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Section 1. Administrative law

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The legal paradigm of antitrust (competition) regulation in Russian and world experience

Abstract: On the basis of retrospective studies major step in the reform of competition law the article examines the basic of its past and present paradigms that reflect key changes in attitudes, approaches to the content of the competition law, the nature of the sources of its regulation, government actors responsible for its development and application. Special attention is paid to the formation stages of the administrative-legal regulators of competitive relations and the modern paradigm changes associated with the development of regional integration processes, markets globalization and international competition.

Keywords: antimonopoly law, administrative law, public competition law, competition protection, antimonopoly law history, Russian experience, world experience, paradigms, European law, European Union competition law, Eurasian Union law, integration processes.

Antitrust law has deep historical roots in Russia and in the world [1; 2; 3, 47–52; 4, 112–153]. Over the long history of anti-monopoly regulation a wide legal, economic, administrative experience has been accumulated in this area. But the active study of the phenomenon of anti-trust (competition) law began no earlier than the second half of the XIX century, which is associated with the search for new approaches to regulation in the new economic conditions and which will be discussed below. Among the Russian authors of this period A. I. Kaminka, A. N. Traynin, I. I. Yanzhul, VI Sinai, V. N. Shreter, A. V. Venediktov, I. T. Tarasov and others can be termed as representatives of public and legal science and civil law.

Later on, in connection with the strengthening of competition law as a system of economics control, its study has been claimed in the world. The exception was the Soviet experience, where due to the special way of the economy, competition law, except for the period of the New Economic Policy antitrust law was not applied and, therefore, the subject to study was absent. True, the international experience was studied, and later it helped with the revival of anti-trust law in the modern Russian period. It is necessary to mention the significant contribution to the theory and history of the world of competition law, introduced by O. A. Zhidkov [3, 47–52; 5].

Currently, Russian, as well as global competition and regulatory science are actively developing. The

object of attention of Russian scientists is both Russian and foreign competition law. In this article, on the basis of the rich regulatory materials, works of domestic and foreign authors on the current state and past periods of global competition law, the author seeks to show its development over time, testifying to the major changes of the basic settings, competition law paradigms, depending on the specifics of the era, and reflecting the specific socio-economic and political processes affecting and predetermining shift competitive legal approaches and models.

The origins of modern antitrust regulation according to experts can be found even in Roman law [1; 2; 3, 47–52; 4]. It has come a long way from antiquity through the Middle Ages and modern times, having eventually become the part of the criminal and civil law in several European countries, particularly France, Prussia, Austria, statutory and common law in England [3, 47–52; 6, 2099–2100; 7, 230–267; 8, 450–486; 9, 10–11]. It has developed significantly, by undergoing a series of metamorphoses in the contemporary history, and in the XX century took its prominent place in the system of public administration and law, having evolved from separate antitrust orientation mechanisms to developed system of public and private law regulators [4, 23–199].

Speaking about a little-known history of Russian anti-monopoly law, it should be noted that even in the period of Ancient Russia as the first mention of monopolistic abuses of the traders are related [4, 23–44; 10, 95–96], and some of the response measures taken by the public authorities, which, however, according to the written sources, had the first casuistic character of specific issues, rather than systemic regulation [4, 25–26; 10, 95–96]. From more recent periods, in particular, XVII century, the petitions of Russian merchants, testifying about their competition with foreign merchants, complaints, and government measures on the latest, preserving or limiting the rights of foreigners, reached us [11, 70, 131–134; 12, 167; 13, 31–36].

It is known, however, that at least from the second half in XVII. Russia the first written laws, aimed at combating monopoly pricing speculation, price agreements (so-called vyazkas and agreements.) and excessive raises of bread prices and some other consumer goods and the necessary requirements by traders – monopolists [4, 24–42; 14, 168; 15]. At the same time mechanisms for public control over the observance of these rules formed and a stiff system of penalties including corporal punishment for their violation was established [4, 24–42; 15].

Then, throughout the whole XVIII century and the beginning of the XIX century acts were published, supplementing and developing antitrust prohibitions and measures against price-fixing and market monopolies, i. e. outbiddings [16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29]. The well-known First Discipline Catherine Charter turned his attention to the issues of combating monopoly outbiddins [30]. At the first half of the XIX century said antimonopoly regulations and standards developed in the preceding period, were revised and incorporated first in the Charter of the national food provision (included in the Code of Statutes of the Discipline by the Code of Laws of the Russian Empire laws) [31], and then also in the Code of penal and correctional punishments [32].

These measures coincided with the economic realities of the era: in order to fight with high prices on essential goods, the State created the legal measures of counteraction to local speculators-monopolists. The development of capitalist relations, the growth of the concentration of production, trade and capital demanded new markets regulation rules. The turning point for both Russian and global competition law began at the late XIX – the beginning of the XX century, when economic realities forced the State by the way of long and painful search to develop new approaches, new legal paradigm of antitrust intervention in the economy, respective development objectives the tasks of development of industry, trade and other sectors of the economy. If before, the key to the system

of antitrust rules played civil and criminal law regulations, the economic legacy of the Industrial Revolution required a more flexible approach, the implementation of which has been available to a greater extent in administrative rather than criminal law.

Changing of the economic reality, growth in the scale of industrial, commercial and financial markets and their participants, the objectively demanded concentration of production and capital necessitated the formation by the authorities of more flexible legal instruments of control and regulation of relations with participation of syndicates and trusts, competition and monopoly. State elite in the developed countries were already well aware of [7, 258–297; 8, 458–486; 33; 34, 361–371] a clear insufficiency for this purpose of the existing antitrust criminal law and civil-law arrangements established long ago in a different economic era for other tasks, namely to counteract the short-term local collusions, strikes and monopolistic speculation.These trends were reflected in the scientific and journalistic works of that period. So a detailed criticism of the inflexible American federal system of criminal liability mechanisms for monopolism imposed by the Sherman Act in its original form in 1890, based on a study of the experience of their application, contained, inter alia, in the works of I. I. Yanzhula. Simultaneously, the professor and academician actually formulated in the same work the concept of the building of a new, flexible administrative antimonopoly control system. [34, 380–445].

The need to offset the center of the implementation of anti-monopoly policy from the repressive anti-speculative activity of law enforcement bodies to economic regulation by the executive authorities, that would make administrative decisions based on the current market analysis, taking into account the integrated and sustainable interests of the State, the economy and consumers, changing global and domestic economic conditions, social and political trends and other systemic factors is all the more apparent. For example, in Australia, the administrative control of cartel agreements was already introduced in the positive law in 1906 with the adoption of anti-monopoly The Trade Practices Act. Establishing strict antitrust prohibitions under the threat of severe penalties, the Act at the same time pointed to the opportunity to avoid these sanctions, if using a special administrative procedure established good intentions of market agreements of businessmen or, in other words, to establish the absence of harm in these agreements and the consequences of their monopolistic actions. A special procedure prescribed in the Law of 1906 made it possible for members of the commercial companies (companies, cartels, trusts) to free from accusations of deliberate violation of the Act. For this purpose, statements concluding a full charter of a company, corporation or cartel should have been filed to the special administrative body [6, P. 2099–2100].

In Russia active reforms in this direction refer to the period of the beginning of XX century. Among the specific steps — consolidation in the Ministry of Trade and Industry of the Russian Empire's powers to conduct antitrust investigations [35, 275–276], the rules on legalization (notification) of business agreements [36], the application by the Government of the customs and tariff regulation measures in order to counter the internal monopoly [36; 37, 69], the development of mergers control system [38; 39; 40] and some other measures which the authorities and society needed in the new economic reality, coupled with the necessity on the one hand, to allow and develop major business associations, production and capital concentration to increase industrial growth, and on the other — to control effectively such associations in order to consumer protection and countering selfish monopoly.

In the Western European countries the first attempts to create flexible administrative mechanisms of antitrust control instead of rigid prohibitions business associations were taken in Germany in 1923, in Sweden – in 1925 and in Norway – in 1926. Thus, the German government's Decree on the economic

abuses of economic power, without prohibiting cartels, legalized their special legal status. Government intervention was only permitted in cases where cartels by their actions threatened the whole economy or public welfare [5, 563].

Gradually, administrative and legal regime comes to a dominant position in the competition law of most countries. Even the experience of some countries where criminal law mechanisms in the fight against monopolies are actively used, for example the United States and Canada, confirms this rule, since in addition to criminal law, the earlier time, criminal law mechanisms in the fight against monopolies were subsequently as fills the first flaws were established [41, 516–522; 42, 120; 43, 60–71; 44]. Such key elements of modern competition protection systems such as anti-trust investigation of market abuses, including anti-competitive agreements and abuse of dominance (monopolization), and other operating procedures of regulatory competition authorities, including merger control (economic concentration control), control (notification) market agreements are subject to administrative and legal regulation. Control of State aid, the administrative rule-making, the status of the supervisory authority, the basics and the procedure for its interaction with other public entities of power, order of the quasi-judicial and judicial challenge acts of competition (antitrust) authorities, the public responsibility of violators, and so on, also appear among the administrative and legal subject regulation in many countries. [41, 516–522]. The public system for the protection of competition and antitrust regulation in modern Russia is not an exception.

So, if monopoly or distribution monopoly rights between citizens and the struggle with spontaneous collusion in fairs, market trading, mostly local nature, with civil and criminal law mechanisms, the aftermath of the industrial revolution were strict bans of the basic antitrust paradigm from ancient time, on the period of the merger of the banking, industrial and commercial capital, the growth of production volumes and the consolidation of economic entities, state-monopoly capitalism has brought to life a new economic and legal antitrust paradigm key which began to play a legal and administrative controls satisfying the requirements of the law enforcer of economic specialization, adaptive management, and extensive use of discretion.

The reality of the second half of the XX century, the post-war world order, which brought block structure of global governance to life, have reflected on the anti-monopoly law. On the one hand — the regional integration associations such as the Common European Union market, then MERCOSUR, Eurasian Economic Community (EurAsEC), on the other — already globalizing outside the regional alliances the world economy and international competition within the global market, not having a national and even regional boundaries, determined the new largely the paradigm of competition law. This right with increasing clarity through the features of a complex multi-level system, following the political developments in the integration of the various unions and associations, as well as extra-regional international economic and trade organizations such as the WTO. All these processes are formalized by the creation of new legal model in which antitrust (competition) law consistently takes its rightful place as inextricably linked with the needs of regulation of market economy.

Modern political map of the world and economic reality is unthinkable without various types of intergovernmental associations and unions created to solve complex financial and economic issues, political and security issues. The degree of integration of such associations is different. One part of such associations is characterized by more policy coordination in certain areas, another transfer from the national to the supranational level interstate or a significant amount in legal regulation and enforcement powers. The European Union, inter alia, refers to the latter include. The research of modern integration processes in the post-Soviet space leads to the conclusion that similar phenomena are observed here in

the framework of the Eurasian Economic Space and the Eurasian Economic Union. Competition law is thus an integral part of the integration of economic rights, which in turn leads to a complication of the system of public subjects of competitive regulation, leads to the formation of new, multi-level, complex models and schemes of competitive regulation in which intertwine national and international, public and private law, new competitive and regulatory paradigms are born.

In the process of the deep economic, and in many respects political integration of these associations there is the process of transferring of a significant amount of regulatory and enforcement powers to the supranational level. For example, in the area of competition policy, EU institutions, not only the European Parliament but also the Council of the EU and the European Commission have considerable lawmaking powers. The EU Commission is also responsible for monitoring compliance with EU competition law, and the Court of Justice, in turn, controls, in particular, Directives of the Commission.

It is important to note that the European Union competitive supranational regulation hasn't cancel the same regulation at the national level of Member States, although it has greatly changed [46, 3]. Levels of regulation coexist in a certain system. The criterion of differentiation of their subject matter was laid in the Treaty of Rome in 1957, according to which the competence attributed to the pan-European competition protection issues relating to the Common Market, while the national competition jurisdiction extends only to relations affecting competition within a single Member State. A similar model has been forming and in the framework of the Eurasian economic integration.

As part of a global Eurasian space, as well as the communitarian Europe, in such a way or a two-level, dualistic system of economic regulation has been forming. By analogy with the EU experience, the issues of protection of competition in the markets that go beyond a single Member State are transferred to the competence of the Eurasian supranational bodies. This system is even more complex in federal States, where the entity level has its own antitrust authorities and their regulations.

For the study of the dualistic model, the issue of the interference of regulatory competition levels of government is very important. Thus, the study of the EU experience in the field of competition regulation led to the conclusion of a significant dominance at the present stage of the EU regulatory approaches in the field of competition policy for the maintenance of the same regulation in the Member States, a significant dependence on the content of the latest approaches and positions of supranational bodies of the EU.

The development of an integration or supranational competition law in the post-Soviet space, in turn, started in the framework of the CIS, as well as in the framework of the Eurasian Economic Space. The foundation on January 1, 2015 of the Eurasian Economic Union, [45] increased economic integration for a number of post-Soviet States. Within the framework of the Eurasian Economic Union the formation of the supranational Eurasian system of protection of competition, including physical, procedural and institutional arrangements has continued. At the level of the Eurasian Economic Union not only the competition rules, required by Member States, but also the authorities to ensure compliance with them have been provided. Wherein, the distinction of powers between the national institutions of the Member States and the Eurasian Economic Union institutions has been provided. This distinction is associated with the concept of cross-border markets.

In connection with this Article 3 of the Russian Law on the Protection of Competition has been supplemented with the following new third part: "3". The provisions of this Law hereof shall not apply to the relations regulated by the same rules of competition in cross-border markets, compliance control of which falls within the competence of the Eurasian Economic Commission in accordance with the international treaty. Market classification criteria for

cross-border established in accordance with an international agreement. "The international agreements within the framework of Eurasian integration system are obviously understood by such agreements".

Competitive relations in Eurasia have been directly regulated by Section XVIII (General principles and competition rules) of the Treaty on the Eurasian Economic Union, as well as Annex 19 to this Treaty (Protocol on the general principles and rules of competition). As it states in the article 74 Section XVIII of the Treaty on the Eurasian Economic Union, "The subject of this section is the establishment of the general principles and rules of the competition, providing detection and control of anti-competitive activity щп the territories of Member States, and actions that have a negative impact on competition in the transboundary markets on the territory of two or more State Members". Hereby, the concept of cross-border market is linked to the market, whose boundaries include the territory of two or more Member States.

According to the comprehensive analysis of the provisions which were stated in the Agreement and Protocol, it follows that the distribution of powers between national and supranational institutions protecting competition passes through the cross-border markets. The latter are subject to the control of Eurasian institutions and national institutions protect competition in markets within the boundaries of the national territories.

It should be considered the norm of Art. 74 of the Treaty, according to which the classification criteria of the market for cross-border in order to determine the competence of the Eurasian Economic Commission — the body responsible for the implementation of competition policy in the Union — established by the decision of the Supreme Eurasian Economic Council. It is also established that the Member States may impose additional requirements and restrictions in their legislation, as well as additional requirements and restrictions in respect of the prohibitions of competition under the Treaty on the Eurasian Economic Union. Further, it is established that "Member States shall undertake coordinated competition (antitrust) policy with respect to actions of economic entities (market participants) third countries, if such actions could have a negative impact on competition in the commodity markets of the Member States".

Article 75 establishes the General principles of competition, and Article 76 – General rules of competition. General competition rules are in fact the formulation of specific prohibitions on anti-competitive activities. So, p.1 Article 76 prohibits actions (inaction) of dominant economic entity (market participant), for example, fixing and maintaining monopolistically high or low commodity prices, and others. Part 2 Article 76 prohibits unfair competition and establishes an indicative list of prohibited acts. Further, various kinds of anti-competitive agreements between economic entities (market operators) of the Member States, the coordination of economic activities are prohibited.

Competitive and regulatory aspects of economic development are actively discussed and implemented not only within the EU and the Eurasian Economic Union, but also in a number of other regional economic integration organizations, such as MERCOSUR. In many cases, regional economic integration and competition today is associated with the formation of supranational institutions of competitive relations regulation and control. Thus, we can conclude the formation currently of a new paradigm, a new special stage in the development of competition law, the content of which is associated with the formation of complex, multilevel systems of economic and competitive management, which reflect the complexity of international economic processes, which intertwine the interests of the nation-state and globalization, national and regional economic interests, competition between regional economic integration blocs complicate international global economic regulation, particularly within the framework of the WTO.

The formation of new public entities supranational systems of competition regulation, the search

for and development of legal mechanisms for cooperation and coordination of national and supranational competition authorities, the harmonization of substantive and procedural competitive legal frameworks of the Member States of integration associations are legally a reflection of the new socio-economic and political phase. One of the interesting questions is the distribution of specific weight of decision-making on issues of competition and markets between national governments and supranational competition structures. Various options are possible.

The first option — the parity model, where each level implements peculiar to it approaches to the substantive and procedural regulation of competition. At the same time some of the institutions competitive and legal approaches of the integration of competition law and national competition law of Member States may vary, as, for example, in the early stages of economic integration within the European Common Market. At the same time in the framework of the first scenario — the integration competition law can be produced either on the basis of the experience of one of the Member States, either through the development of new integrated approaches to the institutions and subinstitutions of substantive and procedural competition law.

The second option of the development of a new paradigm of competition law can be connected with a dominance of legal approaches of supranational competition law over national with the gradual mandatory harmonization of national competition law and by adjusting to the substantive and procedural standards of supranational competition and economic rights [46, 3], with the involvement of national institutions into the orbit of the active supranational regulation. The experience of recent years of European economic integration within the EU represents, in particular, such an example [47, 472–484].

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Section 2. Global Development

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Trade facilitation: Have international legal instruments worked for landlocked states?

Abstract: While landlocked states might be transit states, they themselves have a right of access to and from the sea under international conventions, regional and multilateral trade agreements. The purpose of this paper is to study the existing regulatory frameworks in this regard and analyze their effectiveness for such states vis-à-vis their right to transit.

Keywords: trade facilitation, regulatory obstacles, landlocked state, development, integration.

Introduction

International law grants a right to transit. A notable acknowledgement of the same came under Article 3 of the Convention on the High Seas adopted in 1958. Several developments have taken place since then to deal with issues related to transit and to define the right to transit more vividly. While international law advocates the existence and implication of a "right to transit" it is to be noted that recognition of a right is not a solution in itself because international law provides a starting point – a concept, a framework or a standard that States are expected to work on. The right to transit is linked to domestic laws of States which only States – as sovereigns, have the power to enact or amend after considering questions such as – How would States mutually exercise this right? What would be the terms and modalities of such an arrangement? It is at this juncture that transit states and the ones that are 'geographically challenged' need to make their minds meet – for international law provides the right certain validity but it is not able to guarantee it.

Multilateralism became the cornerstone in the sphere of international trade with the establishment of the World Trade Organization. Landlocked developing countries (LLDCs) face some specific challenges that are hurdles in their integration into the global economy and consequently are unable to seek any benefits arising out of international trade. Prior to the existence of the United Nations and WTO, The Barcelona Convention and Statute on Freedom of Transit, an international treaty, was signed in 1921. The Convention accepted the statute adopted at a League of Nations conference held in Barcelona and is still in force. It provides for "freedom" to transit of goods and persons across international borders [1]. In contrast, the General Agreement on Tariffs and Trade (GATT), adopted in 1948, provides for a "right to transit" indicating a visible shift from protectionism to liberalism, favoring transit rights of states over the sovereignty of others [2]. Even with respect to Article 3 of the Convention on the High Seas, landlocked countries (LLCs) have submitted that this provision requires an agreement with

countries of transit before the right of access is recognized. It is also conditioned by the requirement that LLCs grant its neighbor a reciprocal right [3, 31–52]. The United Nations Conference on Transit Trade of Land-locked Countries met at the Headquarters of the United Nations in New York from 7 June 1965 to 8 July 1965. The conference resulted in the Convention on Transit Trade of Landlocked States, 1965 (NY Convention) as a result of an initiative sponsored by four Asian LLDCs (Afghanistan, Laos, Mongolia, and Nepal). The Convention recognizes the "right" to transit as a principle for the expansion of international trade and economic development [4]. This was quite an achievement since it was the first time that the word "right" of free transit was inserted in an international resolution concerning LLDCs [5, 201–235]. Despite these positive signs, the practical impact of the Convention has been limited, for few countries of transit signed or ratified the Convention [3]. LLDCs made another attempt at securing their interests under the Third United Nations Convention on the Law of the Sea (UNCLOS III). The purpose of UNCLOS III is to establish a comprehensive set of rules governing the rights of States over oceans. Freedom of transit and trade facilitation is therefore only a part of the convention that deals with broader issues such as establishing specific jurisdictional limits on the ocean area that countries may claim, marine environment and/or establishing guidelines for businesses [6]. The convention provides for a right to access to and from the sea by all means of transport [7]. The Most Favored Nation (MFN) treatment has been excluded from application on account of the special geographical position of LLCs. On the other hand, LLCs have little to gain from the equal treatment they are to be accorded at maritime ports wherein equal could mean a treatment less favorable [8]. However, there are two major limitations on the exercise of right to access by an LLC. Firstly, *the terms and modalities for exercising freedom of transit* ***shall*** *be agreed between the land-locked States and transit States concerned through bilateral, sub regional or regional agreements.* The use of the word 'shall' does not leave any doubt that the right is limited to provisions under the respective agreements that states manage to negotiate and agree upon. It is the same vis-à-vis free zones or other customs facilities that may be provided at ports of entry and exit in transit States [9]. Secondly, sovereignty of transit states is supreme! Transit states ***shall*** have the right to take ***all*** measures necessary to ensure that the rights and facilities provided to landlocked States ***shall*** in no way infringe their ***legitimate interests*** [10]. While this Article constitutes a clear recognition of the principle involved, the modalities called for in paragraphs (2) and (3) must involve substantial qualifications in practice [11]. This substantially leaves LLC's interests in the hands of transit states i. e. the ones hosting port facilities in this context. To what extent does the other state accommodate the interest of a LLC depends on geo-political factors and the consequent action is dependent upon the perception and discretion of the transit state. Essentially a convenient transit for LLC may be refused, at any time by transit states. LLDCs become vulnerable to even greater economic losses that they may suffer due to the actions (or inaction) of a transit state [3].

For LLDCs, adequate road, rail and water transport facility is of primary importance to reduce the country's isolation; cut costs of transportation to the ultimate port in another country. Additionally, LLDCs also need to focus on telecommunications, modes of handling and warehousing consignments and appointment of personnel for administration of the procedures. There are therefore several issues that LLDCs need to address in order to facilitate trade on the domestic, bilateral and multilateral plane. In the light of the major importance of effective transit arrangements for LLDCs, effective legal protection of a right to freedom of transit remains a continuing challenge [12, 1–16]. LLDCs have limited capacities and lack of territorial access to the sea has further led to isolation from world markets consequently resulting in

lowering their effective participation in international trade. Out of the six LLDCs in the Asia Pacific region, five are least developed countries [153, 1–133].

Have the Rules been reformulated?

The NY Convention and the WTO Trade Facilitation Agreement (TFA) are two international legal instruments that deal with transit rights and trade facilitation. The NY Convention and the TFA have come into force in different time periods i. e. 1965 and 2017. It would be interesting to analyze whether there has been any shift in approach while addressing transit issues from then to now. There were a few provisions on trade facilitation (none dealing specifically with LLCs) under GATT that may be looked into to see the WTO system prior to the TFA. Three Articles of the GATT embody provisions on trade facilitation. Article V of the GATT provides for freedom of transit. Although not specifically dealing with LLCs, the Article reaffirms the principles laid down by the Barcelona Statute [3]. The GATT also covered overland transport, and thus provided contracting states greater facilities than those provided by the Barcelona Statute which is limited to utilization of railways and waterways [14]. Article VIII provides for fees and formalities connected with importation and exportation, Article X provides for publication and administration of trade regulations. These three Articles are echoed, among many additional provisions on trade facilitation, in the TFA. The TFA aims to expedite the movement, release and clearance of goods, including goods in transit. It sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation, technical assistance and capacity building [15]. The Transport Ministry of member states along with the customs authority and other border agencies is required to work towards eliminating or reducing regulations on transit so that they do not result in disguised restriction on trade [16]. In processing and control of transit movements, member states are directed to strengthen infrastructure, apply measures that are reasonable and not in excess of requirement i. e. during inspection, identification, arrival or departure of goods [17].

A substantial part of the provision focuses on financing of trade. Any guarantee that Customs requires for a transit movement shall be limited to ensuring that requirements arising from such traffic in transit are fulfilled; discharged by Customs without delay once the transit is completed; and in a manner consistent with its laws and regulations, be comprehensive for the operators or maybe renewed by the trader thereafter [18]. The use of customs convoys or escorts is preferred to the use of guarantees only when there are high risk circumstances or when compliance with customs laws and regulations cannot be ensured. Trade with Central Asia is marked by practices wherein truckers prefer use of convoy systems to even escort systems as they are economical [19]. One Member shall provide to another, upon request and subject to conditions, information and/or documents concerning specific import or export declarations [20]. The agreement stipulates that countries should not apply their technical regulations and standards to goods in transit. This is crucial for LLDCs, as it will provide LLDC producers with significant cost savings, making their exports more competitive in foreign markets [21]. Members are directed to enhance freedom of transit by cooperating with one another to reach a common understanding on charges, formalities and practical operation of transit regimes [22].

A comparison of the TFA and the NY Convention will be interesting. The TFA does not mention LLCs or LLDCs even once in the provision on Freedom of Transit. It rather addresses all members i. e. those that are not landlocked and simply have transit routes passing through other member states (eg. territorial waters). While it does stress upon making transit smoother, the fact that a mention of LLCs or LLDCs is omitted completely cannot be said to be in the best interests of LLDCs. The TFA does not accord enough importance to the unique limitations that LLCs face unlike the NY Convention that caters exclusively to the issue. Whether the LLCs lost ground under the TFA will have to be seen in the coming time. However, there is undeniably a clear difference in

the approaches of the two international legal instruments in the way they address freedom of transit.

Conclusion

This paper intends to show that the process of trade facilitation begins with the recognition of a right to transit which needs to be translated into trade facilitation measures. The recognition of a right therefore, is not a solution in itself. Active engagements are thus required between countries in order to set a pace for achieving the envisioned goals. LLDCs have long pursued to secure their interests and have achieved some success but still have a lot to gain. LLDCs still stand to gain from the provisions of the TFA. Section II of the TFA contains special and differential treatment provisions under three categories for developing and least-developed country members [23]. For developing and LDCs, trade facilitation support relies on a core group of bilateral and multilateral donors. Assistance has also tended to focus on specific regions and countries, with trade facilitation assistance being extended as part of projects infrastructural upgrading, business environment or regional trade integration projects. At the national level, successful implementation of reforms requires co-operation between government and private sector. These reforms are also something that donors are willing to support [24]. Apart from the TFA, bilateral and regional agreements also provide a lot of potential for LLDCs. The TFA itself does not stand in the way of any bilateral or regional trade agreements that seek to provide a wider, more efficient regime on customs cooperation and trade facilitation [25].

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Section 3. Civil procedure

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Legal groundwork of conciliation Institute in Civil and Criminal proceeding by the Legislation of the Republic of Kazakhstan

Abstract: In this article the authors considers the peculiarities of the reconciliation institute in civil and criminal proceedings, as well as the use in mediation procedures in civil and criminal cases by the court. Reconciliation of the parties must be regarded as a legal institution, which has the same meaning in the civil and criminal proceedings.

Keywords: conciliation, mediation, settlement agreement, Participatory procedure, civil procedure, criminal procedure.

Institute of reconciliation of the parties, in practice there is a long time, it is not new for Kazakhstan. Reconciliation of the parties must be regarded as a legal institution, which has the same meaning in the civil and criminal proceedings.

From the 1 of January 1998, since the enactment of the Criminal Code, the institute of reconciliation of the parties, used in cases of crimes small and medium severity crimes, as well as in cases of serious crimes, if they are not associated with causing death or grievous bodily harm, and for the first time committed by minors. And it is possible not only in cases of private prosecution, but also private and public, where pre-trial procedural proceedings carried out by the bodies of criminal prosecution. As part of the ongoing work carried out in the country to improve legislation, improve the efficiency of the authorized state bodies, the introduction of mediation organically «fit» into the overall legal policy as an effective alternative means of resolving civil disputes and criminal law conflicts.

As stated in the law, mediation (the procedure for resolving the dispute (conflict) between the parties with the assistance of a mediator in order to achieve their mutually acceptable solution, implemented by voluntary agreement of the parties) can be used for disputes arising from civil, labor, family and other relations with the participation of individuals and (or)

legal entities, as well as in the course of criminal proceedings in cases small and average weightof crimes [1, 35].

However, the law prohibits the use of mediation in disputes, if they affect or may affect the interests of third parties not involved in the mediation procedure, persons found incompetent by a court, in cases where one of the parties is a public authority, as well as criminal cases of corruption crimes and other crimes against interests of public service and public administration.

The termination of the criminal proceedings and the release of a person from criminal liability is permitted only under the criminal law and criminal procedure and conditions of compulsory grounds — reconciliation without intermediaries. Procedural form is expressed in the consolidation of the results of the conciliation procedure in the form of a settlement agreement. Reconciliation of the parties shall be in the form of a settlement agreement. The settlement agreement is determined by the procedural position of the parties, the terms of reconciliation and redress, execution time. The settlement agreement must be certified by an authorized person in charge of the criminal proceedings and it is binding on the parties reconciliation. Reconciliation of the parties in cases of all forms of prosecution is a procedural matter only when it occurred notlater than the removal of the court to the deliberation room for discussing.

In the case of the criminal proceedings termination and exemption from criminal responsibility from a person who has the first criminal prosecution, should be established a probation period and take into account the involvement of the facts before the person to criminal responsibility, but of liberation from it, as well as the facts of the crime is committed outside of the Republic of Kazakhstan. The offer to turn to mediation can be made at the request of the other party, the court or the prosecuting authority, whose production is a criminal case. Conducting the mediation carried out by mutual agreement of the parties and at the conclusion of the mediation between the contract. The choice of a mediator (or more, at the request of the parties) is also carried out by mutual agreement of the parties, at the same time, the organization of mediators may recommend the candidature of a mediator (mediators), if the parties are directed to the specified organization of appropriate treatment. Dates of the mediation are determined by the contract on mediation.

Peculiarities of applying mediation in a criminal proceeding

The Law introduces amendments to the Criminal Code of the Republic of Kazakhstan, according to which a person who has committed a crime of minor or moderate severity (except for corruption and other crimes against interests of public service and public administration), shall be released from criminal liability or may be released from criminal liability if he reconciled with the victim, including by way of mediation and to make amends for the harm to the victim [2, part 1, 2 art. 67]. As the provisions of the law, the application of mediation procedure is possible only for criminal cases at the pre-trial stage or in the trial stages. However, an agreement on mediation does not suspend the criminal proceedings and mediation must be made within the criminal procedure law, pretrial and trial proceedings. We believe it is right, as a preventive measure to the accused may be elected to the arrest and suspension of criminal proceedings on the basis of the mediation procedure can complicate and extend the arrest.

Norms of Criminal-Procedural Code of the rights of suspects, defendants, victims are supplemented by the right to reconciliation in the order of mediation in cases established by law [2, art. 68, 69, 75]. Conclusion the parties to the agreement on the settlement of the conflict in order mediation is the ground for termination of the criminal case by the agency conducting the criminal proceedings [2, art. 51, 269, 307]. Upon termination of the mediation carried out in the framework of civil and criminal proceedings, the parties must immediately send an agreement to the court or the prosecution authority: in the case of

signing an agreement on a conflict, in other cases — a written notice of termination of mediation specifying the grounds provided by law.

Settlement procedures in a civil proceeding

According to the Civil Procedure Code of the Republic of Kazakhstan there are three types of conciliation procedures in the new edition — the first is the "settlement agreement" as a classic example of a voluntary settlement of the dispute between the parties; second, it emerged as an institution in Kazakhstan recently, in 2011, the "mediation" and the third "Participatory procedure" with the obligatory participation of lawyers [3, article 181].

The settlement agreement as an institution of dispute settlement in civil proceedings has been known since time immemorial and there is no doubt about its necessity for the participants in the process, especially when the case of the parties are persons who of relative relationships, friendly relations (to the dispute), or in a business partnership, and legal claims could be met voluntarily. It is important to note two points: first, that at the conclusion of the settlement agreement the parties may not change the subject and the bottom of the dispute (stated claims), which is possible in the mediation procedure, and second, that the settlement agreement may be concluded only in the framework of civil procedure, i. e. after filing a claim in court and payment of the state duty in accordance with the law way and size. Mediation Institute in the civil process is much wider than the usual reconciliation. The parties have the right to change the subject and cause of action in the conciliation procedure in order mediation. This is the privilege of a given category of reconciliation in civil proceedings [4].

The main differences are the use of participatory procedures in procedural law as follows:

– the first, talks in a participatory process can be carried out between the parties with the mandatory participation of lawyers, ensuring the validity of all claims of a possible agreement on the settlement of the dispute;

– second, the whole procedure takes place without the participation of the judge hearing the civil case, and without outside influence anyone to make a decision by the parties to conclude an agreement by way of negotiations between lawyers as the representatives of the plaintiff and the defendant, or the dispute between them with respect to any law;

– third, and most importantly, Participatory procedure can be used by lawyers outside the court, after organizing civil dispute, that is, without bringing an action in the courts without payment of state fees and such analog methods has not be applied before in the practice of Kazakhstan's legislation was not earlier.

Conducting participatory procedures attorneys in the interests of principals without bringing an action in court, that is, without paying the state fee, no longer walking on the courts, without tremendously wasted time and nerves, without loss of trust and broken kinship, friendship and business relationship between the parties to the dispute as the opponents. It must be a powerful tool in the arsenal of lawyers for alternative settlement of civil disputes. If the signatories of the agreement in order participatory procedures will not fulfill its obligations, the law provides the procedure as enforcement and summary (written) production (without calling the parties to the court with a reduced period of up to one month of the application), which is a guarantee of performance made by the parties on the commitments that have been achieved as a result of negotiations between lawyers.

During the conciliation proceedings in criminal and civil proceedings it must be guided not by avoiding from the responsibility of guilty or the opposite side, but for the injured party, or the extent to which the victim will feel safe in this country. Perhaps it makes sense to introduce a special conciliation procedure in criminal proceedings with the obligatory participation of the lawyers, similar participatory procedure in civil proceedings (or provide conducting participatory procedures – negotiations between the lawyers in criminal proceedings in a criminal case) with the establishment

of special procedural term for the procedure. For example, if a lawyer representing the interests of the injured party, insists on the inevitability of punishment, the lawyer of the suspect (or accused) person will insist on the innocence of his client. Here is a conflict of interest between the two lawyers. We need to focus on the narrative (recovery) approach in criminal proceedings, where the main actor is the victim, not a suspect (accused), the social significance of such an approach would lead to the fact that each of the lawyers will think: what is more important to his client (the victim on case) — the punishment of the suspect (the accused) or the possibility of repentance and compensation, and most importantly, safety and absence of the element of revenge and aggression in the relationship between criminal actors.

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Section 4. European law

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Basic scientific approaches to the essence and role of transport law in the system of law in Russia, England and France

Abstract: In the Russian Federation, same as in other developed countries including England and France, which were specially selected for the comparative legal research in this paper for representing different legal systems, transport is one of the largest basic branches of the economy and an important part of the industrial and social infrastructure. In this regard, these relations need effective state regulation provided by creating a ramified system of legal norms that take into account and regulate all aspects and specificity of transport activities. In order to let this system of norms having a scientific name of transport law be an effective regulator of public relations, it is necessary to identify its essence, features and role in the system of law, which is a necessary prerequisite for the transport legislation improvement.

Keywords: entrepreneurial activity, transport law, transport legislation, legal system, Russia, England, France.

Since the late 1990s and up to the present time, scientific discussions have been held in Russian and foreign legal science on the nature and role of the transport law in the system of law. Each country approaches the solution of this issue regarding the peculiarities of its legal system.

Summarizing the approaches existing in the Russian legal science, it is possible to distinguish five most common approaches to the essence of the transport law. Let us briefly review and assess each of them.

1. Conceptual essence of the transport law as an independent branch of law is reduced to several codification acts regulating water, air, rail and road transport, thus forming the basis of the transport law. In fact, it is about the presence of sub-sectors within the framework of such a large branch of law as the transport law.

This point of view seems to be not fully justified, since at least two criteria are needed in order to let a particular set of norms become a separate branch of law: an independent subject in the form of a homogeneous social relations complex and a method of legal regulation; neither the volume of normative legal regulation, nor the existence of codification acts can justify the existence of independent branch of law on their basis without taking into account the above-mentioned criteria. Alone, the presence of transport regulations and codes does not change the complex nature of the subject and the methodology of the transport law.

2. The concept recognizing certain parts of transport law as independent branches of law did not get sufficient support in the legal science as well. For

example, A.K. Zhudro and V.F. Meshera argued that the maritime law was an independent branch of law along with the civil and administrative law [1]. Of course, we agree with regarding the maritime law as one of the most specific structural entities of the transport law. However, despite its clear specificity and existence of its own structural units (for example, norms of general emergency, rescue, ship collision, etc.), the maritime law retains its integrated nature, same as railroad, air, inland water and motor transport law.

3. Many representatives of the Russian legal science engaged in the study of this legal phenomenon such as V.A. Yegiazarov and A.G. Kalpin consider the transport law as a complex branch of law. At the same time, this approach is one of the most controversial ideas since the presence of complex branches in the system of law is a big controversy itself. In our opinion, the idea of complex branches of law is too widely used nowadays for considering the issues of the essence and role of the transport law in the system of Russian law. This is due to the fact that many legal scholars focus their attention only on the specificity and problems of transport activities, which objectively need comprehensive legal regulation, but ignore theoretical issues of building the system of law in general. Emphasizing the undoubted importance and value of the transport law for the state and society, they "grant" the branch status to it. And since the transport law does not fit into the independent branch of law, it is regarded as a complex branch taking into account the complex character of transport and legal regulation, which is not entirely correct from the law theory point of view.

4. The transport law is a complex branch of legislation having no appropriate place in the system of law. This approach to the transport law appeared in the 1970s. A number of authors considered the transport law not as a branch of law or a system of legal norms, but as a branch of legislation, a complex of normative legal acts of various natures (belonging to civil law, administrative law, etc.). It is not entirely correct to say that the transport law is just a complex branch of legislation being limited by this and denying the possibility of this category existence in the system of law. It is well known that the system of law and the legislation system are two sides of the same coin, they relate to each other as the content and form.

5. The transport law doctrine formed in the 1920s considered the transport law as the civil law institution with the only object of carriage contract; it lost its former leading position in the system of approaches to the transport law and became outdated in modern conditions due to its narrow approach to the role of the civil law for the legal regulation of public relations in the field of transport.

Summarizing the analysis of the Russian legal doctrine, it should be noted that none of the approaches to the essence and role of the transport law existing in the legal system of Russia fully corresponds to the modern reality. The author of the paper has developed a modern concept of the essence, specificity and role of the transport law in the Russian law system based on fundamental provisions of the law theory of doubling the law structure and modern neo-conception of the civil law as a general direction for the development of civil law in Russia, according to which complex legal regulation is used for regulating various economic relations including public relations arising in the field of transport in the process of realizing its functions initially based on the civil law norms. This concept considers the transport law as a secondary multifunctional integrated complex interdisciplinary normative formation of the Russian law system with the leading role of the civil law in it. In essence, this formation is an association of complex integrated interdisciplinary functional legal institutions of air, sea, rail, inland water and motor transport law. It includes mainly the norms of the civil law, as well as the norms of other branches, interacting under the influence of the transport law own principles with few own norms of the transport law in the process of regulating diverse specific social relations arising in the field of transport activities.

The norms of each complex interdisciplinary functional legal institution within the transport law

are externally expressed in the corresponding complex branch of legislation, and the entire transport law is expressed in the complex formation of the Russian legislation system - a complex legislative array. This approach complies with the fundamentals of the state and law theory taking into account the historically complex nature of the transport relations, since the existence of complex interbranch legal institutions in the system of law is universally recognized unlike the complex branches of law.

Next, we proceed to a brief analysis of the French and English legal doctrines.

The issue of branch division in the French law includes two developed fundamental points of view. Representatives of the first approach strictly divide the entire French law into branches of public and private law without recognizing other classifications.

In turn, representatives of the second approach distinguish differently named branches combining private and public law, so-called mixed branches, in addition to the public and private law branches [2].

Besides, a number of scientists developed the idea of mixed branches appearance emphasizing their origin by separation from other branches. For example, J.-L. Aubert notes that the civil and commercial law gave birth to agrarian, transport, insurance and intellectual property laws. At the same time, branches originating from the commercial law are often distinguished within the private law, and the transport one is among them [3].

Summarizing the above, the following conclusion can be drawn: the French legal doctrine includes three basic approaches to the essence and role of the transport law; first, it is a part of the commercial law and, therefore, is the private law; second, the transport law is a mixed branch of law combining the norms of private and public branches separated from the commercial law. Finally, there is one more point of view, according to which the maritime law is included in the commercial law and regarded as the private law, and air and other components of the transport law are special (mixed) branches, where the norms of public and private law are essentially intertwined [4] .

For comparison, the analysis of works by English jurists [5] indicates blurred division of the law into private and public, civil and criminal branches in the Anglo-Saxon law. This is due to the fact that the main source of law in England is a judicial precedent, and most English courts have general jurisdiction; it is specifically noted in the legal literature [5, P. 13]. At the same time, it is known that the divided jurisdiction results in differentiation of law branches, while the unified one, on the contrary, causes the reverse process. In addition, the English law has no codifications and no branch codes of European type; as a result, the law is homogeneous to some extent for English lawyers [4]. Due to the fact that the branches in the Anglo-Saxon legal system states are not so clearly expressed, the issues of their classification are not often addressed in the English legal doctrine. Moreover, the English legal doctrine includes no discussion about the structural division of law [4]. It explains the fact that the English jurisprudence does not pay much attention to the transport law as an integral normative formation, and the researches in this area consider only certain aspects of the transport functioning.

It is obvious that a lot of common aspects can be identified when comparing the approaches by Russian, French and English scientists to the transport law; it is logical due to the fact that Russia and France belong to the same legal system.

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Section 5. Constitutional law

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Legal nature of Constitutional Court's decisions and its role in improvement of criminal procedure of legislation

Abstract: In this article, legal positions of the Constitutional Court's decisions were reviewed, positions of lawyer-scientists related to it, somewhat conflicting and different thoughts and discretions related to it were analyzed and generalized. Thought of, which Constitutional Court's decisions are the source of the criminal- procedural law was substantiated. Initial conditions of the settlement of this problem were determined on the basis of the analysis of the scientific positions for legal nature problem of the Constitutional Court's decisions. Classification of the Constitutional Court's decisions was given according to various reasons (features). The impact to legal regulation and the role in formation of the Constitutional Court's decisions in the field of criminal proceedings was investigated.

Keywords: Constitutional Court, decision, source of law, legal act, precedent, prejudice, legal position, legal regulation, criminal procedure law.

As it is known, Constitutional Court which is a relatively new legal institution in the field of justice proceedings of Azerbaijan Republic plays a key role in ensuring strengthening of democracy and the rule of law, as well as in protection of human rights and freedoms. So during the short period of its existence, the Constitutional Court reviewed a great number of petitions, applications and complaints, and adopted decisions aimed at the protection of human rights and fundamental freedoms.

If we have a look at the statistics of the decisions adopted on the Criminal Code, Criminal Procedure Code, the Civil Code and the Civil Procedure Code of Azerbaijan Republic on the basis of the requests and appeals to the Plenum of Constitutional Court of Azerbaijan Republic, we can see that on the basis of the request and the applications the Plenum of Constitutional Court of Azerbaijan Republic during 1998–2016 years (the first six months of 2016) adopted totally 126 decisions on the Criminal Code, the Criminal Procedural Code, Civil Code and the Civil Procedure Code. 41 of them were adopted on the basis of petitions and applications on Criminal Code, 35 on Criminal Procedure Code, 30 on Civil Code and 20 on Civil Procedural Code.

In the decisions made by the Constitutional Court in the criminal proceedings, this highest judicial body confirming guarantee of a number of democratic provisions of the citizens in the criminal processes extended them and helped to remove the obstacles in the way of guarantying important constitutional rights (right for liberty, the right to defense, the right to equality of parts, etc.)

The resolution of the issues about the place of the Constitutional Court's decisions in criminal procedure regulation mechanism is related, first of all, with determination of the legal nature of these decisions. However in the literature the issue about the legal nature of the Constitutional Court's decisions is still under discussion.

During investigation and analysis of the legal nature of the Constitutional Court's decisions, first of all, its analysis should be conducted in proportion and comparison with normative legal acts.

1. B. S. Abzayev notes that the Constitutional Court's decisions are not normative acts and cannot be represented in a precedent quality carrying normative-regulatory importance [1, P. 164].

2. N. A. Bogdanova shares the similar position, and indicates that the Constitutional Court's decisions are not source of law, because they do not have the recommendatory peculiarity as normativity. At the same time, these decisions may be considered source of knowledge. The author notes that "To consider the Constitutional Court's decisions as in the quality of normative acts contradicts with the state juridical conception" [2, P. 64–67].

3. T. G. Morshokova speaks about the interlocutory role of the Constitutional Court's decisions. The author believes that the Constitutional Court's decisions are not precedent from juridical point of view, they carry interlocutory character and are special type of interlocution. The author notes that the term "interlocutory" means that the fact that has been determined by the Constitutional Court and the essence of which is in determination whether some article corresponds to the Constitution or not cannot be further determined either by the Constitutional Court or other organs. And it indicates not precedent, but interlocutory nature of the decision [3, P.29; 20, P. 29].

N. V. Batuev notes that T. G. Morshakova's proposal about considering the Constitutional Court's decisions the acts reflecting interlocutory facts does not contradict with the concept of interlocutory revised in law doctrine [4, P. 77; 2, P. 77]. The author considers that neither Constitution, nor the law "On Constitutional Court" provides an authority to accept normative-legal acts. And it is natural. The matter is that availability of the authority for implementation of juridical creativity would be contradictory against its assignment as a court body on constitutional control. Thus, the Constitutional Court in its essence is not a lawmaking body. Therefore, the decisions of the Constitutional Court cannot be normative legal acts. Besides it, the author notes that some peculiarities of the Constitutional Court's decisions give ground to speak about their likeness to normative juridical acts. The Constitutional Court's decisions are characterized by a special rule of preparation, acceptance, issue and coming into force, they have got special documentation form and structure. Implementation of the decisions of the Constitutional Court are mandatory for state authorities, local self-government bodies, enterprises, organizations and institutions, officials, citizens and their associations throughout all the country [4, P. 61; 2, P. 61].

For some authors these peculiarities of the Constitutional Court's decisions gave ground to say that these juridical acts carry normative character and that some of Constitutional Court's decisions refer to criminal procedure legal sources. For example, V. V. Lazerev thinks that the Constitutional Court's decisions are the legal source [5, P. 49; 16, P. 49]. T. A. Khabriyeva sharing the similar position indicates that the descriptions of the Constitutional Court's decisions refer to the highest rank of official statements and its decisions, although not being considered a law, have the power of law due to a number of parameters [6, P. 10–11; 27, P. 10–11]. N. V. Vitruk notes that as a rule, in Constitutional Court's decisions new regulatory criteria are formulated, "models" of essentially new legal norms are built [7, P. 54; 9, P. 54; 10). N. S. Bondar considers Constitutional Court's decisions as special court act where both normative and constitutional-doctrinal beginnings are involved [8, P. 75–85].

It should be noted that in the 2nd article of the Law of Azerbaijan Republic "On Normative acts" dated on November, 26, 1999 it is shown that "The normative legal act of Azerbaijan Republic is an official written document accepted by the authorized state organ with the indications of general mandatory character, determining, changing or annulling legal norms and intended for multiple use".

The content of this concept allows to consider the decision of the Constitutional Court a normative-legal act. We should note that in the 3rd article of the Law "On normative legal acts" the decrees, instructions and directives of the Central Election Commission of Azerbaijan Republic; the decisions of local executive authorities and local self-government bodies; the decisions of the National Bank of Azerbaijan; resolutions of the National Television and Radio Council; the decisions of the Constitutional Court of Azerbaijan Republic are classified into the category of acts of normative character.

A. D. Boykov stated the following thoughts about the legal nature of the Constitutional Court: "Judging by the fact of the division of the authorities, the Constitutional Court proceeding cannot be related with lawmaking activity" [9, P. 78–79; 7, P. 78–79]. V. A. Petrushov shares the similar position. While researching legal nature of the acts adopted by the court and consisting of the description of the law the author notes that the court organs including Constitutional Court does not have an authority to create new legal norms. While implementation of the explanation of the Constitution and while adopting other decisions, Constitutional Court cannot create any norm [10, P. 54; 22, P. 54].

A. V. Grienko concludes that the Constitutional Court's decisions are just the information sources of law. Developing this thought he noted that the information sources differ from normative- legal acts, first of all, for lack of the clearly expressed hierarchy. And it is conditioned with a number of reasons. 1) legal nature of the sources are different; 2) the sources can be used both by law executer and legislative bodies; 3) degree of necessity of the articles determined in the information sources are not the same [11, P. 27].

On the conceptual basis of these views and opinions stands such a thesis that law is a dynamic and ever-developing event and it, of course, as a positive change in term of law allows to move beyond the narrow frame of normativizm. Indeed, the criminal procedure law is constantly being adapted to the needs of society and new useful updates are being adopted. Of course, not only updated legislation, but also the sources actively influencing on the legislative authority also create favorable conditions for the development of law.

Discussion on the legal nature of the Constitutional Court's decisions is not limited with the disputes related whether these decisions are normative legal acts or not. According to some of the authors' view, Constitutional Court's decisions constitute a separate group of legal acts and they are characterized with normative interpretation, precedent and general compulsion.

V. A. Kryachkov and L. V. Lazarev in one of the textbooks call Constitutional Court's decision "precedent-mandatory": "The decision is precedent-mandatory for the Court itself. It brings stability and some order to the legal relations" [12, P. 239–240; 14, P. 239–240].

Thus, in the legal literature there are different positions regarding the place of the Constitutional Court's decisions (resolutions) in the legal system. V. O. Luchin and O. N. Doronina note that the Constitutional Court "does not only interpret separate legal norms, but also forms constitutional — legal doctrine. Constitutional Court creates law in a known sense and framework" [13; 17].

A. A. Belkin's position is of interest. He notes that it is appropriate to distinguish besides the primary sources of law, also the derivative legal sources. The author refers the decisions of the highest judicial authorities, as well as the Constitutional Court to the derivative sources of law, because in the Constitutional Court's decisions, first of all, the

primary material existing in the Constitution and in other sources of law is used and description and interpretation of the constitutional and other articles are given in its resolutions. Besides it, the Constitutional Court adopts a decision in regard to concrete applications and acts, and it narrows the importance of law creating elements in the content of its resolutions, opinions and decisions, yet does not decrease them to null [14, P. 21; 3, P. 21].

As for the Constitutional Court's decisions being considered a special type of precedent, this issue is quite controversial.

As L.A. Morozova notes the judicial precedent (Lat. "leading", "previous") being a decision of the court on a particular case becomes a rule in resolution of analogical cases in future [15, P. 239–240; 19, P. 239–240].

The comments provide the basis for such a conclusion that the decrees of the Constitutional Court and the legal positions which are parts of these decrees give an idea about the current state of the mechanism of regulation of valid Criminal Procedural legislation and criminal-procedural activity and allows to identify the directions for provision of human and civil rights and freedoms on a higher level and improving the efficiency of law and criminal proceedings. At the same time, it is necessary to note that the Constitutional Court cannot independently take the initiative to verify the correspondence of a criminal-procedural norm to the constitution, also cannot go beyond the scope of the particular complaint, request or inquiry.

The assignment of the Constitutional Court consists of review of the legal norms, as well as the provisions of the criminal procedure law to verify their correspondence with the constitution, it is not adaptation of the norms and provisions to the Constitution — it is the function of a legislature.

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Section 6. Criminal law

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Some practical and theoretical aspects concerning the criminal acts of "sexual or homosexual relationships with minors" in the Albanian legislation

Abstract: The article aims to make an analysis of the legislation conserning the fenomenon of sexual or homosexual relationships with minors. The specter of sexual abusive acts includes a wider range of criminal acts such as rape and lesser sexual harassments. Through this thesis we will analyze only the criminal act of " Sexual and Homosexual relationships with minors" as regulated by the Albanian Criminal Code.

Keywords: pedophilia, crime, sexual act, shameful acts, minors, albanian legislation, Criminal Code.

Introduction

Crimes such as sexual or homosexual relations with minors are considered to be of a very high level of danger for the society, also representing one of the most common ways of criminal abuse of minors. The safety of freedom and sexual growth in society is very important for the minors and children physical integration in society. Thus being one of the pillars and basic most valuable rights this criminal figure or better say the study of such penal act is very important for the safeguard of such rights.

To achieve the principle we have today of such penal act there were many changes made by the legislative instances in order for its covered area to expand. When the Criminal Code of The Republic of Albania was first approved in 1995 this is how it regulated such crime: *"Sexual acts with minors that have not yet reached puberty or that are under fourteen years old is punished by law with five to fifteen years of incarceration.*

In the cases when the sexual act is achieved by force or violence and as such the minor has severe health consequences the this act is punished with ten to twenty years of incarceration.

In the cases when the sexual act has lead to the death or the suicide of a minor then this crime is sanctioned with no less then twenty years of incarceration" [11].

During the practical application of this penal act it was clear that it couldn't effect homosexual acts with minors. Thus in order for the penal law to act in such specific cases it was important for the legislative to act [1, 113]. Such a legal vacuum was addressed with the the regulating law Nr. 8733 Date 24.01.2001 which changed the above mentioned context with the one we have today [11]. Thus even in the cases of homosexual acts with minors the regulation will be made the same by law.

Regarding the historical aspect of such penal act we need to understand that the incriminating

techniques of such crime derive from the older Criminal Codes wich were implemented before the 90' in the Republic of Albania. Thus the Albanian Criminal Code of 1952 in its fourth chapter, section four stated about sexual crimes with direct object as follows:

- Violent sexual acts with minors (Article 165);
- Sexual acts with minors (Article166);
- Bribing of a minor (Shameful acts) (Article167);
- Sexual acts in the genus (Article 168).

In relation with the Criminal Act of "Sexual Acts with minors" this code provided and sanctioned that:*"Sexual acts with minor who are yet to reach the age of sexual maturity will be sanctioned with three up to fifteen years of jail.*

When the above mentioned acts are accompanied by violence or conducted by a group of people and resulting in severe health injuries for the minor those actions are sanctioned with ten up to fifteen years of jail" (Criminal Code. 1952. 166).

While the Albanian Criminal Code of 1977 [10] in its fourth chapter which was "Crimes against People and Families" in the third section of this chapter had provided and categorized such penal crimes as:

- Violent sexual acts (Article 97);
- Sexual acts involving minors (Female) (Article98);
- Shameful Acts (Article 99);
- Sexual acts of the same gene (Article 100).

Regarding the part which regulates the penal act of "Sexual acts with minor girls" this code stated that "Sexual acts with a girl" who has yet to be 14 years old or achieve sexual maturity are condemned with up to fifteen years of imprisonment.

"Also this acts when if they have provided heal complications or were made in group are sanctioned with no less then 10 years of incarceration and if the minor suicided due to this act then the penal condemned is by death" [10].

As we can see from the above mentioned Articles we can derive that The Criminal Code of 1977 has about the same acts and sanctions as the 1995 Criminal Code.

The incrimination.Techniques of such Criminal Acts

This stereotype of crimes is conducted in an active way of having sexual or homosexual intercourse or sexual acts with the minor who has yet to be fourteen years old or yet to achieve sexual maturity. Thus the incrimination technique requests or is achieved only if we have active sexual or homosexual relations with the victim.

Our Criminal Code does not give a concrete dimention to the statement " Sexual or Homosexual Acts". Regardless the Albanian Penal doctrine has defined this as a sexual intercourse between a male and a female [1, 114]. Such a meaning and interpretation has a confining character to it. Also the Albanian Penal area has expanded its approach within the European standard within this area of the Penal Law which consider sexual acts the penetration of a sexual organ in any part of the body.

Or the minor penetration regardless of the size with any object in the anal or genital parts of another person. Also the sexual act is not only understood as a physical union of two bodies of the same or different sex, but also every other act that even tho it might not have a direct physical contact with the passive person (the victim in our case) it impacts the base and most principal sexual rights of this said person, in be for pleasing and exciting sexually the abuser.

With the "Sexual Act" notion we include all the actions oriented towards the erogenous zones which can greatly afflict the sexual freedom of the victim and the rights to have a free sexual determination of said person. This kind of sexual abuse might come with constriction, pressure ore abuse of the sexually inferior victim.

In all those cases will be included every kind of touching, grabbing, pressing on the genital areas of the victim, which are vulnerable and able to incite sexual pleasure that even in a not absolute/or short period of time and with irrelevance to the fact if the victim has achieved sexual pleasure or not.

Should be said here that the jurisprudence [15] in Albania has broaden its horizons towards these new concepts and tendencies of the modern Penal Law. Some countries and their Penal. Legislation have defined the terms "Sexual Acts" and other terms related with such sexual acts.

In the concept of sexual act its also acknowledged and included the term "oral sex". Such statement was also involved in the judicial practice. Thus in the case The Court of Tirana stated that [19]:*"… In such case, This Court based on the Article 374 of the Albanian Procedure Penal Law, sees as appropriate to give a new legal definition to this legal fact from that what the persecutor is asking due to the fact that the defendant H.Q but having sexual intercourse (oral sex) with the citizen A.Q has consumed without a doubt the penal act of "Sexual and Homosexual relations with minors" Article 100 of the Criminal Code and as a result the defendant has to be accused not for the Paragraph two of Article 100 but for paragraph one of the same Article… "*.

For conducting such acts violence is not required. In order to consume such a crime its enough for both subjects to have sexual contact. The victim is not able to fully understand the character of such criminal acts and their consequences because of her young age and her young psycho-logic build. Sexual acts with a small girl even without physical or mental violence still are considered as a crime because the culprit in this cases takes advantage of the victim not fully understanding the circumstance she is in.

Important circumstances of Legal Qualification

This crime is executed in certain circumstances like:

a) The sexual or homosexual act derives or is executed by force. One of the elements that characterize or describes the criminal act of " Sexual or Homosexual relationships with minors" is that even tho there might be a consensual agreement between the subjects involved in such act due to affection, the criminal act will still be consumed. This is due to the fact that the minor child has not yet reached that phase of conscience to understand the character of hi/her acts and thus the consequences deriving from it. But because of such cases mostly they are neglected due to the application of the criminal responsibility, but on the other hand its regarded as a gauge for the gravity of the sentence. So we deduce here that the term "agreement" can be considered as such only when the subjects are above fourteen years old and have reached the age of sexual maturity. There is no such agreement if a person with ether words or gestures expresses lack of agreement for doing or continuing such sexual act; Such agreement is reached with the involvement of another person on behalf of the victim; agreement is reached through fear, intimidation or threats and if such means don't include using of force, violent threats or serious exploitation; or cases of the victim being in no position to reach such agreement of having sexual acts because of reduced psychic or physical abilities due to alcohol, drugs or other chemical substances. Thus such person can not be considered physically or mentally capable to take any decision by him/her self. When we talk about violence or at least the concept we directly relate it to physical violence, which can be categorized as beating, hitting, small wounds, severe wounds, pushing, binding ect. Regarding the concept of violence Albania's High Court of Justice with the directive Nr.1 Dt. 14.03.1979 [19], 1) has evaluated or considered that:*"Beating, wounding, freedom deprivation, grabbing by the hair, laying on the ground and every other usage of physical violence against the victim which puts her in a situation where she cant object any sexual abuse will be considered as physical violence"* Physical violence in any form that it might be manifested is mainly used to submit and neglect any opposition coming from the victim. Violence here is used as a countermeasure to the resistance of the victim.The question here is that in the cases in which this violence is not used to subdue the victim in order to sexually abuse her but this violence is made for the sole purpose of the culprits sexual desires, how do we classify this in a legal standpoint?

Replying to this question should take in consideration various aspects such as the goal of such violent acts.

Thus if said vioelnce is due to the victims resistence in order to oppose sexual acts towards here then we can classify this under Article 100 second paragraph of our Criminal Code. Unless in another scenario when this is a technique to impose sexual acts we can classify this in the first paragraph of the same Article.

b) Acts that have brought consequences such as death or suicidal of the victim. Lethal acts such as death or suicidal of the victim must have a direct connection with the violence and abuse that was made upon her. Hence these qualifying circumstances make this penal act have complicated structure as classified by the penal law. In cases when a clear description of such penal violation is lacking in the current form of our Criminal Code and legislation the penal doctrine and jurisprudence have at least tried to give some sort of conceptualization to it. A complicated sort of penal act is considered to be when the crime in itself its composed of two or more actions from the culprit. Each of those criminal actions in itself may very well be classified as a separate criminal act [2, 53]. In this case we are talking about a merge that the penal law does to different criminal acts in order to group them as a single entity. As a result this complex penal crime has as an integral part not only the merging of different criminal acts but all the actions and their criminal composition [3]. In specific cases when the elements of two criminal acts merge with each other to make a single crime can be illustrated with the common crime of "Murder which results with the death of the victim" In other cases a single criminal act can be considered as a qualitative circumstance of another act.

Thus the deliberate murder of a person falls under (Article 76) or even from carelessness (Article 85) of the Criminal Code. Those two crimes are considered as specific and separate acts but when it comes to the "Sexual or Homosexual relationship with minors" they might serve as complimentary acts to this crim which is ruled under (Article 100) paragraph 3. In this certain case the death of the young victim should have occurred during the sexual violation.There are some conditions that should be met in order for such a specific crime to be considered as a complicated criminal act:

• The Article that describes such criminal act should include two or more actions (or inaction) in their natural concept to be classified as a crime. Such criminal deeds can be sanctioned only by law in order to give a single judgment for the specific crime.

• Two or more specified criminal acts sanctioned by the Criminal Code must be simultaneously affected by it. This complex criminal act must include in itself two or more targets.

• Such actions (inaction) that result in crimes should be executed back to back and for them to be considered as a single crime they should help achieve the same criminal goal. This makes it possible that the second criminal action derives from the first action or helps the function of the first one to make this crime possible [4, 27]. As we can see there is an organic and time connection between these actions [5, 363]. So if one person in a certain period of time abuses sexually of a child and then after the act is consumed he kills the victim, in this case said person has consumed two different criminal acts, "Sexual or Homosexual relationships with minors" and "Murder" in the real concept of both those acts.

In the above mentioned thesis the criminal act of "Sexual or homosexual relationship with minors" which in death of the victim its a straight complex penal crime because sexual acts with minor in itself is a crime even its it doesnt result in the death of said victim. On the other hand murder is a crime in itself and can be classified as such on its own.

Regarding such qualitative circumstances an important aspect of which is the mental stability of the active person which is connected to the murder of the child. Some authors state that outcomes such as the death or suicidal of the child might be a great deal caused by carelessness [1, 116], thus considering this criminal act as a complexity of two types of culpability. In any case such a statement is not entirely true or stable in its reasoning because in many cases the

mental state of the culprit that has caused the death, suicide or severe wounding of the victim is much more complex and its not considered as a simple form of guild by the legal doctrine.

In its complexity the feeling of guild should be understood as a very different approach that the culprits mind takes on criminal social consequences in the near or the future. There are some actions may those be active or passive that not only can cause criminal consequences in the present but might also be very dangerous for the future. Taking this form of guilt the culprit wishes and desires the outcomes that his crime might cause in the presents without taking in account that in the future such acts might result to an even more severe outcome.

For us to be in the circumstances of a more complex form of guilt its needed that the culprit with his actions must desire the near future outcome such as the sexual act. On the other hand the the future outcome such as the death of the child comes from carelessness. The culprit does not desire an outcome such as the death of the child but due to the circumstances and the actual facts he can predicts such an outcome. Its not easy to identify in such cases if the author is conscious about letting such future outcomes happen or its really a case of carelessness.

Which brings us to a form of excessive self confidence. This happens because the culprit can't foresee that an outcome involving the death of the victim might really happen. In fact its hard to presume that the culprit doesn't foresee an outcome where the death of the victim might be eminent by forcing said victim to sexual abuse. If the death of the child is voluntarily caused by the abuser before, during or after the sexual or homosexual act then it will classify in death as a result of sexual abuse of minors.

The main question that emerges from our deductions here is will this crime be classified as "Sexual or Homosexual relationship with minors" and if so under which paragraph of said Article will it be sanctioned with?

I strongly believe the the legal qualification for such crime should fall under Paragraph I of Article 100 of our Criminal Code, because said outcome doesn't comply with the requests of Paragraph III for the same crime which is that of murder.

Some Practical problems shown by the subjective aspects of this Criminal Acts

The criminal act of "Sexual or Homosexual relationships with minors" as a defining characteristic has the direct and strong wish of the culprit to execute such crime. Which also defines the subjective part of the crime which revolves around the psyche of the culprit during the time of the crime [6, 143]. We can deduce here that the subjective more hidden parts of these kind of crimes its not a case of identifying certain facts but due to its metaphysical form we can only identify such variables through the concrete criminal actions that the culprit executes in such cases [7, 136].

In its incrimination techniques the legislator in Article 100 of our Criminal Code has not included or specified the certain psyche that the culprit should have when executing such criminal actions upon the victim regardless of her age or sexual maturity. This approach is not the same with other articles or Penal crimes stated in this same Code. For example Article 79 implies that "Deliberate murder against" … b) a person with physical or psychological disabilities, seriously ill or pregnant when the qualities of said victim are apparent or known". The concept "apparent or known" would be appropriate to specify also the characteristics of the child such as age or sexual maturity. Simply because the culprit must know that he is having sexual or homosexual actions with a minor or sexually immature child. Such knowledge or basic understanding is presumed only if the culprit knows the age or of the victim or her the sexual maturity is visible.

The question here is once again plain to see. Will it be considered as a crime if the culprit doesn't know the age or if the victim has reached sexual maturity? Will it be considered as a crime if the culprit doesn't understand that such sexual acts are classified as criminal?

In order to give the right answer to this question we must first shed some light on topics such as craze or guilt in the process of committing a crime.

In a situation of craziness or guilt we might face the fact that the culprit has no real knowledge about the gravity or the illegal activity he is about to commit, because he might not know such act is illegal. Take in account here cases when the violator doesn't know that the victim has yet to reach the age of fourteen or sexual maturity. The culprit might not know such facts because he might originate from a country which has a lower age gap for such sexual or homosexual acts. In the first scenario he might have a completely wrong picture of the facts while doing one think he thinks is allowed he ends up doing something totally different. On the other hand on our second scenario the culprit knows and understand fully what he is about to do but is convinced that what he is doing is not prohibited by law [8, 294]. The fact of craze as a notion is categorized in three stages from a penal legal standpoint:

• Craze as a notion in our penal law is a sort of state when the culprit has no recollection or is completely oblivious of the fact that he is committing a crime or that is doing something gravely punishable. So its a plain dis function of the normal line of thought and a crazed psyche state of the culprit. Such are the cases when the author of said crime doesn't understand the characteristics of the criminal law [8, 294]. A state of intellectual craze is that part of the psyche that omits its intellectual counterpart.This general misconceptions of the culprit totally part his consciousness from the criminal act he is about to commit. So parts of the criminal consciousness and unconsciousness omit each other by making such crime not clearly determinable from the criminal law standpoint. Craze from a legal standpoint is the mistaken concept that the author has about what is allowed or not by the law. Only such form of craze is relevant and can omit guilt as a concept from a certain type of crime, while if such craze its unavoidable it can exclude a penal crime in itself. For cases can be classified that author of the crime might have a crazed misconception they will be involved in the intellectual definition of said crime;

• Such act of craziness in fact comes because the culprit in such cases not only thinks that the circumstances are not against the law but the acts he is doing its because of extreme needs or extreme defense;

• Craze from a legal standpoint consists in the ignorance of the culprit to identify such acts as forbidden by law. When the culprit has a misleading understand of what he is doing we are under the element of factic state of craziness, while on the other hand when the author of said crime doesn't understand that he is doing something against the law, we face a case of legal craze.The culprit knows what he is doing but doesn't think that such acts are illegal for example: A foreigner who comes from a country in which sexual or homosexual relationships are allowed after the age of 12. Therefore such person might not know that the penal laws in our country don't allow such acts. Such forms of craze not only have correlation to the penal Laws of our country but they have a whole range of impact on society itself.

So now in order to reply to the question posed to ourselves we must take into consideration the three key factors mentioned above. So in case of factic fault we can exclude the elements of consciousness and unconsciousness of such illegal act. So we can omit here the three types of guilt that are, direct fault, indirect fault and excessive self-esteem. The illegal act of " Sexual or Homosexual relationship with minors" is done in a direct way. So in the case a person who doesn't have knowledge that the victim is under fourteen and hes yet to achieve sexual maturity this person cant be held as culprit because we cant underrule this as a violation of the law.

Exactly the same statement was made by the Court of Tirana which in its ruling of the case Nr. 1524 Dt. 07.05.2015 states that:*"… Subjective part: The defiant in order to act under his own will knowing that the victim was under fourteen years old and still continues with the sexual act. But in other circumstances*

due to the complicate state of this case when because of outer looks or body shape the age and sexual maturity cant be certainly identified the author might start to doubt about the age of the victim.

In such cases its still regarded as an illegal act because the culprit had all the ways possible to find out about the age of the victim and her sexual maturity" [16].

If the physical attributes of the violated child are visible we are not under the situation of a factic type of guilt.

Regarding the facts such as knowledge of the age of the victims different Criminal Codes in different countries treat this problem in total diversity. For example the Italian Criminal Code under Article 609 states that: *" When the crimes described in articles 609 bis, 609 ter, 609 quater and 609 octies are executed agains a minor less than fourteen years old, also in the case of crimes committed under article 609, the culprit cant justify himself the argument of his lack of knowledge toward the victims age."* [14, 609]. As seen above the Italian Legislator excludes this lack of guild from such criminal acts.

On the other hand the Criminal Code of Kosovo in article 229 states that: *" 1. For the purposes of the Chapter, a mistake as to the age of the victim who is under the age of sixteen (16) shall not be a mistake of fact under Article 25 of this Code if the perpetrator was negligent in making such mistake.*

The perpetrator is not criminally liable because of a mistake of fact under Article 25 of this Code if he or she, for justifiable reasons, did not know and could not have known that the victim was under the age of sixteen (16)" [11, 229].

On one side this Criminal Code regulation demands from the culprit that he must gather all the information concerning the victims age in order not to fall under cases of factic guilt. But on the other hand it also justifies such crime if its committed under the effect of ignorance towards the victims age.

This leads us to some concerns about our Criminal Code who needs to set up some strict regulations regarding the involvement of the notion of guilt in such crimes.

In case case if juridical errors, which happen when the culprit has a wrong recollection of the law that leads us towards a situation of juridical craze. The culprit in such cases knows what he is doing but doesn't realize that his actions are against the law. For example a foreigner which has knowledge of his country restrictions to sexual activities with minors only under 12 years acts the same in another country who has a higher age bar. In this case we can refer to Article 4 of the Albanian Criminal Code that states: *" Ignorance of the law that punishes a criminal offense does not constitute a cause for exclusion from criminal liability, unless the ignorance is objectively unavoidable"* [12, 4].

In Tiranas Courts case Nr.1524 Dt. 07.05.2015 its stated that:*"... Subjective part: The defiant in order to act under his own will knowing that the victim was under fourteen years old and still continues with the sexual act. But in other circumstances due to the complicate state of this case when because of outer looks or body shape the age and sexual maturity cant be certainly identified the author might start to doubt about the age of the victim.*

In such cases its still regarded as an illegal act because the culprit had all the ways possible to find out about the age of the victim and her sexual maturity."

Such ruling derives from Article 4 of our Criminal Code in conjunction with Article 100/1 which clearly states that ignorance of the law that punishes a criminal offense does not constitute a cause for exclusion from criminal liability, unless the ignorance is objectively unavoidable [16].

There are cases when the judges in their ruling have misinterpreted the the concepts of actual fault and juridical fault. So for example juridical guilt can not be excused with the reason of cultural marriage even if the wife is under 14 years of age. In its ruling Nr. 2301 Dt. 24.06.2015 Tiranas Courts stated that: *"Its been nearly one month since I got to know the Citizen name Vosa Shaqiri. I fell in love with her at first sight. She accepted me thus we agreed for her to come and live with me just like a married couple. I asked about her age and she told me that she was 15. I took her home during December 2014 and my family gladly accepted*

her. I asked her to sleep with me but at first she was reluctant. She told me she had never slept with anyone else. After five days we decided to have sexual intercourse. After having sex with her I saw that Vosa was not a virgin. Our last sexual relationship ended on the 23rd January 2015" [17].

The defendant and his lawyer had the same arguments directed to the court stating that marriage and sexual relationships at this age were common to said communities culture.

Conclusion

1. Albanian Criminal Code does not give a concrete dimention to the statement " Sexual or Homosexual Acts". Regardless the Albanian Penal doctrine has defined this as a sexual intercourse between a male and a female. Such a meaning and interpretation has a confining character to it. Also the Albanian criminal area has expanded its approach within the European standard within this area of the Criminal Law which consider sexual acts the penetration of a sexual organ in any part of the body, or the minor penetration regardless of the size with any object in the anal or genital parts of another person. Also the sexual act is not only understood as a physical union of two bodies of the same or different sex, but also every other act that even tho it might not have a direct physical contact with the passive person (the victim in our case) it impacts the base and most principal sexual rights of this said person, in be for pleasing and exciting sexually the abuser.

2. For conducting such acts violence is not required. In order to consume such a crime its enough for both subjects to have sexual contact. The victim is not able to fully understand the character of such criminal acts and their consequences because of her young age and her young psycho-logic build. Sexual acts with a small girl even without physical or mental violence still are considered as a crime because the culprit in this cases takes advantage of the victim not fully understanding the circumstance she is in.

3. There is no such agreement if a person with ether words or gestures expresses lack of agreement for doing or continuing such sexual act; Such agreement is reached with the involvement of another person on behalf of the victim; agreement is reached through fear, intimidation or threats and if such means don't include using of force, violent threats or serious exploitation; or cases of the victim being in no position to reach such agreement of having sexual acts because of reduced psychic or physical abilities due to alcohol, drugs or other chemical substances. Thus such person can not be considered physically or mentally capable to take any decision by him/her self.

4. In its incrimination techniques the legislator in Article 100 of our Criminal Code has not included or specified the certain psyche that the culprit should have when executing such criminal actions upon the victim regardless of her age or sexual maturity. This approach is not the same with other articles or Penal crimes stated in this same Code.

5. In case of factic fault we can exclude the elements of consciousness and unconsciousness of such illegal act. So we can omit here the three types of guilt that are, direct fault, indirect fault and excessive self-esteem. The illegal act of "Sexual or Homosexual relationship with minors" is done in a direct way. So in the case a person who doesn't have knowledge that the victim is under fourteen and hes yet to achieve sexual maturity this person cant be held as culprit because we cant under-rule this as a violation of the law.

6. This leads us to some concerns about our Criminal Code who needs to set up some strict regulations regarding the involvement of the notion of guilt in such crimes.

7. In case if juridical errors, which happen when the culprit has a wrong recollection of the law that leads us towards a situation of juridical craze. The culprit in such cases knows what he is doing but doesn't realize that his actions are against the law. For example a foreigner which has knowledge of his country restrictions to sexual activities with minors only under 12 years acts the same in another country who has a higher age bar. In this case we can refer to

Article 4 of the Albanian Criminal Code that states: *"Ignorance of the law that punishes a criminal offense does not constitute a cause for exclusion from criminal liability, unless the ignorance is objectively unavoidable."*.

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Production and distribution of materials that contain appeals to the performance of terrorist activity or justification of terrorism in the Russian Federation

Abstract: Such a characteristic of the objective side of public appeals to terrorist activities as publicity is examined in detail in this article. An attempt is made to define the concept of publicity, as well as to establish its upper and lower quantitative boundaries with the aim to facilitate practical application of Art. 2052 of the Criminal Code of the Russian Federation.

Key words: publicity, terrorist activities, justification of terrorism, appeals to terrorist activities.

It is known that public appeals to the performance of terrorist activity and public justification of terrorism represent the objective side of the crime, which is stipulated by the article 205.2 of the RF Criminal Code. However, we think that the objective side of this crime can be presented both by distribution and (or) production of materials that contain appeals to terrorist activity or justification of terrorism (with their subsequent distribution). The designation of the mentioned actions as alternative ones, which represent the objective side of the crime concerned, will automatically solve the issue that arises while determining the subject of the crime, which is stipulated by part 1 of the article 205.2 of the RF Criminal Code and was committed in complicity, and also the crime, which is stipulated by part 2 of article 205.2 of the RF Criminal Code, concerning the matter of who is the author of the material, which contains the signs of crime stipulated by the article 205.2 of the RF Criminal Code; who is the material distributor, editor-in-chief of the publication that released such materials and who is the owner of the news aggregator or blogger that authorized their publication.

So, A. V. Brilliantov thinks that actions of the author of the material, which contains appeals to the performance of terrorist activity, should be estimated as actions of an accomplice [4, P. 450]. Z. A. Shibzukhov holds an opinion that the author of such materials in this case "should be condemned as an accomplice of the crime … " [5, P. 118–122]. We agree with the latter opinion, because otherwise the role of the author of an article will be too underestimated. Disposition of the article 205.2 of the RF Criminal Code says nothing about the distribution of corresponding appeals. This suggests that text writing or preparation of any materials, which contain signs of the crime considered, represent one of the stages of its objective side, and, consequently, the creator of such materials is an accomplice of the crime together with a person, who is engaged in their distribution. Also the preventive function of the article 205.2 of the RF Criminal Code will not be enough efficient in this case, because the punishment for complicity will be less strict, which alleviates the guilt of almost the main "plotter" of the crime, while he/she deserves a more severe punishment.

A similar situation occurs during commission of the qualified composition of this crime — commission of this act with the use of mass media or electronic and information-telecommunication

networks, including "Internet". However, here we deal with the matter of qualification of the actions, performed by the author of article (material) and the person, who gave the relevant permission for publication or broadcasting.

Various scientists in the field of criminal law have different views on this issue. For example, A. V. Brilliantov says: "In this case, giving permission for publication will be regarded as commission of the objective side of a crime… The actions of the author of the material should be regarded as actions of an accomplice" [4, P. 451]. V. I. Radchenko suggests in his turn: "The heads of the mass media agency, that published corresponding materials, bear responsibility as accomplices in commission of the crime" [3] Z. A. Shibzukhov also regards the actions of both persons as "joint participation in commission of the crime" [5].

If the relevant material (text, articles, etc.) was absent, there would be nothing to distribute, and, therefore, the crime would not be committed. That is, production of relevant material is a part of the objective side of public appeals to the performance of terrorist activity or public justification of terrorism with the use of mass media or electronic and information-telecommunication networks, including "Internet". It means that the author of the material, which contains public appeals to the performance of terrorist activities, is the crime committer, and the person, who gave permission for publication of the relevant material, is an accomplice.

In accordance with paragraph 1, item 20 of the Resolution of Plenum of the RF Supreme Court "About some questions of court practice on criminal cases about terrorist-oriented crimes": "public appeals to the performance of terrorist activity (part 1 of the article 205.2 of the RF Criminal Code) should be regarded as a completed crime from the moment of the public proclamation (distribution) of at least one appeal regardless of the fact whether it was possible to encourage other citizens to perform terrorist activities or not". That is, directly the distribution of materials, as well as their proclamation, which contain appeals to the performance of terrorist activity or justification of terrorism, is designated as criminal; however there is no word about production of such materials. However, we think that if all possible acts, which represent the objective side of this crime, were enumerated in part 1 of article 205.2 of the RF Criminal Code, there would be much less controversial issues in practical application of this article.

It should be noted that the judicial-investigative practice, regarding the editor-in-chief of the printed periodic publication, in which the materials of criminal character according to the article 205.2 of the RF Criminal Code were published, as crime committer, estimates the role of author of such materials quite ambiguously. Let us consider the following examples from practical experience:

Mukhin Yu. I., being editor-in-chief of the newspaper "Duel", included the article by Dubrov "Death to Russia!" into the edition No. 27 as of July 4, 2006 and authorized it for publication with subsequent replication and distribution on the territory of Russia and thus made public appeals to the extremist activities.

Mukhin Yu. I. was condemned by the sentence of Savelovsky district court of Moscow City as of June 18, 2009 under part 2 of the article 280 of the RF Criminal Code.

In this example, the court, having absolutely fairly convicted the newspaper's editor-in-chief as the crime committer, provided no criminal-legal assessment of the article author's actions. However, in our view, the role of article author is huge, because he / she is exactly the one, who appeals to readers. If the author's actions did not take place, the crime would not be committed.

Here is the next example:

The court established that in the period from February to April 2006 the newspaper "Provintsialnye vesti" (Provincial news) with Shmakov. V. as editor-in-chief published the articles by Dilmukhametov A. in the edition No.1 (276) for April, 2006, in the edition No. 5

(280) for April, 2006 and in the edition No. 6 (281) for April, 2006, which according to the psychological-linguistic expertise contain public appeals to the performance of extremist activities, active non-observance of legal requirements of authorities' representatives, which encourage citizens to perform forcible changes of the fundamentals of the constitutional system and violation of integrity of the Russian Federation, the violent seizure of authoritative powers of the President of the Republic of Bashkortostan.

By the sentence of Kirovsky district court in Ufa city Shmakov V. and Dilmukhametov A. were found guilty of commission of the crimes, which are stipulated by part 2 of the article 280 and part 3 of the article 212 of the RF Criminal Code.

In this example the court fairly convicted both the author of articles, which contained appeals to the performance of extremist activity (including terrorist), and the newspaper's editor-in-chief, who gave permission for their publication, as accomplices of the crime.

Considering the ambiguous position of executors of law on this matter, we think that designation of distribution and production of materials that contain appeals to the performance of terrorist activity or justification of terrorism in part 1 of the article 205.2 of the RF Criminal Code as independent actions, which represent the objective side of this crime, will not only alleviate the practical application of this article and clarify the examined situation, but also will strengthen the preventive function of this article, thanks to the fact that it will eliminate the possibility of avoiding the criminal responsibility of persons, who are actually guilty.

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Section 7. International law

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Legal regulation of space tourism

Abstract: Space tourism was defined as "any Business activity offering customers direct or indirect experience of space travel". The official definition of tourism is submitted by the World Tourism Organization (WTO) and the United Nations Statistical Committee in 1994, we can read that: "it is the activities of people traveling and staying in places outside their normal environment for not more than one year for the purpose of rest …". Tourism, therefore, requires the presence of three different components: material accessibility for tourists; Free time, which can be spent on travel arrangements and trips; Maintenance of tourism infrastructure that offers accommodation, food, transportation services, sightseeing so that the tourist can see them, buy souvenirs.

The above definition of space tourism contains "indirect experience", which refers to activities such as flying for pleasure, a few seconds in weightlessness. However, while these flights are only approaching the edge of outer space, they have not yet penetrated into outer space. Thus, the issues of space law cover not all flights of space tourists.

Keywords: space law, legal regulation, space tourism, Committee on the Peaceful Uses of Outer Space (COPUOUS), treaty on space activities.

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Правовое регулирование космического туризма

Аннотация: Космический туризм был определен как «любая Коммерческая деятельность, предлагающая клиентам прямой или косвенный опыт космического путешествия». Официальное определение туризма, представленное Всемирной туристической организации (ВТО) и Статистическим комитетом Организации Объединенных Наций в 1994 году, гласит: «это деятельность людей, путешествующих и останавливающихся в местах вне их обычной среды не более чем на один год с целью отдыха … ». Туризм, следовательно, требует присутствия трех различных компонентов: материальная доступность для туристов; свободное время, которое можно тратить на организацию поездок и сами поездки; поддержание инфраструктуры туризма, которая предлагает проживание, питание, услуги транспорта, осмотр достопримечательностей, чтобы турист мог увидеть их, приобрести сувениры.

Приведенное выше определение космического туризма содержит «косвенный опыт», который относится к деятельности, такой как перелет ради наслаждения, несколько секунд в невесомости. Однако пока эти рейсы только приближаются к краю космического пространства, они пока не проникли в космическое пространство. Таким образом, вопросы космического права охватывают далеко не все перелеты космических туристов.

Ключевые слова: космическое право, правовое регулирование, космический туризм, Комитет по мирному использованию космического пространства (COPUOUS), договора по космической деятельности.

Противостояние космического туризма и права — это типичная ситуация. Каждый раз, когда кто-то разрабатывает новую концепцию и планы, чтобы сделать ее возможной, адвокаты усложняют ситуацию. Это заложено в законе, которого в некотором отношении не хватает на инновации.

Сложная деятельность требует правовой основы для контроля за своим исполнением. Космический туризм обещает стать мульти-миллиардным бизнесом, и это, безусловно, вызов, чтобы создать или организовать правовые условия для осуществления этой деятельности. Эта статья пытается затронуть некоторые важные вопросы, касающиеся космического туризма в соответствии с точкой зрения международного публичного и космического права [2, С. 60].

Без сомнения, космический туризм станет достоянием частных предприятий. Проблема не в том, что коммерческая деятельность обязательно касается неправительственных организаций или частного сектора. Но по какой-то причине туризм и исследования всегда были частными предприятиями, которые до сих пор осуществляют идеи космического туризма. И это должно быть реализовано с целью достижения экономических и социальных выгод с меньшим государственным контролем. Без сомнения, космический туризм по многим причинам реализуется в общественных интересах. Одна из них — это возможность создать совершенно новую часть промышленности, работающую на космическом сырье, ориентированную на исследования или на туризм, что соответственно, создает огромную потребность в человеческих силах. Это должно быть мотиватором для государства, для его поддержки частных предприятий в их деятельности [11, С. 53].

Частные предприятия работают в первую очередь в соответствии с их национальным законодательством. Однако частные предприятия, которые заняты проектами космического туризма в космическом пространстве, также должны соответствовать международным нормам, поскольку затронули интересы всего мира. Это не ново — участие частного сектора в космической деятельности. В основном это происходит косвенным образом, т. е. означает, что правительственные или неправительственные организации делегируют определенные задачи частным предприятиям. Космический туризм будет требовать другого измерения: прямого или ведущего участия. Таким образом, правовые условия, касающиеся частной деятельности в космическом пространстве, должны быть детально проанализированы [7, С. 2].

Космический туризм относится к тем причинам, которые мотивируют частных предпринимателей совершать экономико-правовые действия: желание космических путешествий — это не совсем законно-значимый критерий. Например, «типичный» самолет будет перевозить туристов (летящие лица осуществляют полет, потому что они любят летать или хотят провести свой отпуск далеко от дома), а также пассажиров, которым просто нужно попасть в другое место по их личным или рабочим причинам. Но, юридически говоря, все пассажиры в таком полете не равны с точки зрения авиационного законодательства — идет ли речь о договорной ответственности, праве потребителей или миграционном законодательстве [4, С. 33].

Комитет по мирному использованию космического пространства (COPUOUS) был создан в 1958 году и стал постоянно действующим в 1959 году. По состоянию на 2016 год есть 77 стран-участниц, в том числе основных космических держав, таких как США (НАСА), России (Роскосмос), Японии, Китая, Канады, Бразилии, Австралии и государств-членов Европейского космического агентства [6, С. 73]. COPUOUS является движущей силой пяти договоров и пяти принципов, которые управляют освоением космоса. Основным договором является договор о принципах деятельности государств по исследованию и использованию космического пространства, включая Луну и другие небесные тела, или просто «Договор по космосу». Он был ратифицирован в 1967 году и во многом опирается на совокупность правовых принципов Генеральной Ассамблеи, принятой в 1962 году [1, С. 371].

Договор имеет несколько основных пунктов. Некоторые основные из них:

• Пространство бесплатно для исследований всех наций, и суверенные претензии не могут быть сделаны. Космическая деятельность должна осуществляться на благо всех народов и людей. Так, например, никто не владеет Луной;

• Ядерного оружия и других видов оружия массового уничтожения не должно быть на орбитах вокруг Земли, на небесных телах или в других космических объектах. Другими словами, мир является единственно приемлемым принципом использования космического пространства;

• Отдельные нации (государства) несут ответственность за любой ущерб, вызванный их космическими объектами. Отдельные государства также несут ответственность за все правительственные и неправительственные мероприятия, проводимые их гражданами. Эти государства должны избегать вредного загрязнения в связи с космической деятельностью [1, С. 373];

В поддержку договора по космосу в 1960-х и 1970-х годах были подписаны четыре других договора для поддержки мирного освоения космоса. Этими договоров (далее по названиям) являются:

• Соглашение о спасении Космонавтов, возвращении космонавтов и возвращении объектов, запущенных в космическое пространство («Соглашение о Спасении», 1968) сформировано, чтобы дать космонавтам помощь при незапланированной посадке или, когда они сталкиваются с чрезвычайной ситуацией. Соглашение также предусматривает, что стороны будут содействовать обнаружению космических объектов, которые возвращаются на Землю за пределами территории стартовой площадки;

• Конвенция о международной ответственности за ущерб, причиненный космическими объектами («Конвенция об ответственности», 1972) излагает соображения по компенсациям, если космический объект вызывает повреждения имущества или потери человеческой жизни. Конвенция также устанавливает, что, когда две или более сторон совместно производят запуск космического объекта, они могут нести взаимную ответственность за всю сумму ущерба, независимо от доли участника;

• Конвенция о регистрации объектов, запускаемых в космическое пространство («Конвенция о регистрации», 1975), составлена для оказания помощи странам в отслеживании всех объектов, запускаемых в космическое пространство. Этот реестр Организации Объединенных Наций имеет важное значение для таких вопросов, как избегание столкновений и мусора;

• Проект «соглашения о Луне» (1979), в котором даются более подробные сведения о космическом пространстве, договоре имущественных прав и использовании Луны и других небесных тел в Солнечной системе (за исключением объектов, которые, естественно, попадают на Землю от объектов, в частности, метеоритов). Этот договор был подписан 16 странами, все из которых являются незначительными фигурами в освоении космоса [9, С. 55].

Область космического права развивалась для решения таких вопросов, как право собственности, оружия в космическом пространстве, защиты космонавтов и многих других вопросов. Однако космическое право остается сложной областью. Обязательной и эффективной системы урегулирования споров в области космического права не существует [10, С. 86].

Особенно это касается частных предприятий, которые выполняют коммерческую космическую деятельность, такую как космический туризм. Для них правовое обеспечение – на уровне частного и публичного международного права — это обязательное требование [5, С. 34].

Очевидно, что космический туризм, как любая коммерческая деятельность в космосе, нуждается в юридической безопасности, поскольку в противном случае инвестиции будут в опасности и могут стать объектом манипуляций государства, например, дипломатических, политических или просто финансовых [8, С. 41].

Недавно в Индии был открыт офис космического туристического агентства «Галактическая Дева»: британский предприниматель Ричард Брэнсон открыл свой офис в Нью-Дели для продаж по всему миру мест на пассажирские рейсы в космос ЦО 2010 за дополнительную плату в размере $200,000. Было решено, что корабль будет спущен на высоте 50000 футов над землей и по выходе из материнского корабля возьмет вертикальную траекторию на скорости в три раза большей скорость звука. Около 300 человек, включая четырех индейцев, купили билеты в путешествие на космическом корабле. Предполагалось, что потребуется около 18 месяцев, чтобы начать промышленную эксплуатацию этой идеи. Богатые люди со здоровым сердцем и легкими смогут отправиться в это путешествие. Власти объяснили, что, поскольку корабли имеют короткую продолжительность перелета, туристы не столкнутся с космическим укачиванием [3, С. 30].

Выводы:

Космический туризм обязательно содержит частные аспекты космических пилотируемых и космических транспортных полетов, коммерциализации космического пространства. Международные договора, связанные с существующим космическим правом, необходимо заключать на уровне государств, иначе международное соглашение о космическом туризме и других коммерческих проектах в космосе не спасет от серьезных конфликтов. Предпринимались усилия, чтобы создать такое туристическое соглашение, упомянуть, например, проект Конвенции о пилотируемых космических полетах, которая занимается основными аспектами вышеуказанной темы. Подходы международного космического права необходимо основательно пересмотреть и повторно определить для того, чтобы частные предприятия напрямую могли заниматься такой космической деятельности, как космический туризм. В противном случае космический туризм будет осуществляться частными предприятиями в рамках режима государств, провоцирующего конфликты, которых можно было бы избежать. На мой взгляд, вполне понятно, что современными законами космического права нельзя решить существующих проблем, связанных с космическим туризмом. Наиболее оптимальным решением может стать создание дифференцированной поэтапной системы, совершенно нового законодательства, которое объединяет все эти элементы в специальном Договоре для коммерческого (исследовательски-промышленного, туристического, прочего) использования космоса.

Возможность космического туризма действительно выглядит довольно прибыльной, но насколько она может быть реализована без четкого свода правил и законов — это хороший вопрос.

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Some aspects of legal regulation of surrogate motherhood in Europe

Abstract: The article deals with the problematic aspects of surrogate motherhood and the ways of its regulation in European states as well as ethical issues arising from this phenomenon. In article European countries' legislations and case-law of Eur opean Court of Human Rights are examined concerning surrogate motherhood and its consequences

Keywords: surrogate motherhood, legal regulation, reproductive rights, in vitro fertilisation.

Reproductive rights are the inalienable, fundamental rights of every human being, regardless of national and social distinctions, property status and health status. The phenomenon of surrogate motherhood is known to people for ages. The best- known examples come from The Bible, where in the Old Testament, Sarah, the wife of Abraham, enlisted the help of Hagar, an Egyptian slave, who bore them a son, Ishmael. Later, Isaac and his barren wife Rachel relied on Rachel's servant Bilhah to enable them to have a child (Genesis, Chapter 30) [1].

That biblical stories are the first mention of the so-called traditional surrogate motherhood, in which the natural fertilisation of a female donor takes place. An opportunity to have children not from a legal wife, in the case of her long-lasting infertility, was also enshrined in the Code of Hammurabi (Art. 144–146 of the Code) [2]. Later, in the history of mankind, such relations arose quite often because until the twentieth-century medicine did not know how to deal with infertility.

In the 1970s and 1980s, some infertile couples, to become legal parents, called on the services of 'surrogate mothers', who agreed to be inseminated by the spouse's sperm, to carry the baby to the term of the pregnancy and to hand over the child at birth. Gestational surrogacy has become a booming, global business [3].

On 25 of June 1978 at Oldham General Hospital, Oldham (Lancashire, UK) by planned Caesarian section was born Louise Brown – the first child ever conceived by *in vitro fertilisation* (from now on IVF). IVF has changed the perception of people about surrogate motherhood in particular and reproductive medicine in general. It is necess ary to take into account an array of ethical, biomedical, religious, social and strictly legal problems that surrogate motherhood creates both for persons directly involved in this process and for society as a whole. This article is devoted to the peculiarities of legal regulation of surrogate motherhood in the European states.

Gestation and the birth by a surrogate mother of a stranger in blood baby (a baby who is not genetically hers) trou gIVFh (the so-called gestational surrogate motherhood) for the first time took place in 1986 in the USA. In medical terms, surrogate motherhood is a therapeutic method in which embryos obtained in the cycle of IVF are transferred for gestation into the uterus of a woman not genetically associated with these embryos.

Commercialization and commodification of gametes and commercial gestational agreements

offend many ethical precepts including respect for human integrity and dignity [4]. Surrogate motherhood is a commodification of the human person. The child becomes an object of a contract, while the surrogate mother is exploited as an incubator. Such contracts are called gestational arrangements. What do we know about these arrangements?

Gestational arrangements — are contracts, under provisions of which intending parents, who desire to have children conclude an agreement with a woman who agrees to carry the baby to the term for them. This baby may be either conceived of their genetic material or the third parties' genetic material. Gestational arrangement contradicts the general opinion of the unacceptability of trading human bodily parts, tissues, substances and processes. They also violate the child's right to know his or her origin and identity, as guaranteed in Article 7 of the Convention on the Rights of the Child [5]. Opponents of such arrangements I particular and surrogate motherhood, in general, emphasise that egg donors and surrogate mothers represent economically disadvantaged and socially excluded groups, which turns the whole process into an immoral use of the plight of these women for the benefit of the commissioning parents.

Furthermore, nature of the relations between parties of surrogate motherhood is quite complicated, and a number of the individuals can vary up to six persons [6]:

– the genetic mother (egg donor);

– the genetic father (sperm donor);

– the surrogate mother – the woman who agrees to carry a child (or children) for the intending parents (s) and relinquishes her parental rights following the birth.

– the couple of the surrogate mother;

– the commissioning mother and father (also known as intending parents) – the persons who request another to carry a child for them, with the intention that they will take custody of the child following the birth and parent the child as their own.

The equally complex can be the relationship between them and the offspring, who is born as a result of the application of reproductive medicine.

Relations in the world community to surrogate motherhood are different, and the legal regulation of this issue is also different. There are three positions: for surrogate motherhood, against surrogate motherhood and neutral.

According to Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, everyone has the right to respect for his or her private and family life [7]. In the case of a woman signing a gestational arrangement voluntarily her freedom to make decisions regarding her body is protected by the right to privacy and reproductive autonomy. Attempts to limit these rights are to have reasonable reasons. Rights and safeguards of a pregnant woman by the Convention on the Elimination of All Forms of Discrimination Against Women do not conflict with the surrogate motherhood [8]. At the same time recognition of motherhood as a «social function» rather than a commercial one 's hard to reconcile with commercial surrogate motherhood. From the standpoint of international human rights law, surrogate transnational commercial motherhood needs to be prohibited, because there are the risks of exploitation of disadvantaged women, especially in developing countries, and these risks assist gender inequality on a large scale [9].

In European countries, the legislation regulating surrogate motherhood, as well as the rights and duties of the surrogate mother and those to whom she carries a child, are different. Let us make clear the situation with surrogate motherhood in European countries:

– surrogate motherhood is completely banned in Austria, Germany, France, Norway, Sweden, Spain, Iceland, Estonia, Moldova, Montenegro, Slovenia, Serbia, Turkey, France, Sweden and Switzerland;

– surrogate motherhood is explicitly permitted in Albania, United Kingdom, Greece, Georgia, Denmark, the Netherlands, Ukraine, the Russian Federation;

– Surrogate motherhood occurs but not regulated in Andorra, Bosnia-Herzegovina, Hungary, Ireland, Lithuania, Malta, Monaco, Romania, San Marino.

One should note that couples from European countries, where surrogate mothe rhood is prohibited, often go for other countries where surrogate motherhood is allowed, and there become parents.

The prohibition or restriction on surrogate motherhood established by the national authorities put citizens of these countries in an unequal position compared to citizens of neighbouring countries belonging to the European Union.

Particular attention should be paid to the standpoint of the European Court of Human Rights, in particular, its decision in the case of Mennesson v. France of June 26, 2014. In that decision, there was a violation of Article 8 of the European Convention for the Protection of Rights and Fundamental Freedoms (the right to respect for private and family life). That case was about non-recognition by the legislatio n of Fra nce paternity of intending (commissioning) couple, whose children were born as a result of prohibited reproductive technologies (surrogate motherhood) [10]. This decision should have triggered the legalisation of surrogate motherhood in the EECP member states, and also have had some effect on such countries as France, Spain, Germany, Ireland and Italy, but as far as France is concerned, there are some implications. On 21 July 2016, the European Court of Human Rights delivered a judgment in the cases of Foulon v. France and Bouvet v. France, which concerned the non-recognition in France of the acknowledgement of paternity of intending (biological) fathers of children born to surrogates in India. Despite the change in French case-law since the Mennesson & Labassee v. France judgments, legal parentage had not been established (with Mr Foulon having exhausted all legal options and remedies). The Court thus came to the same conclusion as in Mennesson & Labassee v. France: France violated the right to respect fo r the children's privacy and e ach child wa s awarded 5 000 EUROs for non-pecuniary damage. It is important to note that all these judgments against France find no violation of Article 8 of the Convention (right to respect for their family life) of the applicant parents, only of the surrogate-born children. One further case against France is currently still pending before the European Court of Human Rights: Laborie v. France concerns the non-recognition of Ukrainian birth certificates in France on two children born t rough a surrogate motherhood [11].

Thus, in European countries, the legislation regulating surrogate motherhood, as well as the rights and duties of the surrogate mother and intending parents varies. So, in some European countries, surrogate motherhood is completely prohibited, in some non-commercial surrogacy is allowed and in some jurisdictions issues of surrogate motherhood is not regulated by law. The prohibition or restriction on surrogate motherhood established by the national authorities puts citizens of these countries in an unequal position in comparison with their neighbours. Therefore, further development of legislation in this area and its unification within the European Union and Council of Europe is necessary.

In addition to the many problematic issues discussed above, assisted reproduction creates a number of additional social aspects. Most controversial of them are postmortem fertilisation (the birth of a child many years after the death of one o r both of the genetic parents), postmenopausal pregnancies, multiple parents, anonymous genetic parents, and also children conceived simultaneously but born in different periods. The complexity of surrogate motherhood and subsidiary reproduction, in general, is that, as bioethical problems, they extend far beyond medicine and law, and are influenced by religious, cultural and social factors. The role of national and international law should be to gradually, cautiously and reasonably intervene in these relations, to protect the rights of all persons involved in these complex relationships, their honour and human dignity. However, the rights of the child should always be a priority of the state and protected in any case.

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Section 8. Municipal law

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Direct forms of self-government of the local population

Abstract: The article widely analyzing the legislation on local survey. It is noted that questions relating to the competence of the municipalities, as the separation of the municipalities from the district and city administrative-territorial structure, declaration of autonomy, changing established by the State municipality borders, restriction of rights and freedoms of man and citizen, as well as questions aim to damage historical and cultural monuments and protected natural areas cannot be submitted on a local survey. Despite the fact that many times was approved the identification of the corresponding definitions, it is not clear lack of using the term "local referendum". One of the gaps in the legislation is also, not regulating the case of stopping holding due to refusal of such an initiative. The legislation should be expressed changing in the local survey with other direct form of civil authority of local government, as well as the cases of suspension of the initiative of holding local survey. At the same time, the legislation should also provide a basis for making changes in dates for holding simultaneously local survey with elections to the organs of state power and municipalities.

Keywords: autonomy, state, rights and freedoms of man and citizen, local survey, legislation, direct form of local government, international law.

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Прямые формы самоуправления местного населения

Аннотация: В статье широко анализируются законодательство о местном опросе. Отмечается что, вопросы не относящейся к компетенции муниципалитетов, как отделение муниципалитеты из районной и городской административно-территориальной структуры, объявление автономии, изменение границ муниципалитета установленным государством, ограничение прав и свобод человека и гражданина, также, вопросы преследующие цель повреждения исторических, культурных памятников и охраняемых природных территорий не могут выноситься на местный опрос. Сколько бы не одобрялась выявление соответствующего определения,

непонятно неиспользование термина «местный референдум». Одним из пробелов в законодательстве также является не регулирование случая остановки проведения по причине отказа от такой инициативы. В законодательстве должно быть выражено изменение местного опроса другой прямой формой гражданской власти местного самоуправления, а также случаи приостановления инициативы проведения местного опроса. В то же время законодательство также должно предусмотреть основания для внесения изменений дат для проведения одновременно местного опроса с выборами в органы государственной власти и в муниципалитеты.

Ключевые слова: автономии, муниципалитет, государство, права и свободы человека и гражданина, местный опрос, законодательства, прямая форма местного самоуправления, международное право.

Как уже упоминалось в литературе непосредственная или «опосредованная форма происходит из сути местного самоуправления» [1, С. 203]. Также как народ осуществляет свою власть непосредственно и посредством своих представителей, также местное население осуществляет свою власть в местной территориальной единице не только посредством муниципалитетов, но также непосредственно [2, С. 219].

В законе о местном опросе мнения (ст. 1) форма непосредственной воли местных жителей представлена ограниченным понятием, что не совсем понятно.

Таким образом, любые территориальные, политические угрозы, которые могут возникнуть для национальной безопасности, ограничены на уровне Конституции и законодательства. Согласно 3-ей статье Закона о местном опросе мнения вопросы, не относящиеся к полномочиям муниципалитетов, вопросы, преследующие цель отделения муниципалитетов от районной и городской административно-территориальной структуры, объявления автономии, изменения границы муниципалитетов, определённые государством, ограничения права и свободы человека и гражданина, повреждения культурных памятников и охраняемых природных территорий не могут быть исключены. Как бы закрепление соответствующего ограничения не одобрялось, не понятно, почему термин «местный референдум» не используется.

Местный опрос мнения может быть проведён за исключением вопросов, выраженных в ранее упомянутой нами 3-ей статье Закона о местном опросе мнения. С точки зрения интерпретации соответствующего положения изложение его содержания необходимо. Отмечается, что из местного опроса мнения не могут быть исключены:

– Вопросы, не относящиеся к компетенции муниципалитетов согласно Конституции и законодательству;

– отделение муниципалитетов от районной и городской административно-территориальной структуры;

– объявление автономии;

– изменение границ муниципалитетов, установленных государством;

– ограничение прав и свобод человека и граждан;

– вопросы, преследующие цель повреждения исторических, культурных памятников и охраняемых природных территорий.

За исключением первого пункта и с учётом точности других пунктов, здесь мы хотели бы остановиться на «Вопросах, не входящих в компетенцию муниципалитетов согласно Конституции и законам АР». Следует отметить, что эта статья создает впечатление неопределенности как с точки зрения системы, так и содержания. С точки зрения системы неопределённость заключается в том, что, за исключением первого пункта, все последующие пункты – вопросы, относящиеся компетенции центрального правительства согласно

конституции и законодательству. В связи с этим, суть имеющейся систематизации не понятна. Статья либо должна завершиться первым пунктом, либо должно быть обеспечено перечисление вопросов, не находящиеся в рамках компетенции муниципалитета, без указания первого пункта. Учитывая сложность, которую в определенной степени может создать последний вариант, более эффективным будет ограничиться изложением первого пункта.

В связи с вопросами, которые согласно Конституции и законодательству не относятся к компетенции муниципалитетов, в том числе вопросами, перечисленными в 3-ей статье Закона о местном опросе мнения, необходимо отметить следующее:

1. статус муниципалитетов;

2. сотрудников органов местного самоуправления;

3. избрание должностных лиц муниципальных органов, депутатов, увольнение должностных лиц;

4. утверждение местного бюджета или его изменение, выполнение финансовых обязательств;

5. мероприятия, связанные с законодательством о чрезвычайных мерах по здравоохранению и безопасности местного населения, не были отнесены к компетенции муниципалитетов.

Во избежание неопределенности вопрос, который выносится на местный опрос мнения, должен отличаться точностью, не должно иметь место неоднозначной интерпретации (п. 12). Законодательство не полностью решило эту проблему. В 10-й статье Закона о местном опросе мнения (право определить местный опрос мнения) говорится, что в решении об определении местного опроса мнения указывается дата проведения местного опроса мнения, излагается вопрос, выносящийся на местный опрос мнения, определяется порядок финансирования и разрешаются другие вопросы.

Мы считаем, что положение должно быть определено как «обеспечивает изложение вопросов, выносящихся на местный опрос мнения, в соответствии с законодательством». Тем самым, соответствующий муниципальный орган оказывается высвободившимся от любых неконституционных результатов референдума.

Как отмечается в законодательстве, проводимый опрос мнения ни в коем случае не должен нанести ущерб правам и свободам человека, в том числе основным правам и свободам граждан, проживающих в этом районе [4, С. 83; 3, С. 113]. Под правами и свободами человека и гражданина также понимаются политические и избирательные права, предусмотренные в конституции и соответствующих международных соглашениях. Принципы проведения местного опроса мнения в 5-й статье Закона направлены на обеспечение соответствующих прав. Здесь, в местном опросе мнения излагаются:

– прямое и добровольное участие граждан в местном опросе мнения;

– проведение местного опроса мнения на основе всеобщего, равного и прямого избирательного права;

– проведение тайного голосования в местном опросе мнения;

– предотвращение контроля над изложением гражданами своей воли.

11-ая статья Закона гласит, что местный опрос мнения проводится по инициативе муниципального органа или граждан, проживающих на территории муниципалитета. Граждане, проживающие на территории муниципалитета, могут выступить с инициативой проведения местного опроса мнения лишь тогда, когда минимум 10 процентов граждан, проживающих на соответствующей территории и обладающих правом голоса, подписались за проведение местного опроса мнения.

В этой статье будет уместным раскрыть два наших примечания. Прежде всего, указанные здесь «10 процентов» для сбора подписей мы считаем слабым аргументом. Эта цифра должна быть выше. Например, могут быть приняты подписи половины 50 процентов населения, проживающего на территории муниципалитета.

Инициатива проведения местного опроса мнения в Азербайджане, в отличие от многих государств, не предусмотрена для избирательных объединений, различных общественных объединений [7, С. 6382]. В законодательстве порядок регулирования инициативы регулирует вопросы, начиная со сбора подписей, формирования инициативных групп, регистрации, выдвижения инициативы, а также уполномоченного института представительства.

После проверки соответствия вопроса, выносящегося на местный опрос мнения, вопрос его регистрации разрешается. Проверка соответствия инициативы законодательству поручается территориальной комиссии по местному опросу мнения. 13-ая статья Закона о местном опросе мнения гласит, что после проведения заседания инициативная группа обращается в письменной форме к территориальной комиссии по местному опросу мнения. К обращению прилагается протокол заседания, проведённый с целью создания инициативной группы. Территориальная комиссия по местному опросу мнения проверяет соответствие вышеуказанных документов статьям 2, 3 и 12 Закона со дня их представления и принимает соответствующее решение. В случае регистрации инициативной группы уполномоченный представитель получает свидетельство о регистрации инициативной группы и подписанные листы, утверждённые в соответствующем количестве и форме, указанной в приложении к Закону.

В данной статье упоминается о полномочии территориальной комиссии по местному опросу мнения, предусматривающем проверку соответствия содержания инициативы законодательству, что мы считаем неправильным. Полномочие на проверку данного вопроса должно принадлежать органу, который обязан знать законодательство, права. Например, указанный в 10-й статье Закона (соответствующий орган исполнительной власти Азербайджанской Республики может обжаловать в суде решение об определении местного опроса мнения) орган должен обладать таким полномочием. В другом же случае, 13-ая статья может предусматривать обращения в Министерство юстиции или его комиссию по вопросам муниципалитета для получения отзыва о соблюдении статей 2, 3 и 12 для территориальной комиссии по местному опросу мнения.

В то время как, территориальная комиссия по местному опросу мнения должна нацеливаться на обеспечение процедурных вопросов по местному опросу мнения, включая поступающие жалобы на деятельность участковых комиссий по местному опросу мнения. Как и полагается, этот вопрос нашёл своё отражение в статьях 15 и 17 Закона. Статья 15 гласит, что территориальная комиссия по местному опросу мнения проверяет их соответствие 11-й и 14-й статьям данного Закона в течение 5 дней со дня представления подписных листов и принимает соответствующее решение.

Под словами «контролирует осуществление данного закона на территории проведения местного опроса мнения», указанная при перечислении компетенций территориальной комиссии по местному опросу мнения в 17-й статье Закона следует понимать:

– определение границ участков по местному опросу мнения;

– формирование комиссии по местному опросу мнения;

– координацию деятельности участковых комиссий по местному опросу мнения, рассматривание жалоб (заявлений), поступающих в результате их решений и деятельности, принятие обоснованных решений по данным жалобам (заявлениям);

– приказы о денежных средствах, выделенных на подготовку и проведение местного опроса мнения, раздел данных средств между участковыми комиссиями по местному опросу мнения и осуществление контроля над их использованием по назначению;

– обеспечение участковых комиссий по местному опросу мнения бюллетенями по местному опросу мнения и другими документами;

– решение других вопросов, связанных с материально-техническим обеспечением местного опроса мнения;

– определение результатов местного опроса мнения, осуществление иных полномочий в соответствии с этим законом.

В 14-й статье Закона о местном опросе мнения указаны правила и сроки сбора подписей инициативной группы. Отмечается, что инициативная группа организует сбор подписей граждан с момента получения свидетельства о регистрации. Подписи собираются гражданами Азербайджанской Республики, которые обладают правом на участие в местном опросе мнения. Даже если в Законе не указано, но правом сбора подписей должны обладать дееспособные граждане Азербайджанской Республики, достигшие 18 лет. С уполномоченным представителем заключается договор о сборе подписей для местного опроса мнения. Плата за сбор подписей осуществляется за счёт средств фонда, сформированного инициативной группой для местного опроса мнения. Выполнение данной работы лицом, собирающем подписи, в обмен на определенную сумму важно с точки зрения предотвращения в какой-либо форме принуждения граждан к подписанию, либо его (её) склонения с этой целью.

По просьбе гражданина, подписывающего подписные листы, лицо, собирающее подписи, должно предъявить удостоверение личности. Каждый гражданин Азербайджанской Республики, проживающий на территории муниципалитета, проводящего местный опрос мнения, и имеющий право на участие в местном опросе мнения, может лишь один раз поставить свою подпись. Наряду с подписью гражданина, на подписном листе также указывается его (её) имя, первое имя, отчество, дата рождения, место жительства, удостоверение личности (паспорт) серийный номер.

Квота на сбор подписей, определённая законодательством, меняется в зависимости от административно-территориальной структуры. Так, например, в унитарных и федеративных государствах, в которых реформы законодательства ведутся в направлении децентрализации, квоты устанавливаются на более низком уровне [5, С. 651–670].

Собрав в течение 30 дней подписи, инициативная группа должна представить их территориальной комиссии по местному опросу мнения. 16-ая статья Закона о местном опросе мнения гласит, что местный опрос мнения проводится не раньше 30 дней и не позже 60 дней с момента принятия решения о его проведении.

Одним из пробелов в законодательстве является то, что случай отклонения инициативы проведения местного опроса мнения не регулируется. Случаи замены местного опроса мнения другой прямой формой местного самоуправления и приостановление инициативы проведения местного опроса мнения должны найти своё отражение в законодательстве.

Законодательство также должно включать основы изменения времени для одновременного проведения местного опроса мнения и выборов в государственные органы и муниципалитеты.

Во многих европейских странах представительный орган муниципалитета, местное государственное управление вместе с местными жителями могут выступить с инициативой [6, С. 179–198].

Остальные наши примечания связаны с первым пунктом. В 13-й статье Закона о статусе муниципалитетов определение и изменение территорий муниципалитетов …, определяются законом Азербайджанской Республики с учётом внимания мнения населения.

Несмотря на то, что принятие во внимание мнения населения соответствующей территории закреплено в качестве требования законодательства, данная процедура остается неопределенной. Для учёта мнения местного населения, орган государственного управления также должен выступить в качестве инициатора. В таком случае, орган государственного управления тоже должен быть включён в круг субъектов, указанных в изло-

женном нами первом пункте 11-й статьи Закона о местном опросе мнения и норма должна быть зафиксирована как «Местный опрос мнения проводится по инициативе муниципального органа, граждан, живущих на территории муниципалитета, и органа государственного управления.

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Section 9. Political institutes, processes and technologies

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Armenian Think Tanks influence aspects on Public Policy

Abstract: The Article discusses issues of role and impact of Armenian think tanks in public policy. Current situation, main trends and challenges of Armenian think tanks are discussed. Development possibilities of the sphere are described in Conclusion.

Keywords: think tanks, Armenia, public policy, impact, expert community.

Introduction

Second half of the 20th century may be mentioned as important timeframe for development and institutionalization of political expertise. Development of think tanks established in the mentioned timeframe is being continued in many countries during 21st century. This development is not only expressed in quantitative increasing trend but also increasing of influence in the public policy sphere.

After 1990, since the restoration of independence institutions having modern expertise and analytical format have started to emerge. At the same time regarding estimation of activities of Armenian think tanks in public policy it is very important to analyze level of popularity among different state and political frames.

Description of the situation and key trends

It is necessary to mention that unfortunately majority of think tanks established in Armenia are not well known not only among wide society and politicians but also representatives of academic and expertise society.

Above mentioned phenomenon is also mentioned by other experts. In particular as to Assistant Professor Yevgenya (Jenny) Paturyan representing American University of Armenia Armenian think tanks remain virtually unknown to the public, including such important segments of the public as journalists, students, scholars, and others who would clearly benefit from think tank generated, systematized and stored information [1].

This situation can be explained by the following main reasons:

- sustainable activities, provision of activeness in information domain and public platforms, also lack of necessary funds for applying marketing technologies;
- insufficient efficiency of think tank management;
- limited opportunities of involving professional experts and analysts.

In the context of above mentioned it is important to highlight that Armenian independent, non-state think thanks as a rule survive mainly by the support of foreign funding, grants and less from domestic

funding. In this case after foreign funding is over organizations like this have to be more passive in their activities till the next grant or they are closed. Besides, in situations mentioned, activities of Armenian think tanks and in particular research agenda is formed from foreign sources considering grants, as a rule, usually support research areas which are of an interest for the organization that supports funding.

Situation somehow is different in the case of Government affiliated think tanks which have sustainable funding and are directly funded by the State budget. Referring to University affiliated think tanks majority of those organizations also usually benefits from the foreign grants. But there are some exceptions. Nowadays for example Center for Regional Studies of Public Administration Academy of the Republic of Armenia is funded by the State Committee of Science of the Ministry of Education and Science of the Republic of Armenia. And "Amberd" Research Center of Armenian State University of Economics is almost completely funded from the University budget. It is important to mention that "Amberd" Center is implementing research projects with government agencies and private organizations of Armenia on the basis of an agreement which is considered to be an additional source of income.

In general issues of providing sustainable funding are the Achilles heel of Armenian think tanks. Unfortunately, tradition of patronage and charity to support such organizations has not completely formed in Armenia. Reflection of this phenomenon is clearly observed if paid attention to World Giving Index Report by Charities Aid Foundation published in October, 2016. In the Report Armenia is on the 130th place among 140 countries [2, 34].

Regarding insufficient activeness of Armenian think tanks in the information domain it is necessary to add though vast majority of those organizations has an official web page they are updated rarely. Most popular social media among Armenian think tanks is Facebook. Around 80% of Armenian think tanks have official web pages on Facebook but unfortunately vast majority of those pages is not active sufficiently.

It is obvious that insufficient information accompaniment of Armenian think tank activities significantly has its influence on impact level of those organizations, moreover both on decision making process of the political elite and society. It is important to emphasize that some Armenian think tanks have linguistic orientation of English. For example official web pages of some Armenian think tanks are only in English which significantly narrows latter auditorium in Armenia and as a result decreases impact having on political processes. It is obvious that by applying those methods it is not possible to achieve efficient impact on country's social, political processes and formation of public opinion. Research of alike web pages sometimes there is general impression that think tanks like that are targeted exclusively on foreign auditorium and main aim is to show foreign donors implemented work.

In general, besides Government affiliated think tanks that even are limited but have their own levers on the political elite, vast majority of Armenian think tanks does not have significant impact and influence of Armenian expertise society on formation of political reality and political processes is not that much obvious.

Among already mentioned reasons this phenomenon is conditioned by expertise, potential, resources, organizational possibilities of Armenian think tanks do not allow efficiently participate in the decision making process. Besides, intellectual product of Armenia think tanks, unfortunately, is not sufficiently intended to solution of applied issues. From the other hand although some progress still exists insufficient demand towards analytical product in Armenia which decreases competition in the sphere and does not establish conditions for think tanks to reconsider nature of their product.

It is obvious that in darting and ever-changing political, economic processes of the 21st century in particular among the political elite it is necessary to rise interest towards think tanks' intellectual product

through complying with some requirements: make those more concise, more precise and applicable, reading friendly, if necessary include forecast/likely scenarios future developments, concrete suggestions, recommendations, and in this way be useful for decision makers. Unfortunately, many Armenian think tanks today are not able to publish such an intellectual product properly. Some think tanks in the style of academic institutions emphasize publication of more extensive work which if necessary and compulsory in fundamental sciences is not advisable in the case of think tanks.

It is important to add that one of the reasons of current situation is rooted political culture in decision making process where expertise community was not widely involved traditionally. This phenomenon is typical to not only Armenia but also many other countries of the world among those countries of Eastern Europe and post-soviet area countries.

Nevertheless, some independent think tanks, experts of those institutions through their active public, research and publication activities have some influence in public policy. In this context we may emphasize: Caucasus Institute, Regional Studies Center, Armenian Institute of International and Security Affairs, Armenian Center for National and International Studies, Caucasus Research Resource Center-Armenia, International Center for Human Development, Institute of Public Policy and active functioning of several think tanks. From that point of view — Centre for European Studies of Yerevan State University, The Turpanjian Center for Policy Analysis of American University of Armenia, "Amberd" Research Center of Armenian State University of Economics, Laboratory for Strategic Research in the Sphere of National Security of Russian-Armenian University, etc. stand out among University Affiliated Think Tanks.

Other experts of the sphere have also rebounded issues of insufficient influence of Armenian think tanks and small share of involvement in political decision making process. According to them in Armenia, think tanks have limited channels to reach decision makers or see policy proposals enacted, but there is still room for manoeuvre [3]. In Armenia policymaking is fairly closed. There are a few elite pockets of discussion, often involving the Central Bank and some other institutions, but the spaces for discussion is narrow [4].

Insufficient influence level of Armenian think tanks, also role in public policy may also be graded by other index. So, it is well known that in many countries designation "revolving doors" has been widely spread policy when ex high ranked (and not only) government officials, politicians are hired by think tanks or lead those. Also vice versa experts, analysts of the think tanks are invited to work at the state governing sphere. This approach is usually applied and has already proven its efficiency first of all in the USA, and recently it has been widely applied also in China and other countries. It is truthfully mentioned by experts Cheng Li and Lucy Xu – "revolving doors" helping facilitate the fluid exchange of ideas and expertise between government and non-government [5]. What refers to Armenia we need to mention that unfortunately targeted policy is not implemented in this sphere. Though some precedents exist they are not of a systematic nature and in general after leaving the post of a high-ranked political official very rarely join already existing think tanks. The same can also refer to employees of think tanks who are very rarely hired in a state governing sphere.

In this regards currently existing situation in the sphere is much more similar to a one way road and only some cases may be mentioned when ex-politicians or high level political officials establish their own research, analytical institutions. In particular, Armenian Center for National and International Studies was established by the First Minister of Foreign Affairs of the Republic of Armenia (1991–1992) Raffi Hovannisian, "Modus Vivendi" Center was established by ex-Ambassador Extraordinary and Plenipotentiary of the Republic of Armenia to Canada (2000–2006) Ara Papian, Armenian

Center for Society Research, was established by the ex-Prime Minister of Armenia (2008–2014), ex-Ambassador Extraordinary and Plenipotentiary of Armenia in the USA during the establishment and currently President of the Commission of Eurasian Economic Union Tigran Sargsyan, etc.

Conclusion

Concluding it is important to mention that the industry of Armenian think tanks has not completely evolved and still a lot of issues exist such as insufficient opportunities of organizational, financial resources of think tanks, involvement of professional experts, insufficient activeness in the information sphere, as well limited opportunities of involvement of think tanks in decision making processes.

Nevertheless, since 90th of the previous century launched development of the think tank industry in Armenia will have a continuative nature as necessity of professional expertise, analytical institutions is obvious in the sphere of public policy. Besides for the development of mentioned think tank industry the below mentioned prerequisites exist:

- state and democratic institutions have strengthened, operational efficiency has risen;
- gradually interest of the political elite is rising towards the intellectual products of think tanks;
- democratization level of decision making process has ascended;
- slightly fund rising opportunities of scientific, expertise, analytical institutions have risen (state funding, foreign and domestic grant calls).

It is also important to mention in some cases there is a gap between activities of Armenian think tanks and the national priorities. The reason of the mentioned is level of insufficient cooperation between executive and legislative authorities of Armenia from one side and from the other side think tanks. Considerable financial dependence of Armenian think tanks from external funding is also of great importance. It is obvious that solution of the latter issue is connected to the country success in the development of economy which may expand Armenian sources of think tank funding and allow the government to lead the activities of think tanks applying soft mechanisms towards solutions of the priority issues facing the country and society.

Also regarding the reinforcement of staff of think tanks it is necessary to add that considering many academic and university institutions that are main sources supporting think tanks with staff, currently in Armenia still there is intellectual potential not used and in case of proper conditions industry of think tanks may increase speed of development. This will have a multiplicative effect and among those mentioned it will influence further consolidation of democratic system and development of civil society institutes.

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Potential effects of power delegitimation: the attempt of methodological revision

Abstract: The article presents a methodological attempt to identify the forms of power delegitimation and the accompanying consequences in terms of the political decision-making. By employing such analytical categories as legitimacy and political networks this paper aims to determine the conditions under which the delegitimation may transform into its extreme form, i. e. a legitimacy rupture, and the repercussions, which will follow it.

Keywords: legitimacy, delegitimation, power, political decisions, political networks.

Nowadays one can witness a serious challenge for the modern forms of governance that include disengagement between citizens and political authorities, erosion of representative democratic mechanisms and dilution of political parties, the shifting of decision-making to the supranational level and significantly increased role of non-state actors in domestic political affairs. Even provided fully functional democratic mechanisms – electivity and accountability of the governing bodies – their applications are seriously limited and citizens significantly lose their influence on shaping the political course, which results in growing frequency of political crises. The established democracies and those, whose political systems are undergoing democratic transformation, have faced a partial or a total crisis of legitimacy of their regimes over the recent years. The phenomenon of the power legitimacy decrease remains topical in contemporary political studies. Still, there is a lack of comprehensive vision of correlation between the conditional and consequent aspects of power delegitimation.

In individual studies the power delegitimation has been classified as a particular category of 'stereotyping and prejudice' towards ethnic or religious groups [1]; as 'legitimacy crises', which is according to Habermas rests on inconsistency between the motives declared by the state, on the one hand, and the motivations of the socio-cultural system, on the other hand [2]; and as a state of 'legitimacy deficit' that is generally identified with 'democracy deficit' [3]. Delegitimaiton as a 'legitimacy gap' mostly studied in the theoretical framework of public affairs management as the inconsistency of business conduct and social adjustments [4]. In terms of the threefold legitimacy concept, Beetham provides three types of power delegitimation: a 'failure of government performance, compounding a normative inadequacy of the constitutional rules', an 'act of disobedience, withdrawal of consent', which is a result of the government's inability to represent the common interests of society, or a 'basic disagreement within society over the spatial organization of the state' [5, 211–212].

In the present work, power delegitimation is considered in terms of the political decision-making. I proceed from the assumption that the low level or even the lack of legitimacy of political decisions, especially in periods of social crisis, may be a powerful factor that may lead to a legitimacy rupture, which is the irreversible power delegitimation. Thus, the purpose of the article is to identify the conditions under

which the delegitimation may transform into its extreme form, i. e. a legitimacy rupture, and the repercussions, which will follow it.

The collected theoretical and empirical materials concerning the essence of legitimacy and the practice of legitimation procedures form the prerequisites for a more comprehensive presentation of those processes in the chosen area of political science. Starting from Weber's approach [6] of distinguishing three types of legitimate authority: traditional, legal-rational and charismatic, and up to the analysis of economic, social, cultural factors that influence power legitimation, the known definitions of legitimacy are mostly interpreted in categories of confidence or public opinion, convictions, irrespective of whether it is analyzed in a system-functional (Lipset, Easton, Berger and Luckmann, Luhmann), value-symbolic (Almond and Verba, Bourdieu) or procedural dimension (Putnam, Leonardi and Nanetti). Thus, legitimacy of the power is prevailing voluntariness of its acceptance by the society as best meeting the requirements and challenges of the social and political reality. In this context, Putnam, Leonardi and Nanetti [7] proved the need to form, on a trust basis, some social capital for building informal horizontal (connecting people of the same status and influence) and formal vertical (connecting people of unequal status, with asymmetric connections of hierarchy and dependency) connections among the members of a particular social group or the whole society. When both types of the connections are stimulated in a harmonious and responsible manner, the society generates powerful social capital, which helps to develop and improve the system. Otherwise, if the trust relations among the equal game players are broken, but strong dependency connections remain, that society automatically steps towards a deep authoritarianism. If otherwise, there ensues absence of clear rules of hierarchical submission, but the strong horizontal interaction between citizens and society is moving towards anarchy. Thus, the legitimation of political decisions is the core element of power exercising and has to be present in the horizontal dimension (between the participants of a particular political network), and in the vertical one (between the power holders and the citizens). Since the next stage of decision-making happens in the horizontal format, it seems reasonable to turn to the methodological principles of policy network analysis.

Legitimacy networking

There is an idea with rising popularity in political science, that we are witnessing the shift of the political and managerial order 'from organizations/hierarchies (and markets/anarchies) toward networks' [8, 503]. Many current political administrations already have little in common with the traditional concepts of hierarchy or the neoconservative idea of providing state services through private markets. And despite the fact that the state policy by definition is under the supervision of the state power and aimed at ensuring 'social welfare', the public policy areas have been recently turned into a certain type of hybrid formations that are essentially private or public institutions. Moreover, the political decision-making mechanisms do not narrow down to merely formal administrative activity, because they include the activity of the other actors, which, being non-governmental, participate in the process of political decision-making.

The concept of political networks offers acceptable methodological tools for differentiating and describing public and private actors (organizations, individuals) involved in the process of political agenda setting. According to Borzel [9, 254], a policy network is 'a set of relatively stable relationships which are of non-hierarchical and interdependent nature linking a variety of actors, who share common interests with regard to a policy and who exchange resources to pursue these shared interests acknowledging that co-operation is the best way to achieve common goals'. Heywood [10, 103] points out the 'common interests of the network participants' and defines the political networks as 'a more or less integral formations tying together political actors adhering to similar political positions and convictions'. What the above-cited definitions have in common is

that the structural peculiarities of the networks influence the players' characteristics and activity. The membership and the central positions inside the network are in the focus of constant negotiation and fighting for between the actual and potential participants. The exchange of resources between the formal and informal network players is limited and structured by the institutional rules.

The category of recruitment to the political networks allows to determine the degree of openness (and therefore, transparency) of the decision-making process. The democratic regimes kindred to the pluralistic model are characterized by the open type of the networking decision-making format that enables individuals to be engaged in the policy-making processes through public organizations or via the crowd sourcing. In the corporatist models of government the networking forms of decision-making are partially open for involvement of certain groups of interests, lobbying organizations or field-specific associations. The closed format of decision-making is typical of client-patron networks.

It is important that the decision made in the network is primarily legitimized by the network participants. The decisions made in open political networks accessed by public representatives have a higher degree of legitimacy. In case of the closed network format, i. e. client-patron or clannish, characteristic of autocracies and underdeveloped democracies, there is a risk of decision capsulation, and as a result, of a low degree of their legitimacy in society. Surely, such a model is common not only to autocratic regimes. The tendencies in operation of the existing developed democracies are revealing more and more narrowed political networks and the elitist nature of decision making, which consequently leads to a reduction of the perceived legitimacy of the government actions and causes the spreading of legitimacy crises. In which circumstances can a legitimacy crisis be positively resolved? Under which factors will it become irreversible and ends up as a legitimacy rupture?

In the frame of the present research, i. e. networking legitimation of political decision-making as the core of power exercising, I state that the process of power delegitimation may possibly have two outcomes. One is legal-normative — rebooting of the authority (for example, by voluntary resignation of the government/head of the state and announcement of elections to be conducted), with the elite in power giving it up in favor of the counter-elite while preserving its internal legitimacy and integrity of its network, and ensuring a chance to eventually return to governance. The other one, more radical, is legitimacy rupture, an act of irreversible delegitimation accompanied by spontaneous social protests, revolutions, non-conventional practices of the government overthrow. It is worth pointing out that this scenario is characterized by legitimacy ruptures inside the ruling elite circles conditioned by the inter-network conflict about the decisions made. In other words, a legitimacy rupture as an irreversible form of political power delegitimation occurs when the crisis of horizontal legitimation of political decisions (elites vs. elites) overlaps the crisis of vertical forms of legitimation (society vs. elites).

It can be summarized, that due to the changes in social order and political governance the approaches to power legitimacy study should be thoroughly revised. It also seems expedient to refer to the network analysis when studying legitimation/delegitimation of political decision-making in order to reveal values and mutual interests that condition the formation of political networks (elite, corporate, client-patron, civil, etc.).

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Section 10. Political Geography

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Threats territorial integrity of states in the conditions of globalization

Abstract: At the present stage of development of international relations one of the most problematic issues is the territorial integrity of the state. This topic affects the relationship between countries and their foreign policy.

One important aspect, which does not allow to solve this problem and contributes to the development of negative trends in the international system — a threat, the nature and the sources of which are analyzed in this article.

Keywords: threat, territorial integrity, global processes, state, world politics, international system.

Introduction

The modern system of international relations in the process of its development suffers from threats affecting the historically established foundations and provisions of the national state. The major consequence these threats are endless conflicts between states. The subjects of these conflicts are historical and geographical territory of the natural resources belonging to them. The incessant and cruel struggle for the advantage of ownership of these riches has become a source of threat and the main cause of violation of territorial integrity of states.

The collapse of the old system of international relations has violated the main law of the existence of the system — the balance of forces that pushed the nation-states, especially the young country, with the challenge of ensuring their interests in the new system of international relations, a major and fatal of which is its geographical area and the available natural resources.

The article examines, in our opinion, the main threat to the development of modern international relations; problems associated with the provision of the territorial integrity of the state and the international implications of the problem unresolved.

Consequences of infringement of the principle of the inviolability of borders in the context of globalization and their impact on international relations. The principles enshrined in the UN Charter, adopted and must be respected by all parties of international relations, state that (Article 2, paragraph 4): "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations" [1].

It should be noted that even for non-members of the UN, ordered to act in accordance with these principles, "as it may be necessary for the maintenance of international peace and security" [1].

However, with the collapse of the bipolar system of international relations and the balance of power in violation of international politics, the principles of the UN have lost their power and influence, which was the cause and source of the threats faced by the international community today.

Today, the principles of the UN Charter are interpreted in favor of the aggressor State and the initiators of these conflicts.

An important consequence of the violation of the principle of inviolability of borders is the unstable political situation in the world, which has a negative effect on the economic development of the world's states.

The issue of territorial integrity of the state is faced with the problems of an international nature, which constitute the totality of the threats to the country. These threats include global problems of the modern world, which are not considered with the rules of the world order and thereby complicate the relationship between the state, up to a military clash.

The military policy of modern states. The group of major threats to the territorial integrity, in our view, include the presence of a huge number of weapons for use which requires the conflict zone. In this regard, the incitement of these conflicts has become one of the directions of the foreign policy of more powerful states, which are determined according to the interests of the state in a particular country or region.

An example is the position of Russia in the Armenian-Azerbaijani Nagorno-Karabakh conflict. For the first time Russian military aid to Armenia, the facts were made public minister in charge of Russia's cooperation with the CIS member states A. Tuleyev at a press conference held in Moscow on February 14, 1997. During this press conference, he told the press that during the 1994–1996 Russian secretly transferred large Armenian parties of various types of weapons and military equipment. Later, A. Tuleyev issued a letter to the Minister of Defense of Russia Rodionova I. from 28 February 1997, in which virtually confirmed the facts of unauthorized deliveries of Russian military equipment worth over one billion dollars to Armenia for 1994–1996 [2].

In the modern political map of the world there are many territorial conflicts, destabilizing the international political situation. These include conflicts in the former Soviet Union: Armenia-Azerbaijan Nagorno-Karabakh conflict, which does not allow the creation of a collective security system in the region, the conflict in Ukraine, the geographical area which, after the annexation of Crimea to Russia have changed, that was the result of tensions between Russia and Ukraine.

Today, apart from the state, have access to weapons of force, whose actions are not authorized by any country. This fact has become the source and the cause of international terrorism, has received in recent years, the status of the global problem. The fight against international terrorism after the events of September 11, 2001 has acquired a new coloring and intensified the big countries to solve this problem.

The use of terrorist activities in conflict zones (continued terrorist acts) stakeholders paralyzes the end of the regional ethnic conflicts, which are accompanied by mass murder of innocent people and destabilizing in the long run, political and economic development of the state. Attempts by states in conflict management face this problem and remain unsuccessful.

However, among the above-mentioned threats to global processes, perhaps, are the source of the most serious threats to the sovereignty and territorial integrity of States in historically developed concept of these positions.

Today, the processes of globalization directed towards the creation of a common space in the economic, cultural and other relations, which limits the function of an independent state. Economic globalization, forms of which are the creation of a single customs zone (this limits the state's right to a decision to regulate the import and export of goods), a free trade zone, a common economic and monetary market. Economic globalization affects the development of production and the prevalence of imports over exports. It weakens economic positions within the state. Create problems

of migration. In search of work becomes unregulated flow of people from their countries of resettlement in economically strong countries.

Information Policy States. These threats should also include the so-called information war for territorial integrity. Uncertainty and the falsity of the information is drawn from the media (internet, television, radio, the current print) fueling regional and ethnic conflicts, sets the one state against the other, thereby causing the aggression in the country and has become a cause for armed conflict.

The power held by the media, the development of information technology contributes to high-speed transmission and presentation of any information of the international community. In this regard, access to actual and reliable information, the possibility of its analysis and forecasting of the situation becomes problematic issue for the state.

Some of the information services and agencies in favor of those reasons or deliberately distort this or that information about the situation. It often becomes a cause for the onset of tension and confrontation in relations between states.

The source of the information war, in our opinion, can be considered as the problem of cracking of various information databases, both public and private (the activity of so-called hackers). The ability to uncover any information with all sorts of methods and ways of making the state vulnerable, weakens its information security system and, accordingly, the fight against the threat of further complicated and entail negative consequences.

Religion as a threat to the territorial integrity of the state. Another threat to the territorial integrity of modern states can be regarded as the attitude and policies of religion.

At present, the separation of religion and public affairs, but it still remains an important aspect of civil society. The false idea of the true purpose of religion fueling conflicts under the guise of alleged religious aggressive policy of the state directed against specific people professing "wrong" religion.

Create tension in society has become a cause for conflict between nations, which is fraught with a split in the relations between states, and, ultimately, a threat and the country. For the basic requirements related to the separation of the country, professing not the official religion of the state.

The ratio of the major powers to the territorial integrity threats at the present stage. The above threats affecting today are mostly young state, which, wanting to become independent and take some and rightful place in the international system, are targeted in order to promote the interests of the major powers with stable policies and stable economic development of the system.

But these threats were made and these countries, for not standing in front of a direct threat to the territorial integrity of the large states, they assess the current political developments as a threat to their constitutional order.

In his speech during the extended meeting of the Russian Security Council in the Kremlin, Russian President Vladimir Putin said that "the sovereignty and territorial integrity — a fundamental value. It's about protecting the territorial integrity, constitutional order. Direct military threat to our country is not. We strictly adhere to the norms of international law, its commitment to its partners. Russia does not enter into any alliances, and therefore pursues an independent policy. Any country that is included in the alliance, a part of their sovereignty gives. We hope that our national interests will be considered legitimate, and disputes will be resolved through negotiations. Increasingly, ultimatums and sanctions language. Any objectionable destabilized the country, using the color revolutions and simply coup. Used problems in failed states. There are problems, but it is not clear why they were used to the collapse of the country. "

In this case, the above given reason to believe that the issue of preservation of the territorial integrity of any state in modern conditions of development of global processes is still an urgent and requires nuanced approach to the issue.

Conclusion. So, we can conclude, in our opinion, a simple and complex at the same time, that all countries, especially those with strong potential in all major areas of development, must want and make every effort to develop a common mechanism to combat the above-mentioned threats.

Since research into the causes and sources of these threats, we see that most of them come because of the positions and behavior of the states, which become problems for their own independent and full-fledged development.

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Section 11. Political sociology

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Implement social security policy and the role of the state in the implementation of social security policy in Vietnam

Abstract: Social security policy is a system of policies, guidelines and measures to ensure income and other essential conditions for individuals, families and communities in the face of economic and social changes. Association and nature causes them to lose or lose their ability to work or lose their jobs, illness, illness or death; For the lonely elderly, orphans, the disabled, the underprivileged, war victims, people affected by natural disasters. Implementing social security policies is the process of turning policies, measures, and measures related to the social security system into actual outcomes through organized activities in the state apparatus. And the broad participation of organizations, units, families, individuals and the whole society, in order to realize the goals set by the policy. The state plays a fundamental role in the implementation of the social security policy, which derives from the basic functions of the state. Through 30 years of implementing the renovation policy, the assurance work in our country has achieved many important results. However, the work of ensuring social security in Vietnam is still inadequate and weak.

Keywords: policy; Social Security; Policy enforcement; Social security in Vietnam; State role.

1. Organize implementation in the policy cycle

1.1. Policy cycle

Public policy is the overall action plan of the state that has a conscious impact on the lives of the people in a certain way in achieving their goals. Public policy is the result of the state's political will represented by a set of related decisions, including the direction of the goal and the manner in which public affairs are dealt with [9, P. 51]. The policy cycle (public policy) is a sequence of successive stages that are relevant to each other since the public policy issue is selected until the outcome of the policy is assessed – the process of rotating the steps From the beginning of policy to the determination of the effectiveness of policy in social life [7, P. 166–190; 9, P. 84]. The policy cycle following the model of countries around the world consists of five stages: (1) Establishing policy agendas is the process by which public issues become the concern of the State and include in the chapter. Presentation; (2) Policy formulation is the process of setting up different policy options for addressing the public; (3) policy decision making is the process by which a competent state body adopts a specific course of action by a policy; (4)

Policy implementation is the process of putting policies into practice for the participants to implement; (5) Policy evaluation is the consideration of the impact of policy on socio-economic objects and processes according to qualitative and quantitative criteria [7, P. 166–190]. In particular, the policy implementation step plays a very important role: The adopted policies must be implemented. The implementation phase includes promulgation of legal documents, responsibilities and authority as well as the implementation of specific actions and measures.

In Vietnam now, the policy cycle is usually divided into three stages: policy formulation, policy implementation, policy evaluation: the first stage in the policy cycle is planning: planning Policy is the whole process of studying, building and issuing a full policy. This is the policy formulation phase and policy decision making. In order to complete this phase, state agencies are tasked to carry out situational analysis to identify policy issues and address problem solving on the agenda for policy issuance. Policy identification is not only done by government agencies but also by the wider participation of the society, especially mass organizations such as the Fatherland Front and other organizations. Its tablets. The principle of public policymaking is: For the benefit of the public, the principle of the majority, the principle of the system, the principle of reality. Important content in the public policy planning phase is the identification of policy objectives and measures to achieve them. To do this, the subject needs to analyze the impact of each solution and compare the solutions together so that the final decision-making body can decide. The next phase is the implementation phase of the policy: This is the stage of realization of the policy in social life — the stage of implementation of selected policy solutions and monitoring of the implementation. It can be said that this is a critical stage to the success of a policy. This stage includes steps such as: Planning implementation; Dissemination, advocacy; Assignment, enforcement coordination; Maintain policy implementation; Policy adjustment; Follow up, check, motivate. Finally, the policy review phase summarizes the experience: This is the stage in measuring the costs, the results of policy implementation, and the actual impacts of policy during the implementation of the objective. Policy, thereby determining the effectiveness of a policy in practice. Based on the results of the policy review, government agencies may make policy adjustments if deemed necessary. These agencies may add targets, change, or adjust appropriate solutions, perhaps even decide to continue pursuing the goal or ending the existence of the policy [7, P. 166–190; 9, P. 88–94]. Policy analysis is not an independent phase of the policy cycle, but rather an activity linked to the stages of the policy cycle. This is a fundamental activity that forms the basis of decision-making for policy-makers, actors, and evaluators.

1.2. Implementing policies and implementing social security policies

Policy enforcement is the process by which policies are transformed into actual outcomes through organized activities within the state apparatus, in order to realize the goals set by the policy; Is the whole process of the subject's activities in different ways in order to realize effective public policy content [9, P. 127]. The importance of implementing the policy is to solve the pressing problems of society posed. Without this step, the policy cycle can not exist; Without the implementation of policies to achieve certain results, the guidelines, regimes are just slogans. If the implementation of bad policy implementation will lead to lack of trust. The process of implementing policies contributes to the finalization of policies: There are problems in policy making that have not yet arisen, revealed or arisen, but the planners have not noticed, to the stage. The new enforcement organization discovered. The process of implementing policies with practical actions will contribute to adjusting, supplementing and perfecting policies in line with reality, meeting the requirements of life. Analyzing and evaluating a policy (good and bad) can only be full and persuasive after implementing

the policy. Through the implementation organization, the authorities can know whether the policy is accepted by the society and the majority of people or not, come to life or not.

Implementation of the policy includes the following basic steps: Step 1: Develop a policy implementation plan, which is an important step as the implementation of the policy is a complex process. Out in the long run so have to plan. This plan must be developed before putting the policy into practice and include the following steps: Organizational and operational plans such as stakeholder engagement, staffing, enforcement mechanisms; Plans to provide resources such as finance, equipment; Time schedule implementation; Plan to check and speed up the implementation of policies; Proposed regulations and rules on organization and administration of policy implementation. Step 2: Popular policy propaganda: This is the next step after the policy has been adopted. It helps the people, the authorities at all levels understand the policy and help the policy to be implemented smoothly and efficiently. This propaganda needs to be done constantly and constantly, even when the policy is being implemented and for all audiences. Step 3: Coordinate the implementation of the policy: A policy is usually implemented on one basis. Large areas and many organizations involved must therefore have the coordination, reasonable division to complete the task well. Step 4: Maintaining policy: This is the step that will make the policy sustainable and effective in the real world. In order to maintain the policy requires the consensus, the synergies of many factors, such as the State is the organizer of the policy implementation must create conditions and the environment to implement policies well. For policy followers, it is their responsibility to actively participate in policy implementation. Step 5: Policy adjustments, which are necessary, take place regularly during the implementation of the policy. It is carried out by the competent state authorities (usually the agency that makes the policy has the right to adjust). This adjustment must meet the preservation of the initial objective of the policy, only adjust the measures, the mechanism of implementation of the target. This activity must be very careful and accurate, without distorting the original policy. Step 6: Monitoring, checking and urging the policy implementation: Any policy implementation must also be checked and urged to ensure that the policies are properly implemented and effectively used by all. power. State agencies carry out this inspection, and if done regularly, help the manager master the implementation of the policy from which accurate conclusions about the policy. This inspection also allows the implementers to realize their limitations to make adjustments and improvements to improve the effectiveness of the policy. Step 7: Summarize and draw experience: This phase is carried out continuously during policy maintenance. In this process we can evaluate each or every policy. This assessment must be carried out for both government agencies and policy beneficiaries [9, P. 131, 136].

Social security policy implementation is the process of turning policies, measures, and measures related to the social security system into actual outcomes through organized activities within the home. Water and broad participation of organizations, units, families, individuals and the whole society in order to realize the objectives set by the policy.

It is the process of implementing the social security policy system (social assistance, social incentives, social insurance, health insurance, employment …) into reality with tools, State machines aim at realizing the goal set [10, P. 44]. How does the implementation of social security policy relate to the various sections (state social security planning agencies, executives implementing social security policies, Social security, beneficiaries of social security policies) and basic steps in the implementation of social security policy. In fact, these divisions often do not have absolute separation from each other, but are interwoven, integrated (such as social policy-makers as beneficiaries of policy …). The implementation of

steps in the implementation of social security policies must be considered at the level of enforcement subject: Social policy, policy is central level (national policy), the main enforcement level Social security books are local governments at all levels. On the basis of national policies, local governments at all levels, based on local conditions, continue to institutionalize national policies through the issuance of decisions, plans and programs. Local policy) and organization of implementation to realize the aforementioned policies. Therefore, in terms of relativity, the implementation of social security policy of a province or city is just one step in the policy cycle (planning, implementation, evaluation of results). It can be seen that the implementation implies the entire policy cycle (local policy) with all three steps (planning, implementation, evaluation).

2. The role of the state in the implementation of social security policies and the implementation of social security policies in Viet Nam over time

2.1. The role of the state in the implementation of social security policy in Vietnam

First, it derives from one of two basic functions of the state — social function: As a public authority, the state has two basic functions: class function (political dominance And social functions. The social function of the state is to function in the management of common activities for the sake of the existence of society, for the care of the affairs of the whole society and within the limits of which it may satisfy certain needs. Bridge of the community in society. Social functions manifest in such tasks as: solving common affairs of society; Organizing the creation and protection of public order and protection of ecological environment; Manage, regulate the areas of social life. This, affirmed by the Communist Party of Vietnam in its "State of the Role in Building and Implementing Social Policies", [5, P. 91].

Secondly, to overcome the limitations of a market economy: The socialist-oriented market economy in Vietnam is a multi-sectoral commodity-based economy operating under the market economy regime. The regulation and regulation of the State under the leadership of the Communist Party of Vietnam. The market economy, in addition to the advantages, it has limitations and disabilities such as the rich and poor, the polarization of wealth, the pollution of the living environment. Therefore, it is necessary to use the tools, policies and resources of the state to "orient and regulate the economy, promote production and business and environmental protection, make progress and fair commune. Association in each step, each development policy… ensure social security, sustainable social development" [6, P. 103–104].

Third, ensuring social security and improving social welfare is not only an important task for every country in the development process, but also for the protection of the rights of all people under the Universal Declaration of Human Rights. Of the United Nations. The right to security is an important right of the person, as defined by the Constitution of Vietnam (Article 34, Chapter 2: Citizens have the right to social security).

Fourth, social security is also seen as a service that the private sector can hardly undertake to accomplish. In other words, only the state can offer the appropriate incentives and its influence to press the necessary in promoting mandatory contributions.

2.2. Social security policy and implementation of social security policy in Vietnam over time

From the point of view of the Communist Party of Vietnam, the social security policy system in Vietnam in the renovation period is institutionalized by the State with legal documents that go through each stage of development in the process.

Regarding the social insurance policy: In terms of the policy system, this is the most advanced phase of the social insurance policy with the introduction of a series of high legal documents such as: Decree No. 299 of August 15, 1992 of the Council of Ministers on allowances for public servants, administrative and public employees, armed forces and social policy beneficiaries; Decree No. 43 of June 22, 1993 of the

Government on temporary regulations on social insurance. The establishment of the Labor Code in 1994 was of great significance in institutionalizing the law provisions on labor. On the basis of the Labor Code, the government issued a series of guiding documents. Meeting the requirements of market economy conditions, further securing workers' rights, dated 2 April 2002. At the 11th session, the Xth National Assembly passed the Law amending and supplementing a number of articles of the Labor Code in 1994 which took effect on January 1, 2003. Accordingly, the scope of the subject and coverage are extended to further protect workers in labor relations …On November 20, 2014, at the eighth session of the National Assembly of the Socialist Republic Vietnam XIII Legislature has adopted the Law on Social Insurance (this law takes effect from 01 January 2016) [12].

Regarding health insurance policy: In recent years, regulations on health insurance are mainly reflected in the following documents: Decree No. 63/2005 dated 16 May 2005 of the Government promulgating the Regulation Health Insurance; Inter-ministerial Circular No. 21/2005 of August 24, 2005, of the Ministry of Health and the Ministry of Finance, guiding the implementation of voluntary insurance; Decision No. 36/2005 of October 31, 1995 of the Ministry of Health promulgating the list of high-tech, big expenses paid by medical insurance; And other documents relating to issues related to health insurance such as assessment, management of health insurance fund, accounting, accounting … At the fourth session of the 12th National Assembly, the 14th November 2008 approved the Health Insurance Law. Together with the Law on Social Insurance, these are the two documents that institutionalized at the highest level two important parts of the social security policy system in our country. On July 13, 2014, at the Seventh Session of the National Assembly, the XIIIth National Assembly of the Socialist Republic of Vietnam passed a law amending and supplementing a number of articles of the Law on Health Insurance. On January 1, 2015). On 15 November 2014, the Government also issued Decree No. 105/2014 detailing and guiding the implementation of a number of articles of the Law on Health Insurance. New points of the Law on Health Insurance link health insurance participants; Level of insurance coverage; Open medical insurance coverage [4; 13]. In general, the legal system of social insurance and health insurance in the current period is relatively complete and of high legal value, meeting the requirements and aspirations of employees.

Regarding social support policy: In the renovation years, the State has issued many legal documents on social assistance, including some legal documents have high legal value such as Decree No. 05 dated 26/1/1994 of the Government which regulates the adjustment of allowance and pension levels for beneficiaries of social policy; Ordinance on Disabled Persons No. 06/1998 of July 30, 1998 of the Standing Committee of the National Assembly; Decree No. 55/1999 of July 10, 1999 detailing the implementation of a number of articles of the Ordinance on Disabled Persons; Ordinance on Elderly No. 23/2000 of April 28, 2000 of the Standing Committee of the National Assembly; Decree No. 67/2007 dated 13/4/2007 by the Government on policies to support social protection beneficiaries. Decree No. 13/2010 of the Government dated 27/02/2010 amending and supplementing some articles of the Decree No. 67/2007. Legal documents clearly define the scope of beneficiaries, beneficiaries, regimes and financial sources for regular social relief and irregular social relief as a basis for the implementation of social assistance. On 21 October 2013, the Government issued a decree regulating social assistance policies for social protection beneficiaries [1]. According to the decree stipulating social support policy for social protection beneficiaries, there are 6 beneficiaries monthly social allowance; To issue health insurance cards for social protection beneficiaries; Support for housing for poor and near poor households.

Regarding social preferential policies: In recent years, the legal documents on social preferential policies have been supplemented and improved. The two most promulgated legal documents are the Ordinance on Preferential Treatment of People with Meritorious Services to the 2005 Revolution, the 2007 Amendments and Supplements, and the Ordinance on the State Honorary titles of Vietnamese Heroic Mothers. In 1994, a series of other decrees and circulars guiding the implementation of these two ordinances, such as the State Honorary titles of Vietnamese mothers, the Decree detailing and guiding the implementation of a number of construction regulations Setting up and managing the "Gratitude" fund clearly defines the beneficiary and the social preference system. On October 20, 2012, the National Assembly Standing Committee passed the Ordinance Amending and Supplementing a Number of Articles of the Ordinance on the State Honorary Title of "Hero Vietnamese Mother". On May 22, 2013, the Government issued a decree detailing and guiding the implementation of the Ordinance on the State Honorary titles of "Hero Vietnamese Mothers" and the Ordinance Amending and Supplementing a Number Article of the Ordinance defines the honorable title "Heroic Vietnamese Mother" [2; 14].

3. Assess the implementation of social security policy in Vietnam in recent years

Through 30 years of implementing the renovation policy, the work of ensuring social security in Vietnam has achieved many important results. The social security system is more and more synchronous and complete with the coverage is constantly expanding. The material and spiritual life of the people is constantly improving. Social security has become a solid backstop for the poor and the vulnerable in society, contributing to the formation of societies that no longer excluded social groups and ensured the socialist orientation of social cohesion. develop the country. To date, the work of ensuring social security has achieved many outstanding achievements, the people agreed and international appreciated:

The social sector has achieved many important achievements, especially poverty reduction, job creation, preferential treatment for people with meritorious services, education and training, health care, support for people in particularly difficult circumstances, work Family and gender equality. The material and spiritual life of people with meritorious services, the poor and ethnic minorities has been improved, contributing to strengthening people's confidence and socio-political stability. Vietnam is recognized by the United Nations as one of the leading countries in implementing some of the Millennium Development Goals [5, P. 104].

Institutionally, in the recent years of doi moi, the Communist Party of Vietnam and the Government have formulated and implemented many important social security policies, mobilizing the resources of the whole society to help. For the people (the ethnic minorities, the poor, the lonely elderly, the children and the vulnerable) rise up in life. Policies and solutions to ensure social security are implemented in all three aspects: Help beneficiaries increase access to public services, especially in health, education, teaching. Occupations, legal aid, housing, …; Support production development through policies on market guarantee, credit, employment; Develop essential infrastructure for localities to serve people better. The legal system of social security has become more and more complete and has become an important legal basis for regulating social relations. The social insurance system has been developed with increasing content and forms in order to share risks and provide practical assistance to the participants. Social insurance is implemented in three types: compulsory insurance (Social Insurance and Health Insurance) and voluntary insurance.

However, the work of ensuring social security in Vietnam still has many shortcomings and weaknesses: poverty reduction is not sustainable, people in ethnic minority areas, remote areas are more difficult, Rich and poor, the distribution between regions tends to expand. Underemploy-

ment in rural areas, urbanization and urban unemployment is high. The resources for implementing social security are limited, mainly based on the state budget, with coverage and low support levels, not keeping up with the development of the socialist-oriented market economy. Meaning. The balance of sources and uses of the social security system, including social insurance funds, health insurance and social protection schemes, is limited and faces great challenges in the short term, As well as medium and long term. Social insurance funds, especially health insurance funds, are in a state of emergency in the near future. Investment resources for social security of the State hard to meet the requirements of social security increasing people, while mobilizing from other sources, especially from the community is limited, especially countryside. Forms of insurance do not meet the diverse needs of the people; The quality of services is generally low, still occur no less negative, troublesome. Some unreasonable social security policies exist; There are no specific social security policies and suitable for rural people and mountainous and ethnic minority areas with difficult living conditions. The quality of provision of social security services, especially health services, is limited, not meeting the requirements of socio-economic development and increasing living standards of the population. The administrative and social service delivery system has not kept pace with the development requirements, and limited in organizational and managerial capacities for social security [11].

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Section 12. Investment law

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Judicial mechanisms for protecting the rights of investors in Kazakhstan

Abstract: This article is devoted to the role of national-legal regulation of foreign investments in the development of investment activities and investment relations in the Republic of Kazakhstan. The author studies the policy of realizing a favorable investment climate in the country, the prospects for the development of judicial protection of investors' rights in Kazakhstan, and the analysis of the current state of the investment legislation of the Republic of Kazakhstan is examined.

Keywords: investments, entrepreneurship, investment legislation, entrepreneurial legislation, direct investments.

In the conditions of the economic crisis, the predetermining factor of structural and investment transformations was the deformation of the economy and its reduction to the optimum of technical and technological possibilities for constructing an organizational and economic model for managing the investment process.

The intensification of structural and investment reforms is a renewal of the industrial potential of the industrial sector of the economy, which is based on the mechanism of economic growth and the construction of new economic relations with a given level and direction of development.

Proceeding from this, the problem of ensuring economic growth is predetermined by two levels – directly technological and determining – organizational and managerial, as a combination of two factorial levels. The economic component of the policy is designed to combine the system of priorities into a single economic organism for the functioning and development of the investment process in relation to the specific conditions of the organizational and economic system of the Republic, which is provided by the peculiarities of the current period of transformations in the economic complex, that has lost its stability and certainty of development.

The mobilization of technical, technological and organizational-economic potential depends on the economic growth, its stability and efficiency. The essence of this approach is to support the state's priority fields to promote the development of new forms of investment process that ensures the sustainability of the development [1].

The attraction of foreign investors has such positive consequences as:

– import of capital and loans increase the accumulation of capital in the host country, accelerate its

economic development, and improve the balance of payments;

– foreign investment are accompanied by the transfer of technologies, organizational and managerial experience, the results of scientific and technical research and the development embodied in technology, patents, licenses, trademarks, etc.;

– increasing the level of employment and skills of local labor forces;

– manufacturing operations of foreign firms expand the range of products, promote more active development and more complete use of local resources;

– improving the living standards and purchasing capabilities of the population;

– foreign investments render a stimulating effect on the development of services, starting from banks and insurance up to transportation and advertising;

– foreign investments create an additional incentive for other investors, as they increase confidence in the country, maintaining capital inflows;

– foreign investments strengthen competition in the national economy and reduce the level of monopolization;

– foreign investments make a certain contribution to the development of social sphere [2].

As a result of the state investment policy in the Republic of Kazakhstan, which includes legal, organizational activities and measures for judicial and extrajudicial protection of investors' rights, about 20 billion dollars of foreign investments are attracted annually to Kazakhstan. Only for the first half of 2016 the economy of Kazakhstan received over 1.3 trillion tenge of foreign investments. The Republic of Kazakhstan in the rating of comfortable and favorable conditions for doing business by the evaluation of the World Bank "Doing Business", the past year had raised by 12 positions and occupied the 41st place out of 189 [3].

During 25 years of Kazakhstan's independence, the policy of implementing a favorable investment climate in the country, supporting foreign direct investment and protecting the rights of investors is a topical direction.

The state of investment activity is negatively affected by the lack of an effective mechanism for its legal regulation, as well as the management model of interaction of the participants of the investment process in the course of ensuring their security with the use of administrative legal and financial legal means of protection.

In 1998 the Council of Foreign Investors was established under the chairmanship of the President of the Republic of Kazakhstan in order to build a sound investment policy and ensure economic development of the country.

Achieving the goal of forming a solid legal basis for investment activities is complicated by the absence of a deliberately arranged system.

Governmental legal regulation of investment protection should meet the goals and objectives that oblige to implement such regulation with a view to ensure proper quantitative and qualitative growth of investments, interests of all participants in investment legal relations and the society.

Among various forms of protection of law, the leading role is permit by the judicial form of protection of investors' rights as a universal, historically developed norm regulated in details by the rules of civil procedural law [4], which provide a special procedure for considering investment disputes.

In order to implement the program "Ensuring the Supremacy of Law" according to the Strategy of the President of the Republic of Kazakhstan NA. Nazarbayev – "100 steps" [5] separate legal proceedings on investment disputes were created and on its basis a specialized investment board was organized in the Supreme Court of the Republic of Kazakhstan. In accordance with subparagraph 2 of Article 28 of the new Civil Procedure Code of the Republic of Kazakhstan, on the jurisdiction of the Supreme Court in which a specialized judiciary board was established. The board is engaged in the consideration of investment disputes by the rules of the court of the first instance to which the major investor is a party. Consideration of civil cases on investment disputes, except

the cases that are subject to the Supreme Court, as well as other disputes between investors and state bodies related to the investor's investing activities are referred to the jurisdiction of the court of Astana. Revision of the judicial decisions on the investment disputes of the court of Astana is also carried out by the specialized board of the Supreme Court of the Republic of Kazakhstan.

The plan of the nation "100 steps" stipulated the establishment of the International Council on the basis of the model of the Council of Foreign Investors under the President of the country. As a consultative and advisory body to the Supreme Court, the Council out of 12 authoritative foreign and Kazakhstani lawyers and scientists, is established at present, which is focused on developing recommendations on the implementation of advanced international standards in the national justice system, giving conclusions on specific court cases related to the consideration of investment disputes.

This means that if earlier investors in their disputes with the state applied to the regional economic courts (SREC – a specialized inter-district economic court of a city or region), now a grand investor immediately appeals to the Supreme Court of the RK to protect his rights from illegal actions of state bodies.

What does this give investors and what is the difference from the old system?

First of all, it is necessary to understand that not every dispute involving an investor is an investment.

Investment dispute is a dispute only between the investor and the state (for example, in the sphere of subsoil use, taxation, environmental protection, competition protection, customs clearance, etc.) [6].

The direct consideration of the investment dispute in the Supreme Court is called upon to ensure prompt and qualitative consideration of the case, since the above areas of activities require the high qualification of judges and the availability of specialized knowledge not only in the field of jurisprudence but also in the relevant branch of economic activity.

According to the Investment Ombudsman, in recent years more than 30 transnational companies (TNCs) have come to Kazakhstan. This year, it is planned to reinvest 9 TNCs. The Ministry of Investment and Development of the Republic of Kazakhstan is actively working currently on more than 200 projects with the participation of small and medium-sized investors informed the head of the department [7].

As can be seen from the reports of authorized persons, the number of investment projects and the volume of foreign investments increase every year, while the number of investment disputes also steadily increases. Most often, investors face problematic issues on tax, customs, antimonopoly legislation, as well as in the sphere of land relations and licensing.

With this scale of participation of foreign capital on the part of the state, it was decided to adopt cardinal, even revolutionary measures to change the procedure for examining investment disputes, adopting the most advanced world experience in this field as the basis.

So on December 7, 2015, the Constitutional Law of the Republic of Kazakhstan "On the International Financial Center Astana" (hereinafter – the Law) was adopted.

The International Financial Center "Astana" (hereinafter referred to as the IFC "Astana") or in English – Astana International Financial Center (AIFC) is actually a tax and economic paradise for business entities, considering that:

– the participants of the Center until January 1, 2066 are exempted from corporate income tax on the income received from the provision in the IFC "Astana", as well as legal, audit, accounting, consulting services;

– foreigners working in the IFC "Astana", before January 1, 2066, are exempted from paying an individual income tax on the income from the activities in the Center for Labor Contracts;

– bodies and participants of the IFC "Astana" providing services undertaken by the Law are ex-

empted from payment of property tax and land tax on facilities located on the territory of the Center. Besides this, the legislation of the Republic of Kazakhstan is partially abolished on the territory of the IFC "Astana". The rules on the territory of the center shall be based on the principles of Law of England and Wales and the standards of the world financial centers (for example, Dubai International Financial Center – DIFC). The center management body is entitled to adopt normative acts that will regulate civil-legal, civil-procedural relations, financial relations and administrative procedures arising between the Center participants, the Center bodies and their employees (art. 4 of the Law).

Within the framework of this Law, it is also envisaged to create a separate court to review the cases of participants of the financial center. The Center court is declared independent in its activities and is not included in to the judicial system of the Republic of Kazakhstan.

The official language of the Center shall be English, used in all areas of public relations regulated by the Center throughout the Center. Legal proceedings and transactions in the IFC "Astana" are also planned to be conducted in English, upon the request of the parties, with translation into Kazakh or Russian (art. 19–20 of the Law).

The implementation of the proceedings in English is due to the necessity to create favorable conditions for foreign investors and to consolidate the international level of the AIFC.

Thus, it can be stated that the prospects for the development of judicial protection of investors 'rights in Kazakhstan present large-scale events affecting both the legal and economic components of these legal relations, since it is the judicial protection of investors' rights that provides the proper conditions for the development of the capital market and the attraction of new financial technologies in to the Country [8].

As it has already been stated in the article, such disclosure of clear concepts shall allow considering dispute decisions either in the Supreme Court or in the Court of the city of Astana. All other disputes with the participation of investors, but not related to investment activities, shall be attributed to the jurisdiction of district courts.

Increasing "number of lawsuits in the courts of the Republic of Kazakhstan testifies to increasing investor's confidence in justice, confidence in strict observance of the requirements of legislation by courts and the terms of concluded investment contracts, which are the main indicators of a favorable investment climate".

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Section 13. Labour law

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Judicial protection of labor rights in terms of judicial integration: application of "Jurisdiction" and "Subordination" definitions

Abstract: It is noted that jurisdiction, subordination and competence are not identical concepts. The presence of the definition of "subordination" in the Economic Procedure Code contradicts the existing principles of the judicial system, and in the case of the protection of labor rights in economic proceedings, "subordination" narrows the guarantees of labor rights protection. Therefore, there is a favorable moment to introduce certain changes in the Economic Procedure Code of Ukraine – about bringing this procedure act in line with the constitutional provisions and European standards – in order to exclude the cases of unequal understanding by the European Court of Human Rights of the concepts "jurisdiction" and "subordination", which are inherent in procedural law of our state.

Keywords: court, protection of labor rights, court jurisdiction, subordination, competence

The integration processes of Ukraine into the European Union were launched by signing the Partnership and Cooperation Agreement (ratified by the Verkhovna Rada of Ukraine in November 1994) in Luxembourg on June 16, 1994 between the European Union (EU) and Ukraine. According to the Agreement content suggests that citizens of member countries of the Agreement have common rights in the field of working conditions and social security coordination [1].

Thereafter main directions of cooperation between Ukraine and the EU were defined by the corresponding Decrees of the President of Ukraine, and the Strategy of Ukraine's integration into the European Union was approved [2; 3].

Main provisions of these regulations stipulate commitment of Ukrainian society to the European values, in particular to the security and protection of fundamental rights and freedoms, which requires the state to implement appropriate measures for the harmonization and adaptation of Ukrainian legislation to the legislation of the European Union.

Integration processes in our country, particularly as a part of European integration, cover various aspects of life (economy, science, education, culture, health, labor and social relations, etc.) and the state activity aspect. I. V. Yakoviuk indicated in his research that integration through the right, judicial integration appears to be a necessary approach for the harmonization of different legal systems and, in particular, the legal system of Ukraine and the one of European Community. [4, P. 29–42].

At the Yalta Ukraine – European Union Summit on October 7, 2003 consensus was reached. The consensus meant that one of the most effective ways to use these opportunities of the current European

Union enlargement for Ukraine is the intensification of work by it in the field of national legislation, regulations and standards corresponding to the EU norms. The European Union confirmed its readiness to continue cooperation and support of Ukraine in the adaptation process.

Taking into account the importance of judicial integration, in 2004 the Law of Ukraine "On the National Program for Adaptation of Ukrainian Legislation to the Legislation of the European Union" was adopted. In section I of this program it was noted that the goal of adapting Ukrainian legislation to the European Union legislation is to achieve compliance with the acquis communautaire legal system of Ukraine with taking into account the criteria set by the European Union (EU) for states that intend to join it. The adaptation of Ukrainian legislation to EU legislation is a priority component of the Ukrainian integration process into the European Union, which, in turn, is a priority direction of Ukrainian foreign policy [5].

As for the integration processes in the field of labor law and social security law, judicial integration is impossible without taking into account the principles of EU Social Charter, adopted in December 1989 by the European Parliament. The principles of the Social Charter are the fundamental principle of the European labor legislation: freedom of movement, employment and remuneration, working and living conditions; social protection; professional education; equality of women and men; health and safety at work; protection of children and adolescents, etc.

Specialists and scientists in the field of labor law paid attention in their publications to integration processes on issues of labor remuneration, working conditions, labor protection, employment, equality of women and men. The study of issues in the field of labor rights judicial protection and compliance with relevant procedural provisions in the integration processes aspect is absent at the moment. Taking into account the fact that in European legislation (and not only in labor legislation) there is no such thing as subordination, but the definition of "jurisdiction" is used, it should be noted that the study of this problem is timely and relevant.

During the consideration of labor disputes, it is most often possible to erroneously determine jurisdiction, because labor disputes in accordance with the subject of the relationship (or subject of the dispute), the nature of the relationship, the subject composition can be considered both in the order of the Civil Procedure Code of Ukraine and in the Administrative Procedure Code of Ukraine, of the Economic Procedure Code of Ukraine.

It would not be an exaggeration to say that there is an imperfection of the procedural legislation in determining or delineating jurisdiction in the case of judicial protection of labor rights and the correlation between the concepts "jurisdiction", "subordination", "competence".

On 30.09.2016, the Law of Ukraine "On Amendments to the Constitution of Ukraine (Regarding Justice)" came into force as of 02.06.2016 [6]. And the Law of Ukraine "On the Judicial System and Status of Judges" as of 02.06.2016 [7], according to the content of which the fundamental definition in the determination of "a court established by law" (as specified in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms) [8] is precisely the "jurisdiction of the court".

Before the adoption of the Constitution of Ukraine in 1996, the term "subordination" had been used instead of the concept of "court jurisdiction" both in legislation and scientific legal sources.

Thus the definition of "subordination" is also fixed both in the title of Section III of the Economic Procedure Code of Ukraine: "The subordination of cases to economic courts. Jurisdiction of cases", and in the context of this section. According to the Article 12 of Economic Procedure Code economic court subordinate disputes upon which property requirements to the debtor against whom proceedings on a bankruptcy case has been initiated, including

cases on disputes on wages recovery, reinstatement of the debtor's authorities and officials at work, are claimed [9].

It is quite common to interpret subordination as an established by law set of authorities of economic courts on consideration and solving cases referred to their competence. This definition has been used since the existence of arbitration courts — court subordination is treated as part of the judicial field, the range of cases that are subject to a solution in courts [10, P. 55–56].

Court jurisdiction determines the field of the judiciary and the multi-level differentiation of powers of various courts to review cases. According to V.V. Komarov, court jurisdiction, a new institution of constitutional and procedural law, should not be identified with the subordination [11, P. 477–481].

The presence in the Economic Procedure Code of the definition of "subordination" contradicts the existing principles of judicial organization, and in the case of the protection of labor rights in economic proceedings, "subordination" narrows the guarantees of labor rights protection.

Therefore, it is essential to make appropriate changes to the provisions of the Economic Procedure Code of Ukraine, bringing its regulations to a common denominator regarding the use of "jurisdiction" definition instead of the current and outdated term "subordination". This would increase the effectiveness of labor rights judicial protection and, moreover, would facilitate judicial integration in the labor rights protection field – taking into account the fact that the legislation of the European Union does not have such term as subordination.

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Section 14. Finance law

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Banking system of Cambodia

Abstract: The article addresses the issue of the banking system of Cambodia. The author singles out several stages of the banking system's development in the state with focus on of classification of the banking system in the doctrine and in practice. The article is instrumental in better understanding of the foreign legislation in banking sector which may be helpful in incorporating experience from Cambodia into legislation of Russia.

Keywords: banking system, stages, the National Bank of Cambodia, the sources of the legislation, prakas, bank institutions, microfinance organizations.

Introduction

In the modern society finance plays a key role. Many years ago the famous French politician and lawyer Jean Bodin compared the nervous system of a human being with the functionality of the state. He thought that the country could not exist without the system of finance [1, 11]. Moreover, the Russian legal science is interested in various experience from foreign countries. That is why the comparative legislation is useful for better understanding of the sovereign law improving it [2, 5]. As regards, the structural reform of the Russian banking system, we consider that it is necessary to refer to the experience of foreign jurisdictions, for instance of the Kingdom of Cambodia.

The banking system in Cambodia has played a crucial role in economic growth through the gathering and allocation of previous unproductive financial resources to fulfill the financial needs of business sectors.

Three stages of the banking system of Cambodia

We assume that it is appropriate to single out three stages of the history of the banking system of Cambodia concerning the functioning of the National Bank of Cambodia [3, 51–54].

In the wake, Cambodia banking sector was established in 1954 after Cambodia got independence from France in 1953 and the Indochina Printing Institution was closed. Thereby, on the 23 of December 1954 the National Bank of Cambodia (further — the NBC) was established and it became fully operational from the January,1, 1955. The NBC gained autonomy of printing riel as the national currency as well as managing the banking system in the state. In 1964 the banking system was reformed and the NBC was transformed from a semi-autonomous organization into a state-owned bank with commercial characteristics. Furthermore, domestic and foreign

private banks were closed and the government established several state-owned banks. Before the reform there were 8 commercial banks 5, of them were foreign ones the National Bank of Cambodia. But July, 1, 1964 the banking system were represented by three banks [13, 164]. After that from the 1970 to April 1975 the state accepted the foundation of private banks.

At the second stage, from 1975 to 1979 during the Khmer Rouges regime the whole banking system was totally destroyed including the NBC. It is Appropriate to note that in 1980 the banking system was reintroduced and it could be described as mono-bank system. It means that the monetary authority functioned both as central and commercial bank through a network of provincial branches via agencies. It is necessary to add that for international transactions the Foreign trade Bank of Cambodia was established (further – FTB) following the Sub-decree No. 1213 dated 10 October 1979. In Russian legal system we do not have this source of law that is why it is essential to define it. In Cambodian legal science a sub-decree means an executive regulation usually prepared by relevant ministries, adopted by the Council of Ministers and signed by the Prime Minister [4, 9].

At the third stage, from 1979 to the present time the National Bank of Cambodia was reformed and named as The People Bank of Kampuchea. On 30 January 1992 the legislative body of the state – the National Assembly adopted the Law on the change of Organization's Name and Duty of the Central Bank. In 1994 the name was changed to the NBC. Thereafter, The mono-bank system was transformed into a two-tier banking system in 1996 [5, 53].

The modern structure of the Cambodia's banking system

Nowadays, the banking system of Cambodia is represented by several players:

1. The National Bank of Cambodia;
2. Commercial banks;
3. Specialized banks;
4. Licensed Microfinance Institutions.

Nevertheless, the whole structure of the banking system in this state is more complicated than it was mentioned above.

First of all we should distinguish the Central Bank in the top of the hierarchy [6, 5]. After that, it is crucial to divide **bank institutions** into two separate groups such as:

1. Commercial banks;
2. Specialized banks.

Microfinance organizations can fall into three groups:

1. Microfinance deposit taking institutions;
2. Microfinance institutions;
3. Registered microfinance operators.

Other covered institutions form the third group:

1. Foreign bank representative offices (8 organizations);
2. Financial lease companies (9 legal entities);
3. Third party processors (6 organizations);
4. Credit bureau company (1 enterprize);
5. Money changers (2 010 across the state).

Defining the banking system of the Kingdom of Cambodia it is necessary to determine the sources of legislation in the banking sector. The word "sources" in this context means the origins of legal rules, including relevant Cambodian authorities and other sources of law recognized by the laws in force. So, the word "law" in the context can mean both domestic law and international law according to a 2007 decision of the Constitutional Council of Cambodia.

Banking legislation

Nowadays there are several laws which regulate banking sphere such as:

1. Law on the Organization and Conduct of the National Bank of Cambodia (1996);
2. Law on the Amendment Article 14 and Article 57 of the Law on the Organization and Function of the National Bank of Cambodia;
3. Law on Foreign Exchange (1997);
4. Law on Banking and Financial Institutions (1999);

5. Law on Commercial Enterprises (2005);

6. Law on Negotiable Instruments and Payment Transactions (2005);

7. Law on Anti-Money Laundering and Combating the Financing of Terrorism (2007);

8. Law on Financial Leasing (2009).

Nevertheless, banking system is also regulated by Ministerial proclamation (called "prakas") — which is issued by a member of the government to exercise his/her own regulatory powers. A ministerial or inter-ministerial decision is signed by the responsible minister [7, 23]. A proclamation must comply with the Constitution and the authorizing law. Sometimes, circulars of the NBC govern banking activity.

The national bank of Cambodia

In our opinion, it is worth paying attention to the legal regulation on the National Bank of Cambodia. So, according to Article 1 of the Law on the "Organization and Conduct of the National Bank of Cambodia (1996)" the NBC is the "Central Bank" which is an autonomous public entity of a commercial and industrial nature [8, 9]. Also it is a legal entity and shall have capacity to:

1. Lend, borrow and enter into all other contracts;

2. Institute legal proceedings and be subject to such proceedings: and;

3. For the purpose of its business, to acquire, hold, and dispose of property whether movable or immovable.

Article 3 of the current law defines the principal mission of the Bank which is to determine and direct the monetary policy aimed at maintaining price stability in order to facilitate economic development in accordance with the framework of the Kingdom's economic and financial policy. The NBC is obliged to publish on a regular basis its monetary policy objectives and different statistics.

It is important to enumerate several functions and duties of the Central Bank such as:

1. Determination monetary policy objectives, in consultation with the Royal Government and consideration of the framework of the economic and financial policy of the Kingdom;

2. Formulation, implementation and monitor monetary and exchange policies aimed at the determined objectives;

3. Conduct regular economic and monetary analysis, make public the results, and submit proposals and measures to the Royal Government;

4. Licensing, delicensing, regulation and supervising banks and financial institutions and other relevant establishments such as auditors and liquidators;

5. Acting as the sole issuer of national currency of the Kingdom and etc.

Thus we consider to uncover the structure of the core-body of the NBC. According to the legislation the managing organ of the Central Bank is the Board of Directors. The Governor is the Chairman of the Board. It consists of 7 members, including the Governor, the Deputy Governor and 5 other members, one being a representative of the head of the Royal Government, one a representative of the Ministry of Economy and Finance, one a member from the real economy, one an academic and one the representative of the National Bank staff.

Moreover, Article 12 determines that the Governor and the Deputy Governor shall not be a public servant, a person serving as adviser of a public entity, or a member of the Royal Government, or a member of the National Assembly in their term of office. The above restriction also applies to all other members except the representatives of the head of the Royal Government, the Ministry of Economy and Finance, and the academic who may maintain their civil service status.

The Board of Directors has several duties such as:

1. To establish the policies for the operation of the Central Bank;

2. To issue decisions, regulations, circulars and other directives to govern the business of the Central Bank;

3. To establish internal rules and regulations;

4. To set up departments of the Central Bank;

5. To establish staff statute;

6. To found a staff training committee;

7. To establish an audit committee.

Article 14 also sets requirements to the candidates of the Board of Directors. They should be persons of recognized experience or standing in economic and financial matters and should be older than sixty five years. They can be appointed for a 4 year period of and shall be eligible for reappointment for only one further term. Other than for the Governor, Deputy Governor and the National Bank staff representative, two of the board members, chosen by lot, shall serve for 2 years, from the date of appointment of the first board. We should add that, members of the Board and their family members must not be shareholders of any bank and financial institution regulated by the NBC.

Bank institutions

At present, the whole banks, except the central Bank, are regulated by the Law on Banking and Financial Institutions (1999). According to Article 1 of the current Law banks are legal entities licensed to carry out banking operations as their regular business. They may be involved in three types of operations [9, 20]:

1. the collection of non-earmarked deposits from the public;

2. credit operations for valuable consideration, including leasing, guarantees and commitments under signature;

3. the provision of means of payment to customers and the processing of said means of payment in national currency or foreign exchange.

Moreover, Article 3 regulates additional banking operations which can be carried out by:

1. foreign exchange operations;

2. transactions in derivatives;

3. spot or forward dealing in precious metals, raw materials and commodities;

4. money market intermediation, and all operations in negotiable claims on said market;

5. other services related to their core activities, subject to the agreement of the supervisory authority.

If the bank carries out at least one of these three types of operations it should be considered de facto to be engaged in banking process. But if a legal entity works just with one of these three types of activities or only one component of each of these activities it should be considered as specialized bank.

The NBC issues licenses and supervises banks. It is important to add that all bank institutions can be registered as a public company under commercial law or as a cooperative or mutual noncommercial society subject to special legislation — statute.

The minimum capital of commercial banks are at least to 50 billion riel.

Foreign banks have a right to open an information, liaison or representative office in Cambodia but it can not provide banking operations which were enumerated above. Said amount is determined on the basis of Special Drawning Rights (SDR) = 5,616, riel.

According to the latest official statistics there are 47 banks: 36 commercial banks and 11 specialized banks in 2015 [10, 6]. For example, Anco Specialized Bank [11, 5] and First Investment Specialized Bank [12, 6] are both specialized banks.

According to Article 8 of Prakas on the New Capital Requirement and Criteria for Licensing Approval Of Banks 2008 Specialized banks locally incorporated as companies which have at least one influential shareholder as a bank or financial institution with a rating "investment grade," extended by a reputable rating agency must have minimum capital equal to at least KHR 10,000,000,000 (ten billion). Specialized banks having shareholders as individuals or companies must have a minimum capital of at least KHR 30,000,000,000 (thirty billion). Specialized banks have to maintain 5% of its capital with the NBC.

It is essential to add, that all banks including commercial and specialized banks have to submit all periodic reports to the NBC of Cambodia in line with the date as set in the following:

1. Daily report shall be submitted every morning of the next working day;

2. Weekly report shall be submitted every Tuesday of the following week;

3. Monthly report shall be submitted no later than on the 10th of the following month;

4. Quarterly report shall be submitted no later than on the 15th of the first month of the following quarter;

5. Annual report (audited financial statement) shall be submitted no later than on 31 March of the following year;

6. Report on reserve requirement shall be submitted following the annual schedule set by of National Bank of Cambodia;

7. Publication of annual audited of financial statements shall be submitted no later than on the 30th June of the following year.

Microfinance organizations

In the modern Cambodia this type of banking enterprises plays a core role as a source of funds for citizens in the rural area, allowing them to found and modernize their medium-small business. It aids people to improve their life standards, reducing poverty and develop the rapid growth of economy and financial sector on the whole because of entrepreneurial activity.

In 2015 there were 58 microfinance institutions (further – MFIs), 8 of which were deposit-taking institutions.

A licensed MFI shall only conduct banking operations as defined in Article 2 of the Law on Banking and Financial Institutions. Credit services and savings should be deemed to be permitted there under, unless prohibited by this prakas or the terms of the decision granting the MFI license.

Admittedly, a licensed MFI should have a minimum registered capital of 250 million riels. The Deposit is necessary for getting a MFI license for 3 years.

There are several operations which can be done by MFI:

1. can only collect saving and fixed deposits; the amount of savings of an individual client shall not exceed 3 percent of Institution's net worth;

2. cannot lend to an individual client at a rate exceeding 2 percent nor to a group of related clients at a rate exceeding 3 percent of Institution's net worth;

3. maintain at all times a solvency ratio of no less than 15 percent of the Institution's net worth;

4. have a liquidity ratio of at least 50 percent;

5. institution shall permanently deposit the capital guarantee of at least 10 percent of its registered capital into an account maintained with the NBC.

We should enumerate capital requirements of MFI:

1. minimum paid up capital equal to 10,000 million riels for deposit taking Micro Finance;

2. at least 8 percent of its client deposits.

Conclusion

A small number of banks do not manifest how small or large is the banking sector, but the important things are to ensure strengthening and sustainable development of the financial sector which is crucial for speed and growth of economic prosperity. We hope, that the research will help Russian legislators to borrow advantages of the Cambodian banking system and implement them in our legislation.

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Fair price of procurement during the period of economic crisis

Abstract: The article deals with the concept of «fair price» in the economic, philosophical, socio-political and competition aspects. The possibility of the use and the determination of fair prices in the contract procurement system during the economic crisis.

Keywords: contract system in procurement, legal regulation, fair price, the initial (maximum) contract price, financial security.

At the moment, it is necessary to admit the inadequacy of the research of the problem of "fair price", taking into account the building momentum of the contractual system in the field of public procurement, public-corporate procurement, as well as the unstable political and economic international relations. Considering that the trend of the development of world powers, legal and economic systems, is taking place in the ever growing dynamics, the concept of "fair value", in our view, should be examined not only in its economic meaning, focusing on justice, equality and so on., but also in the philosophical, social, political and antitrust aspects. It is not surprising that the issue of fair prices has a debatable character and pronounced conflicting approaches of its definition, considering the subjectivity of contract customer services officials.

The need to identify appropriate, effective and competitive prices for goods, works and services in close conjunction of the State policy of counteractions to corruption abuses of certain officials, whose authorities are inextricably linked to the expenditure part of budgets of various levels in the implementation process of State and municipal needs, has determined the relevance of the identified issues. The lack of unified and universal methods, systems research and algorithm of formation of "fair value" in the Russian Federation is, in our opinion, the main and visible problem of the economic development of the State. It also doesn't favor the development of competition of all economic entities and the effectiveness of expenditure of budgetary funds in procurement.

In recent years, it noted that the world community is taking significant steps to transition to the widespread introduction of fair value because theoretically such assessment is recognized as the most presentable and best reflecting the real value of assets and liabilities [1, 5].

The legislators' attempts to establish a rate obliging customers not only to justify the initial (maximum) contract price (hereinafter – IMCP), the contract price (hereinafter – CP), but also to calculate it correctly is nothing but how to solve the eternal problem of the establishment of a «fair price» category which is diffuse and not specific at all. Unfortunately, there is no consensus how to calculate and set a universal formula "fair price". So what is this unique concept of «fair price»? What is its content, meaning and impact and who needs a "fair price"?

And the most important issue — whether the Russian economy is ready as a whole to implement and use overall the concept of "fair value" of goods,

works and services during the economic crisis, under sanctions of foreign countries?

In search of the most constructive response to the above questions we should turn to the ancient origin of this concept, touch such areas of activity of economic entities and the states as legal, economic, social and political.

Speaking about the product and its fair value, it is first necessary to understand who is the consumer of the certain product, what category of consumers it is meant for and whether it has use value, i. e. the direct dependence of the value of goods of the possibility and necessity of its consumption. There is a good old proverb that describes objectively this dependence: "He is selling, but who's buying?". The sense load of the catchphrase clearly shows that the main and almost the only standard of the product demand are money or price, expressed as a certain number, identifying the equivalent of a consumer demand. Therefore, as a universal instrument of exchange, the amount of money that is not only ready to give the buyer for the goods, but also to the seller expresses a template of "fair price". It is template because if the buyers offer a price well below the cost price of the goods or the seller has announced knowingly the unbearable cost of different interpretations for the seller – it will get a fair price for an analogue. But the profit of any size, without breaking the law, — is precisely the absolute right of the seller and manufacturer.

Let's consider the concept of "fair value" in terms of a simple modern everyman – the average Russian. We continuously or regularly go to the shops, markets, and buying products often believe that the price is high, and sometimes unfair, especially if we cannot afford to buy this product for our own needs. We were taught that the consumer is always right, so many people sincerely believe that such a right should be applied to pricing.

On the other hand, and this is quite natural, sellers believe that their price of goods is quite correct, and maybe even understated. This example shows clearly an obvious contrast to the «buyer – seller» design view on the price of the goods. Each has its own «fair price» for the goods, and often they are not identical – as a general rule the seller intends to sell as expensive as possible, the buyer to buy goods as cheaply as possible.

What should be done for setting a fair price for both the buyer and seller? And it most important, who can and must do it, who is entitled to determine the criterion of "fair value" for buyers, deciding for others what the profit of the seller (manufacturer) is right? What categories of sellers should set the limit allowances, to what extent and whether it would be fair to them?

Many consumers state in favor of the need to establish by the State so-called limit markups, including permanent consumer goods (necessities) and it is already functioning fractionally on the example of a specific list of drugs sold by pharmacies with a minimum trade allowance. However, these government's actions contradict to the economy postulates, preventing the value of the profits, and for which any commercial organization is created.

At the same time, consumers considering many food prices too high, their wages or other source of income, that is, speaking in a different socio-economic status (employee, artist, tenant, etc.) are convinced that the value of their income is understated. Introducing the value of our labor, each of us would like to receive adequate remuneration that can provide a decent life and the realization of our own needs.

The right to set the price of goods and services derives from the ownership of them. It is the basis of commodity-money relations. The interference into these relations, even by the government or certain officials of ministries and departments, affects certain restrictions on the right to use the property, altering the economic relations of economic agents, which in turn can give birth to inequality and social injustice.

From our point of view, the State doesn't have the right to indicate by measures of legislative and

coercion commercial organizations what how to do in the context of business, except cases when uncontrolled entrepreneurial activity can lead to adverse socio-political situation, in the result of which there would be a direct threat to internal (state-political, constitutional foundations) and also external (defense, security, economic security) negative factors affecting the State sovereignty of the Russian Federation.

The role of the State, first of all, is the sphere of compulsion and coercion in order to protect all types of property from fraud, violence, crime, external expansion. It does not apply directly to a market economy. On the other hand – a profit of any size, without breaking the law – is precisely the absolute right of the seller and manufacturer. Therefore, the buyer will take the goods at a price which he considers fair to himself and the seller. In the case of excessive commodity price the realization will be low, and it is disadvantageous to the seller. Thus the market mechanism forms the structure, "demand – offers" based including on the establishment of the adequate fair price.

The cited example of contemporary reality shows, that at first glance, the fair price in the market economy — a market (free) price! But if it so immediately possible to equate these concepts, taking into account the various existing models for calculating the cost of goods, including through the involvement of independent experts who can operate outside the economic and legal sphere of a functioning market?

The State is obliged to maintain a constant balance between the freedom in the implementation and realization of entrepreneurial activity and certain mandatory restrictions in the field of entrepreneurship in the sphere of pricing. This activity requires a staff of qualified professionals, who must constantly analyze the functioning of markets, explore the pricing process, examine the economic and socio-political factors that could have a significant impact on the formation of the cost of goods, works and services. However, the legislator solved somewhat differently the problem of formation of a fair price in the contract system in the procurement – below we'll consider it in detail.

It is possible that business organizations, entrepreneurs taking advantage of certain market conditions, can establish a high price of the goods on which the goods will not be able to buy besides no one will trade at a loss voluntarily. There are always market risks, dividing consumers into groups capable or not capable, but in small (insufficient) amount to purchase a particular product, depending on the pricing procedure. Without dwelling on the previously identified relative equality concepts, we propose to consider the emergence and establishment of a fair price in the historical and philosophical aspects.

Initially, the problem of social justice, as well as the fair price of the goods has been designated in the IV century BC by the ancient Greek philosopher Aristotle, who established justice of exchange as criterion of a fair price. Such an exchange, according to the philosopher, had to be based not only on the mutual needs of the parties, but also on the proportions of exchangeable goods, reflecting the volume of the participation of each of the parties. If the strong ties and business relations between the parties were the result of this transaction, the transaction was considered to be fair. "Everybody has a share, and no one suffers loss and cannot profit from the exchange", so Aristotle defined the fair price of the product [2, 154].

At the same time, in his "Great Ethics" the philosopher, focused, contrasting the importance of the reasonable (fair) completion to monopolization, the attention at the need of an equitable exchange of property wealth in the economy. He wrote: "There is a proportional equality in the fact the person having a large property makes a great contribution, and likewise that the one suffered heavy efforts receives a lot, and having suffered a small – small" [3, 30].

Despite the fact that at the time of Aristotle there were no mature competitive markets, providing un-

conditional effects including the formation of prices for goods, works and services, there was no standardization of financial and labor costs, allowing to identify (compare) the contributions of the parties to the proposed the exchange of goods clear and categorical, Aristotle didn't happen to answer to the question of equitable exchange proportion, but his works laid down a certain foundation for the further development of economic thought.

As a development of Aristotle's idea of a fair price Aristotle some scientists took as a basis for a fair price ratio thesis of the contributions of each party into commodity exchange, the others – the thesis of the need as a general measure of exchange. And if the theories of production costs and the labor theory became the results of the first scientists (J. Scott, Adam Smith, David Ricardo, Marx, Lenin, etc.), the latter (St. Augustine, E. Condillac, J. Bentham, G. Gossen, Paul Samuelson, etc.) have formulated a number of theories that display the price of the utility of goods [4, 10].

In Roman law, the basis of which – freedom of contract, the concept of "fair price" had also formed with economic and ethical nuances and tones. Having divided the factors of pricing into two groups – economic factors covering seller's costs (materials, labor costs, transportation, storage, etc.) and types (factors) of different needs (natural or unjustified), Roman law used the "fair price" as a moral classification of actions, in particular vendors. Moral standards transformed sooner or later into a custom business turnover, which in Roman law was taken into account in determining of the fair price.

Th. Aquinas defined the fair price of any items on the basis of the degree of benefits that might be derived from it, "the price of things is not seen by its nature, but on the extent of its use" [5, 11].

Analysis of the philosopher's idea enables to assume that a fair price is formed not only by the material, financial and labor costs, but also the market formula of "supply and demand". The philosopher regards as a fair price – the average price formed on the market at the moment on a specific product under average conditions, permitting thereby automatically include a fair price and the average profit of the seller of the goods. The analogy of philosophical thought of Thomas Aquinas is possible to find in the domestic civil law. Part 3 of Article 424 of the Civil Code expressly provides that in cases where a paid contract price is not available and can not be determined basing on the terms of the contract, the performance of the contract must be paid for at a price which under comparable circumstances is usually charged for similar goods, works or services. It is necessary the information about the current price in the region (area) market of those or other goods, works and services on the basis of which the parties to the contract can come to an average price – a contract that is "fair price" for all the parties to the contract.

Medieval Europe, having legitimized certain privileges to classes, has left a reasonable basis for thinking about the order of formation of the idea of a fair price, putting it in direct dependence on the subject of the legal system "seller" – "buyer". In his monograph "Development of competition law …" Pisenko KA. notes that the inevitable dictatorship of monopoly sellers, driving up prices for basic necessities, caused a strong reaction of not only wide strata of the common people, but also of the nobility and the Catholic Church. Not by chance in canon law, along with a general discussion of profiteering and greed, the rule, according to which the seller had to ask for the goods "fair price" had developed [6, 118].

The Christian idea of "fair value (price)" and "reasonable income" became the basis of a number of municipal statutes and regulations of the royal power, which forbade outbidding of goods, departing from a strict set of trade rules — the time, the place where the commercial transactions, etc., as well as the right fixed the prices of many tradable goods, sometimes in the form of special listings [7, 49].

Evolution of the "fair price" comes to the fact that by the end of the XV century under it not only the typical market price is understood, but that price at

which was appointed "with the assistance of trusted people to define it in accordance with the principle of universal justice" [8].

This was another wave of the activity in the part of the research of a "fair price", and then it was forgotten until the middle of the XX century, when the influence of the State on the price formation process became one of the most important priorities and instruments of domestic economic policy. When calculating and setting of prices of goods, not only the interests of producers but also the interests of the consumers of products were considered. At the same time the government solved problems of preventing inflation through the regulation of prices because of shortages of certain commodity segments of the market, rising prices for raw materials, fuels and lubricants, the development of competition and prevent monopoly manufacturers, as support of a specified minimum subsistence level, and the achievement of certain social outcomes by providing the population with a sufficient amount of the goods of prime necessity.

We see that in this instance the State had assumed the right and the responsibility in this case to set limits (cost of living) for the use and maintenance of a fair price under the market economy. This kind of socio-economic functions of the State is applicable to any type, including Western and Asian countries. Without the support of the population, including socially disadvantaged, there won't the State as such. The social function of a 'fair price" is concluded in the need to establish and maintain a "fair price" for certain types of goods, works and services in order to support certain strata of the population, and therefore support the functioning of the State as a whole.

Let's consider how to determine the "fair value" in the individual groups (categories) of the population – religious organizations. Religious organizations shall act in accordance with its internal regulations, which do not contradict the legislation of the Russian Federation, and have the capacity envisaged in their charters. The State ensures the respect of these internal statutes, if they don't contradict the legislation of the Russian Federation [9].

is the doctrine of fair price is of particular interest on the example of the Roman Catholic Church, developed in opposition to the Roman law, which allows to determine the price of the goods as a result of free contract. Sergeev P. V. notes that, since the canon law only recognizes a fair price, i. e. the price which complied with proportional equality, based on the exchange of equivalents, the conclusion of trade agreements with the Roman Catholic religious organizations in the framework of business activity does not make sense, since none of the parties must not have profit as a result of the transaction, ("By what measure you measure, it will be measured to you"). The author concludes rightly that the law enforcer, considering the question of the legality of contract pricing for the commodity organization of Catholic religious persuasion should study a half-thousand-year tradition of theological interpretation of the concept of a fair price. It is necessary to take into account the uniqueness of its own procedures for determining the price for the goods of various religious organizations (for example, in the Islamic tradition there is a set of rules governing the amount of the gap between wholesale and retail prices) [10].

Failure to comply by the parties of the doctrine of fair price, including by making a profit together with the rule of Article 15 of the Federal Law of 26.09.1997 number 125-FZ "On Freedom of Conscience and Religious Organizations" conditions on the cost of the contract may become the basis for recognition of the transaction void void by virtue of article 168 of the Civil Code. Thus, it seems very interesting the relationship religious organizations with counterparts and government in the part of the mechanism of regulation of prices for goods as a condition of the contract price for the goods already pre-ordained rule of Article 15 of the Federal Law of 26.09.1997 number 125-FZ "On Freedom of Conscience and religious organizations". The ratio of internal statutes of religious organizations and

contractual prices for the purchased or sold goods religious organization requires further deep research and analysis.

At the present stage of economic and political development of the State the economic concept of the definition of "fair value" is actively developing according to which the price of goods laid exclusively reasonable cost and share of profits may not exceed the average market income. The State thus gives customers the opportunity to purchase certain types of products at the best price, based on an assessment of the consumer basket and the purchasing power of the population of a given region, and sellers to extract even a small, but still a profit. This formula will allow the manufacturer to provide the level of income required for the functioning of the company, did not significantly exacerbating the problem of social inequality of the population, but would not achieve the main goal of the commercial organization — profit and gain income (maximum) on the result of work, including the intellectual.

Let's note that during almost all the historical stage of the development of competition in Russia violation of antimonopoly legislation in the part of the cartel, syndicate agreements and collusions was classified as a criminal offense with all the consequences and sanctions. For example, Article 913 (1) of the Penal Code prohibits "the intentional excessive, not justified by the conditions of production and marketing, the rise by the merchant or an industrialist, and heads of the cases of companies, associations, establishments and companies, members of their boards and attorneys in prices for food items if the perpetrators took advantage of this to be felt particularly among the local needs of the population in these subjects, except cases of price increases on items when the price of these items has been defined in the special procedure established by law" [6, 74].

However, as K. A. Pisenko notes such cartel, syndicate agreement that regulated the production of goods and pricing issues were directed to a greater extent to overcome the economic crises, prevention of devastation that could follow because of excessive fall in prices for goods as a result of intense competition and overproduction of goods, including even below cost, which in turn made it impossible for the lack of profit to enterprise and conduct business. Hence the intention to enter into agreements with competitors and to standardize the volume of production, product launch and establish at least a minimum price of their sales, as high as it would have covered the costs and give at least some profit to industrialist (manufacture) [6, 58].

The concept of "fair price" in the Russian procurement legislation is absent. However, the legislation of the Russian Federation on the procurement rules contains enough rules and articles, pointing indirectly to the formation of analogs of a "fair price" formation.

It is noteworthy, but significant "contribution" to the formation of fair prices for specific goods, works and services in a specific region is made by the participants of procurement by bidding for bidding by submitting their quotations.

Without conducting an in-depth analysis of the order of formation of the contract price, we have the right to stay and to identify the following key criteria for determining the price by any party to the purchase:

1) amount of financial and operational capacity procurement party, the degree of congestion, the possibility of transformation in the case of a win and contracting;

2) factor of competition in this market segment on the subject of trading;

3) complexity and categorical terms of documentation on procurement and contract established by the customer;

4) planned reduction of the threshold values of the initial (maximum) contract price for an adequate understanding of the possible profit margin on the contract.

The above criteria demonstrate that the offer price by the contract party of the purchase in addition to all other economic justification entirely

depends on the intended size of the profit. Naturally, as the price of the proposed contract is higher, the profits of a commercial organization are higher. However, a very high bid by participant of contract purchase price reduces the potential possibility for winning and receiving the contract.

Therefore, the problem of a fair price from the point of view of a purchases participant is a search for the best compromise between laborious formation of his greatest contract price and the contract price offered by other competing parties to procurement within the framework of some trades. In this case it is necessary to form his highest contract price so that it would significantly less than the contract price offered by a competitor. The above clearly shows that the state of competition in the market of goods, works and services, plays an important and sometimes decisive role in shaping a fair contract prices. We emphasize that only fair competition promotes adequate process of forming a fair price, which impacted certain historical factors of formation and development of antitrust law in Russia.

Monitoring and support of fair competition within the framework of compliance with the antimonopoly legislation in the Russian Federation is entirely entrusted to the Anti-Monopoly Service (FAS Russia), which related in its decisions on cases of the violation of the antimonopoly and procurement legislation has repeatedly stressed that the establishment of false contract price does not contribute budget savings, but also limits fair competition, the opportunity to participate in the procurement of the greatest number of persons.

The introduction of the contract system in the procurement marked the past centuries perennial problem of the definition of "fair price" in the framework of the formation IMCP, of which accuracy and validity depends directly on the planning and implementation of all customer needs, cost-effectiveness, budget and off-budget funds. In late 2011, the system not providing for mandatory IMCP justification procedure when placing orders, on the contrary demanded that all, without exception, customers not only the calculation by IMCP, but also the documentation about the ground of such price. The idea is revolutionary and necessary, but given that the lack of established mechanism for calculating IMCP, customers are free to decide the issue of the contract price and the choice of the method of its calculation. To minimize the risk of corruption and other abuses in the procurement sphere of authorities in Russian regions develop their own methods of calculating IMCP, which are required to follow all the customers in the region.

Despite the fact that in the contracts for the supply of goods, works and services the contract price is not an essential condition of the contract, its value is quite important, taking into account the provisions of the Federal Act from April 5, 2013 No. 44 "On the contract system in procurement of goods, works, services for state and municipal needs", according to which the supplementary rules of the contract can't be concluded in the absence of its price, which is as a general rule is fixed and can't be changed. Price is also one of the criteria for selection and evaluation of potential participants in the procurement of all types of tenders or request for proposals, and with the request for quotations or auction in electronic form is the only criterion for the selection of the winner, as the lower the offered price, there are more chances to win, and most importantly – effectiveness for the customer on the issue of financial savings.

The position of the legislator in the legislative consolidation of the concept of effectiveness or efficiency of use of budgetary funds is very interesting. Thus, in accordance with Article 34 of the Budget Code of the Russian Federation under the principle of effectiveness and efficiency of budget funds use the achievement of participants in the budget process given results with the least amount of resources and the best possible result with a certain amount of budgetary funds is meant.

The norm of the Code allows to conclude, that actually end in itself of the Law on Procurement is

to minimize the consumption of the budgets of various levels and off-budget sources of funding rather than the effectiveness of the use of these funds. This means effectively — not necessarily cheap!

"In the development of our assumptions we'll give the conclusion made by G. I. Martynenko, who notes that the price alone is not an adequate indicator of the costs. The application with the lowest price won't necessarily provide the best value for money" [11].

Consequently, there is a certain specificity of formation of the contract price (especially the national competition and leveling the profit in certain cases) in the contract system in the procurement sphere, which does not allow to say fully with full confidence that the order of forming IMCP is identical to the procedure for establishing a "fair price".

The legitimate question is — is it possible in the process of public procurement, in compliance with the rules of budgetary legislation, including on minimizing the expenditure side the talk about the establishment or use of fair price in the contract system and for whom it would be fair?

Let's consider detail category of IMCP having two basic properties. First – it has the time interval, that is, it is primary, and all other proposals for the contract are secondary (subsequent). The second property of IMCP — it is the maximum and represents the limit, above which no cost changes won't occur in the force of law. So it is very important and reasonable to calculate, prove and establish it. Properly calculated IMCP, from our point of view, can be, if not a fair price, then an analog of a fair price for both purchases parties, and for the customer. This conclusion is based on the theoretical and practical aspects of construction of possible variants of development of the procurement process at various options for establishment by the customer IMCP.

The first option is when the customer has correctly identified IMCP in compliance with all requirements and procedures, in accordance with the current laws, having used an array of data and information on the cost of goods, works and services that are the subject of the contract within the boundaries (limits) formed and functioning of the market, as well as alternative sources of information (other functioning markets, regions, countries), taking into account the respective correlation of price indices. As a result, the customer receives the required (desired) result of the purchase – and the satisfaction of their needs, and budget savings. It is an ideal option that is not often possible to meet in practice, since the customer and his contract service doesn't possess all the necessary knowledge of the economic, legal, social and political constituents for the proper determination of the full IMCP. Large amounts in the conditions of on-time, acute shortage of contract services workers don't allow to make an adequate analysis of the market, which indicates the lowest possible chances of the customer to set the correct (desired) IMCP fair practice.

The second option, in which the customer overstates IMCP, on the one hand has though imaginary, but the positive trend of budget savings, achieved by reducing IMCP procurement participants in the competitive rivalry to an objective and fair market for the purchase of certain participants. This is imaginary competition, although the result will be similar to the price of the market! But, if there is no competition and there is only one party purchases or only authorized to participate in the procedure and has no intention to reduce IMCP likely contract by IMCP, originally overstated by the customer due to its improper justification and definition. That is to prevent possible cases, because of the lack of competition participants of procurement the Procurement Law established the obligation of the customers to conclude preliminary agreement with a single supplier contract in the supervisory organization. The object of attention and study by the supervisory organization in the course of such coordination is the correct definition and justification of IMCP. If the fact of overstatement of IMCP the supervisory body refuses to agree to the customer, after which

the latter is entitled to re-conduct the procedure for the changes and proper calculation IMCP [12, 61].

The third option is in which the customer understates IMCP. In this case, there is a high probability of narrowing the range of potential participants in the procurement by "absenteeism purchase" or receiving substandard goods, works and services, as well as high-volume forced claim work performed by the customer with counterparty. Of course, the result of poor performance by counterparty obligations under the contract possible in the first embodiment of determining the optimal (fair) price on material understatement party purchases directly in the procedure, but for this case it is provided other mechanisms to protect bona fide customers.

Using any of the above options to define IMCP, the customer would have to take into account a set of common elements of traditional marketing (market research): product, price, place, product promotion.

Some experts point out that since the contract price in public procurement sets not the seller (manufacturer) but the customer (buyer), then it is prematurely to talk about the maximum price, at best, such price can be indicative or minimum [13, 12].

Only the manufacturer (seller) or a qualified person can be fully aware of all the costs incurred for the production of concrete goods and estimate the fair margin, allowing "to maintain the production". However, when placing orders earlier and now in the procurement system, focusing on budget savings, the legislator has bound the customer to count IMCP actually vesting powers to the customer of "pricing" in the procurement system. Customers having received the right to set the price too high or too low, actually have a significant impact on the formation of prices in the region.

Despite the absurdity of the above-described "quasi-pricing" process, one algorithm has been developed currently in the procurement system. It allows customers to unify the system of setting IMCP. The legislator supposed the mechanism of formation and study IMCP as part of the study on the issue of pricing of the market in pursuit of the principle of respect and the establishment of a "fair price". The Law on Procurement established a direct duty of formation and study by customer of IMCP. A special procedure set out in the Order of the Ministry of Economic Development 2/10/2013 number 567 [14] has also been developed.

The following calculation methods of IMCP based on the analysis of research in the Law on Procurement have been established: comparable uncontrolled price method (market analysis); normative method; tariff method; design and estimate method; cost – based method.

Since each of the above methods requires a large amount of knowledge and generalists experts, which most customers hasn't, the set duties turn into a formality, without providing real purpose of the above pricing mechanism, and the issue of forming a fair IMCP in public procurement has been open. Only in one case – the implementation of procurement with a single supplier the customer together with the supplier determine all pricing factors.

The downside of public procurement is the lack of legislation fixing a minimum price contract, as noted in his work by K. V. Kichik. We share fully the point of view of the young scientist who believes rightly that the minimum price can act as a lower "border" price threshold below which the participants of placing the order may not indicate the price of their offer in the bidding or request for quotations [13, 13].

Drawing an analogy with the formation of a "fair price", the minimum price contract is equated to the value of the cost of production of goods without any profit — it makes only its cost price. Establishment of a minimum price would help not only to ensure a minimum return of supplier costs without profit, but guarantee the fulfillment of all obligations under the contract in full. Therefore, conscientious and professional purchases participant, knowing the order of the formation of the price of goods, will never propose in its bid price, the price below the minimum threshold.

Practice in the field of procurement has repeatedly shown that the obligation of the customer to establish a maximum limit price purchase threshold, the lack of low-end threshold allow unskilled participants to purchase or any raiders to win using a dumping price decline, resulting in a significant volume with claims and judicial work of the customer, as well as the disruption of the process meet state needs for goods, works and services.

Despite the time-tested economic postulate – goods of appropriate quality for the optimum, not the minimum price FAS of the Russian Federation stated and continues to state strongly against setting the lower threshold prices, which is contrary to the principle of effectiveness of the budget process. This legal position of the individual officers involved in the formation of the procurement system in Russia has led to the fact that in the Procurement Law a minimum contract price has not been legislated, but it was set the dumped customer protection mechanism from unreasonably low prices participant purchases at auction.

The establishment of anti-dumping measures by legislation in place the lower price threshold allows us to say that the State at the present stage of economic and political development does not consider the minimum price to guarantee the efficiency of spending of the budget process, the development of competitiveness and economic development of a single industry. Taking into account that the minimum price is able to minimize the risks of the customer in the field of improper selection of the counterparty, its replacement by dumping mechanism will only temporarily hide the naked and obvious problems of the procurement system.

Consideration of the direct dependence of formation of price thresholds (minimum and maximum) led to the conclusion that the «fair value» in procurement may be in the range of the specified thresholds. For a more detailed study of this issue we believe it rational to appropriate legislatively not only lower price of threshold — the minimum price of the contract, but also the method of its calculation.

In summary, we note that the legislator in order to not only improve the efficiency of budget spending, but also the development of competition, by establishing a "reasonable price", in this case, in the absence of the lower price threshold IMCP uses tools, which were considered by many philosophers and economists as components for determining the "fair price". Undoubtedly, legislative consolidation of these methods of forming IMCP is a significant achievement of the Russian Federation in the procurement system. However, at this stage of the start of the innovation it is necessary to ascertain the fact that the customer (rather than the supplier – manufacturer) is imposed the duty and the responsibility for the correctness of the IMCP, in accordance with the purposes and functions of the Law on Procurement. At the same time it has virtually no motivation of its correct definition.

Currently, the fair price is used mainly in the accounting with regard to the evaluation of various groups of fixed assets, however, and in this procedure of assessment due to the lack of uniform standards there is necessary clarification. In our opinion, the main problem is the imperfection of the theoretical and methodological basis for the definition of fair price in the field of public procurement. The legislator has somewhat expanded the potential capabilities of the Law on procurement in terms of setting a fair price – this is the introduction of life-cycle contracts. The criterion of the cost of the product life cycle or created as a result of the work object includes the costs for the purchase of goods or performance of the work, subsequent maintenance, operation during the term of their service, repair and disposal of the goods delivered or created as a result of the fulfillment of work by the object. The economists found that long-term contract at the price calculated on the results of monitoring of the market, meets best of all the criteria of real (fair) price. Therefore, when calculating the NMC contract of the life cycle the customer, having taken into account the cost of further maintenance and operating costs of the goods,

in our opinion, will be closer to the establishment of a fair price for the goods.

The legislative consolidation of the principles of the contract system in the procurement of the procurement law was a significant step forward in the development of the sphere of procurement in the Russian Federation. These principles, as a guiding rule of all participants of the contract system, represent the subjective aspect of their behavior in terms of definition and formation of fair prices in procurement. Before 2013, there were no individual and directly established principles in this industry. Thus the legislator has identified the following principles of openness, transparency of information about the contract system in the area of procurement, competition, customers, professionalism, encourage innovation, the unity of the contract system in the procurement, responsible for ensuring the effectiveness of state and municipal needs, the effectiveness of procurement.

In conclusion, we note that the main lever of resolving the problem of correct determination of the fair price by the customer is tightening procedures for internal and external control (audits), which is required to assess stepping the correctness of the applied methodology for determining IMCP, thereby having minimized the risks of negligence and bad faith on the part of the customer's individual officers.

We consider it appropriate to introduce in the contract procurement system instead IMCP a fair price of the goods, works, services, expressed in the fair value range limit (maximum) and lower (minimum) price of the contract. The proposed value range will clearly reflect all possible vendor fair margin – margin besides the cost of production. It won't allow participants to procurement bidding offer the price, obviously unrealistic and impossible with respect to the required quality of the goods, works and services. These changes will be a positive step towards the establishment of an adequate cost, reliable information about purchases, raise the quality of reporting and transparency in this area.

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