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Dear Readers,

I would like to present for your attention the first regular issue of the Kazan University Law Review 2017.

The articles in the issue take up current questions of theory and practice of civil procedure in Russia and in other countries.

The title article is written by our colleague, outstanding scholar, academician and alumna of Kazan University Taliya Khabrieva, Director of the Institute of Legislation and Comparative Legal Studies with the government of the Russian Federation. In her article, the author expounds the characteristic features of constitutional reform as seen in the numerous modifications in constitutions of recent times. The author considers the achievements of political studies as well as analysis and results of research by the Venice Commission of the Council of Europe on the challenges of changing the basic law introduced in various regions of the world, and suggests a broad approach to reform that takes into account accompanying economic, social and political transformations.

A central topic of the world order – the prohibition of and restriction on the use of force in international relations – is analyzed in the article by one of the leaders in the science of international law, Professor Aslan Abashidze of the Russian University of Friendship of Nations and the International State Institute of International Relations. In his view, the science of international law as a product and, at the same time, the engine of social development has played and continues to play an important role in limiting and prohibiting the use of force in international relations.

It is important for Russian legal doctrine and comprehension of law to search out and invite foreign legal experience. For this reason, our editorial policy assumes the publication of articles written by colleagues from leading universities across the world in each and every issue of our journal. We are therefore grateful to our colleagues Professor Guillaume Payan of the University of Toulon (France) and Haimei Yu, Researcher at the Institute for Chinese Legal Modernization Studies (China), for contributing their articles on current topics of an international character.

The issue concludes with a review of the roundtable conference that was held at Kazan Federal University in 2016, and which was dedicated to the centennial celebration

of the founding of the Tatar Autonomous Soviet Socialist Republic. The material presented was prepared by Senior Lecturer Elena Luneva and Professor Zavdat Safin on the topic of the conference, "History of the Development of Environmental Legislation in Tatarstan: beginnings, present status, prospects". The importance of conducting and highlighting such scientific forums is undeniable. In particular, because the participating representatives of legislative and enforcement bodies in the field of environmental protection and rational nature management as well as scholars of environmental law have the capability to eliminate the uncertainty and inconsistency of legal regulation of environmental relations in Russia and in the Republic of Tatarstan through their joint efforts.

I would like to thank all of the authors for their insightful and stimulating contributions.

And I sincerely welcome all of you, our readers, to this first regular issue of our journal.

With best regards,
Editor-in-Chief
**Damir Valeev**

ARTICLES

**Taliya Khabrieva**
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# CONSTITUTIONAL REFORM: THEORETICAL ISSUES

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**Abstract:** This paper examines the criteria and features of constitutional reform. It draws on the experience of constitutional reforms in light of political study achievements, and the analysis and results of research by the Venice Commission of the Council of Europe on the challenge of constitutional changes that have been introduced in various regions of the world. The author suggests using a broad approach of identifying criteria of constitutional reforms which include not only the self-transformation of the basic law, but also all accompanied social and political changes. Particular attention is given to the consolidation of the reform, its implementation, which ultimately determines the success of constitutional modernization. The author sets a mission for the further development of constitutional reform theory, together with representatives of the other social sciences in terms of an axiological approach and modern ideas on social processes.

**Keywords:** constitutional reform, amendment process, Venice Commission

In Russia, the twentieth century could be considered a period of major constitutional change brought about by the socialistic pattern of the first Russian Constitution and the development of new constitutional models after the Second World War. Elsewhere in the

world, in the same period and extending into the early twenty-first century, there have been constitutional transformations, whose magnitude and pattern differed noticeably from those of earlier periods. The development of countries has brought new features, not only with respect to integration, but also with respect to social and political conflict, which at times has led to disintegration. These factors have implications for political and constitutional activities all over the world, but in the different regions implications that are not uniform.[1]

To paraphrase a famous saying, it could be argued that the constitution in the developed society is not dogma; it is a vital social tool. It can be modified owing to a community need or as the result of a political project, which can be imposed from above. Usually, constitutional changes occur as the result of the gradually accumulated and ever-increasing impact of certain social, political and legal considerations, but ultimately constitute an affirmative action of bold political leadership. Solutions have to take into account the need for the regulation of new relations, which is raised by the level of constitutional regularity, changing value-based benchmarks (as an example: reform in the former socialist countries) and the other urgent demands in shifts in public life, but it can be arbitrarily minor in terms of constitutional legal relations. It is impossible to create a common, eternal text of the constitution that will serve society equally well at all times in its historical development. And the motivation for change of the constitution may arise outside the country, for instance in order to fulfil international obligations or requirements necessary for entry into international structures, such as the European Union and the Council of Europe. Studies confirm that many constitutions of modern states were transformed for such reasons.[2]

The principal legal tool of development and change of the constitution is the amendment process. The adoption of amendments to the Armenian Constitution in 2015 is a recent example, amendments which have affects on all the principles of the basic law: human rights, the role of the church, the organization of the judiciary, the form of government, and others. As a result, the text of the constitution has been considerably revised, and the amendments themselves evaluated by a number of authors and the Venice Commission of the Council of Europe as a "new constitution".[3]

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[1] *See:* Khabrieva T.Ja. *Konstitucionnye modeli i osnovnye jetapy konstitucionnogo razvitija* [Constitutional models and main stages of constitutional development] // *Zhurnal zarubezhnogo zakonodatel'stva i sravnitel'nogo pravovedenija = Journal of foreign legislation and comparative jurisprudence.* 2005. Pervyj vypusk [First issue]. p. 3–9; Khabrieva T.Ja. *Konstitucionnaja reforma v sovremennom mire* [Constitutional reform in the modern world]. M., 2016. (in Russian).

[2] *See:* Khabrieva T.Ja. *Konstitucionnye reformy v sovremennom mire* [Constitutional reform in the modern world] // *Vestnik Rossijskoj akademii nauk = The Herald of the Russian Academy of Sciences*. 2016. I. 86. № 7. p. 579–586. (in Russian).

[3] CDL-AD (2015) 037e, CDL-AD (2015) 038.

"Constitutional re-engineering" is the term coined to describe the process of adoption of numerous amendments in the text of the Constitution of the Kyrgyz Republic in 2016.[1]

The variety of the forms of changes to the text of constitutions includes – stylistic, terminological and substantial; and at the same time all implying different methods such as exception, replacement, new numeration, inclusion of a new section, and other methods as well. The most significant change may affect the structural areas of sections of the constitution, including rights and freedoms, the national basis of the state and its social system. The set of descriptive terms is huge: "the adjustment", "the new version", "the partial revision", "the improvement", "the major review" and even "the constitutional revolution".[2]

For example, the Venice Commission employs such terms as "the major review or the adoption of a new Constitution", "the radical constitutional reform", "the limited constitutional reform", "major or minor reforms", "the fundamental changes to the Constitution", "the constitutional change in the narrow and broader sense, including the adoption of a new constitution" in the analysis of amendments to a constitution.[3]

The question of whether and when reform of the law can be considered "constitutional re-engineering" is relevant in theory and in practice even within the widespread application of the definition "the constitutional reform" and recent specifications of significant or slight undertakings in respect of changes to a constitution. Many researchers acknowledge that there are non-traceable "facets" between the formation of a new model legal regulation ("modernization") and constitutional reform.[4]

Some authors note that this term has no clear definition, when considering constitutional reform as a supplement or replacement of the constitution and has proven to be more profound with regard to changes in societies.[5]

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[1] *See:* CDL-AD (2016) 025.

[2] CDL-AD (2010) 001, sect. 14, 16, 19, 23, 56, 104–106, 109, CDL-AD (2007) 047.

[3] CDL-AD (2010) 001, sect. 14, 16, 19, 23, 56, 104–106, 109, CDL-AD (2007) 047.

[4] *See:* Sm. podrobnee: Balytnikov V., Ivanov V. *Konstitucionnaja modernizacija: obnovljaja –sohranjat', sohranjaja – obnovljat'* [Constitutional modernization: to save by updating and to update by maintaining] // *Konstitucionnoe pravo: Vostochnoevropejskoe obozrenie = Constitutional Law: East-European review.* 2000. № 2 (in Russian); Belkin A.A. *Peresmotr konstitucii (teoreticheskie aspekty)* [Revision of the Constitution (theoretical aspects)] // *Pravovedenie = Jurisprudence.* 1995. № 1. p. 73, 89 (in Russian); Butusova N.V. *O modernizacii rossijskoj Konstitucii (celi, zadachi, puti osushhestvlenija)* [About modernization of the Russian Constitution (goals, tasks, ways of implementation)] *// Konstitucionnoe i municipal'noe pravo = Constitutional and municipal law.* 2013. № 1. p. 5–10 (in Russian); Medushevskij A.N. *Konstitucionnaja modernizacija Rossii: strategija, napravlenija, metody* [Constitutional modernization in Russia: strategy, directions, methods] // *Zakon = Law*. 2013. № 12. p. 41–52. (in Russian); Bondar' S.N. *Konstitucionnaja modernizacija rossijskoj gosudarstvennosti v svete praktiki konstitucionnogo pravosudija* [Constitutional modernization of Russian statehood in the light of constitutional justice]. M., 2014 (in Russian).

[5] *See:* Kireev V.V. *Teoreticheskie problemy reformirovanija Konstitucii Rossijskoj Federacii* [Theoretical problems of reforming the Constitution of the Russian Federation]. Cheljabinsk, 2008. (in Russian). Brandt M., Kottrell D., Gaj Ja., Regan Je. *Razrabotka i reforma konstitucii: vybor processa* [The development and reform of the constitution: selection of the process]. Kiev, 2011. p. 351 (in Russian).

The Venice Commission specifies that reviewing or updating new constitutions have formal differences.[1]

Therefore, changes from the external view can be accepted as correction and modification of the text, from the substitution of particular terms to the introduction of a new institution and even a shift of constitutional model within a limited extent of the constitution. But a large-scale modernization is not always attributed to a constitutional reform. Conversely, limited constitutional reforms could be implemented in a totally new constitution.[2] All the above indicate that any proposed changes to a constitution should receive the learned input of legal scholars and they should also take into account the concrete historical situation in the country. The dictionary reports that reform (Latin, *reformo*) means the improvement or amendment of something wrong, corrupt, unsatisfactory, etc. A constitutional amendment refers to the modification of the constitution of a nation or state. In many jurisdictions, the text of the constitution itself is altered; in others, the text is not changed, but the amendments change its effect. The method of modification is typically written into the constitution itself. This is the main way in which amendments differ from other changes to constitutional text. In the larger society, social studies also produce reforms that affect many aspects of public life to varying degrees. However, "the magnitude", the duration and other quantitative indicators of such reforms are rather evaluative categories. The reform process may seem all-encompassing, could be lengthy, incremental, but an assessment of the depth of the change cannot immediately be estimated. More often it can be made only at "the end", on reaching, in the process of ongoing changes, qualitative achievements. And also, an analysis may have no results at all. This means that reform did not take place. History knows many examples of such reforms. However, can a "failed reform" be considered a reform if the work did not lead to reforming? We think not: such reforms remain simply a "project", a "plan of reform". Furthermore, as shown by a long list of examples, the legal characteristics of changes are not determinant: the reform cannot be reduced to the modernization of a constitution merely as a legal act, even if it is recognized by the basic law, as its implementation extends beyond legal procedural questions and legal technique.

It is inexpedient to give a definition of the constitutional reform at the contemporary stage of its study, especially because not just the settled legal methodology is required for this purpose.

Nonetheless, the achieved level of analysis of constitutional amendments (including that by the Venice Commission) allows us to highlight several important characteristics or criteria, which (in the aggregate) permit the identification of features of the phenomenon of constitutional reform among a variety of constitutional modifications.

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[1] CDL-AD (2010) 001, sect. 21.

[2] *Ibidem.*

The list of criteria may vary in the future as new levels of relations develop, new challenges of time and emerging institutions can (and have to) demand their modification and even different means of constitutional regulation. Moreover, theoretical structures always have an "ideal" character and can be considerably corrected by extensive constitutional practice. In fact, prior to its realization the constitutional reform is a perfect "image of the future" in the opinion of its reformers.

Here then is the list of criteria.

1. Constitutional reform is a high-quality transformation of the organic law, affecting its fundamental, basic institutions that also define the framework of modern constitutions – the constitutional status of a person, the basis of social order, the principles of economic, social, political systems and the spiritual life of society. The Venice Commission notes that "[w]hen analysing constitutional amendment" the two most important categories of provisions are, "The institutional rules – on 'the machinery of government'" and "The bill of rights".[1] These frameworks seem to be too narrow. The Venice Commission extends this approach in the sense that fundamental constitutional change accompanies political, economic and social transformations, and varies with the essential contents of the constitution.[2] Probably it is also necessary to agree with the broadest approach according to which the result of proper legal reform is the transformation of legal conscience.[3]

2. Constitutional reform is a manifestation and a result of the conservation of constitutional continuity. Therefore even new constitutions can be established. As the Venice Commission points out, if "the forces calling for political reform are strong enough, then changes are to be done through formal constitutional amendment rather than by revolution and upheaval, breaking the too-strict formal constitutional chains at huge cost to society".[4] While analysing the constitutional amendments the Commission intentionally excluded "the creation of entirely new constitutions, replacing the old system with a new order, following a constitutional break or revolution" as well as using other illegal and unconstitutional instruments.[5]

There is also another aspect to this question: the continuity has to be promoted "by a slower and gradual process and abidance by other procedures, than in the daily policy".[6]

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[1] CDL-AD (2010) 001, sect. 130.

[2] *Op. cit.* Sect. 5, 21.

[3] Zorkin V.D. (2015) Civilizacija prava i razvitie Rossii. [The civilization of law and the development of Russia] Moscow, p. 303.

[4] CDL-AD (2010) 001, sect. 81.

[5] CDL-AD (2010) 001, sect. 21, 18.

[6] *Ibidem*, sect.75; *See:* CDL-AD (2008) 015, CDL-AD (2011) 001, CDL-AD (2012) 010.

Thereby, the Venice Commission frequently warns about the harm of amendments being adopted in haste, emphasizing that they cannot be introduced into a constitution "with every change in the political situation in the country or after a formation of a new parliamentary majority".[1]

3. Constitutional reform is primarily a change of a formal constitution. In many legal systems the alternative ways of legitimate constitutional change are through judicial interpretation and unwritten political conventions.[2] Constitutional reform will not be accomplished if it represents only a transformation of the present actual constitution (the de facto existing social structure and system of government) when a text of the organic law formally is not touched. Along with actual constitutions new "living" constitutions often arise, but the constitutional changes are not always included in their text. Repeatedly, an alternative to constitutional reform is an evolutionary reforming of the constitution by judicial interpretation without any changes to the text of the constitution. Such reform has the feature of insufficient legitimacy and can lead to serious practical discrepancies between the actual and legal constitutions. For major constitutional change, deliberative, democratic, legal and political procedures for constitutional amendment are clearly preferable to judicial interpretation.[3]

4. Constitutional reform is to include programmatic goals on its implementation which should be explicit in earlier reforms, legal and political documents, programs and in other acts. At the same time, the purposes have to be clear to both reformers and society, and the consequences are to be predictable. The Venice Commission specially notes the need for constitutional predictability and understanding of the possible consequences of constitutional reform.

5. Constitutional reform should feature legitimacy at the highest level. This applies to any constitutional amendments, especially to the reform. First of all, the amendments to the constitution should meet the requirements of legality; any constitutional changes should be managed according to the official amendment procedures established by the constitution (an initiative, parliamentary procedure, etc.). The Venice Commission notes that with almost all constitutions such changes are more difficult than with ordinary legislation, but this guarantees constitutional and political stability, and aims at securing broad consensus as well as the legitimacy of the constitution and, through the process, the political system as a whole, efficiency and quality of decision making, and the protection of minority rights and interests.[4] There are no universal principles and recommendations;

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1 *For example:* CDL-AD (2015) 014.

2 CDL-AD (2010) 001, sect. 109, 246.

3 CDL-AD (2010) 001, sect. 112.

4 CDL-AD (2010) 001, sect. 6, 15, 238; CDL-AD (2015) 014.

rather, the challenge is to strike a balance between rigidity and flexibility which allows necessary reforms to be passed without undermining constitutional stability.[1] In the same vein, the resort to national referendums for a decision on a constitutional amendment should be limited to those constitutional systems in which their implementation is required (sometimes referendums are applied bypassing rigid constitutional procedures). The Venice Commission considers that the constitutional reform's legitimacy is not influenced by the inclusion or non-inclusion of a general referendum as a part of the constitutional amendment procedure.[2] Another dimension to the legitimacy problem is more connected with the question of constitutional stability. Constitutions often contain "non-amendable" articles blocking decision making. Such provisions and principles should be interpreted narrowly so that it must be possible to discuss and amend all parts of the constitution.[3] After supporting the idea and the project of constitutional changes that are introduced legitimately, the requirement of legitimacy belongs to the subsequent stages of discussion and adoption of the amendments. The assessment of the legitimacy of constitutional changes from the position of their content is also needed and includes acceptance by the expert community for implementation. Additionally, the legitimacy of the constitutional changes is connected with the legal protection of the constitution, and in a narrower sense, with a constitutional control. It should also be pointed out that in modern times legitimacy has not only legal, but also social, political and other aspects. Constitutional reform is a process which requires free and open public debate, and sufficient time for public opinion to consider the issues and influence the outcome.[4]

In general, the issue of social support of the reforms, including constitutional reforms, is investigated by the social sciences.[5]

6. Constitutional reform should be characterized by sufficient financial, legal and ideological support. As has already been described, public support for the reform is an integral part of its legitimization. The reform also requires meaningful participation of the expert community, institutional and legal, as well as informational support. As noted by researchers, the most important "resource" in the process of making reform is

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1 CDL-AD (2010) 001, sect. 239, CDL-AD (2007) 004, CDL-AD (2013) 029.

2 CDL-INF (2001) 003, par. 24.

3 CDL-AD (2010) 001, sect. 250, 248.

4 *For example:* CDL-AD (2010) 001, sect. 203–205, 245; CDL-AD (2004) 030; CDL-AD (2011) 001; CDL-AD (2013) 010; CDL-AD (2014) 027; CDL-AD (2015) 014.

5 *For example:* Jadov V.A., Klimova S.G., Halij I.A., Klimov I.A. (2008) *Social'naja baza podderzhki reform i potencial massovogo protesta* [Social base of reforms' support and potential of a mass protest] // *Rossija v global'nyh processah: poiski i perspektivy = Russia in the global processes: the searches and the prospects,* Moscow. (in Russian).

determination and a clear sense of purpose – to provide a good level of understanding and predictability of the results.

7. Finally, constitutional reform is characterized by certain legal and clear-cut results. The final and hardest phase is its implementation, which is related to establishing the new system of constitutional-legal relations. Even a well-written constitution cannot ensure the stability and democratic development of society without the political will of different political forces, and even further, not without lawmaking according to democratic standards and an effective system of checks and balances, which create a framework for accomplishment of the aforementioned.

The practical implementation of constitutional reform exists in the doctrine. However, few studies on this topic have explored at least three aspects of the enjoyment of constitutional transformations: *introduction*, which includes implementation of the constitutional provisions; *support*, providing the observance of the constitution and the laws, aimed at the realization of it; and *protection*, in maintaining the integrity of the constitution, the limitation of making hasty amendments and the exclusion of perverting constitutional norms.

It is obvious that the realization of constitutional reform implies enforcement. Reform usually leads to dramatic legislative change; however, this is not the end. Implementation of regulation of citizens' daily activities, their associations, officials and state organs should be introduced. What is also important is not only to elaborate the legal aspect of the transformation (procedures, acts), but also to research actual changes in social relations. A large part of social relations requires development of a productive system of partnership outside the framework of legislation. We are talking here about harmonizing the potential of such tools for regulating social relation as agreements, arrangements, self-regulation, etc.

Refocusing attention on the following directions of realization of the constitutional reform is needed: the enactment of new legislation (lawmaking); forming a new law enforcement practice; changes in components of the public consciousness; and creating legal awareness that corresponds to changes brought about by the reform.

The impact of a constitution may be explained as the consolidation of the basic values underpinning the basis of legislation. The process of legislative support of constitutional reform evolves within the constitutionalization of the law – a legislative harnessing of constitutional ideals and values.

As the practice of a number of countries in the post-Soviet area shows, the constitutionalization of the law can conditionally be divided into several stages: "formation" (laying the foundations of legislation), "adaptation" (adjustment in which constitutional control plays a huge role), "optimization" of the system and "development". In general, modernizing legislation implies more consistent, systematic and high quality assurances.

This goal can be achieved by federal action on laws and regulations, which the Institute of Law and Comparative Jurisprudence under the Government of the Russian Federation proposes to adopt. This decision has been taken in consideration of the experience of countries where such acts in respect of the law and regulations exist (Bulgaria, Hungary, Kazakhstan, Belarus, Armenia, Georgia, Azerbaijan, among others).

With the enactment of new legislation, it is important to build an enforcement body that corresponds to constitutional goals. The main providers in this regard are the judicial authorities, who more than others substantiate their decisions by referring to constitutional norms. The work of constitutional controls now assumes special importance. The activities of the Constitutional Court of the Russian Federation on the enforcement of constitutional reform (1993) can be considered an essential process, resulting in the inclusion of organic law in the social life of Russia. Through these activities, for the first time in the country's history, the Constitution has transformed into a fully active legal document, one which is capable of being the tool to protect the constitutional order, citizens' rights and freedoms.

Constitutional reform usually does not affect social attitudes to basic values, but it can impart new elements into the public consciousness, which is why the results of the reform involve the introduction of new constitutional norms not only into legislative processes and law enforcement, but also into legal awareness.

Recently it has become clear that constitutional reform might have a possible negative impact, especially if it is hasty and not well prepared. Not only can there be a consequent downgrading of the constitution and the law in general, but also public disorientation and destruction of constitutional legal awareness.

The continuing search for the doctrinal definition of constitutional reform requires further creative efforts. Greater attention should be given to analysing the particularities of the constitutional reform in the diversity of different constitutional systems, including the countries where constitutions are consolidated and those where it is unconsolidated. The development of criteria that have the flexibility to account for diverse national and historical contexts is highly important. From an axiological point of view, in constitutional law there are different levels of values, selecting from which it is particularly significant for constitutional and juridical regulation without forgetting that different models of constitutions (liberal, Islamist, socialist, post-socialist, etc.) resolve this matter in different ways.

The criteria of constitutional reform can reflect social, political, legal and even psychological aspects, requiring more diversified studying, and provide for the involvement of applying a panoply of modalities and means from other sectors of a study. Researchers in constitutional reform, *inter alia*, agree with this point that analysis in terms of value approach (axiology) is a necessary part of exploring the political and legal processes.

Maintaining a "balance" between common and global – and thus beyond domestic (including religious) – constitutional values is urgent in contemporary political conditions. The Venice Commission, in particular, noted the need for the precautionary approach to constitutional reform in "old" and "new" democracies. "New" democracies need not only special flexibility, but also constitutional stability and rigidity, probably even more than in the established democratic systems. Either way, different types of constitutional processes and a new phase in the evolution of global constitutionalism provide a great deal of material for the study of various aspects of the doctrine and the formation of constitutional reform.

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# ROLE OF THE SCIENCE OF INTERNATIONAL LAW IN THE PROHIBITION AGAINST AND RESTRICTION ON THE USE OF FORCE IN INTERNATIONAL RELATIONS

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**Abstract:** One of the central issues of the world order is restriction on the use of force and its prohibition in international relations as an instrument of international dispute resolution. The science of international law has played and continues to play an important role in this issue. In this article the author presents a narrative on the history of the science of international law, gives a summary of the views of famous representatives of the Western science of international law on war and its restriction in the framework of international law, and reviews the guiding principles of international relations in different time periods. In contrast, the Russian science of international law has always reflected the status of external relations of the Russian state. Thus the author also gives a summary of the views of representatives of the Russian science of international law, and underlines that the approach of Russian legal scientists differs from the approach of West European scientists, whose views consider war as the last resort, it had to be just, etc., whereas there is the interesting view of Professor Vladimir Grabar, who distinguished between war and struggle. The author notes that the United Nations Charter created a strong foundation for creating a system of international legal mechanisms, which reinforce the principle of non-use of force in international relations. In the framework of this system of international legal mechanisms the most important place should be given to international judicial bodies, including those bodies whose jurisdiction covers crimes against peace, crimes against humanity (including genocide) and war crimes.

**Keywords:** brute force law, use of force, international law, international relations, social development

The choice of this article's theme is not accidental. The central issue of a world order which is regulated by international law as a system of norms is the restriction on the use of force and its prohibition in international relations as a method of settlement of international disputes. The science of international law as a product and at the same time a motor of social development has played an important role in the prohibition against and restriction on the use of force in international relations.

To begin our study of the specified theme we should pay attention to two facts which attracted the attention of famous Russian international law scholars. Professor Friedrich F. Martens wrote, "Both in ancient and [in] medieval times ... the right of brute force was indeed the primal principle of all international relations."[1] Professor Vladimir Grabar noted that the history of the science of international law has been studied much more than the actual history of international law.[2] The study of the history of the science of international law still outstrips the study of the actual history of international law despite the circumstances noted by Professor Dmitri Kachenovsky: "History shows that the skillful diplomats arose much earlier than the educated publicists."[3] This has led to the situation in which scholars have been more successful in studying the history of the science of international law than the historians and international affairs specialists have been in studying the actual history of international law. This situation can be explained by the fact that the actual history of international law dates back to ancient times, while the history of the science of international law dates back to the seventeenth century. The cause of such a lag is a specific Eurocentric approach in studying the actual history of international law, which of course can be the subject of separate research.

In a world where "brute force law" was the supreme reason, where the law of the sword in international relations could result in war and existed as a guiding principle of all international relations, as was mentioned by Martens, thinkers, theologians and

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1 Martens F.F. *Sovremennoe mezhdunarodnoe pravo civilizovannyh narodov* [Contemporary international law of civilized nations]. V. I. Izd., pjatoe, dopolnennoe i ispravlennoe [Fifth issue, supplemented and corrected]. – SPB., 1904. – P. 88.

2 Grabar' V.Je. *Materialy k istorii literatury mezhdunarodnogo prava v Rossii (1647–1917)* [Materials to the history of literature of international law in Russia (1647–1917)] / The scientific editor, biographical essay and bibliography compiled by: U.Je. Batler; executive editor and author of the foreword: V.A. Tomsinov. – M.: Zercalo, 2005. – P. 492.

3 Kachenovskij D.I. *Kurs mezhdunarodnogo prava* [Course of international law]. Har'kov, 1863 / *Zolotoj fond rossijskoj nauki mezhdunarodnogo prava* [Golden reserve of Russian science of international law]. V. I. – M.: *Mezhdunarodnye otnoshenija = International relations*, 2007. – P. 46.

philosophers made attempts to limit war in international relations on the basis of moral, ethical, religious and other reasons. This finally led to the emergence of the so-called "just war" theory and the substantiation of natural law, of which elements of both still exist in the theory and practice of international law.[1]

Even in the works of Cicero we can find evidence of an ancient Roman practice of waging a just war for the benefit of achieving peace.[2] And before Aristotle, who was convinced that achieving peace was the only just reason for waging war, based his arguments on the natural law approach.[3] Saint Augustine wrote the following letter to the Pope: "A war should be waged only in a case of its indispensability; and it should be waged only when Our Lord can save the people from misery and achieve peace through it."[4] Thomas Aquinas systematized the study of Saint Augustine on a just war and offered his own system for waging it.[5]

In the works of a noble international law scholar Pierino Belli, along with ideas supporting the just war theory we can find elements of a rule of law concept. In his work "The military and war questions treatise" (1536), Belli stated that the norms of law can put restrictions on the warring parties even without a demand to follow them.[6] Famous Spanish theologians Francisco de Vitoria and Francisco Suarez supported the idea of a just war and at the same time the idea of limiting the use of war as a method of resolving disputes between nations.[7] Vitoria upheld the point that a just war theory should be applied to the non-Christian nations. Suarez advised establishing a secular law based on the ideas of reason that could be a mediator between God's commands and the people's law. Suarez distinguished *jus gentium* (law of nations) from *jus naturae* (law of nature), expecting Christian states to build their relations on the basis of international treaties and customs that together formed *jus gentium*, which was different from *jus naturae*.

The famous Italian lawyer and diplomat Alberico Gentili supposed that a decision whether or not to use force could be made exclusively by the monarch himself. In his work, he supported the demand for states to base their relations not on political views, but on the basis of legal norms recognized by the European nations.[8]

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1 US National Institute Proceedings. 1969. – P. 61.

2 Marcus Tullius Cicero. *On Duties (De officiis)* (bk. 1) M.T. Griffin and E.M. Atkins eds., 1991. – P. 13.

3 Joachim von Elbe. *The Evolution of the Concept of the Just War in International Law* // 33 American Journal of International Law. 1939. P. 665–667.

4 Benedetto Conforti. *The Doctrine of «Just War»* / Contemporary International Law, 2002. It. Y.B. Int. l. L. 3. – P. 3–4.

5 Michael Walzer. *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (3rd ed., 2000).

6 Nussbaum Arthur. *A Concise History of the Law of Nations 35*. Rev. ed. 1954. – P. 91–92.

7 Arthur Nussbaum. *Ibid.* P. 79–91.

8 Joachim von Elbe. *Ibid.* P. 675.

The contributions of Dutch lawyer Hugo Grotius are highly valued by scholars, and this includes Russian scholars as well. For example, Martens considered Grotius to be "the father of the science of international law;" Professor Evgeni Korovin and Professor Fyodor Kozhevnikov called Grotius "the father of the science of international law in Western Europe."[1] Undoubtedly, Grotius was the first to prove the independence of such a legal science as international law in his famous work *De Jure Belli Ac Pacis Libri Tres* (*On the Law of War and Peace*) 1625.[2] After studying the history and literature of the nations of ancient and medieval times, and after collecting a vast amount of facts and opinions of famous thinkers of the past, Grotius concluded that the Christian nations, although having a right to wage war, still had to limit their actions by respecting the inalienable rights of human nature. He divided all law into natural law (*jus naturae*) and positive law (*jus voluntarium*), and the latter could be divided into the people's law (*jus humanum*) and divine law (*jus divinum*). The people's law, according to Grotius, consisted of civil law (*jus civile*) and the law between nations, or, international law (*jus gentium*). The obligatoriness of the legal norms for states stemmed from correspondence to the laws of nature (i.e. a source of natural law) or from the people's consensus (i.e. international law, *jus gentium*). According to Grotius, the norms of international law should be found among customs and international treaties, where the will of nations can usually be seen.

One of the reasons why Grotius is considered to be the father of international law is that in *De Jure Belli Ac Pacis Libri Tres* he was the first to systematize international law by summarizing the arguments of his predecessors and by the dissociation from theology, as a result of which he could develop his ideas towards the concept of a new natural law (or, the law of reason).

Hugo Grotius and his followers Hans Kelsen[3] and Hersch Lauterpacht[4] developed the idea that the use of force in international relations is justified only in support of the norms of international law, and not in the interest of one state. They argued that the restriction on the use of force to enforcing the laws fits well the concept of a normally operating legal system (both domestic and international), whereas the abuse of force in the interest of ambitious rulers not restricted by any legal limitations does not fit the concept of a normally operating international legal system. In this way they proved the supremacy of law over politics.

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1 *Mezhdunarodnoe pravo: uchebnik* [Internationa law: textbook] / edited by E.A. Korovin. – M.: *Gos. izd-vo «Juridicheskaja literatura» = State publishing house "Legal literature",* 1951. – P. 55. *Mezhdunarodnoe pravo: uchebnik* [Internationa law: textbook] / edited by F.I. Kozhevnikov. – M.: *Gos. izd-vo «Juridicheskaja literatura» = State publishing house "Legal literature",* 1957. – P. 33.

2 Hugo Grotius. *De Jure Belli ac Pacis Lebri Tres* / Francis W. Kelsey trans., 1925, reprinted 1995.

3 Hans Kelsen. *Peace Through Law*. 1944. – P. 84–85.

4 Hersch Lauterpacht. *The Function of Law in the International Community*, 1933. – P. 424.

Grotius and his followers understood that compulsion by force is an actual part of any legal system (both domestic and international). Their understanding of international law as a legal system was based on accepting the need of methods for enacting the norms of international law, together with the principles that lie at the basis of these methods.

Grotius considered the state of war and the state of peace between states to be legal. He said that the history of humanity witnesses that the law of nations and the laws and customs of every nation do not condemn war. He studied war as a way to settle an argument between countries. Therefore he tried to clarify the rules of waging war so as to place war within legal boundaries.

The Peace of Westphalia gave foundation to those tendencies that later contradicted the world view of Hugo Grotius. The right of the sovereignty of countries proclaimed in the Treaty of Westphalia of 1648 created the conditions for the formation of a society different from Grotius's understanding of a global legal society. Instead of a universal global legal society, separate sovereign countries became the subjects of international law and relations, and individually began to decide what kind of international law they needed and what kind they were able to create and support. Even though the Treaty of Westphalia proclaimed the creation of a united Christian society, in reality it opened the era of sovereign absolutism of European nations that did not acknowledge any authority. In conditions of the absence of a supreme power, it is clear then why the efforts of jurists who were interested in restricting the possibilities for waging war aimed towards creating international legal acts.

The famous Swiss diplomat, legal expert and international law jurist Emer de Vattel supported the idea of countries gaining full sovereignty. Though he called himself a follower of the theory of natural law, his work opened new horizons for legal positivism. He is most famous for his work "The Law of Nations or the Principles of Natural Law Applied to the Conduct and Affairs of Nations and Sovereigns" (1758), which was written based on his own diplomatic experience. Vattel shared Grotius's views on how human relations are regulated by laws given from above, not by man-made laws.[1] He raised the importance of government and its will so high that legal positivism (a theory, according to which law is created from the positive acts of governments) became the natural result of his ideology.

One of the merits of his work is a more detailed development of international dispute resolution methods. Vattel pointed out the importance of adhering to international agreements. He warned government officials that breaking an agreement leads to the absence of trust and offered specific measures to ensure satisfaction of agreements in cases where the parties did not follow through with their obligations.

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[1] Emmerich de Vattel. *The Law of Nations or the Principles of Natural Law Applied to the Conduct and Affairs of Nations and Sovereigns.* 1758 / Charles G. Fenwick trans., 1916.

Vattel acknowledged the right of the government to engage in war for self-defense. He argued that in international relations every country has the right to execute punishment, and this right is embodied in conducting warfare.

Though the fact that Vattel enhanced Grotius's theory with practical recommendations by pointing out specific measures to secure satisfaction of international agreements is universally accepted, he clamored against the theoretical heritage of Grotius, wherein one of the main points is the thesis that international law is supranational and stands above countries and their unions. As the result of Vattel's efforts the idea that a country should be fully sovereign and independent acquired much respect.

Emer de Vattel's research was deeply rooted in the ideology of the Age of Enlightenment, which conceptually prepared the foundation for the French Revolution (1789–1794). Due to this understanding, international law came to be examined as a consensual concept created according to the will of governments and not as a gift from above. The Final Act of the Congress of Vienna (1815), which was signed after the end of Napoleon's wars, also included a number of statements taken from Vattel.

If we compare the results of the Peace of Westphalia (1648) and those of the Congress of Vienna (1815), it is clear how different Grotius's and Vattel's ideas are on many key points.

During the course of the nineteenth century European countries convened similar congresses, for example the Treaty of Paris of 1856 and the Treaty of Berlin of 1878, among others.

While speaking of the practice of convening international conferences it is worth mentioning that Vattel welcomed these kinds of forums and thought that it was possible to prevent warfare with their help, but history proved otherwise: the nineteenth century was a time of a series of cruel wars. In their effort to create colonial empires, European countries fought with each other all over the world: wars were fought to acquire new colonies, and they were conducted against local populations and international rivals alike. However, none of these reasons fits into the theory of the "just war."

Looking at nineteenth-century wars and international congresses, where post-conflict matters were settled, the wrong impression can be acquired that the strengthening of legal positivism and the concept of the full sovereignty of nation states led to the final rejection of the idea of legally restricting the conduct of warfare and that the theory of the "just war" had lost its importance. Researchers mention another point: almost every European government tried to give legal justification for the wars they conducted. Natural law, according to which law has to stand above the ruler, continued to be an important part of legal doctrine. Legal positivism was presented in parts of international agreements, but the general principles of international law were based on natural law.

Overall, international law struggled to fit into positive law theory, which led British legal expert John Ostia to call it "positive morality" instead of law.[1] He shared one of the main ideas of Thomas Hobb's theory that laws come from the ruler. Ostin thought that law itself means the will of the ruler, supported by sanctions for breaking the law. As to relations between countries, neither of them thought countries had sovereign rights over other countries: no country had the right to command another country. Ostin offered to build relations between countries on "laws by close analogy" to support "positive morality." He thought that rules of "positive morality" are created based on society's opinion, which represents every social group, and that rules of positive law are created based on opinion, represented by not one but many nations at the same time.

According to Ostin's theory, true law is not possible in an international legal system, where there is no ruler. He thought that if the laws themselves are not obligatory, then there should not be sanctions for breaking them. This explains why, in his opinion, breaking international legal acts did not result in punishment. He thought international legal acts were obligatory to follow based only on the fact that all moral rules and rules in general should be obligatory.

The famous German legal expert Georg Jellinek developed the theory of a country's self-restriction, owing to which international legal acts could become obligatory. He wrote, "When a sovereign country enters legal relations with another country, rules of international law gain power by the country's applying some self-restriction, that it cannot reject at any moment without breaking rules of law."[2]

Another German philosopher of law, Heinrich Trippel,[3] proposed the theory of another common will of countries, which found its representation in international agreements and customary rules of international law, which can restrict the freedom of every separate country to abandon its obligations.

German legal expert Lassa Oppenheim[4] actively promoted the idea that international law is a positive legal system only and on such an important question as government, international law cannot be considered a structure that stands above governmental will. He found the obligatory power of international law in a country's acceptance of rules of international law or in self-restriction. He found differences between such concepts as international law and moral norms, suggesting that while compliance with international law is provided by an external force, moral norms are observed only on

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1 John Austin. *The Province of Jurisprudence Determined and The Uses of the Study of Jurisprudence* / with an Introduction by H.L.A. Hart. Indianapolis: Hackett Publishing Company, 1954.

2 Wilhelm G. Grewe. *The Epochs of International Law. Michael Byers trans*., rev. 2000. – P. 505.

3 Arthur Nussbaum. *Ibid.* – P. 235.

4 Lassa Oppenheim. *The Science of International Law: Its Task and Method* // American Journal of International Law. Vol. 2. 1908. – P. 313.

the basis of consciousness. Oppenheim was a passionate supporter of the positive legal theory, openly standing against the theory of natural right.

At the Hague Conferences of 1897 and 1899, which were initiated by Russia, for the first time the limitation on the right of states to conduct military activities was stipulated by provisions of multilateral treaties. States were obliged to settle their disputes first of all through international arbitration and other peaceful measures involving a third party. The Hague Convention concerning the limitation on the use of force dated 18 October 1907 was adopted.

Legal scientists, primarily from Germany, considered the League of Nations an organization dominated by the Entente, and as an organization in which Germany was not able to participate on an equal basis. They thought that the League of Nations served to preserve Anglo-American domination in the world. Indeed, the Charter of the League of Nations prohibited conducting wars only for a certain period of time which allowed disturbing the existing international model, and that model put Great Britain and the United States in an advantageous position compared to other states. The apprehension over this state of affairs was later confirmed when the 1933 Disarmament Conference in Geneva failed. It was decided at the Conference that only the United States and Great Britain were not obliged to reduce their naval and land arsenals. Thus, under the situation that existed with the League of Nations and under other circumstances a certain "background" was established for refusal to follow the ideology of legal positivism in cultural life.

Hans Kelsen[1] held an opinion different from that of John Austin. The latter assumed that the main source of legitimate power is the will of the ruler, who is entitled to govern the state. Kelsen, however, assumed that since the ruler could be delegitimized the main source of legitimate power was hidden somewhere else. Such a source was characterized by Kelsen as *Grundnorm*, i.e. the basic norm of legitimate power. The legal force of rules recognized as *Grundnorm* could be considered legitimate and the violation of such rules was supposed to be answered by sanctions. At the same time, *Grundnorm* itself originated in the faith in general international law. Kelsen based the ideas of his theory on the assumption that both domestic law and international law were based on the same fundamental rule which legitimized actions. Having one common foundation for all types of law made up a united legal system. In this system, in accordance with the rules of logic, international law was prioritized over domestic law. Kelsen emphasized that a state is only a legal regime and, taking into account the existence of various legal regimes, in the case of a dispute between equal legal regimes the ultimate rule having the ultimate power in respect of all parties needed to be addressed in order to resolve the dispute. In his opinion, these ultimate rules could only exist in international law since it was put higher than the legal regimes of equal states.

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[1] Hans Kelsen. *General Theory of Law and State* / Anders Welbord trans. 1943; Hans Kelsen. The Legal Process and International Order, 1935. – P. 24.

According to Kelsen, war and countermeasures under certain limitations were necessary legal sanctions in the mechanism of international law. Kelsen found the confirmation of his assumptions concerning the theory of "just war" in the provisions of the Treaty of Versailles 1919, the Charter of the League of Nations and the Kellogg-Briand Peace Pact 1928. Moreover, Kelsen considered these legal documents as the basis for countermeasures in the case of unlawful waging of war.

Kelsen thought that after the end of the First World War the next logical step to be taken would be the establishment of a court that would have the power to impose sanctions in the case of disobedience of its decisions. With the establishment of the Permanent Court of International Justice (PCIJ) under the League of Nations this was truly fulfilled, but PCIJ did not have the power to impose sanctions. Therefore Kelsen thought that the Kellogg-Briand Peace Pact was a mistake. In his opinion, the creators of the pact should have established a court that would oversee cases concerning the use of force, in order to provide the realization of the court's decisions.

The ideas of Kelsen, who had been actively promoting the establishment of international courts and tribunals, was also recognized by his compatriot Hersch Lauterpacht who, in his book *The Function of Law in the International Community*, published in 1933, wrote, "… the main question if there is a judge authoritative enough in order to settle cases concerning human rights and ensure the peace throughout the whole world."[1] After the end of the Second World War, the author pointed out the Nuremberg Trials as evidence that the international community was ready for that move.

Lauterpacht denied the arguments of those who claimed that international law could be considered only "as law providing the coordination of actions of sovereign states on the bases of mutual agreements." In his opinion, international law was a complete legal system legally binding on heads of state, even without their consent. Lauterpacht had the same opinion as that of Grotius concerning human nature: he believed in human intelligence and thought that "both on the level of human relations and relations of states the moral responsibility and the ability to foresee the consequences are prioritized by humans over unrestrained selfishness and lusts."[2]

This then is a brief and systematic summary of the views of famous Western scholars concerning war and its limitation by international law.

In regard to the Russian science of international law, Professor D.I. Kachenovsky wrote, "The science of international law came to us from the West as an alien theory."[3]

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[1] Hersch Lauterpacht. *The Function of Law in the International Community*, 1933. – P. 424.

[2] Hersch Lauterpacht. *The Grotian Tradition in International Law* // 23 Brit. Y.B. Int. L.1, 1946. – P. 16.

[3] Kachenovskij D.I. *Kurs mezhdunarodnogo prava* [Course of International Law]. Har'kov, 1863 / Zolotoj fond rossijskoj nauki mezhdunarodnogo prava [Golden reserve of Russian science of international law]. T. I. – M.: *Mezhdunarodnye otnoshenija = International relations*, 2007. – P. 48–49.

In accordance with the statement of Grabar, the science of international law in Russia takes its origin at the end of the fifteenth century when an independent national Russian state was established.[1]

Obviously, the shape of the science of international law in Russia was a reflection of Russian foreign policy: from the moment of the establishment of Kievan Rus relations were primarily held with Byzantium. The international relations of Russia were almost fully suspended during the feudal period and under the Mongol yoke, and reinstituted under Peter the Great.

The historic evidence showing the shape of Russian foreign affairs dates from the period of ancient Russia (Kievan Rus) and the period of the Moscow state. In Kievan Rus, foreign affairs were assigned to the princely retinue; in the Moscow state, to the State Duma. Under the reign of Ivan IV, the embassy clerk specializing in foreign affairs appeared in the system of state bodies. He had his own special office (cottage), which was named "embassy order" in Moscow official letters. Embassy order in the sixteenth and seventeenth centuries primarily researched foreign countries, including their foreign policy and practices. In accordance with the Manifest of Emperor Alexander I, dated 8(20) September 1802, an external policy department was named the Ministry of Foreign Affairs of Russia.[2]

Based on so-called "Article lists" (documents concerning the diplomatic relations of the Moscow State with Western and Eastern states, reports of ambassadors concerning the fulfillment of their tasks), Grabar informs us about the perception of Moscow diplomats with regard to war: war was considered a last resort; it had to be just – to wage war the Tsar had to have a just reason; war could not be launched without a declaration; the war had to have no effect on the trade of fighting states.[3] It is worth mentioning that those principles were not different from the approaches of countries of Western Europe.

Martens wrote, "Russian literature is poor of the independent publications covering the entire system of international law." Among those rare publications he included the legal scientists and their works: D.I. Kachenovsky (*The Course of International Law*, second edition, 1863–1866, the work was never finished, the author stopped at the history

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[1] Grabar' V.Je. *Materialy k istorii literatury mezhdunarodnogo prava v Rossii (1647–1917)* [Materials to the history of literature of international law in Russia (1647–1917)] / The scientific editor, biographical essay and bibliography compiled by: U.Je. Batler; executive editor and author of the foreword: V.A. Tomsinov. – M.: Zercalo, 2005. – P. 1.

[2] Abashidze A.H., Fedorov M.V. *Pravo vneshnih snoshenij: Uchebnoe posobie* [Law of external relations: Tutorial]. M., *Mezhdunarodnye otnoshenija = International relations*, 2009. – P. 29–38.

[3] Grabar V.Je. *Materialy k istorii literatury mezhdunarodnogo prava v Rossii (1647–1917)* [Materials to the history of literature of international law in Russia (1647–1917)] / The scientific editor, biographical essay and bibliography compiled by: U.Je. Batler; executive editor and author of the foreword: V.A. Tomsinov. – M.: Zercalo, 2005. – P. 9–12.

of international relationships in the Middle Ages); A.N. Stoyanov (*Essays on History and Dogmatism of International Law*); M.N. Kapustin (*The Review of Subjects of International Law*, 1856, and also the summary of lectures on international law, 1873); A.V. Byaletsky (*The Significance of International Law and its Materials*, 1872); and P.E. Kazansky (the textbook, *International Law: Public and Civil Aspects*, 1902).[1] In order for this list to be complete, we need to include the following legal scientists: N.M. Korkunoff, V.A. Ulyanitsky, F.F. Martens and L.A. Kamarovskii, in whose works full information on the development of international law in the periods during which they lived is provided.

Professor Ulyanitsky deemed intervention a contradiction to the basis of international law – the autonomy of states as independent political bodies. By the word "intervention" the author understood: "autocratic, overbearing, coercive interference, which was not based on legal title, of one state in foreign affairs of two other states without permission of those or in [the] internal affairs of one state." He commented that the means of restoration of the rights which had "the principles of enforcement and power" existed for a long time, but in modern times those principles "dealt with the rules limiting the use of violence."[2] Ulyanitsky compiled the views of Russian legal scholars concerning war, according to which war was not the inevitable consequence of the imperfection of human nature (Western theologians considered war the punishment of God for mankind's sins. They saw in war the law of moral reign.) or the inevitable fatal law as a phenomenon of physical nature, but the result of the imperfection of social, economic and cultural life. History confirms that the changes in the organization of society lead to changes in the way of conducting wars. Consequently, scholars came to the conclusion that if we managed to get rid of the imperfections in socio-economic life, which lead to wars, the occurrences of military confrontations could be limited, or even eliminated.

The classification of war as "just" and "unjust" was widespread in Western Europe. At the same time, Grabar suggested another division – he assumed that there was war and there was struggle. In his opinion, struggle was the element of world order and stimulated further development. Thus, struggle was considered a generic term unlike war which was considered a specific concept with the feature of the use of violence. Scholars thought that struggle would always exist in human society: "civilized nations" substitute struggle for the competition of spiritual powers.[3]

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[1] Martens F.F. *Sovremennoe mezhdunarodnoe pravo civilizovannyh narodov* [Contemporary international law of civilized nations]. V. I. Fifth issue, revised and corrected. – SPB., 1904. – P. 179.

[2] Uljanickij V.A. *Mezhdunarodnoe pravo* / Zolotoj fond rossijskoj nauki mezhdunarodnogo prava [Golden reserve of Russian science of international law]. V. III. – M.: *Mezhdunarodnye otnoshenija = International relations*, 2010. – P. 100, 396.

[3] Grabar' V.Je. *Vojna i mezhdunarodnoe pravo* [War and International Law] // *Uchjonye zapiski Jur'evskogo universiteta = Scientific notes of Yuriev University.* – 1895. – № 4.

Professor Korkunoff admitted the legitimacy of war in order to force the state to fulfill its obligations under convention or international custom. Speaking of war as a whole he wrote:

> But only notorious doctrinaire can demand to [re]solve to make peace and war decision[s] based on legal assumptions. The state fights when it has power, once there is enough power the occasion will always be found. The international life does not know the limitation in time after all. The existence of interests due to which the wars are fought is measured not by decades but centuries. Once it occurs that violation of law is not revenged immediately it will be revenged in 10, 20, 60 years after. And since the question is about the existence of violations who does not have any violations in the past? In other words the question about wars is as complicated as the question of [the] right to exist. Such questions in my opinion should be avoided. It is inappropriate for serious science to do that.[1]

The third part of the summary of lectures of Kapustin is devoted to questions concerning war and neutrality. The crucial element of the author's thoughts concerning war was the relation between the law and enforcement. In the words of the author, "Without power the law would be mere logic definition not dominating structure. Hence the right of the people to demand their rights and use while doing it."[2]

Among all the aforementioned scholars, Professor Kachenovsky was rather regarded as a member of the group of so-called "Westerners," those who assumed that social thought in Russia must reflect the standards in Europe. He drew attention to a historical fact: in the attempt to prevent the domination of one state over other states the rulers settled certain obstacles because of which all conquerors in the new age fell – starting with Karl V and ending with Napoleon I. Based on this, the scholar concluded that, "The highest sanction in international law is not war or violence." In his opinion, "International law is the product of the civic consciousness of the world." The social ideas of humanity are reflected there. He also offered another definition: "International law is the law of peace and harmony." Having allayed the fears of idealists concerning war, Kachenovsky stated:

> [T]he era of conquests in Europe has passed away irretrievably, as Napoleon III said, the development of social interest and international cooperation among states at the fullest extent contributes to the peace; war is becoming harder to conduct

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[1] *Lekcii po mezhdunarodnomu pravu professora N.M. Korkunova, chitaemye v Voenno-Juridicheskoj Akademii v 1883–1884 gg.* [Professor N.M. Korkunov's lectures on International Law, read at the Military Law Academy in 1883–1884] / Zolotoj fond rossijskoj nauki mezhdunarodnogo prava [Golden reserve of Russian science of international law]. – M.: *Mezhdunarodnye otnoshenija = International relations*, 2007. – P. 255–257.

[2] Kapustin M.N. *Mezhdunarodnoe pravo. Konspekt lekcij.* – Jaroslavl', 1873 / Zolotoj fond rossijskoj nauki mezhdunarodnogo prava [Golden reserve of Russian science of international law]. V. I. – M.: *Mezhdunarodnye otnoshenija = International relations*, 2007. – P. 219.

> each year; states are not only ashamed but consider it to be necessary to make mutual concessions and use force in rare cases having exhausted all remedies.[1]

Having agreed on the position of Western scholars, Professor Kamarovski also proved the legitimacy of war based on two categories: the reasons which cause it and the means which are used to conduct it.[2]

In the work of Professor Martens the history of international law is divided into three periods. The first period is characterized by the domination of "physical force." Martens considered war in the life of ancient people as a tool for convergence – the destroyer of preservation, which was a common feature for all ancient people. He wrote, "[W]ar for ancient Romans served not only as a tool for enslavement of other nations but for convergence with them, familiarization with their culture and civilization, products of their intellectual and industrial work which came to Rome and became part of everyday life." Characterizing the Middle Ages Martens wrote:

> [T]he whole history of the middle ages is the chain of private wars which were conducted by feudal [lords] not only for [the] purpose of settlement of disputes among them but also for satisfaction of passion for war. The right of private war which belonged to any legal person or entity brought anarchy into [the] life of people of Western Europe and had to lead to toughening of attitude, to domination of right of power (faustrecht, droit du poing) which was the ultimate form of the dominated in that period principle of person, individual force stipulated in law.[3]

Martens contributed much to the creation of international humanitarian law and serves as an unquenchable source for its progressive development. Therefore, it is no wonder that questions concerning war have a special place in his book.

In general, it is worth noting that although the Russian science of international law was different in fundamental approach concerning certain issues regulated by international law, basically it orientated on the approaches of Western scholars concerning the key aspects of international law. Of course, at the time when the use of force was not only prohibited but also not restricted, until the end of the nineteenth century to the beginning of the twentieth century, the drastically different approaches were not expected.

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[1] Kachenovskij D.I. *Kurs mezhdunarodnogo prava* [Course of International Law]. Har'kov, 1863 / Zolotoj fond rossijskoj nauki mezhdunarodnogo prava [Golden reserve of Russian science of international law]. T. I. – M.: *Mezhdunarodnye otnoshenija = International relations*, 2007. – P. 52, 54, 135.

[2] Kamarovskij L.A. *O mezhdunarodnom sude* [About international court]. M., 1881/ edited by L.N. Shestakov; the author of a biographical essay: V.A. Tomsinov; author of the introductory article: U.Je. Batler. – M.: Zercalo, 2007. – P. 58.

[3] Martens F.F. *Ibid.* – P. 13, 61, 75.

In the twentieth century, in the span of just twenty years, the world was shaken by two world wars that brought "untold sorrow to humanity" (Preamble of the UN Charter).

The Austro-Hungarian Empire, the Ottoman Empire, the German Empire and the Russian Empire collapsed as a result of the First World War. On the territory of the Russian Empire the Soviet state with communist ideology appeared, and which later led the so-called "socialist camp" – one pole of a bipolar world. At the initial stage, the Soviet state featured activity in international relationships despite blockade and refusal of recognition by Western states, and accordingly its absence from the League of Nations at the beginning of its functioning.

One of the first decrees of the Soviets was on peace, dated 28 October (8 November) 1917, in which the prohibition of aggressive war in any form was emphasized, for it was considered "the greatest crime against humanity." The decree also condemned annexation, which was described as "the accession of any small nation to a large powerful state without the expressly recognized consent of the first one."[1]

The decree on peace recognized such principles of international law as peaceful settlement of disputes between states, non-interference in the internal affairs of states and self-determination of people.

The Soviet state, based on bilateral agreements with Persia of 26 February 1921, Afghanistan of 28 February 1921, Turkey of 16 March 1921 and Mongolia of 5 March 1921, announced all previous agreements, which had led to the diminution of the rights of peoples, abolished.

During 1920–1921 the RSFSR government signed peace treaties with Estonia, Lithuania, Latvia and Poland. The prohibition against armed and other forms of intervention was enshrined in the treaties of non-aggression, non-interference and neutrality signed by the Soviet Union during 1925–1933 with Germany, Turkey, Finland, France, Italy and other countries. The non-aggression pact of 28 September 1926 signed between the Soviet Union and Lithuania as well as a similar agreement with Iran on 1 October 1927 contained the parties' obligations in respect of economic non-aggression.[2]

Although the Soviet Union did not participate in the creation and adoption of the Convention on the Renunciation of War as an Instrument of National Policy (the Kellogg-Briand Peace Pact) in Paris on 27 August 1928,[3] it accessed to it on 6 September

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[1] Lenin V.I. *Polnoe sobranie sochinenij* [Full composition of writings]. V. 35. – M.: *Izdatel'stvo politicheskoj literatury = Publishing house of political literature*, 1974. – P. 14.

[2] Romanov V.A. *Iskljuchenie vojny iz zhizni obshhestva (mezhdunarodno-pravovye problemy)* [Exclusion of war from the life of society (international legal problems).]. – M.: Jurizdat, 1961.

[3] *Dogovor ob otkaze ot vojny v kachestve orudija nacional'noj politiki ot 27 avgusta 1928 g.* [The Renunciation of War Treaty as an instrument of national policy on August 27, 1928]. // *Mezhdunarodnoe publichnoe pravo. Sbornik dokumentov: v 2 t. = Public international law. Collection of documents: 2 volumes*. V. 2. – M.: Izd-vo BEK, 1996. – P. 1.

1928. The Soviet government's note of 31 August 1928 marked the disadvantages of the Convention, in particular, the ambiguity of the prohibition against war. Due to this fact, the Soviet government proposed banning the different methods of interference, including intervention. At the same time, they emphasized that the Convention imposed specific obligations on contracting states. According to Article 1 of the Convention, contracting states condemned the method of the use of war to resolve international conflicts. It contains the refutation by states to use war as a tool of their national policy. According to Article 2 of the Convention, all conflicts and disputes between states must be settled by peaceful means.[1]

In early 1933, the Soviet government submitted to the General Conference on Disarmament Committee, convened under the auspices of the League of Nations, a proposal to adopt a convention on the definition of aggression. In the draft convention, many actions were qualified as acts of aggression, including a declaration of war on another state and the invasion by armed forces on the territory of another state.

In 1933 and 1934, the Soviet government also initiated the signing of the agreement known as the London Convention for the Definition of Aggression with Estonia, Latvia, Turkey and other countries. They emphasized that no considerations of a military, political, economic or other nature can be a justification for aggression.[2]

In August 1953, the Soviet Union proposed the definition of aggression again. A Special Committee of the UN General Assembly had proposed definitions for "armed aggression," "indirect aggression," "economic aggression," "ideological aggression" and other types of aggression, which could be qualified in specific cases by the UN Security Council.

In the proposal of the Soviet Union, aggression was considered only as an action committed by a state. In the proposed definition, so-called chronological criterion was fixed, i.e. the fact of the first use of force against another state.[3] This criterion of the first use of force was emphasized in the works of Soviet legal scholars.[4]

On 18 May 1931, the Soviet government submitted to the European Commission of the League of Nations a Protocol on economic non-aggression, which prohibited any actions of economic aggression. It contained the refusal of all clear as well as hidden

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1 *Vneshnjaja Politika SSSR. Sbornik dokumentov (1925–1934 gg.)* [Soviet foreign policy. Collected documents (1925–1934)]. Volume III. – M.: 1945. – P. 270.

2 *Vneshnjaja Politika SSSR. Sbornik dokumentov (1925–1934 gg.)* [Soviet foreign policy. Collected documents (1925–1934)]. Volume III. – M.: 1945. – P. 646.

3 *Sovremennoe mezhdunarodnoe pravo. Sbornik dokumentov* [Contemporary International Law. Collected documents]. M.: IMO Publishing House, 1964. – P. 592–595.

4 Romashkin P.S. *Agressija – tjagchajshee prestuplenie protiv mira i chelovechestva* [Aggression is the gravest crime against peace and humanity] // *Sovetskoe gosudarstvo i pravo = Soviet state and law*. 1963. № 1. P. 61.

forms of economic aggression, including special discriminatory duties and any boycott imposed by governmental orders for only one country.[1]

The attempts by the Soviet Union to ensure economic non-aggression based on the agreement failed. Similar attempts by the USSR at the international level in the field of political power failed as well.[2]

However, there were exceptions. In particular, at the Nuremberg Trials, with respect to the principal German war criminals, the Soviet definition of aggression was widely used in the accusatory materials, including by the chief prosecutor of the United States.[3] The Soviet Union contributed much to the formulation of the provisions of Article 6 of the Charter of the Nuremberg International Military Tribunal (IMT), which stipulated:

> The following acts, or any of them, are crimes subject to the jurisdiction of the Tribunal and which involve an individual responsibility: (a) crimes against peace, namely, planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the above actions.[4]

General Assembly of the UN resolution 95 (I), edited in 1947, confirmed the principles of international law accepted in the Charter of the Nuremberg IMT.[5] The definition of aggression, approved by the UN General Assembly resolution 3314 (XXIX) of 14 December 1974,[6] reflected all the basic elements of the Soviet draft definition of aggression proposed in 1969.[7] The basis of the definition is the statement that "aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State." At the same time, it emphasized that the first use of armed forces violated the UN Charter and constituted an act of aggression.

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1 *Vneshnjaja Politika SSSR. Sbornik dokumentov (1925–1934 gg.)* [Soviet foreign policy. Collected documents (1925–1934)]. Volume III. M.: 1945. – P. 498, 636.

2 *Sbornik dokumentov o mezhdunarodnoj politike i mezhdunarodnomu pravu* [Collected documents on international policy and international law]. Issue IV. – M.: 1934. – P. 66.

3 *Njurnbergskij process. Sbornik Materialov* [The Nuremberg Trials. Collection of materials]. V. 1. – M., 1954. – P. 146–147.

4 *Sovremennoe mezhdunarodnoe pravo. Sbornik dokumentov* [Contemporary International Law. Collected documents]. – M.: IMO Publishing House, 1964. – P. 597.

5 Poltorak A.I. *Njurnbergskij process (osnovnye pravovye problemy)* [The Nuremberg Trials (base legal problems)]. – M.: *Nauka = Science*, 1966.

6 *Rezoljucija General'noj Assamblei OON 3314 (XXIX) ot 14 dekabrja 1974 g. Opredelenie agressii* [UN General Assembly Resolution 3314 (XXIX) of 14 December 1974. Definition of Aggression] // Doc. OON A/RES/3314 (XXIX).

7 Kuznecov V.I. *Opredelenie agressii – pobeda miroljubivyh sil* [Definition of Aggression is the victory of the forces of peace] // MZh. 1975. № 2. – P. 22–31.

The Soviet people played a key role in the victory over Nazi Germany and its satellite states, as well as militaristic Japan. The Soviet government contributed much to forming the post-World War II order being guided by the UN Charter.

According to paragraph 4, Article 2 of the Charter of the United Nations: "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."

Unlike many foreign international law scholars, who believe that international law continues the course of "classic" international law, native legal scholars highlight the qualitative changes in international law as a result of the adoption of the principle of non-use of force and threat of force recognized by the UN Charter, which, in its turn, reinforces the principle for the respect of the sovereignty of states, non-interference in the internal affairs of a state and the peaceful resolution of international disputes. The last principle, i.e. the principle of the peaceful resolution of international disputes, formalized in paragraph 3, Article 2 of the UN Charter, as well as the principle of non-use of force and threat of force, reveal the essence of the new international legal order, according to which the use of peaceful means is the only legal way to resolve international disputes, while the use of force for such purposes constitutes the breach of international law. According to Article 37 of the UN Charter, should the parties to a dispute fail to settle it by peaceful means, they shall refer it to the UN Security Council, which can recommend such terms of settlement as it may consider appropriate. It is necessary to mention that the parties to the dispute have no right to use force, regardless of their attempts to settle the dispute in a peaceful manner. According to Articles 24, 25, 39, 41 and 42 of the UN Charter, the application of enforcement measures is centralized and delegated solely to the UN Security Council, acting on behalf of all members of the United Nations.

The UN Security Council determines the conditions necessary to apply the enforcement measures, and the nature and scope of the actions to be applied. The decisions of the Security Council with regard to all such issues should be made by the permanent members of the Security Council solely in compliance with the rule of unanimity and are mandatory for all members of the United Nations.

Soviet international law science considered the principle of non-use of force and threat of force to be multifaceted.[1] Professor V.I. Menzhinsky believed that the prohibition mentioned in the UN Charter addresses both enforcement measures with the use of armed force and enforcement measures without the use of armed force.[2] Professor J. Pushmin has stated that the concept specified in paragraph 3, Article 2 of

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[1] Kuznecov V.I., Tuzmuhamedov R.A., Ushakov N.A. *Ot Dekreta o mire k Deklaracii mira* [From the Decree on Peace to the Declaration on Peace]. M.: *Mezhdunarodnye otnoshenija = International relations,* 1972. – P. 3–11.

[2] Menzhinskij V.I. *Neprimenenie sily v mezhdunarodnyh otnoshenijah* [Non-use of force in international relations]. M.: *Nauka = Science*, 1976. – P. 45.

the UN Charter applies equally to all disputes, i.e. to the disputes that can endanger international peace and security, and to less bitter disputes as well.[1]

It is noteworthy that Soviet international law science had deeply investigated the issues of the non-use of force and threat of force in foreign affairs in terms of the UN Charter, whose role in strengthening international law is primarily determined by the fact that this UN constituent instrument became the first to regulate the issue of enforcement with regard to foreign affairs. According to Professor G.I. Morozov, the UN Charter created all opportunities necessary for reinforcement of the international legal order and justice.[2] This paper highlights the necessity of scrupulous compliance with the principle of non-use of force specified in the UN Charter, adequately outlined and reaffirmed in the Declaration on Principles of International Law, adopted by the General Assembly of the United Nations in 1970.[3]

The following Soviet legal scholars (whose works appear in the footnotes) should be mentioned with regard to this topic: K.A. Baginian,[4] G.V. Sharmazanashvilli,[5] V.A. Romanov,[6] D.B. Levin,[7] N.A. Ushakov,[8] E.I. Skakunov,[9] V.I. Menzhinsky,[10] among

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[1] Pushmin Je.A. *Mirnoe razreshenie mezhdunarodnyh sporov. Mezhdunarodno-pravovye voprosy* [The peaceful settlement of international disputes. International legal questions]. M.: *Mezhdunarodnye otnoshenija = International relations*, 1974. – P. 11.

[2] Morozov G.I. *Organizacija Ob'edinjonnyh Nacij (Osnovnye mezhdunarodno-pravovye aspekty struktury i dejatel'nosti)* [The United Nations (General international legal aspects of structure and activity)]. – M.: IMO Publishing House, 1962.

[3] *Deklaracija o principah mezhdunarodnogo prava, kasajushhihsja druzhestvennyh otnoshenij i sotrudnichestva mezhdu gosudarstvami v sootvetstvii s Ustavom Organizacii Ob'edinjonnyh Nacij* [The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the United Nations Charter] *// Rezoljucija General'noj Assamblei OON 2625 (XXV) ot 24 oktjabrja 1970 g.* [UN General Assembly Resolution 2625 (XXV) of 24 October 1970] / Doc. OON A/RES/2625(XXV).

[4] Baginjan K.A. *Agressija – tjagchajshee mezhdunarodnoe prestuplenie (k voprosu ob opredelenii agressii)* [Aggression is the gravest crime against peace and humanity]. – M.: Publishing House AN SSSR, 1955.

[5] Sharmazanashvili G.V. *Princip nenapadenija v mezhdunarodnom prave* [The principle of non-aggression in international law]. M.: Publishing House AN SSSR, 1958; Sharmazanashvili G.V. *Ot prava vojny k pravu mira* [From the law of war to the law of peace]. M.: *Mezhdunarodnye otnoshenija = International relations,* 1967.

[6] Romanov V.A. *Iskljuchenie vojny iz zhizni obshhestva. Mezhdunarodno-pravovye problem* [Exclusion of war from the life of society. International legal problems]. – M.: Gosjurizdat, 1961.

[7] Levin D.B. *Mezhdunarodnoe pravo i sohranenie mira* [International law and the maintenance of peace]. – M.: *Mezhdunarodnye otnoshenija = International relations*, 1971.

[8] Ushakov N.A. *Nevmeshatel'stvo vo vnutrennie dela gosudarstv* [Non-interference in the internal affairs of the states]. – M.: *Mezhdunarodnye otnoshenija = International relations*, 1971.

[9] Skakunov Je.I. *Samooborona v mezhdunarodnom prave* [Self-defense in international law]. – M.: *Mezhdunarodnye otnoshenija = International relations*, 1973.

[10] Menzhinskij V.I. *Neprimenenie sily v mezhdunarodnyh otnoshenijah* [Non-use of force in international relations]. – M.: *Nauka = Science*, 1976.

others. Many of them stated that the principles specified in the Declaration, as of 1970, including the principle of non-use of force, are the peremptory norms of general international law (*jus cogens*), i.e. obligatory for all.[1]

Speaking of the Soviet science of international law in the context of this topic, it is important to mention the "Course in International Law" prepared under the guidance of the Institute of State and Law of the USSR Academy of Sciences. Part II of this book is dedicated to the main principles of modern international law. A separate chapter deals with the analysis of the non-aggression principle.[2] That chapter provides the main aspects of the formation and development of the non-aggression principle.

A landmark book by Professor G.I. Tunkin summarizes the heritage of Soviet international law science with regard to issues of war and peace. In his book, Tunkin used a systems approach to investigate the most important issue of international law and foreign affairs – the issue of correlation between law and force in the international system.[3]

In conclusion, it is necessary to say that the UN Charter, adopted by the members of the anti-Hitler coalition, formed the strong basis necessary to create a system of international legal mechanisms that could reinforce the principle of non-use of force in foreign affairs, with regard to introducing and securing the responsibility under international law for the infringement of international legal obligations primarily on the basis of the UN Charter. International judicial bodies, including those that can deal with crimes against peace, humanity (including genocide) and war crimes, play an important role in such a system of international legal mechanisms.

In fact, international rule-making followed this path, in which the UN International Law Commission prepared the draft articles on the responsibility of states and international organizations for internationally wrongful acts, the International Criminal Court was established, etc. However, these new mechanisms are unclaimed: the drafts are still projects and cannot be transformed into mandatory international instruments; the leading states, such as the USA, China, Russia and Japan, are not the parties to the Rome Statute of the International Criminal Court, etc. What is the reason for this? Probably the

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[1] Ushakov N.A. *Pravovoe regulirovanie ispol'zovanija sily v mezhdunarodnyh otnoshenijah* [Legal regulation of the use of force in international relations]. – M.: *Izd-vo IGiP RAN = Publishing House of the Russian Academy of Sciences*, 1997. – P. 10-12, 25.

[2] *Kurs mezhdunarodnogo prava: v VI tomah. T. II. Osnovnye principy sovremennogo mezhdunarodnogo prava* [Course of International Law: in VII volumes. V. II. Base principles of contemporary international law] / Bahov A.S., Bobrov R.L., Bogdanov O.V., Zhukov G.P., Levin D.B., Meleshko E.P., Molodcov S.V., Tunkin G.I., Ushakov N.A., Sharmazanashvili G.V., Shurshalov V.M. – M.: *Nauka = Science*, 1967. – P. 111–145.

[3] Tunkin G.I. *Pravo i sila v mezhdunarodnoj sisteme* [The law and the power in the international system]. – M.: *Mezhdunarodnye otnoshenija = International relations*, 1983.

members of the anti-Hitler coalition could not achieve and maintain the unity with regard to understanding and application of the international collective security system based on the UN Charter. Failure to observe the UN Charter regulations, including the principle of non-use of force and threat of force in foreign affairs, and failure to respect the power of the UN Security Council, whose activity is based on the consensus of its members, especially permanent ones, disrupt any international mechanism, no matter how perfect it is. For this reason, those states that try to discredit the UN Security Council, and the UN as well, should "change their mind," and engage in a constructive dialogue within the framework of a collective security system based on the UN Charter; while international law science can be used to help states and global management organizations to improve their performance under the conditions of globalization, within which states and nations become more interdependent and vulnerable, when facing a growing number of threats and international peace and security challenges.

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COMMENTS

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# ANALYSIS OF THE THREE FEDERAL TARGET PROGRAMS ON "THE DEVELOPMENT OF THE RUSSIAN JUDICIAL SYSTEM"

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**Abstract:** Since the start of the new century, for further implementing judicial reform, the Russian government has promulgated in succession the three Federal Target Programs on "The Development of the Russian Judicial System for 2002–2006, 2007–2012 and 2013–2020". Under the guidance of these programs, the Russian Federation has invested a large amount of money, issued or modified several laws, and implemented a series of measures in judicial reform, pursuing an independent judiciary, improving the quality of justice, establishing judicial credibility and the rule of law in the country. However, at the same time many problems, such as fragile judicial independence, the prevalence of judicial corruption and weak judicial culture, still exist in the judicial system. From this analysis, for the successful completion of judicial reform, not only change at the institutional and technical levels is needed, but also change at the concept and behavioral levels is required. And for Russia, the reshaping of the legal culture is essential. Judicial reform is a systemic project which is closely tied to politics, economy and culture.

**Keywords:** Russian Federation, Federal Target Program, judicial reform, independent judiciary, rule of law

With the end of the Soviet Union, the Russian Federation inherited Resolution No. 1801-1 "Concept of Judicial Reform in the Russian Soviet Socialist Federal Republic" (the Concept) issued by the Supreme Council of the Russian Soviet Socialist Federal Republic on October 24, 1991. The Concept is regarded as the starting point of judicial reform in Russia. Under its guidance, Russia carried out a series of reform measures. Since the start of the new century, in order to further deepen judicial reform, the Russian federal government has promulgated in succession the three Federal Target Programs on "The Development of the Russian Judicial System for 2002–2006, 2007–2012 and 2013–2020". What are the Federal Target Programs? Why has Russia promulgated these three? What role do they play in Russia's judicial reform? At present, what kinds of main problems still exist in Russia's judiciary? What inspiration and thinking will an analysis of these three Federal Target Programs provide us? These are the questions examined in this paper.

## I. SOCIAL BACKGROUND, MAIN CONTENT AND VALUE ORIENTATION OF THE THREE FEDERAL TARGET PROGRAMS

Russian Federal Target Programs aim at solving the systemic problems in the state, economic, environmental, social and cultural development of the Russian Federation with definite tasks, allocated resources and time frames. Federal Target Programs are one of the most important means to achieving national policy and to actively promoting social and economic development.[1] "Federal Target Programs are the efficient instrument to realize the state economic and social policy, especially when solving long-term tasks and realizing large infrastructure projects."[2] The Ministry of Economic Development of the Russian Federation includes the Department for State Investment Programs and Capital Investment, which is specifically in charge of the implementation and supervision of the Federal Target Programs. The Russian Federation established a dedicated official website named Russian Federal Target Programs (fcp.economy.gov.ru), which publishes information on the federal budget, targets and implementation.[3] The content of Federal Target Programs involves, among other categories, high-tech development, housing, transportation infrastructure, the Far East, rural development, social infrastructure, security, regional development and national institutional development. The Federal

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1 Federal Target Programs, http://www.programs-gov.ru (in Russian) (last visited February 9, 2017).

2 Federal Target Programs, http://www.economy.gov.ru/wps/wcm/connect/economylib4/en/home/activity/sections/ftp/index (last visited February 9, 2017).

3 Internet project "Federal Target Programs of Russia", http://fcp.economy.gov.ru/cgi-bin/cis/fcp.cgi/Fcp/ViewHtml/View/2014/contacts. htm? page_title =% CE% 20% CF% D0% CE% C5% CA% D2% C5 (in Russian) (last visited February 9, 2017).

Target Program on "The Development of the Russian Judicial System" belongs to the national institutional development category, reflecting the national judicial policy which corresponds with the national strategic program.

Since the start of the new century, the Russian Federation has launched three Federal Target Programs on "The Development of the Russian Judicial System" aimed at guiding judicial reform and development of the judicial system. This action is worthy of attention. At the end of 1991, after the collapse of the Soviet Union, and especially after the entry into force of the 1993 Constitution of the Russian Federation, the Russian state institutions implemented the principle of separation of powers. The Federal Assembly exercises the legislative power, the federal government the executive power and the federal courts the judicial power. The Russian federal judicial system is the sum of all the courts.[1] Thus, the Federal Target Programs on "The Development of the Russian Judicial System" in fact aim at the reform and development of the Russian court system. Since they are closely related to the courts, this also involves the content of the work of the court police and forensics departments. An analysis of these Federal Target Programs has great significance for our understanding of and research into the situation and reform trend in Russian courts since the start of the new century.

On October 24, 1991, President Boris Yeltsin systematically and openly raised the conception of judicial reform in Russia. On the same day, the "Concept of Judicial Reform in the Russian Soviet Socialist Federal Republic" was approved by the Russian Supreme Soviet. Thus the Concept is seen as the symbol kicking off judicial reform in Russia. The document declared, "Russia will build independent judicial power to protect human rights, ensure social stability and build a democratic, rule of law state."[2] After more than ten years of evolution, the Russian judicial authority established a system of three branches: the Constitutional Court of the Russian Federation, the ordinary court system headed by the Federal Supreme Court and the Federal Arbitration Court System headed by the Supreme Arbitration Court. Russia passed a series of federal constitutional laws on the Constitutional Court, Supreme Court, Supreme Arbitration Court, the status of judges, the court system, civil procedure and criminal procedure, which are the outcomes of the judicial reform and an important basis for deepening judicial reform. In 2000, at the 5th Conference of All Russian Judges, President Vladimir Putin declared that "in the basic parameters, the conception of judicial reform is realized".[3]

However, persistent budget deficits resulted in insufficient material technical resources and support for the courts, which hindered the proper functioning of the

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[1] Liu Xiangwen & Song Yafang, *Research on the Constitutional System of the Russian Federation*, Law Press, 1999, pp. 240–241.

[2] Hao Yuwei, *Analysis of the Path, Performance and Problems of Russian Judicial Reform,* Russian Studies, 2002 (3).

[3] Xiao Huizhong, *Legal Construction in Russia since 90 Years*, Russian Studies, 2003 (3).

judicial system. Courts could not take advantage of modern information technology systems and document handling, which resulted in violation of trial periods, thus delay, which in itself has a negative effect on the final result of the work of the courts. Courts had to postpone the trial period and reduce the number of cases they accepted. Such a situation makes the harmed rights and legitimate interests of citizens unrecoverable, which reduces citizens' confidence in the judiciary, so that they are not willing to bring a case to court. This narrows the space for upholding individual legal rights. What is more, the actual number of federal court judges did not match the demand. One result of the situation was that after Russia joined the Council of Europe, thousands of Russian citizens brought suit against the Russian judiciary at the European Court of Human Rights. The deterioration in the situation of the courts transformed a financial issue into a political issue. The budgetary problems caused by the lack of funding for the courts created countless problems for citizens, who lost confidence not only in the judiciary, the state and their national leaders, but also in the authorities that are supposed to seek to safeguard the legitimate interests of citizens.[1]

In 2001, President Putin opened a new round of legal reform, mainly because of the lack of implementation of court decisions and the financial shortages relating to legal reform.[2] In this social context, the Russian federal government enacted The Federal Target Program on "The Development of the Russian Judicial System for 2002–2006" (Program 1). The main goal of Program 1 was to develop and consolidate the judicial system as an independent branch of state power, so as to create the conditions for the judicial system to safeguard rights and freedoms. Its main tasks were to improve judicial authority; enhance the independence and autonomy of courts and judges; improve laws and regulations on the judicial system; support personnel for the judicial system; guarantee the material and technical requirements for the judicial system, including information technology systems; enhance the research capacity of the judiciary; and create vocational training and retraining systems for judges and court staff.[3]

After implementation of the first five-year Federal Target Program, the President's Address to the Federal Assembly "Russia Must be Strong and Competitive" pointed out that the modernization of the judicial system had taken a substantial step forward. Russia had enacted most of the necessary laws and other normative legal documents,

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1 Government Decree of the RF from 20.11.2001 N 805 On the Federal Target Program "Development of the Russian Judicial System for 2002–2006", www.consultant.ru (in Russian) (last visited February 9, 2017).

2 Xiao Huizhong, *Legal Construction in Russia since 90 Years*, Russian Studies, 2003 (3).

3 Government Decree of the RF from 20.11.2001 N 805 On the Federal Target Program "Development of the Russian Judicial System for 2002–2006", www.consultant.ru (in Russian) (last visited February 9, 2017).

which not only related to changes in court organization and working conditions, but also involved changes in the judicial protection of individual rights and the accessibility of the procedures.

But at the same time polls showed that public trust in the judicial system was low, the implementation rate of court decisions did not exceed 52 percent[1] and there were many problems associated with the judicial system that had not been resolved. The degree of protection and equipment of the court buildings was not sufficient to establish the necessary IT infrastructure. In the court buildings, the courts were not separated from the service areas (offices for judges and administrative staff). Therefore, the protection of court personnel and at the same time allowing free public access to the courts could not be guaranteed. Many court buildings did not have a specific court hall for trial. In some locations, part of the court buildings was occupied by the court police. This entire situation severely limited access to justice. An additional problem was that a large number of judges and court administrators did not have housing or had clear need to improve their housing conditions.

To further implement the judicial reform and improve the efficiency of the Russian federal judiciary, the Russian federal government decided to approve The Federal Target Program on "The Development of the Russian Judicial System for 2007–2012 (Program 2). The goal of Program 2 was to improve the quality of justice and raise the level of judicial protection of the rights and legitimate interests of citizens and organizations. The tasks of Program 2 were to guarantee the openness and transparency of the judiciary; enhance the credibility of the judicial system by improving the efficiency and quality of hearing cases; create the necessary conditions for trial and ensure accessibility to the courts; safeguard the independence of judges; and improve the degree of enforcement of court judgments. Program 2 was designed to enable Russia to meet international standards of justice and approach new tasks through IT development.[2]

Document No. 39 of the Presidium of the Judges Council of the Russian Federation states that Program 2 was meaningful not only for improving the material technical level of the courts, but also for creating the conditions for accessibility to the courts, openness and transparency, while obeying the constitutional principle of the independence of judges.[3]

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[1] Government Decree of the RF from 21.09.2006 N 583 On the Federal Target Program "Development of the Russian Judicial System for 2007–2012", www.consultant.ru (in Russian) (last visited February 9, 2017).

[2] *See id*.

[3] D.A. Krasnov, *Ob itogah realizacii federal'noj celevoj programmy «Razvitie sudebnoj sistemy Rossii» na 2007 - 2012 gody i zadachah po vypolneniju meroprijatij federal'noj celevoj programmy «Razvitie sudebnoj sistemy Rossii» na 2013 - 2020 gody* [On the results of the implementation of the Federal Target Program "Development of the Russian Judicial System" for 2007–2012, and tasks for the implementation of the activities of the Federal Target Program "Development of the Russian Judicial System" for 2013–2020], http://oktab.vol.sudrf.ru/modules.php? name = sud_community & id = 89 & cl = 1 (in Russian) (last visited May 4, 2014).

To implement Presidential Decree No. 596 (May 7, 2012) Long-term Economic Policy of the State, Presidential Decree No. 601 (May 7, 2012) The Basic Direction of Improving the Management System of the Russian Federation, and Concept for the Long-Term Social and Economic Development of the Russian Federation for the period until 2020 (Regulation of the Government of the Russian Federation No. 1662-r, November 17, 2008), the favorable experience with the implementation of Program 1 and Program 2 confirmed the effectiveness of resolving the problems in the judicial system with the method of the Federal Target Programs. In order to maintain the continuity of implementation of Federal Target Programs, their use was considered the most reasonable method in the period 2013–2020 for contributing to a judicial system that meets the requirement of a rule of law country.[1] In this social context, on December 27, 2012, the Russian government approved The Federal Target Program on "The Development of the Russian Judicial System for 2013-2020 (Program 3). The goal of Program 3 is to improve the quality of justice and the judicial protection of the rights and legitimate interests of citizens and organizations. Its tasks are to protect the openness and accessibility of justice; create the necessary conditions for the implementation of the trial; protect the independence of the judiciary; build an efficient execution system so as to improve the openness and accessibility of the enforcement system; and modernize the forensics activities of the National Forensics Institution of the Ministry of Justice of the Russian Federation.[2]

Throughout the three Federal Target Programs, one can clearly see that their value is the same as that of the Concept. That is to say, the main line of court reform in Russia is the pursuit of an independent judiciary, the improvement in the quality of justice, the strengthening of public confidence in the judiciary, the protection of the rights and legitimate interests of citizens and legal persons, and the establishment of the rule of law in the country.

## II. PROGRESS OF REFORM AND MAJOR PROBLEMS IN THE FEDERAL COURT SYSTEM

### A. Progress of judicial reform

As regards the federal financial allocation of funds, in order to effectively improve the financial situation of the courts, the three Federal Target Programs formulated each year's allotment as presented in the following tables.

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[1] Government Decree of the RF from 27.12.2012 N 1406 On the Federal Target Program "Development of the Russian Judicial System for 2013–2020", www.consultant.ru (in Russian) (last visited February 9, 2017).

[2] *See id.*

Table 1. Funding for the Judiciary

| 2002–2006 Sum | 2002 | 2003 | 2004 | 2005 | 2006 |
|---|---|---|---|---|---|
| 44,865.6 | 7,992 | 8,463.2 | 8,387.5 | 9,303.1 | 10,719.8 |

(millions of rubles)

Table 2. Funding for the Judiciary

| 2007–2012 Sum | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 |
|---|---|---|---|---|---|---|
| 60,723.9689 | 6,379.7 | 8,937.1 | 10,152.5 | 10,930.33 | 13,531.5032 | 10,792.8357 |

(millions of rubles)

Table 3. Funding for the Judiciary

| 2013–2020 Sum | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
|---|---|---|---|---|---|---|---|---|
| 90,559.33 | 10,000 | 10,000 | 10,000 | 10,650 | 11,363.55 | 12,147.63 | 12,815.75 | 13,582.4 |

(millions of rubles)

The above data is taken from the three Federal Target Programs. The data show that, in order to effectively change the status of the Russian judiciary and to continue deepening judicial reform, the Russian Federation invested and plans to continue to invest large sums of money.

As regards material and technical security, Program 1 focused on raising the salaries of judges and court staff. In 2002–2006, for increases in salaries Program 1 planned 28,167 million rubles, which was 62.78% of total funds (44,865.6 million rubles). Program 1 stipulated that in 2006 the average monthly salary of judges would reach 28,500 rubles. According to statistics from the Ministry of Finance, by the end of 2005 the average monthly salary of a judge reached 59,200 rubles, which is significantly

more than the set target. The salary of judges, court staff and the staff of the Judicial Department at the Supreme Court of the Russian Federation increased, although the number of personnel continued to grow.[1]

Program 2 and Program 3 focused on state infrastructure investment. Under Program 2, the amount of capital construction funds was 50,751.795 million rubles, which was 83.52% of the total amount (60,723.9689 million rubles). Under Program 3 infrastructure investment was 68,400.81 million rubles, which was 75.53% of the total amount (90,559.33 million rubles). The capital investment was mainly for new construction, reconstruction or the purchase of office buildings for courts, forensics centers and court police, and for the purchase of housing for judges. Other expenses were mainly for information technology systems for the court system, the court police system and forensics institutions, so as to protect the openness and transparency of the judicial system.

In regard to personnel, Program 1 was designed to focus on resolving staffing issues in the court system and, according to the first article of its annex, to increase the number of judges and court administrators in the period 2002 to 2006 by a planned 28,790 persons in total.[2] One Russian scholar wrote a summary on the implementation of Program 1 and concluded that when Program 1 was nearly completed in 2006, the task of increasing the number of judges and court staff had been fulfilled. Before turning to the next issue, it should also be mentioned that the establishment of the Justice of the Peace allows citizens to obtain easier access to judicial relief.[3]

In regard to the legal system, according to the information from the website Consultant Plus (www.consultant.ru), since 2000 Russia has issued many federal constitutional laws and federal laws related to the federal court system, for example the laws "On Increasing the Number of Judges and Staff of the Arbitration Courts" (March 28, 2001), "On Arbitration Jurors of the Arbitration Court of Federal Subjects" (May 30, 2001), "Code of Criminal Procedure of the Russian Federation (December 18, 2001), "On Institutions of Judge Group" (March 14, 2002), "Law on Lawyers of the Russian Federation" (May 31, 2002), "Code of Arbitration Procedure of the Russian Federation" (July 24, 2002), "Code of Civil Procedure of the Russian Federation" (November 14, 2002), "On the Jury of the General Court" (August 20, 2004), "On Protection of Victims, Witnesses and other Participants in Criminal Procedure" (August 20, 2004), "Code on Performing Procedure" (September 14, 2007), "On Getting Information on Court Work" (December 22, 2008),

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1 *See id*.

2 Government Decree of the RF from 20.11.2001 N 805 On the Federal Target Program "Development of the Russian Judicial System for 2002–2006", www.consultant.ru (in Russian) (last visited February 9, 2017).

3 U.K. Krasnov, *Development of Judicial Reform in Russia from 2002 to 2006: A Summary on the Implementation of the Federal Target Program*, Jinling Law Review, 2010 (Spring vol.).

"Disciplinary Law of Court Acts" (November 9, 2009), "On Mediation Procedure" (July 27, 2010), "On General Courts of the Russian Federation" (February 7, 2011), "Constitutional Amendments on the Supreme Court and the Procuratorate of the Russian Federation" (February 5, 2014), "On the Supreme Court of the Russian Federation" (February 5, 2014 ), etc. These laws protect and improve the work of the courts in terms of entities and procedures.

**B. The main problems in the Russian court system**

The independence of the judiciary is fragile. Russia has established the mechanisms of the separation of powers and advocated the independence of the judiciary, established a new court system including the Constitutional Court, and since the start of the new century safeguarded the funding, personnel, material and technology of the courts by means of the Federal Target Programs for improving the quality of justice, establishing judicial credibility and promoting the development of judicial authority. Thus it is undeniable that Russia has made significant progress in terms of judicial independence; but it is too early to say that Russia has achieved a truly independent judiciary.[1] A firm financial base is a prerequisite for any authority intended to operate with independence. According to Article 124 of the Constitution of the Russian Federation, the funds provided to the courts must be fully independent. To make this constitutional principle a reality, the Law on the Judicial System of the Russian Federation (1996) states that the standard of court funds should be stipulated by special law. However, up to now this standard has not been determined. Existing budget law violates the fundamental law, which obviously makes the independence of the judicial system fragile, as the courts must fully comply with the will of the government or the Ministry of Finance.[2]

Judicial corruption is prevalent. Although there are many measures in the three Federal Target Programs aimed at curbing judicial corruption, such as increasing the salaries of judges and providing housing (Program 1); mandatory procedures for judges to read out loud all informal requests before hearing a case; prohibiting hearing cases in which judges and lawyers have marriage bonds, kinship or affinity; setting up reception centers in all the ordinary district courts in order to protect citizens' accessibility to justice, shorten queuing time in court, allow submission of complaints on all workdays and receiving feedback, so as to avoid communication between the judges and the parties before the hearing of a case; and the mandatory declaration of income, assets

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[1] Cui Haoxu, *Evaluation and Analysis of the Russian Judicial Reform*, Research on Russian laws (first series), Press of China University of Political Science and Law, January 2013, p. 254.

[2] Tereschin, *Contemporary Russian Judicial Reform of Two Decades: Achievements, Mistakes and Prospects*, Research on Judicial Reform in Transition Countries, Proceedings of the International Conference, October 2012, Zhengzhou, China, p. 2.

and debts of judges (Program 2). But in Russia, judicial corruption has become an acute problem. Firstly, there is personal corruption, which means a judge commits an act of bribery, extortion or demonstrates favoritism; secondly, for political reasons or due to the influence of the people holding economic power, judges cannot enforce the law justly.[1]

Judicial culture is underdeveloped. An antiquated philosophy of judicial decision making still entangles and dominates the discourse of justice in Russia, and in other post-communist countries, and even enhances the existing features of formalism. Deep, ancient legal culture tends to be dressed up with new legal vocabulary, and thus, in some cases, even in some ridiculous way, to influence legal thought.[2] The judge is primarily considered to be engaged in a kind of mechanical work. The quality of judicial reasoning and legal reasoning is extremely poor. A common problem in post-communist countries is the inability to make creative judicial decision making.[3] Judges of civil law, including judges in post-communist countries, work on the basis of a strict, logical, law-abiding attitude, bureaucratic order, and specialization, which is similar to the judicial culture associated with the authority of the national bureaucratic conception.[4] Law has not been internalized in the minds of the professionals who apply it; therefore, Russia has not yet embarked upon the road leading to a rule of law culture.[5]

## III. INSPIRATION AND REFLECTION FROM ANALYZING THE THREE FEDERAL TARGET PROGRAMS

Admittedly, since the start of the new century, through the use of the method of Federal Target Programs to guide judicial reform, the Russian Federation has made a series of achievements. For Russian courts, not only the financial, personnel, material and technical support have been significantly improved, but also the judicial proceedings and the judicial legal system have been improved. With the deepening of judicial reform, judicial independence is gradually strengthened, the quality of justice is gradually improved and judicial credibility is gradually established. But there are problems, such as fragile judicial independence, the prevalence of judicial corruption and weak judicial

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1 Lu Nanquan, *In Russia it is Difficult to Curb Corruption*, Economic Observer, 048 edition, September 30, 2013.

2 Zdenek Kuehn, *Worlds Apart: The Judicial Culture in Western and Central Europe at the Onset of the European Enlargement*, Gianmaria Ajani & Wei Leijie, *Legal Transformation and Culture in the Period of Transition: Considering Legal Transplantation of post-Soviet Countries*, Tsinghua University Press, 2011, pp. 357–358.

3 *See id*., p. 367.

4 *See id*., p. 371.

5 Marina Kurkchiyan, *Impact of Transformation on the Role of Law in Russia*, Fred Bruinsma & David Nelken, *Pursuit of Legal Culture*, Tsinghua University Press, 2011, p. 126.

culture – all still plague the Russian judiciary. Clearly, to realize real independence of the judiciary is not an easy task, it is one which requires multi-party and long-term effort.

To begin with, judicial reform itself requires not only change in the organizational structure at the legal level and in funding at the material level, but also change in the intrinsic support at the ideological level and implementation at the behavioral level. First, change at the institutional level is necessary for judicial reform. The Concept set the general direction of Russian court reform, then the three Federal Target Programs continue and further develop the reform. Under the guidelines of the Concept, Russia established a new court system and judicial mechanisms. The Federal Target Programs are the further improvement of the court system and judicial mechanisms, along with the laws and legal documents related to judicial reform mentioned earlier. Second, change at the material level is necessary for judicial reform. The Federal Target Programs contain basic information, characteristics of problems, indexes and coefficients of tasks, specific measures, financial support, implementation mechanisms and evaluation of social and economic benefits. All the contents of Federal Target Programs, including allocated funding and detailed appendixes, are open to the public. The Russian government adjusts the funding according to the financial and other circumstances. The public observes the implementation of measures. Third, change at the ideological level is required for court reform. In Program 2, there are indicators as to the degree of trust and distrust that citizens have in the judiciary as well as the degree of satisfaction expressed by citizens with the work of the courts. Appendix 2 of Program 2 shows the percentage of citizens who were not satisfied with the courts' work, from 27% in 2006 to 3% in 2012; while Appendix 1 of Program 3 shows that the percentage of citizens who were not satisfied with the courts' work was 19.1% in 2012. Clearly, the task of increasing the degree of trust in the work of the courts was not achieved. Actually, this task is not easy to achieve, because it relates to the ideological level, where remodeling the judicial culture of legal professionals is needed. Fourth, the behavioral level is the ultimate expression of the first three levels of court reform. In Program 2, one of the most important indicators is the implementation rate of court decisions. Program 3 also has an indicator as to the degree of satisfaction with the implementation of court decisions. For improving the quality of justice and establishing judicial credibility, what is needed is to erect office buildings and issue legal documents for the creation of the material, institutional and procedural conditions for an independent and impartial trial. What is more important is that a fair judgment can be implemented effectively. In order for that, the rights and legitimate interests of people must be safeguarded.

Continuing then, judicial reform is a systemic project which is closely related to politics, economy and culture. First, political stability is the basic condition for the ongoing court reform. Yeltsin proposed the Concept, established the judicial power through the Constitution and issued laws on the Status of Judges, the Constitutional

Court, the Court of Arbitration, the Court System, the Court Police, the Judicial Department at the Supreme Court, the Justice of the Peace, the Military Courts and other laws which are important for the new court system. This was the initial stage of judicial reform. In the Address to the Federal Assembly of April 3, 2001, President Putin determined the judicial reform to be the primary task of the Russian government. In order to restore the reputation of the judiciary and its status in society, Putin instructed Deputy Prime Minister Kasyanov to set up a working group on judicial reform, which was in charge of drafting relevant reform proposals and gradually implementing the reform measures.[1] In the Address to the Federal Assembly of 2008, Prime Minister Medvedev described the direction and goals of the judicial reform in detail. He proposed that in the four years to come one of the main tasks of the Russian government was to deepen judicial reform, protect the relative independence of the judicial system and eradicate corruption in the judiciary.[2] In November 2012, President Putin chaired a meeting on the relocation of the federal judiciary; in June 2013, during his attendance at the St. Petersburg International Economic Forum, Putin recommended merging the Supreme Court and the Supreme Arbitration Court of the Russian Federation; on February 5, 2014, Russia passed a constitutional amendment for the formal merger of the Supreme Court and the Supreme Arbitration Court. Thus successive Presidents of the Russian Federation launched court reform from the top design level for the pursuit of judicial independence which is the political basis for the continuation of judicial reform.

Second, economic stability is a necessary condition for the ongoing court reform. From 1991 to 1998, that is to say for seven consecutive years, Russia was in economic recession and the central financial allocations were often not in place, which resulted in the judicial system plunging into financial crisis. Reform still existed – on paper. The reality was far different. The goals of reform could not be achieved, and this diminished the prestige of the courts, and the law. Then, in 1999 the Russian economy began to recover. Corresponding to the improving developments in the economic situation, the financial support for court reform also experienced a turning point, for the better. Thus, experience shows that the pace of economic development significantly affects the process of judicial reform.[3] Beginning in 2000 and continuing for eight consecutive years the Russian economy achieved high growth rates. The average annual growth rate of GDP in that period was approximately 7%.[4] Feeling the influence of the global financial crisis in 2008, in 2009 Russian economic growth slumped. But in 2010–2012 the growth rate

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1 Cui Haoxu, *Putin's Judicial Reform*, New Vision, 2008 (5).

2 *See supra* note 16, p. 249.

3 Cheng Lizhuang, *Research on Jurisdiction of the Russian Federation*, doctoral dissertation, Chongqing University, 2008, p. 126.

4 Zheng Wenyang, *Biography of Putin: He was Born for Russia,* World Press, 2012, pp. 201–202.

was 4.3 %, 4.3 % and 3.4% respectively.[1] Clearly, the steady economic improvement was a necessary condition for the smooth implementation of the Federal Target Programs, because each specific measure of judicial reform requires funds, otherwise reform action is just empty talk.

Third, cultural reshaping is the inner impetus for the ongoing judicial reform. In the process of social change, transformation, the Russian political elites and liberals attempted to build a development path with its own particular characteristics for the rule of law in the country. They absorbed the rational core of Western rule of law culture while at the same time taking into account Russia's own special history and unique ethnic culture. They initially established a government-led development path for the rule of law, which at its core had the Western concept of the rule of law along with the reasonable component of control measures of Eastern authoritarianism.[2] The conflicts between cultures and the fusion of cultures promote the development of the judicial reform. In Russia, this reform is sought through the implementation of the Federal Target Programs by which governmental power is used to promote the development of the judiciary. However, with twenty years of radical reform, public authority, including the judiciary, has not yet established a positive image in the social consciousness.[3] Equality, fairness, justice, faith in law and abidance by law, such spirit of the rule of law is not recognized by the mainstream in Russia. On the contrary, extrajudicial privilege, latent rule, avoidance of the law and belief in authority are the Russian cultural norm. Although Russia has constantly introduced laws, the faith in law has weakened; although Russia has a more complete legal system, Russians do not trust their laws and courts. "Legal nothingness" is widespread. In the past ten years, Russia has emphasized the construction of a formal legal system, which has played an irreplaceable role in a stable social order, but this is not enough.[4] For Russia, it is the reshaping of the legal culture that is the essence of judicial reform, and the biggest difficulty lies here.[5]

Russian judicial reform is far from completion. Huge efforts in the coming years need to be made in the following key areas: optimization of jurisdiction and existing court functions; formalization of courts and enhancement of judicial credibility; modernization of the judicial system; development of procedural rules; improvement in the legal status

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1 Luo Yingjie, *Russia Today: Interpretation from a multi-Perspective*, Digest for Leadership, 2014 (11).

2 Liu Hongyan, *Introspection and Conjunction: Change and Mold of Contemporary Russian Legal Order*, 2011 (3).

3 *See supra* note 17, p. 3.

4 Wei Jianguo, *Reform of Systemic Ethics and Modernization of the Rule of Law in Russia: With the Clue of Trust*, Studies on Russia, Central Asia and East Europe, 2010 (5).

5 *See supra* note 16, p. 256.

of judges; solving the problems of legal status and implementation of judicial documents.[1] These undertakings lie at the institutional, material, conceptual and behavioral levels. It is not enough just to promulgate and implement Federal Target Programs. Judicial reform needs comprehensive support in society, politics, economy and a rule of law culture for the "true guarantee of fairness and effectiveness of court judgments".[2]

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# A NEW LEGAL INSTRUMENT TO ENSURE EFFECTIVE EUROPEAN STANDARDS ON ENFORCEMENT OF JUDICIAL DECISIONS: ADOPTION OF A GOOD PRACTICE GUIDE BY THE COUNCIL OF EUROPE*

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**Abstract:** Twenty years ago the Council of Europe determined to implement action to improve the enforcement of judicial decisions in the light of fundamental rights guaranteed by the European Convention on Human Rights of November 1950. Alongside the case law of the European Court of Human Rights, its activities in this area have recently taken tangible form in the adoption, at the CEPEJ's plenary session on 11 December 2015, of the *Good practice guide on enforcement of judicial decisions*. This *Guide* is a new legal instrument to ensure effective European standards on enforcement. It aims to highlight solutions applied in Member States – concerning enforcement procedures and stakeholders in the enforcement process – which give satisfaction in terms of respecting both private and general interests, while promoting the values on which the Council of Europe is based. This *Guide* also promotes the use of common legal terminology to describe enforcement procedures.

**Keywords:** European standards, European law, legal instruments, enforcement of judicial decisions, good practice guide, the Council of Europe

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* The *Good practice guide on enforcement of judicial decisions* (CEPEJ (2015) 10, 11 December 2015), presented here, originates in a draft commissioned by the Secretariat of the European Commission for the Efficiency of Justice (CEPEJ), to the International Union of Judicial Officers (UIHJ), who asked us to write the draft and present it to the experts of the Working Group on quality of justice of the CEPEJ (CEPEJ-GT-QUAL) in 2015. We express our sincere thanks to the Secretariat of the CEPEJ and to the UIHJ for their confidence. Some aspects of the plan and some developments of the (draft) *Good practice guide on enforcement of judicial decisions* have been retained in this study.

Twenty years ago the Council of Europe[1] determined to implement action to improve the enforcement of judicial decisions in the light of fundamental rights guaranteed by the European Convention on Human Rights of November 1950.[2]

The case law of the European Court of Human Rights is the most well-known aspect of this action.[3] Concerning this case law, in the leading case *Hornsby v. Greece* of 19 March 1997[4] the Court established, implicitly, the existence of a European right to the enforcement of judicial decisions within a reasonable time, by linking this right to the requirements of the right to a fair trial, guaranteed on the basis of Article 6 of the European Convention on Human Rights. Among the many subsequent cases confirming the approach adopted in *Hornsby*, *Lunari v. Italy* of 11 January 2001[5] is particularly important, because the Court affirms for the first time, expressly, the existence of a "right to the enforcement of judicial decisions".

However, as important as this case law is, the action of the Council of Europe goes further.

Alongside the case law of the European Court of Human Rights, the Council of Europe's activities in this area have taken tangible form in the Recommendation Rec (2003) 17 of the Committee of Ministers to Member States on enforcement, adopted on 9 September 2003 at the 851st meeting of the Ministers' Deputies.[6] The aim of the Recommendation was to set European standards with regard to enforcement in civil and commercial proceedings. It comprises rules intended to enhance the efficiency of the enforcement process and rules relating to the status and the functions of "enforcement agents". More generally speaking, it provides a general framework to which the Council of Europe Member States are invited to refer when drawing up or amending their national legislation on enforcement.

In the wake of the Recommendation, the European Commission for the Efficiency of Justice (CEPEJ), whose statute includes the aim of facilitating the implementation of the Council of Europe's international legal instruments concerning efficiency and fairness of

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1 http://www.coe.int/en/web/portal/home (in English) or http://www.coe.int/ru/web/portal/home (in Russian).

2 G. Payan, *"Приставы и правовое Государство: установление общих принципов исполнения судебных решений в Африке и в Европе"* [Bailiffs and legal state: the general principles of the establishment of enforcement of judgments in Africa and in Europe], Практика исполнительного производства [Practice of the executive procedure], №1, 2013, p. 9.

3 The judgments of the European Court of Human Rights are available on its website at the following address: http://hudoc.echr.coe.int/eng# (in English) or http://hudoc.echr.coe.int/rus# (in Russian).

4 Req. n°18357/91.

5 Req. n°21463/93.

6 The Recommendation Rec (2003) 17 of the Committee of Ministers to Member States on enforcement can be found on the CEPEJ website: http://www.coe.int/t/dghl/cooperation/cepej/execution/default_EN.asp?.

justice, added enforcement of judicial decisions to the list of its priorities. In practice, this resulted in the preparation in December 2009 of the *Guidelines for a better implementation of the existing Council of Europe Recommendation on enforcement* (Guidelines).[1]

The goal of the Guidelines was to ensure the effectiveness of the European enforcement standards set out in the Committee of Ministers' Recommendation Rec (2003) 17. For this purpose, they look at the issue of enforcement from an integrated, all-embracing viewpoint, bringing together into a general discussion the principles governing enforcement procedures and those that are of interest to the professionals responsible for implementing them.

To date, no Council of Europe Member State has yet complied with all of the Guidelines. In response, the CEPEJ and its Working Group on the Quality of Justice decided to take a new step in their work dealing with the issue of enforcement by drawing up a *Good practice guide on enforcement*.

Having devised an "ideal enforcement system" intended to inspire the Council of Europe Member States, the aim now is to work towards the acceptance in domestic legal systems of the principles and solutions presented in the CEPEJ Enforcement Guidelines of 2009.

For this purpose, the CEPEJ adopted, at its plenary session on 11 December 2015, a *Good practice guide on enforcement of judicial decisions* (Good Practice Guide).[2] Although devoid of binding nature, this new legal instrument provides a framework within which Member States of the Council of Europe can refer when developing or modifying their national laws on enforcement. An annex to the Guide contains a number of national examples to demonstrate "good practice" in developing and refining the analysis of comparative law.[3]

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[1] CEPEJ, *Guidelines for a better implementation of the existing Council of Europe Recommendation on enforcement*, CEPEJ (2009), 11REV2, 17 December 2009. The Guidelines can be found on the CEPEJ website, at the aforementioned address. About these Guidelines: Union internationale des huissiers de justice, *Les Lignes directrices de la CEPEJ sur l'exécution : Un modèle pour le monde ?*, Institut Jacques Isnard *Juris-Union* n°5, février 2011, p. 125.

[2] CEPEJ, *Good practice guide on enforcement of judicial decisions*, CEPEJ (2015) 10, 11 December 2015. This Guide, which can also be found on the CEPEJ website at the aforementioned address, was drafted on the basis of the "UIHJ Grand Questionnaire" (regularly updated statistical data collected from the professional organizations of judicial officers and related professionals of the 88 member countries of the UIHJ, divided into 26 themes and 350 questions covering the various aspects of the profession of enforcement agent and civil enforcement proceedings). Also used as bases of work, the edition 2014 of the Enforcement report in the member countries of the UIHJ (*Efficiency of the enforcement of judgments in the world: Report on the enforcement in the member countries of the UIHJ - Data 2014*, UIHJ-GT-EXE-final, 17 November 2014, p. 127) and N. Fricero, F. Andrieux and J. Isnard, *UIHJ Global Code of enforcement* (UIHJ Publishing, June 2015, p. 161).

[3] More specifically, in the annex to the Good Practice Guide questions are examined, in turn, relating to: the enforceable titles on which the enforcement procedure is based; the scope of the functions of enforcement agents; the statutory guarantees of enforcement agents; information for the parties on the enforcement process; the intelligibility of the applicable legislation and the clarity of the procedural costs, as well as the search for information on the debtor's assets.

The Guide does not aim to create new enforcement standards at the Council of Europe level. It just aims to highlight solutions applied in Member States.

In this document, the term "good practice" should be understood as follows. The word "practice" is used in a broad sense. It refers to various sources of law (laws, regulations and case law) and not just to professional practices. The adjective "good" refers to approaches adopted in one or more Member States, which give satisfaction in terms of respecting both private interests (particularly those of creditors and debtors) and general interests (such as public order and economic prosperity). More specifically, the term "good practice" is used here to designate national approaches which are entirely in keeping with the principles and objectives on which the Guidelines on enforcement are based. These approaches have currently been adopted to varying extents across Europe. If they were adopted in all the Council of Europe Member States, this would do much to increase the effectiveness of national enforcement systems while promoting the values on which the Council of Europe is based. Consequently, the Guide should not be considered separately from the Guidelines on enforcement and the Recommendation on enforcement of the Committee of Ministers which preceded it. It pursues the same aim of improving the quality of enforcement of judicial decisions in the Council of Europe and applies to the same field. Firstly, it relates only to civil proceedings, and not to criminal and administrative cases. Secondly, the good practices relate to the enforcement both of judicial and of extrajudicial decisions (such as a notarized instrument).

The choice of solutions highlighted in the Good Practice Guide was directed by the objective of maintaining a balance between the rights of creditors and debtors. The good practices described in this document can be divided into four main categories. The first derives from the assertion that enforcement agents should have full control of enforcement operations **(I)**. The second is a general recommendation to the Council of Europe Member States to ensure that the enforcement process is understood by all the parties **(II)**. The third relates to improving the quality of enforcement procedures and the need for regular quality control **(III)**. The fourth deals with promoting the use of common legal terminology to describe enforcement procedures **(IV)**.

## I. ENTRUSTING THE CONDUCT OF ENFORCEMENT PROCESSES TO ENFORCEMENT AGENTS

Like the CEPEJ Guidelines on enforcement, the Good Practice Guide (points 10–14) provides details on the – multiple – functions to be performed by enforcement agents in the Member States of the Council of Europe **(A)**. In return, the Guide (points 15–24) relates to the statutory rules governing access to and exercise of the profession. These rules are guarantees to ensure the quality of the enforcement agents in achieving their missions **(B)**.

### A. The various tasks of enforcement agents

It follows from paragraph 33 of the Guidelines on enforcement that, "Enforcement agents, as defined by a country's law, should be responsible for the conduct of enforcement within their competences as defined by national law."[1] This continues, stating that, "Member states should consider giving enforcement agents sole competence for: enforcement of judicial decisions and other enforceable titles or documents, and implementation of all the enforcement procedures provided for by the law of the state in which they operate." In the wake of this statement, the Good Practice Guide emphasizes the relevance of both solutions – already adopted in a majority of European states – in respect of the interesting task of enforcement of judicial decisions: the partial removal of enforcement processes from the control of the courts and centralization of the enforcement function.

The first solution concerns the division of tasks between enforcement agents and judges. On the one hand, in addition to carrying out the actual processes of enforcement, enforcement agents must check that the prerequisites for the enforcement of the enforceable titles referred to them are in place and must supervise the organization of the enforcement procedure. On the other hand, save in exceptional circumstances, courts are only involved if they have to settle one of the disputes to which enforcement operations can always give rise or issue certain authorizations, for instance when the enforcement operations have to take place on premises used as a house by a third party. This division of tasks helps to ease congestion in the courts and hence speed up enforcement without overlooking debtors' rights.

The second solution concerns the identification of competent professionals to enforce the title. It favours the model in which the same professional – the enforcement agent – is responsible for carrying out most, if not all, enforcement procedures provided for in national legislation. In this kind of centralized enforcement system, acting enforcement agents have a more complete overview of the debtors' circumstances and their relationship with their creditors. Their influence over the procedural strategy for the recovery of debts is increased. It appears that this solution allows enforcement agents to better advise creditors on what measures to apply and hence that the most appropriate methods are used in any given case.

The Good Practice Guide is also interested in enforcement agents' secondary activities. In accordance with the provisions of point 34 of the Guidelines on enforcement, in addition to their main task of enforcing enforceable titles, enforcement agents should be

[1] The words "responsible for" are widely understood. They refer not only to the prerogatives which judicial officers should be invested with in order to carry out their tasks fully, but also to the specific duties (for example: duty of information) to which they are bound.

able to carry out a broad range of "secondary activities" which are compatible with their functions.[1] The Council of Europe Member States could therefore broaden enforcement agents' powers to include tasks relating to all the aspects of enforcement in the broadest sense and enable these professionals to provide a "full service" to the public in this sphere.

It is well known that enforcement agents, in the course of their activities in enforcement of enforceable titles, service of procedural documents or their secondary activities, write numerous documents in which they relate in particular their personal findings and their actions. Therefore, in connection with these secondary activities, the Good Practice Guide encourages states to define the conditions under which such documents can be given probative value so as to discourage challenges filed as delaying tactics.

When Member States diversify and extend enforcement agents' tasks, it seems appropriate that provision be made in national law for statutory guarantees making it possible to ensure the quality of these agents' work when performing their functions. In this regard, Member States could notably pay attention to training and the proper exercise of the profession of enforcement agent.

### B. The necessary statutory guarantees of enforcement agents

The question of the scope of the tasks of enforcement agents is closely linked to the definition of the rules governing their status. The more the missions are extended, the more the guarantees against abuse are indispensable. The statutory rules must provide such guarantees. To this purpose, several provisions of the Good Practice Guide relate to vocational training of enforcement agents and the exercise of this profession.

Concerning rules on vocational training, it is emphasized that all initial or in-service theoretical and/or practical training for enforcement agents (and their employees) should be geared to the needs revealed by the practical performance of the various tasks entrusted to them. Most of all, a high level of vocational training for enforcement agents is warranted. In fact, this requirement is driven by the increasing complexity of civil enforcement procedures and the confidence and consideration that these professionals must inspire in litigants and legal professionals. Even more relevant, such training must be given by trainers who are themselves highly trained. Many training providers are possible, whether universities and/or representative structures of the profession of enforcement agents. Specific structures can also be implemented, such as the National School of Procedure established in France in 1960. Furthermore, so as not to miss its

[1] This can be activities such as debt recovery, voluntary sale of moveable or immoveable property at public auction, seizure of goods, recording or reporting of evidence, and bankruptcy procedures.

target, this training should not be only theoretical, but also practical. To complement their initial theoretical training, all candidates to become enforcement agents should perform a work placement with a serving agent. This placement, which should be of a sufficient length for candidates to be able to acquire the basic practical knowledge needed for them to perform their future tasks, enables them to be placed in real-life situations and confronted with the realities of the profession.

Then, concerning the rules on how the profession is to be exercised, the Good Practice Guide draws the attention of states to the need to involve, in a common reflection, the risk of legal desertification and the territorial jurisdiction of enforcement agents. The problem is difficult and is based on the following observation that the extension of the territorial jurisdiction of enforcement agents raises, in the medium term, a group of these professionals in large structures (at least when the profession is exercised in liberal form) and, consequently, a decline in the number of practices. In fact, small- and medium-sized practices gradually disappear (as in the Netherlands, for example). Such groupings do have their advantages. For instance, they can be viewed as a means of countering the risk that some creditors will manipulate enforcement agents. However, when combined with the ongoing trend towards the dematerialization of enforcement procedures, this phenomenon can lead to geographical restructuring and result in radical changes. There is a real risk of desertification in rural areas and small towns. However, a certain geographical proximity of the enforcement agent is likely to promote a dialogue with debtors and to take into account the specific situation of each debtor.

Furthermore, still about the rules relating to the exercise of the profession, several provisions of the Guide (points 22–24) are related to the rules on how enforcement agents' activities are monitored. So as to ensure that the public is fully aware of enforcement agents' professional duties, the Good Practice Guide says that Council of Europe Member States could establish quality standards, set out in some detail and in language accessible to everyone, and disseminate them as widely as possible. Codes of ethics might also be drawn up. These rules of conduct should relate in particular to: the enforcement agent's objectivity, integrity and independence; the obligation to comply strictly with the laws in force; the professional duty of confidentiality; the enforcement agent's relationship with creditors, debtors and third parties, etc.

Determining disciplinary rules – respectful of the right to a fair trial – is also in the spotlight. Disciplinary rules instil trust in the public towards enforcement agents. States could see to it that there is effective access to disciplinary procedures and that they are conducted in a manner that guarantees the proper administration of justice.

In the same vein, states could clarify the division of tasks between the various bodies (courts, enforcement agents' representative organizations, etc.) responsible for monitoring compliance with the statutory rules applying to enforcement agents.

## II. ENSURING THAT THE PARTIES FULLY UNDERSTAND THE ENFORCEMENT PROCESS

Several provisions of the Good Practice Guide (points 25–33) converge on the need to ensure that the parties (the creditor and the debtor) are able to fully understand the enforcement process in which they are involved and, more generally, to assimilate the principles governing the national legislation. There is a particular application of the requirements of the right to a fair trial which comes in a dual need: informing the parties about the applicable legislation **(A)** and ensuring the intelligibility of the applicable legislation **(B)**.

### A. Informing the parties about the applicable legislation

The Good Practice Guide contains many developments (points 25–30) devoted to information for the parties about the content and implementation of the enforcement procedures. While some relate to information for the parties about the legislation, others provide specific information about the progress of the enforcement process directly affecting them.

As regards, first of all, information for the parties about the applicable legislation, the Guide recommends bringing together the main rules in a single document, such as a code of civil enforcement procedures. This grouping of information facilitates access to this information.

In a related idea, the Guide suggests states develop and widely disseminate "fact sheets" on enforcement procedures, professional organizations and the main tasks entrusted to enforcement agents. Such documents should be drawn up in language that everyone can understand. They may also provide information about the real effectiveness of each type of procedure – such as average length and cost – and should not be confined to a simple description of the rules in force.

While stressing the opportunity to inform the parties – and, more broadly, any litigant – as to the content and effectiveness of legislation on enforcement, the Good Practice Guide emphasizes the importance of information for the parties about the enforcement process in which they are involved. The parties, creditors or debtors, must be able to understand the development of the process, to know the various options available to them and the legal consequences associated with each of these options. To this end, the Guide recommends that states provide written explanations for the recipients of official notices.

In addition, to be sure of the good understanding of this document by the recipient, where an enforcement agent hands a procedural document directly to the recipient, he or

she could be required to repeat orally the main information set out in the document, such as, for instance, the consequences of the document and the possibility of disputing it.

**B. Intelligibility applicable legislation**

The emphasis placed on the intelligibility of the applicable legislation is reflected in the dedication of the Guide to the clarity of enforcement procedures and costs (Guide, points 31–33).

First, in terms of the clarity of procedures, a "standardization" of procedural documents is particularly recommended. For greater legal certainty and in order to make it easier to check the regularity of the documents drawn up in any given enforcement procedure, the Member States could formally standardize such documents and, for instance, set up document libraries, to which all enforcement agents would have access.

Second, the issue of clarity of costs is considered in terms of fixing and advertising professionals' fees. So as to avoid any disparity in the assessment of the costs of enforcement and any discrimination where agents practising on a private professional basis exist alongside others with public status within the same state (as in Bulgaria), each state could establish a scale of enforcement fees based on the same objective criteria. The fees in force should be communicated as widely as possible to the public. All forms of communication methods and media (paper or electronic) could be deployed for this purpose. For example, fees could be displayed very visibly in enforcement agents' offices (in areas where the public is received) and published on the Internet (on government websites and/or websites run by enforcement agents' representative bodies).

## III. ENSURING THE QUALITY OF ENFORCEMENT PROCEDURES

The concept of "quality of enforcement procedures", though often used, is still controversial. In the Good Practice Guide, a broad sense of this concept is retained. Grouped under this general qualification are various recommendations as to the effectiveness of procedures that need to respect human rights in their implementation. In other words, this general qualification of "quality of enforcement procedures" refers to the assertion that these procedures must be effective **(A)** and fair **(B)**.

Noteworthy is that the Good Practice Guide is concerned not only with factors that generate or increase the quality of enforcement procedures, but also with consideration of supervision of the quality. On this last point, the Guide suggests (point 61) that the representative organizations of the profession of enforcement agents publish annual activity reports that include information about the duration, the cost and – where possible – the success rate of implementation of procedures performed during the past year.

### A. The efficiency of enforcement procedures

Several solutions are put forward in the Good Practice Guide to enhance the efficiency of enforcement procedures (Guide, points 33–44). Alongside three key ideas respectively devoted to effective access to enforcement procedures, facilitating the search for information about the debtor and the debtor's assets and the determination of the factors contributing to the celerity of enforcement, is a series of recommendations disparate but equally important.

First, under the disparate provisions, the following are suggested: the creation of specialized courts to deal with all the stages of enforcement proceedings;[1] collective cover of the risk of failed enforcement due to a debtor's insolvency;[2] diversification of types of enforcement procedure;[3] access by enforcement agents to private premises;[4] the ability to implement enforcement operations involving third parties;[5] as well as the forecast of protective measures to the benefit of the (alleged) creditor.

Second, creditors – even if impecunious – should have an effective access to enforcement procedures, regardless of the nature of the enforcement order which they are provided. Specifically, states should provide a legal aid system for the benefit of creditors who cannot pay enforcement fees. States which decide to make the award of such aid dependent on certain conditions should place the emphasis on objective criteria.[6]

Third, the Good Practice Guide deepens the crucial question of finding information about debtors and their assets.[7] National legislation should give enforcement agents

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1 This solution, driven by the increasing technicality of this type of litigation, would have the advantage of facilitating the determination of rules of procedure, if not derogatory, at least adapted to the particularity of the phase of enforcement of the enforceable titles.

2 This would include, for example, the creation of a system in which maintenance creditors facing an insolvent debtor would be entitled to a lump sum payment from the relevant state services, against which the debtor would be liable in the event the debtor returned to better fortune.

3 The objective is to deal with the varied composition of debtors' assets and the diversity of obligations that can be stipulated in an enforceable title.

4 For example, "[T]he absence or obstruction of the occupiers of such premises must not form any obstacle to the performance of enforcement measures or protective measures" (Guide, point 37).

5 Placing assets in the dwelling of a third party should not constitute an obstacle to the conduct of the enforcement procedure.

6 For example, the criteria should be a provision of conditions relating to the claimant's resources.

7 *Adde*, G. Payan, « The transparency of debtors' assets in the European legislation: Council of Europe and European Union », *in* A. O. Parfenchikov and V. A. Gureev (dir.), *Modern problems of foreclosure on the debtors' property and the ways of their solution: national approaches in improving the efficiency of execution of enforcement document*, Publications of the 4th International scientific and practical conference organized by the Federal Bailiffs' Service of the Russian Federation, the Urals State Law Academy and the Russian Law Academy of the Ministry of Justice of the Russian Federation, 18–20 September 2013, in Yekaterinburg; Ural region – Russia, éd. Prospekt, 2014, p. 119 (in Russian) and p. 301 (in English).

direct, secure and electronic access to registers containing information about assets (as in Estonia, Lithuania, Sweden or Latvia). So as to avoid excessive procedural costs, such access could relate in particular to registers – not public – in which several types of relevant information are gathered, for instance registers kept by the tax authorities (as in Sweden) and social security offices. Restricting access to registers containing only fragmentary information (such as vehicle registration lists) would not be productive. Of course, bodies holding information which is legally accessible by enforcement agents should not be able to refuse their requests on grounds of professional confidentiality.

However, the issue of "patrimonial transparency" is not exhausted in investigations into debtors' assets. Investigation into debtors' liabilities is also crucial. In this connection, it is recommended that states adopt a system to publicize enforcement measures and protective measures, and, to this end, set up a central computer file, kept up to date by enforcement agents (as in Belgium, for example). Thus, enforcement agents may be obliged to report to the managing body of the file, within a given time, about any procedural acts carried out in the course of the enforcement procedure for which they have been appointed. This file would list, for all debtors, any current enforcement procedures in which they are involved and those that failed for want of any attachable assets. This type of information is very useful for enforcement agents in helping them to decide whether it is worth proceeding with a (further) enforcement procedure.

Fourth, the requirement for the celerity of enforcement is envisaged through the research factors likely to ensure enforcement within a reasonable time. The emphasis here is focused on the place to be given to the use of new communication and information technologies during enforcement procedures (or "e-Enforcement"). When applied to the enforcement of enforceable titles, this phenomenon is reflected in the spread of exchanges by electronic means between the various bodies involved in the procedure and the dematerialization of actual enforcement procedures (attachments of bank accounts, immoveable property and vehicles, and public auctions – electronic auctioning).

The dematerialization of enforcement procedures helps to save time in the implementation of certain protective or enforcement measures and increases the potential number of purchasers at public auctions. For instance, arrangements could be made to protect the confidentiality and integrity of any information passed on, while the identity of the person serving the document must be checked, and it must be ensured that documents are received by the actual persons to whom they are addressed.

**B. Fair enforcement procedures**

Without undermining the right of creditors to obtain what is owed to them, the fundamental rights and interests of debtors and third parties should be taken into account when implementing enforcement procedures.

As regards debtors, the Good Practice Guide (points 45–56) initially urges states to encourage debtors to be involved in the enforcement procedures. In the interest of all the parties concerned, debtors who have not spontaneously complied with the enforceable title issued against them, could nonetheless be afforded the opportunity of collaborating with the enforcement procedure initiated by their creditors. This could be the case in particular when the enforcement procedures relate to tangible assets. In such cases, increased involvement by debtors helps to appease the enforcement process by enabling debtors, for instance, to avoid the traumatic experience of forced attachment of their property.

Then, to a certain extent, we must protect the right to privacy of debtors and their families. For example, the days and times at which enforcement operations can legally take place should be established. In the same way, we must secure decent living conditions for debtors and their families. In principle, all the assets belonging to debtors should be used to repay their debts. However, limits on the attachment of assets belonging to debtors should also be provided (such as, for instance, objects that are essential for persons with disabilities or the treatment of sick persons).

Finally, in return, the Good Practice Guide draws the attention of the Member States to the need to punish abuses, misconduct and possible offences committed by debtors. For example, the Guide recommends that national legislation provide for appropriate penalties[1] in order to put an end to "wrongful obstruction" by a debtor (as well as to punish one who engages in this behaviour) during enforcement operations. Similarly, sanctions should be imposed on threats made and acts of violence committed by the debtor against the enforcement agent and persons assisting him, and for any concealment and degradation of assets subject to an enforcement measure.

Regarding third parties, the Good Practice Guide recommends providing specific guarantees ensuring their increased protection (points 57–60). In contrast with debtors, third parties have no personal obligation vis-à-vis creditors. It would not be unreasonable, therefore, to establish rules offering them increased protection. In this connection, particular safeguards (for example, the requirement for judicial authorization) could be provided for when an enforcement procedure relates to an asset belonging to the debtor but held by a third party on the premises used by the third party as a dwelling.

Third parties should also be subject to an obligation both to refrain from being a hindrance and to cooperate. Firstly, they should not undermine the proper conduct of enforcement procedures. Secondly, third parties should contribute to the proper conduct of enforcement operations when they are legally required to do so.

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[1] For example, an appropriate penalty could be an order to pay accompanied by a periodic penalty payment for non-compliance or a fine and payment of damages.

Undoubtedly, to be more effective, violations of these obligations should be punished. The sanctions provided for by national law should be effective and proportionate to the conduct alleged against third parties.

## IV. PROMOTING THE USE OF A COMMON LEGAL TERMINOLOGY ON ENFORCEMENT

Like the CEPEJ Guidelines on enforcement adopted in December 2009 and the Recommendation of the Committee of Ministers adopted in September 2003 which preceded them, the Good Practice Guide contains a glossary of key concepts used.

To be sure, while acknowledging the importance of improving the performance of enforceable titles and focusing on the performance of enforcement procedures and the relevance of the rules applicable to judicial officers, the glossary also invites promotion of the use of precise legal language understandable by all.

This glossary contains seventeen definitions, which must be added to those present in Recommendation Rec (2003) 17 and in the Guidelines on enforcement. Indeed, an analysis of national laws of the Member States of the Council of Europe invites the completion of certain definitions in the aforementioned documents. It is not intended here to reproduce them in their entirety, but only to mention some of them.

For example, "Stakeholders in the enforcement process" are defined as: "Persons directly or indirectly involved in the enforcement procedure." This includes the parties (the creditor and the debtor), the third parties and the bodies running the procedure (the judicial authorities and the enforcement agent). Moreover, the words "Enforcement agent" are defined as follows: "A person legally authorised by the state to carry out the enforcement process, not including persons with the status of a judge. He or she may be a private professional vested with a portion of public authority or a public official. His or her status is regulated by the law." As used in the Good Practice Guide, the concept of an "enforceable title" must be understood in the sense of "judicial act (such as a court decision) or a non-judicial act (such as a notarised instrument) establishing a party's right to receive payment of a debt, on the basis of which national legislation allows the use of enforcement measures". Finally, there is the author of "wrongful obstruction", the debtor "who raises objections which are aimed solely at delaying proceedings or have no serious basis … [is] guilty of wrongful obstruction".

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CONFERENCE REVIEWS

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# REVIEW OF THE ROUNDTABLE CONFERENCE DEDICATED TO THE CENTENNIAL CELEBRATION OF THE FOUNDING OF THE REPUBLIC OF TATARSTAN ON THE TOPIC "HISTORY OF THE DEVELOPMENT OF ENVIRONMENTAL LEGISLATION IN TATARSTAN: BEGINNINGS, PRESENT STATUS, PROSPECTS" (APRIL 15, 2016)

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**Abstract:** The article reviews addresses by participants of the roundtable conference dedicated to the centennial celebration of the founding of the Republic of Tatarstan. The topic of the conference was "History of the development of environmental legislation in Tatarstan: beginnings, present status, prospects". Discussions within the framework of the conference were not limited to Republic of Tatarstan legislation only, as land, water, forestry, subsoil and environmental protection legislation are the joint jurisdiction of the Russian Federation and its subjects. Issues of legal regulations in the sphere of environmental protection and rational nature management in the Republic of Tatarstan were discussed together with federal legislation in these fields. Participants paid close attention to three basic stages in the history and development of Republic of Tatarstan

environmental legislation: the Soviet, post-reform and modern periods. Conference participants offered recommendations for future prospects in the development of contemporary environmental legislation in the Republic of Tatarstan.

**Keywords:** environmental legislation, biotechnologies, water conservation zone, best available technology, environmental protection, extra valuable farmlands, protected natural areas

## I. INTRODUCTION

On April 15, 2016, the roundtable on the topic "History of the development of environmental legislation in Tatarstan: beginnings, present status, prospects" was held at the Law Faculty of Kazan (Volga) Federal University (KFU). Following this event, other activities were dedicated to the centennial celebration of the founding of the Tatar Autonomous Soviet Socialist Republic.

The conference was opened by the Head of the Department of Environmental Law, Labor Law and Civil Procedure of KFU, Honored Lawyer of the Republic of Tatarstan, Doctor of Law, Professor Zavdat Safin. Professor Safin drew attention to the tremendous historical and socio-political significance of this event for the development of statehood of the multinational people of the Republic of Tatarstan.

Taking into account that land, water and forest legislation, and legislation on subsoil and environmental protection come under the joint jurisdiction of the Russian Federation and its subjects (i.e. administrative areas), and that 2016 was declared the year of the water protection zones in the Republic of Tatarstan, the roundtable was not dedicated only to normative legal acts of the Republic of Tatarstan. On the contrary, there were many questions relating to legal regulation of relations in the sphere of environmental protection and environmental management in the Republic of Tatarstan with reference to federal legislation.

The roundtable brought together representatives of the legislative and executive branches of the government of the Republic of Tatarstan, public authorities who are directly involved with the environmental safety of the region. In his welcome speech, Professor Safin remarked, "They are the people who protect and keep the environment of our Republic." He went on to draw particular attention to the necessity for close cooperation of the legal scientists of environmental law at KFU with the State Council of the Republic of Tatarstan, the Office of the Federal Service for Supervision of Natural Resources for the Republic of Tatarstan, the Ministry of Ecology and Natural Resources of the Republic of Tatarstan as well as with other agencies and supervisory bodies exercising state supervision in the sphere of environmental protection and rational nature management.

Professor Safin talked about the possibility and expediency of opening the Research Center of Public Law at the Law Faculty of KFU in order to carry out scientific research activities on issues of public law, including environmental law, on the joint development of draft regulations on environmental protection and environmental management with the state authorities and local governments, on examination regulations and on the implementation of experimental development and other activities. The opening of the Research Center of Public Law should be regarded, he commented, as a breakthrough for areas of science, not only for KFU, but for Russia as a whole.

Following the welcome speech, the Deputy Dean of the Faculty of Law of Kazan Federal University for Science and International Activities, Doctor of Law, Professor, Department of Environmental Law, Labor Law and Civil Procedure Damir Kh. Valeev addressed the conference. In his speech, Professor Valeev also noted that the roundtable launched a chain of events, which were dedicated to the 100th anniversary of the founding of Tatarstan.

The topics of the roundtable were relevant and demanding. The representatives of legislative and executive activities in the sphere of environmental protection and rational nature management, and environmental law, and the representatives of the science of environmental law are responsible for eliminating uncertainty and inconsistency of legal regulations in respect of environmental matters in the Republic of Tatarstan.

## II SCIENTIFIC PART

Professor Zavdat F. Safin, in his report titled "Environmental Legislation of the Republic of Tatarstan: History and Modern Life", identified three main periods in the history of environmental legislation of the Republic of Tatarstan (RT): Soviet, post-reform and modern periods.

In *the Soviet period*, environmental legislation of the Republic of Tatarstan was first established. The process started in 1962, when at the eighth and ninth sessions of the Supreme Soviet of Tatarstan the issue of nature protection in Tatarstan was discussed. Because of the degradation of the environment of the region, the Council of Ministers of Tatarstan proceeded to establish a network of specially protected areas (PA) and regional organizations for their protection.

The year 1988 was important for environmental legislation enacted in Tatarstan, because the first environmental protection authorities in Tatarstan were created then. The Tatarstan State Committee for Nature Protection was formed by the Decree of the Presidium of the Supreme Council of Tatarstan of December 12, 1988, № 2619-XI. It had the status of an independent, specially authorized state body in the sphere of nature protection and rational use of the natural resources of Tatarstan.

A relatively small number of regional regulatory acts in the sphere of nature protection were adopted during the Soviet period. The main significant events during this time should be considered as creating a network of PA of regional importance and the establishment of the first regional environmental authorities.

In the history of environmental legislation of the Republic of Tatarstan, *the post-reform period* took its course from the beginning of "perestroika". The adoption of the Constitution of the Republic of Tatarstan played a fundamental role in the development of regional environmental legislation. It contained new rules and guarantees in the sphere of environmental safety in Tatarstan.

Among the most important normative legal acts of the Republic of Tatarstan government, and still in force, is the Cabinet of Ministers' Decree of October 25, 1993, № 615 "On the red data book of the Republic of Tatarstan". At the time, keeping the Red Data Book of the RT was entrusted to the Ministry of Environment and Natural Resources. Today, the Ministry of Forestry is responsible for the Red Data Book.

It should be noted that in the post-reform period many RT regulations that duplicated federal legislation had been adopted. For example, Law of the Republic of Tatarstan of December 25, 1992, № 1722-XII "On subsoil", Forest Code of the Republic of Tatarstan of July 20, 1994, № 2194-XII (repealed), Law of the Republic of Tatarstan of February 12, 1997, № 1040 "On protection of the natural environment in the Republic of Tatarstan" (repealed), Law of the Republic of Tatarstan of July 2, 1997, № 1241 "On protection and rational use of fauna" (repealed), Law of the Republic of Tatarstan of July 2, 1997, № 1243 "On production and consumption" (repealed) as well as other regulatory acts of the Republic of Tatarstan.

Therefore, during the post-reform period the environmental legislation of the Republic of Tatarstan developed greatly. However, the development of the environmental legislation does not take into account the socio-economic characteristics of the region, because the environmental legislation was similar to federal normative legal acts.

*The modern period* of development of environmental legislation of the Republic of Tatarstan began with changing local legislation. The total borrowing of the federal legal provisions led to the fact that the normative legal acts of the Tatarstan needed constant updating after each occurrence of new federal provisions. The majority of regional conflicts with federal environmental legislation were revealed by the prosecutor's office.

After the adoption of Federal Law "On environmental protection" of January 10, 2002, № 7-FL, replacing RSFSR Law "On environmental protection" of December 19, 1991, № 2060-1, it was necessary to regularize regional legal acts. Therefore, in replacement of Law "On environmental protection in the Republic of Tatarstan" of February 12, 1997, № 1040, Tatarstan adopted the Law "On environmental protection in the Republic of Tatarstan" of June 28, 2004, № 38-LRT (repealed).

It is necessary to highlight the year 2009, when the Environmental Code of the Republic of Tatarstan was signed by the President of the Republic on January 15, 2009. As a result, twenty-eight laws and three decisions of the State Council of the Republic of Tatarstan governing various relations in the sphere of interaction between society and the environment were abrogated. The provisions of a significant number of regional environmental and natural resource regulatory acts apparently were consolidated in the Environmental Code of the Republic of Tatarstan, not in content, but in form. This fact does not speak of binding codification, but only of a general incorporation of environmental legislation of the Republic of Tatarstan.

There has been substantial specification and differentiation of environmental legislation of the Republic of Tatarstan in its modern period. The first steps to systemize the environmental legislation have been made, which includes the disappearance of total duplication of federal environmental legislation and the appearance of regional characteristics of natural resource and environmental regulation in the legal acts of the Republic of Tatarstan.

Chairman of the Committee on Ecology, Environmental, Agricultural and Food Policy of the Republic of Tatarstan State Council, Doctor of Agricultural Sciences, Honored Worker of Agriculture of the Republic of Tatarstan Tahir G. Khadeev spoke about two important areas for Tatarstan: water protection zones and biotechnology. First, he focused on the issue of the protection of water protection zones, noting the prevalence of not only consumer issues, but even a selfish attitude toward the water wealth of the country. The active process of capturing the coastal zone and its development began in the mid 1990s and continues to this day. T.G. Khadeev identified the following reasons for this process: the imperfection and constant change of federal legislation; the illegal allocation of land in coastal areas; failure to take measures for the demolition of unauthorized construction; absence (due to a lack of federal funding) of established boundaries of bodies of water, their shoreline, water protection zones and coastal protection strips; and the low level of a legal and environmental culture.

T.G. Khadeev then moved to his speech "Legislative activity of the Republic of Tatarstan State Council on environmental safety". Here he drew attention to the legal problems of maintenance of ecological and food security in Tatarstan, which can be solved by the development of biotechnologies.

Biotechnology in the individual sectors of the economy is represented by biopharmaceuticals, biomedicine, industrial biotechnology, bioenergy (creation of biogas, biofuels), agricultural biotechnology (including organic farming methods) and biotechnologies for the forestry sector.

The legal regulation of innovations affecting society is inevitable. That is why the sphere of development, implementation and use of biotechnology requires its own legal basis either in the Russian Federation or in the subjects of the Federation.

The concept of the socio-economic development of Russia to 2020 (approved by the Russian government on November 25, 2008) references biotechnology to national priorities. Thus, the biotechnical development program to 2020 was accepted at the national level (approved by the Russian government on April 24, 2012, N1853p-P8), where the necessity of this issue is demonstrated even at the level of the subjects of the Russian Federation.

In the Republic of Tatarstan the "Development of biotechnology in the Republic of Tatarstan for 2010–2020" program has been approved. Tatarstan satisfies all the requirements for the development of fundamental and applied biotechnologies. According to the development program, the creation of a biotech cluster in Tatarstan is planned in order to form a bioregion on this basis. However, in the Republic of Tatarstan there are no systemic normative legal acts aimed at supporting biotechnology development in the region.

According to the program, the Republic of Tatarstan has a very small number of industrial companies that use biotechnology manufacturing techniques: OJSC "Tatneft", OJSC "Tatspirtprom", OJSC "Kazan Grease Factory", OJSC "Tatkrakhmalpatoka" and a number of other companies in the food industry. For instance, OJSC "Tatneft" uses biotechnological methods based on the introduction of bioreagents or microbial biomass formation to enhance oil recovery. The OJSC "Kazanorgsintez" uses biotechnology in the deep cleaning of oily wastewater.

However, there are no large industrial companies whose production is directed to the processing of biomass with the use of biotechnologies or completely focused on biotechnology products.

In order to involve a greater number of industrial companies of the Republic of Tatarstan in the sphere of active application of biotechnology, and biofuel development, it is necessary to develop a complex of measures of state support. According to T.G. Khadeev, there is a need to develop a system of benefits, compensation and other legal incentives to enhance the implementation of biotechnological methods in industry in Tatarstan. Taking into account the strategic importance of bioenergy to the Republic of Tatarstan, he suggests adopting a single law that would amend the Budget Code of the RT, the Environmental Code of the RT, the Law "On public-private partnership in the RT", the Law "On the use of forests in the RT" and a number of other laws of the Republic of Tatarstan as well.

Deputy Head of the Federal Service for Supervision in the field of environmental management, Republic of Tatarstan, Lilia A. Gainutdinova devoted her speech to the changes in environmental legislation and law enforcement practice. She began with the system adopted by the federal laws that have made significant changes in many institutions of environmental law. She put emphasis on the Federal Law of July 21,

2014, № 219-FZ (rev. of December 29, 2015), "On amending the Federal Law On environmental protection and Certain legislative acts of the Russian Federation" (the changes to have taken force on January 1, 2016 will come into force only in 2018–2020) (hereinafter, Law "On normalization") and Federal Law of December 29, 2014, № 458-FZ (as amended on December 29, 2015), "On amending the Federal Law On production and consumption", separate legislative acts of the Russian Federation and the "Annulment of certain legislative acts (provisions of legislative acts) of the Russian Federation" (changes in effect from January 1, 2016, part of the changes in force from January 1, 2017) (hereinafter, Law "On waste").

The main aim of the Law "On normalization" is the creation of conditions for reducing negative impacts on the environment. In order to achieve this purpose, a differentiated approach is introduced to natural resource users in the form of a categorization of objects of economic and other activities.

One of the main legal instruments aimed at minimizing human impact on the environment is presented by the transition to the best available techniques (BAT). Public capital investments, tax incentives and tax deductions on expenditures for measures to effect negative impact on the environment are provided for the implementation of BAT. A new aspect appearing in the regulation of expenditures is that the possibility of deducting actually incurred and documented costs for the implementation of these measures exists, and they are subject to state support. The Commissioner of the Russian Federation is responsible for determining BAT for a particular area of their application.

The Law "On normalization" has introduced many other changes that improve the effectiveness of environmental protection and rational use of natural resources. These innovations include: the possibility of establishing an exhaustive list of pollutants for which state regulation measures will apply (rationing, payment for environmental pollution, ecological controls, etc.); the possibility of investment credit for organizations to implement environmental measures; the reduction of the tax base (on account of expenditures within the standard material expenses); expanding the list of objects of the state ecological expertise, as well as other changes in environmental legislation.

It was noted that the Law "On waste" adds to the Law "On normalization" and aims at the effective management of waste including the involvement it has in the economy. This law laid the foundation of a new system for the collection, storage, transportation, processing, recycling and waste disposal. The system is aimed at reducing the negative impact on the environment.

The Law "On waste" reinstated the licensing requirement for all types of waste management activities. Initially, the wrong opinion about the possibility of unlicensed waste collection and transport caused a decrease in the efficiency of state ecological controls.

The law under study here is aimed at increasing the elimination of waste. There is a clear mechanism in the law: either satisfy the standard elimination of waste or pay the environmental fees. For the effective functioning of the mechanism it is necessary to ensure accounting and control over the performance of the established standard of elimination of waste, control over the payment of environmental fees and the maintenance of the state information system of accounting of waste from the use of goods.

There is a real need for the creation of effective regional waste management systems in the Republic of Tatarstan. The bodies of state power of a subject of the Russian Federation have extensive powers in the area of waste management. The main instruments of their work include the regional program and the territorial scheme of waste management – draft documents have been provided to the Federal Service for Supervision of Natural Resource Usage of the Republic of Tatarstan.

Thus, the system of environmental regulation is substantially changed by the Law "On waste" and the Law "On normalization", and the requirements of legal norms based on the implementation of the BAT, with the aim of causing minimum damage to the environment.

The head of the legal department of the Ministry of Ecology and Natural Resources of the Republic of Tatarstan, Marat R. Galiakberov, summed up the results of the regional state supervision in the use and protection of water resources. He began his speech by listing the powers of the Ministry of Ecology and Natural Resources:

– regional state supervision over the use and protection of water resources, except for bodies of water that belong to federal state supervision, as well as the observance of special conditions for the use of water and areas of coastal margins;

– regional state ecological supervision of the discharge of wastewater through a centralized water disposal system;

– measures for the protection of bodies of water owned by the Republic of Tatarstan;

– measures for the protection of bodies of water or their parts that are federally owned and located on the territory of the Republic of Tatarstan, within the limits of the powers;

– appeal to the courts demanding the restriction, suspension and prohibition of economic and other activities which are carried out in violation of the water protection legislation; and

– bring suits for compensation for environmental damage caused as the result of violations of the law in the field of water resources protection.

M.R. Galiakberov then talked about the statistics of the Ministry and pointed out that in the first quarter of 2016 Ministry officials carried out 151 inspections under the regional state environmental supervision powers in the use and protection of water

resources, during which 173 violations of environmental legislation were revealed. As a result, 103 reports were made on administrative violations, fines totaling 1,363.5 thousand rubles were imposed, including recovering 761.5 thousand rubles, five statements of claim were prepared with the requirement to compensate the harm caused to water resources, with a total amount of 672.2 thousand rubles sent to the courts.

During the first quarter of 2016 more than eighty violations of the restrictions on access to the coastline of water resources of common use were identified, thirty-nine reports on administrative violations were made, fines totaling 127 thousand rubles were imposed, and two statements of claim on the obligation to ensure unhindered access to the bodies of water were prepared and sent to the courts.

The most typical violations in the field of protection of water resources are: the absence or violation of the established standards of maximum allowable discharge; violation of the water protection regime in the catchment area of the body of water (pollution, littering the water protection zone); the absence of entitling documents (contracts, decisions on providing use of the bodies of water ); wastewater discharge without sanitary cleaning and deactivation in bodies of water.

Today, the main aim of the Ministry is to implement measures for the improvement and creation of comfortable conditions for living near water. In order to achieve this goal, it is necessary to: bring water protection zones to a single standard; provide free access to water resources; develop coastal infrastructure; reevaluate the cadastral valuation of lands located within the boundaries of water protection zones; impose a moratorium on the transfer of water protection zones to land settlements for building; strengthen control of wastewater discharge; achieve the modernization and reconstruction of cleansing structures; organize the work of afforestation of water protection zones of water resources; and develop sustainable tourism.

The work on suppressing violations of the restrictions on access to the foreshore[1] was strengthened as part of the supervision of the observance of water protection legislation. There is positive case law to ensure unrestricted access to water resources. In order to improve the effectiveness of environmental supervision in the geo-information database "Ecological Map of the Republic of Tatarstan", the layer "Boundaries of Water-protection Zones" was created. The Institute of Public Inspectors for Nature Protection numbering 116 people was formed, which accounted for over 10 percent of the total number of administrative resources. In 2015, a procedure of payments to citizens who provided information on violations of environmental legislation was introduced. Starting from 2016, the list of violations in this area greatly expanded: the size of payments to citizens was increased by 150 percent.

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[1] Author's note: the "foreshore" is "the part of a shore between the high- and low-water marks, or between the water and cultivated or developed land" (Oxford English Dictionary).

The Kazan interdistrict environmental prosecutor for the Volzhskiy interregional environmental prosecutor's office, Counselor in Justice Albert A. Habirov presented a speech on the topic "Prosecutor's supervision over execution of the law on the protection and use of water resources". The prosecutor's office paid close attention to the results of the analysis of the state of the law in the sphere of execution of the law on water conservation.

In 2009, under the complaint by the Kazan interdistrict environmental prosecutor's office, the court decided to oblige JSC "Kama-Ustyinsky Utilities" to ensure regulatory purification discharge of wastewater from the treatment plant in the Kuibyshev reservoir in three chemical parameters. For the seventh year, they could not achieve the proper treatment of wastewater. Moreover, at the end of 2015 three chemical elements were identified discharged in excess of the maximum allowable concentration. Consequently, a new court procedure was started against the company.

There are many similar examples of prolonged, non-judicial decisions made on environmental complaints by the prosecutor's office: LLC "Aktanyshsky Engineering Systems", OJSC "Tetyushi-Vodokanal", SUE "Atninskoe WFP HCS", LLC "Vodokanal Fish Sloboda" and others. Each such economic entity is required to monitor and take appropriate actions in response to prosecutorial complaints.

Federal Law of October 6, 2003, № 131-FZ (rev. February 15, 2016) "On general principles of local self-government in the Russian Federation", providing free public access to water resources in public areas and the foreshore, was attributed to the powers of municipal districts, urban districts and settlements. However, the municipalities ignored the specified duty. Only after complaints by the prosecutor on the elimination of violations of the law was administrative responsibility on the part of local governments accepted and specific measures adopted. Thus, according to the complaints of citizens about the illegal occupation of the foreshore in the gardeners' non-commercial partnership "Schuryachy", the Executive Board of Zelenodolsk, municipal district of the Republic of Tatarstan, did not reveal any violations of employment of the foreshore. However, the prosecutor's office confirmed the arguments of the residents of the area. After the prosecutor's intervention, the Executive Board finally filed a lawsuit. The court dismissed the claim, but the Supreme Court of the Republic of Tatarstan reversed the decision of the lower court.

During the verification of the foreshore of Ilyinsky Lake (the Republic of Tatarstan, Zelenodolsk district), the illegal allocation of land within the foreshore was revealed by the prosecutor's office. The head of the village declared the absence of disturbance. However, the court decided to invalidate the decision of the head of the village on the allocation of land in the foreshore and the dismantling of the fence at issue.

The practice of inspections showed that the illegal occupation of the foreshore is the result of inaction by local governments, or the result of their illegal holdings in these

public lands. There are also instances of unauthorized occupation of land by citizens of coastal areas and the foreshore for the organization of their gardens. Thus, the Kazan interdistrict environmental prosecutor's office appealed to the court against the citizens who created the gardens on the banks of the Nizhnekamsk water reservoir near the village of Tarlovka. People had illegally occupied the shore, installed fences and barns, plowed and fertilized the land. The court granted the appeal and ordered the people to return the shore to its original state.

There are legal difficulties in the classification of offenses considered criminal offenses, as Article 26 of the Criminal Code does not contain any specific criteria for assessing the consequences of violation of environmental legislation. In the criminal code it is not clear what is meant by "significant damage to the environment", "grave consequences" and other ambiguous terms.

Environmental and legal education of the population of the Republic of Tatarstan plays an important role in the issue of water protection. It would be better for the media to pay attention to the results of the activities of law enforcement agencies and to inform the population about the terms of use of land located in water protection zones.

Associate Professor of Civil Procedural Law of the Kazan branch of the Russian State University of Justice Sergey M. Sagitov focused his presentation on aspects of the techniques for calculating the damage caused to the environment in the Republic of Tatarstan. He noted that legislation does not specify at what level of government (federal or regional) the methodology for assessing environmental damage should be approved. Some of the subjects of the Russian Federation (Moscow, Tatarstan, Altai and others) have their own methodological documents for the calculation of environmental damage.

The calculation of the size of damage to the environment is regulated by the appropriate tariffs and methods passed by an appropriate government department.

*Legislation in the sphere of water resources*: Order of the Ministry of Natural Resources and the Environment of the Russian Federation № 87 of April 13, 2009 (w/ amendments of August 26, 2015) "On the adoption of the methods for calculating the size of damage to water resources owing to the violation of water resources legislation". This method is used to calculate the amount of damage caused to bodies of water due to violation of rules of operation of water treatment plants, in case of accidents related to the discharge of pollutants, as a result of which there was pollution and depletion of bodies of water.

*Legislation in the sphere of forest resources*: Decision of the Government of the Russian Federation № 273 of May 8, 2007 "On calculating the size of damage to forests, in consequence of violation of forest resources legislation". The size of damage to forests, including forest implantations, or trees, bushes and lianas not included in the forest implantation plans, is calculated according to these methods. Tariffs for calculating the

ecological damage placed in the enclosures 1–4 to the Decision depend on the charge per one unit volume of the forest resources and on the charge per unit area of the forest resources that are in the Federal Property registry. The charges are set by the Decision of the Government of the Russian Federation № 310 of May 22, 2007. According to the enclosure 2 to this Decision, tariffs for calculating the size of damage to trees and bushes, of which the production of timber is forbidden, are set by the subject of the Russian Federation.

*Legislation in the sphere of land resources*: The method of calculating the size of damage to land as an object of a protected part of the environment is set by the Order of the Ministry of Natural Resources and the Environment of the Russian Federation № 238 of June 8, 2010 (w/amendments of April 25, 2014). This is used for calculating, in a monetary form, the size of the damage that was done to the soil as the result of a violation of land legislation, and as the result of emergencies of natural and techno-genic causes.

Calculating the size of damage caused by the unauthorized cutting, destroying or spoilage of soil in the forests is made according to the methods of calculation of the size of damage to forest resources set by the Decision of the Government of the Russian Federation № 273 of May 8, 2007.

*Legislation in the sphere of subsoil resources*: The instructions for calculating the size of damage to subsoil resources caused by violation of subsoil resources legislation are set by the Decision of the Government of the Russian Federation № 564 of July 4, 2013. These instructions set the algorithm for calculating the size of damage caused by the loss of the minerals.

In accordance with Regulation of the Government of the Russian Federation of February 4, 2009, N94 "On the procedure for determining the amount of one-time payments for the use of subsoil on land parcels provided for use without tender, and auction procedures for exploration and production minerals, or for geological subsoil study, exploration and production of minerals, which are undertaken on the basis of combined license, and also on subsoil plots suggested to be included in land parcel boundaries provided for use in case of its boundary modification", the Ministry of the Environment and Natural Resources of the Republic of Tatarstan, every six months, requests information on the average prices of natural resources, which are established by the Geology and Licensing Division of the Republic of Tatarstan, Subsoil Resources Management Department of the Volga federal district, of the Federal Subsoil Resources Management Agency.

*Regional regulation:* The procedure for determining the size of compensation for the harm caused to land and vegetation in Tajikistan was approved by order of the Minister of the Ecology and Natural Resources of the Republic of Tatarstan on April 8, 2002, № 314. It is designed to determine the size of the compensation for the harm caused to land and vegetation as the result of the unlawful use of land, adding to their waste,

chemical pollution, or resulting in the degradation and removal of economic activity for the valuable land.

It is best to resolve issues of the calculation of damage proceeding from climatic, hydrological and other features of the territories at the regional level. Taking into account regional specifics, subjects of the Russian Federation must have a right to determine the size of tariffs on fauna and flora resources which are not specified in federal laws and regulations.

Assistant Professor of the Department of Environmental Law, Labor Law and Civil Procedure, KFU Albina Sh. Khabibulina presented a report on the history and development prospects of legislation of the Republic of Tatarstan in the field of protection and use of agricultural lands. The establishment of environmental legislation of the Republic of Tatarstan took place between 1990 and 1999, when legal acts stipulating a new state-legal status were predominantly adopted. During this period, legal acts of the Republic of Tatarstan rapidly developed in contrast to federal acts. Among them is the Land Code of the RT of July 10, 1998, N1736. Beginning in the 1990s, the federal legislator began to adopt federal laws of direct application often depriving subjects of the Russian Federation of certain rights. During the first half of the 2000s well-known administrative and municipal reforms were undertaken.

The Land Code of the Republic of Tatarstan was adopted when federal land legislation contradicted reality and, in fact, practically did not exist. For the first time, the Land Code gave the opportunity to citizens and legal entities to acquire ownership of land lots.

The Land Code includes provisions that are dedicated to the designated purpose of land parcels, land categories, ownership and other rights *in rem* of land lots, land resources management, land protection and other similar matters. Moreover, the Code defines agricultural lands which are considered the most valuable productive agricultural lands on the territory of the Republic of Tatarstan that cannot be used for other purposes. Additionally, it provides the rules of formation and publication of the lists of such lands.

The Act of the Republic of Tatarstan of January 24, 2001, N595 "On the fertility of agricultural lands" is aimed at ensuring the fertility of agricultural lands where land possessors are conducting economic activity. The Act establishes the rights and obligations of owners, possessors and users of land lots in the field of providing fertility of agricultural lands.

The Act of the RT of August 6, 2003, N28-3PT "On privatization of land lots from agricultural lands situated on the territory of the Republic of Tatarstan" establishes the maximum size of agricultural land lots which are situated on the territory of one municipal district and can be owned by one citizen and (or) by one legal entity. Their area cannot be more than 25 percent of the overall area of agricultural lands situated there.

Other acts on the protection and use of agricultural lands include the Act of the RT of December 8, 2004, N62-3PT "On civil and territory protection in emergency situations" which regulates relations in the field of civil and territory protection against natural, man-made and biological social emergency situations of an inter-municipal and regional character, and the Act of the RT of June 20, 2006, N42-3PT "On the sanitary and epidemiological welfare of the population" aimed at ensuring the sanitary and epidemiological welfare of the population as one of the conditions of exercising the right of citizens to health protection and a favorable environment.

In general, legislation of the Republic of Tatarstan in the field of protection and use of agricultural lands is systemized. However, the following problems connected with the protection and use of agricultural lands are still not solved.

1. There is no list of the most valuable agricultural lands with cadastral value that significantly exceed the average cadastral value in municipal districts and which cannot be used for any purposes except the production of agricultural products.

2. There is no special Act of the RT "On land recultivation in the Republic of Tatarstan" which would define such terms as "land spoiling". The suggestion has been made to introduce the following definition for "land spoiling": actions of individuals and legal entities connected with land poisoning and pollution, arbitrary moving, partial or total destruction of the fertile level of soil, violations of rules of land use and management of pesticide, agrochemicals and other substances and waste which are dangerous to the health of the population and environment, and also other types of negative impact on land.

3. Due to the fact that the Russian Federation has a variety of climatic, environmental conditions and types of soil, it is appropriate to delegate authority to determine the criteria of significant environmental degradation and signs of agricultural land disuse to the subjects of the Russian Federation. These criteria should be determined by distinct legal act of the Russian Federation.

Senior Lecturer of the Department of Environmental Law, Labor Law and Civil Procedure of KFU Elena V. Lunyova referred to the question of the development of environmental and educational tourism on "specially protected natural territories" (SPNT) as part of her report "Improvement of Legal Regulation in the Field of Protection and Use of Specially Protected Natural Territories of the Republic of Tatarstan".

According to the preamble of the Federal Act of March 14, 1995, N33-ФЗ (as amended on July 13, 2015) "On specially protected natural territories", SPNT have not only special environmental, scientific, cultural and aesthetic importance, but also recreational and heath-improving importance. Unique natural sightseeing locations and rare landscapes are characterized by significant attractiveness for undertaking tourist, recreational and sport activities on SPNT.

Legal regulation in the field of the protection and use of SPNT of the Republic of Tatarstan is carried out by the aforementioned federal Act, the Environmental Code of the RT and other statutory acts and regulations. Program documents of the Russian Federation and the RT state the necessity to create conditions for the development of environmental and educational tourism on SPNT of local, regional and federal importance.

The Concept of development of SPNT of a federal system for the period until 2020 (approved by the Order of the Government of the Russian Federation of December 22, 2011, N2322-r) pays particular attention to the advisability of involving SPNT in environmental tourism development and SPNT integration in the field of the social economic development of the regions. Also, this Concept mentions the necessity of having more accurate legal provisions as to the organization of recreational visitors services in national parks; educational tourism development, including in reserves; and detailing the particularities of undertaking recreational activity in forests situated on SPNT.

At the regional level, the Strategy for SPNT Development and Management for 2013–2015 (approved by Regulation of the Ministry on March 22, 2012, N234 (as amended on November 24, 2014) also focuses on creating conditions for development of tourist activity on SPNT and educational tourism resources of nature reserves (in Russian, "zapovednik") found in the Republic of Tatarstan. To introduce the natural and historic heritage of Tatarstan to its citizens and guests, it was planned to provide all necessary facilities on tour routes on the territories of at least five state wildlife reserves ("Dolgaya Polyana", "Chatir-Tau", "Chistiye Luga", "Sviyazhskiy" and "Baltasinskiy").

To achieve development in recreation, tourism and sports on SPNT, federal legislation provided an opportunity to rent land lots on SPNT even if they are situated on national parks and biosphere proving grounds of state biosphere natural reserves. It is permitted to build capital construction buildings and attendant infrastructure for recreation, tourism and sports. In connection with the mentioned expansive permissions, it is necessary to ensure rational environmental management within the boundaries of SPNT of the Republic of Tatarstan. Tourist and recreational activity should not endanger the safety of unique, natural sight-seeing locations of SPNT.

None of the legal acts and regulations has a legal definition of "rational natural management". Only State Standard (GOST) P 52106-2003 "National Standard of the Russian Federation. Resource Saving. General Provisions" (approved by Gosstandart of the Russian Federation on July 3, 2003, N 236-ст) gives the definition of the term *rational use of resources*, which is similar in content to the category at issue, and which means achievement of maximum effectiveness of the use of resources in business at the existing level of technology, with simultaneous decreasing of a negative impact on the

environment. Taking GOST into account, the suggestion is offered to consider rational natural management on SPNT as providing recreational, tourist and sport services that are delivered by means aimed at diminishing the human impact on rare ecosystems on SPNT at the existing level of technology.

Presently, land lots on SPNT are being rented, the construction of recreational buildings is being implemented, and environmental and educational tourism gradually is being developed. A legal framework has been partially created, conditions for development of recreational, tourist and sport activities have been provided. However, the package of measures of protection of rare ecosystems against excess human-induced load of considered types of impact have not been taken.

Especially, standards of permissible recreational load have not been worked out.

Therefore to ensure rational natural management of SPNT, the following suggestions are put forward:

1. To develop and approve standards of permissible recreational load on rare ecosystems from recreational and tourist activities on SPNT of the Republic of Tatarstan of regional and local importance;

2. To determine the ways of minimization and reduction of negative impact on the natural ecosystems of SPNT of the RT at the existing level of technology (to work out rules of visitors` behavior on SPNT, implement the system of voluntary certification of excursion, ecological trails and tourist routes on SPNT);

3. To improve the system of planning, controlling and monitoring the activity in the field of environmental and educational tourism on SPNT;

4. To establish in legislation of the RT a package of measures stimulating the development of small business in the field of environmental and educational tourism organization on SPNT of the RT;

5. To establish in legislation of the RT a package of measures stimulating the development of attendant environmental and educational tourism undertaken by small- and medium-sized businesses (the development of bed-and-breakfast hotels, guest houses, rural farm enterprises, traditional crafts and trades, production of organic food, and so on).

## CONCLUSIONS AND RECOMMENDATIONS

The roundtable "History of the development of environmental legislation in Tatarstan: beginnings, present status, prospects" addressed the problems of implementation of environmental law provisions relating to practice, discovery of conflict of laws, non-working provisions, and also unregulated social relations connected with environmental and food security of the Republic of Tatarstan.

*The following recommendations on development of environmental legislation of the Republic of Tatarstan (RT) were defined based on the results of presentations and discussions:*

– to abolish the practice of enacting legislation in the RT which duplicate federal legislation in the field of environmental protection and rational environmental management;

– to develop and adopt legal acts of the RT on state support in biotechnology development in the RT;

– to complete and adopt a regional program and territorial scheme of production and consumption waste management;

– to summarize the practice of implementation of legislation on water protection zones and protection of the coastline, and also on taking measures on the protection of bodies of water bodies in the RT;

– for the State Council – to come forward with a legislative initiative on establishing specific criteria of consequence evaluation which are necessary to qualify crimes provided by Chapter 26 of Criminal Code of the Russian Federation;

– to develop and adopt a methodology of calculation of the harm caused to the individual components of the environment, taking into account the climatic, hydrological and other features of the territory of the RT;

– to establish a list of the most valuable agricultural lands of the RT with cadastral value that significantly exceeds the average cadastral value in municipal districts and that cannot be used for any purposes except production of agricultural products;

– to develop and adopt an Act of the RT "On cultivation of lands in the Republic of Tatarstan";

– for the State Council – to come forward with a legislative initiative on delegation to the subjects of the Russian Federation the powers to determine the criteria of significant environmental degradation and signs of agricultural land disuse;

– to develop and adopt legal acts of the RT on measures for stimulating development of small business in the field of organization of tourism, recreation and sports on SPNT of the RT;

– to develop and adopt regional recreational standards of permissible human-induced load on the ecosystems of SPNT of regional and local importance; and

– to make active use of the mechanism of state and municipal private partnership in the field of environmental protection and rational environmental management (crematorium construction, organization of eco-tourism, introduction of biotechnologies, bank/shore protection, recycling, etc.).

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