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Dear Readers,

I am delighted to welcome you to the second regular issue of the Kazan University Law Review 2018.

This issue of the journal presents articles on current topics in theory and practice of Russian and foreign law.

The opening article by Professor *Tamara Makarova* (Minsk, Republic of Belarus) is about extremely important theme in relation to today's realities: "Social importance of environmental law: criteria of values and effectiveness of law". It is of paramount importance that the article conceptually justifies the idea of the leading criterion in determining the value and effectiveness of environmental law which is to ensure the human right to a favorable environment as a fundamental constitutional right.

The issue is continued by the article of *Ivan Bliznets*, rector of Russian State Academy of Intellectual Property, Doctor of Legal Sciences, Active State Counsellor of the third class (Moscow, Russia). The author highlights an important and interesting problem within the trend of legal globalization: the main directions and vectors of the development of international legal regulation of copyright and related rights. At the same time, positive aspects of the existing trends are identified as well as the existing obstacles to their implementation; the article also describes the role of the Russian Federation in promoting a number of initiatives.

It is pleasure to present studies of our foreign colleagues from Turkey and Tajikistan on urgent issues of enforcement of foreign arbitral awards (*N. Emre Bilginoglu*) and participation of a prosecutor in a criminal trial (*Davlatali Kakhkhorov*).

It is always important to show to scientific community the research results of colleagues from Kazan University. To present Kazan legal tradition is also one of the missions of our journal. This issue contains articles by Rafik Khalilov, Aydar Gubaydullin and Alina Shigabutdinova, Artur Khabirov on issues of criminal and civil law and history of legal development.

Closing out, the practical part of the issue Conference Reviews contains descriptive works by lawyers from Kazan, who review two law events: Review of the International

scientific and practical conference "Enforceability of the environmental security in relation to energetics and environmental management" and Review of the XII annual competition among students of the Kazan (Volga region) Federal University "KFU student of the year 2017."

With warm regards,
Editor-in-Chief
Damir Valeev

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Tamara Makarova
Doctor of Law Sciences, Professor,
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SOCIAL IMPORTANCE OF ENVIRONMENTAL LAW: CRITERIA OF VALUES AND EFFECTIVENESS OF LAW

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Abstract: The article explores the criteria allowing determining the social significance of environmental law from the standpoint of the signs of efficiency and value of this branch in the legal system. The concept and content of the criteria "effectiveness" and "value" in the legal science and their specific features as applied to environmental law are analyzed. The study of the environmental and legal categories "legal mechanism for environmental protection" and "environmental and legal status of the individual" allows us to conclude that the leading criterion in determining the value and effectiveness of environmental law is to ensure the human right to a favorable environment as a fundamental inalienable and constitutional right. The article reveals peculiarities of fixing the human right to a favorable environment in the legislation of the Republic of Belarus, including the establishment of its inalienability in the Law of the Republic of Belarus "On Environmental Protection", the definition of protection methods and guarantees. The specific feature of environmental law is defined as a single-purpose nature, which is inherent to it due to its tasks, in aggregate aimed at creating conditions favorable for the life and health of a person as a biological species and social individual, perceived by the legal science through ensuring the human right to a favorable environment.

Keywords: effectiveness of law; value of law; Environmental Law; favorable environment; the human right to a favorable environment; environmental and legal status of the individual; legal mechanism of environmental protection.

The law considered as one of the social regulators is subject to qualitative assessment for its conformity with the demands of society from the standpoint of justice, expediency, conformity with the spiritual, economic and ecological needs of the society. In response to such a request from the public, the legal science, through its methods and practices, assesses the effectiveness of the law by comparing the goal set by the legislator in formulating the rule of law with the actual result achieved in the form of the legal order that is taking shape in society. The problem of the effectiveness of law is invariably of interest to legal science, both in general theoretical and applied aspects. In the scientific literature, emphasis is placed on the fact that the effectiveness of law as a whole is "finding and exercising by law <...> of the creative functioning of a person in a particular society". In this case, situations are possible when the application of specific norms can give a negative result, i.e. the law, called to be a positive regulator of social life, in reality can produce anti-legal, in fact, effects that the legal science defines as defects of law. This means that the effectiveness of law as a criterion is connected to understanding of the value of law as a characteristic on the basis of which the positive role of law is revealed both for society as a whole and for the individual[1]. Efficiency and value acting as a measure in the evaluation of law as a social regulator also need certain criteria, since in cases where it is not a question of law in general but of its branches as the largest structural elements, the criteria for efficiency and value will differ. Based on the above theoretical and legal grounds, let us turn to the definition of criteria for the value and effectiveness of the environmental law. In our arguments, we rely on the generally recognized in legal science views on this area, such as defining its subject as social relations arising in the sphere of the environment[2]; understanding of the complexity of this legal education[3]; recognition of the doctrine of sustainable development as a modern civilizational approach to the provision of environmental, economic and social policies taken in unity as a general methodological basis of the science of environmental law[4]; treatment in the environmental law of the value of nature as a yardstick, the state of which alone is capable of answering the question of the optimality of the legal regulation of relations included in the subject of this branch of law.

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1 General theory of law: study guide / V.A. Abramovich and others; under the general editorship by S.G. Drobyazko, S.A. Kalinin. Minsk: BSU, publishing house "Four Quarters", 2014. P. 72-75.

2 Environmental law: a course book / S.A. Balashenko, T.I. Makarova, V.E. Lizgaro. Minsk: The Higher School, 2016. P. 17-20.

3 M.M. Brinchuk. Complexity as a principle of environmental law // Law in the modern Belarusian society: collection of scientific works. Issue. 4, edited by V.I. Semenkov (chief editor) et al. National Center for Legislation and Legal Studies of the Republic of Belarus. Minsk: Law and Economics, 2009. P.376-392.

4 N.D. Vershilo. Ecological and legal basis for sustainable development: abstract for diss. ... Doctor of Legal Sciences. Russian Academy of Sciences. Institute of state and rights. – Moscow, 2008. P. 51; Legal foundations of sustainable development at the local level / T.I. Makarova et al. Minsk: Kovcheg, 2010. P. 56.

In analyzing the effectiveness and value of environmental law, we proceed from the need to establish the degree of approximation to the subject, by understanding that the most extensive view of the state of nature (the Earth's ecological system) as a criterion for the effectiveness and value of law will be legitimate (and even then to a certain degree of simplification for adoption as such) only at the level of international law. Therefore that part of the natural environment that, according to objective characteristics, cannot act as an object of legal relations (for example, ecological system of water droplets) falls out of our sight. For example, analyzing the concept of nature in the doctrine of environmental law, M.M. Brinchuk considers such generalized categories as the ecological systems of the Earth and the Cosmos, but sees a person as „an organic link between nature and society"[1], which allows him to approach the issue of ecological limits as "permissible by natural laws excessive impact on the natural environment»[2]. We believe that the value and effectiveness of law from the point of view of its main «consumer», the bearer of rights and obligations – a man recognized from ancient times as a «measure of all things»[3]. In order to avoid aberration in the perception of such a special criterion as the person himself, the analysis should be carried out on the basis of comparable characteristics: a person as a subject of law is the bearer of rights and duties in conjunction with the environment, which is also an object of environmental legal relations, and positive environmental law (set of established state norms as rules of conduct) is subject to evaluation in comparison with natural human rights. This approach points to the human right to a favorable environment as the leading criterion in determining the value of environmental law and establishing the signs of its effectiveness.

According to the ideas that exist in science and society, "a man is a creation and at the same time creator of his environment.»[4]. From this position, a man as part of nature must be recognized as the ultimate goal of environmental protection. It makes no sense to protect nature and its wealth without a human being. And the very concept of «natural wealth» is estimated from the point of view of the usefulness of certain elements of nature to meet human needs. A person uses nature to ensure his life's needs (which leads to its change) and protects it from the consequences of his economic activities as much as the laws of nature that he has learned allow this to happen. Such a contradictory interaction for a person cannot but affect the legal regulation of the

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[1] M.M. Brinchuk. The laws of nature and society: a monograph, in 2 parts. Part 1. M.: Yurlitinform, 2015. P.26-36.

[2] M.M. Brinchuk. The laws of nature and society: a monograph, in 2 parts. Part 2. M.: Yurlitinform, 2015. P. 171-177.

[3] General theory of law: study guide / V.A. Abramovich et al.; under the general editorship by S.G. Drobyazko, S.A. Kalinin. Minsk: BSU, publishing house "Four quarters", 2014. P. 71-84.

[4] Declaration of the United Nations Conference on the Human Environment: Adopted in Stockholm, 17 June 1972 // United Nations. 2018. Ch. 1, para. 1. URL: http://www.un.org/en/documents/decl_conv/declarations/declarathenv.shtml (Access date: 17.02.2018).

whole set of relations in the field of the environment and, as a consequence, on the person's legal position in these relations.

In ecological doctrine the transition from nature protection as a conservation of separate components of the environment to the protection of environment as a summation of natural environment components, natural, natural anthropogenic and anthropogenic objects[1] demonstrates a legal position of a human being not only from the traditional standpoint, meaning only as a subject of law, but also as an object whose ecological safety is guaranteed by certain composition of legal means. This approach is justified in law theory by the reasoning of the following order: systematic legal ordering would not happen if the legislator proceeds only from social relations ignoring a human being, who is a doer of all social relations, the main productive force and the highest biosocial value, as an object of law regulation[2]. It should be stated that the approach in question, even if it is reflected in the environmental law, is represented indirectly. Thus, the concept of "favorable environment", defined both in Russian Federation Law "On protection of the environment"[3] and in the Law of the Republic of Belarus "On the protection of the environment"[4] as "the environment, the quality of which provides ecological safety, sustainable functioning of natural ecological systems and other natural anthropogenic objects", is based on the attribute of sustainable functioning of natural ecological systems. The rule lacks the fundamental, from our point of view, idea of who the environment is enabling or not for – the human being.

The issue of using ecological criteria to evaluate the quality of the environment for a human being was researched in scientific literature as a way to combine natural scientific and juridical aspects of the matter. It is about the usage of methods used in natural ecology to evaluate "environmental health", which is understood as the one needed for ensure human health and health of other living beings. Basically, the evaluation of environmental health is nothing but indirect, circumstantial, but still quite reliable characteristic of human health. This statement is based on the fact that the human being is a part of the natural environment, malfunctions in which reflect on the system of life support of human body. Lawyers agree that natural ecological researches may be used not only as an illustration of natural objects' state, but also as

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1 On environmental security: Law of Republic of Belarus, November 26, 1992, no. 1982-XII, edited on 17.07.2002 // ETALON. Law of Republic of Belarus / National centre of legal information of Republic of Belarus. Minsk, 2018. [Electronic resource]

2 S.G. Drobyazko. Subject, field and object of legal regulation during the formation of social constitutional state and legal civil society // Vybr. navuk. pracy Belarus. dzjarzh. un-ta: in 7 vols. Minsk, 2001. Vol. 3. P. 9–24.

3 On environmental security: Federal Law of the Russian Federation, January 10, 2002, no. 7-FZ (amended) // Konsultant Plus: Versiya Prof. Technologiya 3000 / OOO "JurSpektr". M., 2018. [Electronic resource]

4 On environmental security: Law of Republic of Belarus, November 26, 1992, no. 1982-XII, edited on 17.07.2002 // ETALON. Law of Republic of Belarus / National centre of legal information of Republic of Belarus. Minsk, 2018. [Electronic resource]

a characteristic of environmental impact on the human being[1]. Nevertheless conclusions of natural ecology cannot give legal evaluation of favourable environment.

The above mentioned definition of *favorable environment* is criticized from the standpoint of legal positions as lacking juridical criteria which could clarify legal aspects of providing sustainable functioning of natural ecological systems – the concept by natural sciences introduced into the law without any clarification[2]. Herewith the concept of *favourable environment* is defined through another concept – *ecological safety*, which is "a state of protection of the environment, life and health of the citizens from possible harmful effect of economic and other activity or emergency situations of natural and technogenic nature". This "state of protection" is represented in law by the system of regulation in the field of natural environment. In accordance with art. 20 of Belarus Republic Law "On the safety of environment", the standards of environmental quality are set at the level providing ecological safety; they are used to evaluate the environmental state and regulate the acceptable impact on it[3].

The above said confirms the idea that a human being (even if indirectly) is included by the lawmaker as one of legal protection objects. V.V. Petrov paid attention to this peculiarity of legal regulation of natural environment back in 1995. "Applying historically known and traditional forms of environmental protection, he writes, the protection of a human being and his ecological rights is considered as the final stage of development of the whole ecological system through its small and big elements. Gradual transition from keeping natural environment safe to keeping the environment safe makes the human being directly an object of protection"[4].

The peculiarity of individual's legal role as of the one who is in interaction with the environment is reflected most vividly in the category of *ecological legal status of a person*[5]. View on the ecological legal status of a person is based on scientifically accepted approaches concerning the concept of *legal status of a person*[6], subject of environmental law, legal position of individuals as subjects of ecological legal relations and is defined by norms of this branch of law. However in order to the define the concept

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1 M.I. Vasilyeva. On application of ecological criteria of favourable environment in law // Gosudarstvo i pravo [State and Law]. 2002. No.11. P. 84-92.

2 M.M. Brinchuk. Environmental law: course book, 2nd rev. edition. M.: Yurist, 2005. P. 7.

3 On environmental security: Law of Republic of Belarus, November 26, 1992, no. 1982-XII, edited on 17.07.2002 // ETALON. Law of Republic of Belarus / National centre of legal information of Republic of Belarus. Minsk, 2018. [Electronic resource]

4 V.V. Petrov. Environmental law in Russia]: course book. M.: BEK, 1995. P. 119.

5 M.M. Brinchuk. Theoretical basis of ecological rights of individual] // Gosudarstvo i pravo [State and law]. No. 5. P. 5-15; M.I. Vasilyeva. Public interests in environmental law. M.: Izdatel'stvo MGU [Publishing house of Moscow State University], 2003. P. 107-125; T.I. Makarova. Ecological and legal status of citizens of the Republic of Belarus]. Minsk: BGU, 2004. P. 231.

6 General theory of human rights / V.A. Kartashkin and others, chief editor E.A. Lukasheva // Russian Academy of Science, Institute of state and law. M. : NORMA, 1996. P. 151-153.

of ecological legal status, it is not enough to determine the powers of individuals and other constituents included. It is also needed to identify a constructive (fundamental) element of ecological legal status and its legal root, as well as to determine the interaction between this and other elements, creating an exceptional formation incidental only to this branch's status. In our understanding ecological legal status of a person is formed by legal norms of human behavior as a citizen and individual towards the environment to meet his economical demands (nature management) and to protect against adverse environmental factors. The main criterion helping to establish the elements of ecological legal status of an individual should be the place of individual in the system of ecological relations, whereby the common scheme for legal regulation – a subject, using powers, is affecting the object – is not enough for ecological relations. Environmental protection as legal relationship is needed only because the environment (in usual conditions – an object of legal relations) also affects the human. This means that all legal powers of citizens, which are somehow connected to the environment, should be included in the ecological legal status.

In law theory the central place in legal position of an individual is given to constitutional rights, freedoms and responsibilities, around which all the other elements are formed[1]. In ecological legal status of an individual the whole range of rights is considered constitutional: right on favourable environment, on compensation for its harm, on ecological information, on health protection, property rights on natural resources and such rights that allow citizens to participate in making ecologically significant decisions and creating public ecological associations[2]. Among constitutional rights there are some that in juridical literature are considered to be "the foundation in the system of rights and freedoms, on which all the other rights are based on" – inalienable rights[3]. The above mentioned characteristics (inalienable, constitutional, connected to the environment) are intrinsic only for the right to favorable environment. Other rights included in ecological legal status reflect only one particular side of this relationship (such as natural resource and protection) and are often valuable as means to keep and protect this constitutional right. By recognizing the right to favorable environment as central unit of ecological legal status of an individual, we inevitably include in this status the guarantees to the named right. Article 13 of the Federal Law of the Russian Federation "On Protection of Environment" defines them as a system of state measures to ensure rights on favourable environment, including the assistance to citizens, public associations and non-commercial organizations in realization of their rights in the field of environmental protection; taking into consideration the opinions

[1] Idem.

[2] Constitution of the Republic of Belarus of 15th of March 1994 amended at the referendums on 24th of November 1996, 17th of October 2004 // National registry of legal acts of the Republic of Belarus. 1999, no.1 – 1/0; 2004, no. 188 – 1/6032. Art. 34, 36-37, 44-46.

[3] G.A. Vasilevich. Constitution and some aspects of rights and freedoms protection. Minsk: Znanie, 1999. P. 6.

of population or the results of referendums while placing the objects, the economical or other activity of which may cause harm to the environment; prosecution of officials who impede the realization of ecological rights for citizens and public associations[1].

In Belarusian law these guarantees are defined not for the whole complex of ecological rights, but specifically for the constitutional right of citizens to favorable environment and include other ecological rights of citizens, apart from the state measures to avoid harmful impact on the environment and its recovery, prevention and liquidation of consequences of accidents and disasters. These rights are the following: the right to reimbursement of harm, which was caused to life, health and property due to the harmful impact on environment; the right to ecological information, to decisions appeal and actions (inactivity) of public authorities and officials, to court protection and self-protection, to participation in the activity of public ecological associations. Apart from that, the reference to provision of the right to a favorable environment by "other measures provided for in this Law and other acts of legislation of the Republic of Belarus" in the article 13 of the Law of Republic of Belarus "On the protection of the environment" leads to the following conclusion: *ensuring the human right to a favorable environment is identical to the optimal operation of the environmental protection mechanism.* In other words, *ensuring the right to a favorable environment is the criterion for the effective functioning of the legal mechanism for environmental protection.*

One more fundamental difference in the formulation of the environmental law status construction according to the legislation of Belarus is the presence of a legal definition of the right to favorable environment itself. According to the article 14 of the Law "On environmental protection", it is a birthright of a citizen and it is protected as a personal non-property right, not connected with a property right. Moral damage caused to a citizen by a violation of the right to favorable environment is to be compensated[2]. The fact that the text of the law mentions the natural-born nature of the right to favorable environment, its inalienability, and the legal characterization that provides the opportunity to exercise protection by public and private law ways – it all *gives the guidance to the environmental law as a whole.*

It is possible to evaluate the efficiency of the environmental law by comparing the aim of the rule of law, set by a lawmaker, with the actual result in the form of the public order on the basis of the analysis of the environmental law targets. According to the article 3 of the Law of the Republic of Belarus "On environmental protection", these targets are to ensure the favorable environment; to regulate the relations in the field of the utilization, protection and reproduction of natural resources; to prevent negative

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1 On environmental security: Law of Republic of Belarus, November 26, 1992, no. 1982-XII, edited on 17.07.2002 // ETALON. Law of Republic of Belarus / National centre of legal information of Republic of Belarus. Minsk, 2018. [Electronic resource]

2 On the environmental protection: the Law of the Republic of Belarus, 26 November 1992, No. 1982-XII: as amended by the Law of the Republic of Belarus dated 17 July 2002. Electronic Search Engine ETALON, The Republic of Belarus, Minsk, 2018. [Electronic resource]

impacts of economic and other activities on the environment; to improve the quality of the environment; to ensure the rational (sustainable) use of natural resources[1]. This is where we come to one of the key categories of environmental law – *legal mechanism for the environmental protection*. From the legal theoretical point of view, the legal regulatory mechanism is a system of legal means by which the legal effect on public relations is exercised[2]. Understanding of the fact that the force of law is exercised by the legal regulatory mechanism, which "switches on" (or "is switched on") every time, when a public need in social regulation occurs, from the perspective of branch juridical sciences takes on a special practical meaning, which indicates the content given to this notion by separate branches of the juridical science. There is also a generalized notion of the mechanism in the environmental law, and it gives the opportunity to systemize the nature and the ways of the impact of law on public environmental relations[3]. The differences in understanding this notion are also expressed in the terms used by different scientists: "the mechanism of the environmental law" (V.V. Petrov)[4], "environmental-law mechanism" (M.M. Brynchuk)[5], "legal mechanism of environmental protection" (V.E. Lizgaro, T.I. Makarova)[6] etc.

The diversity of public environmental relations regulated by law and, as a consequence, the complexity of the environmental law have led to the scientific substantiation and the establishment of different environmental law institutes as basic substantive elements of the legal mechanism of environmental protection. Further, for the environmental protection purpose, it is not only the means that should be embodied in law as instruments, by which the effect on public relations is exercised, but also the functions, that are performed by these instruments and that make this effect more efficient.

We believe, that the primary feature of the mechanism of the environmental law regulation is that the formation of environmental protection means (and, as a consequence, the corresponding environmental law institutes) often has an external nature and is connected with a discovery or scientific substantiation at the level of natural sciences (ecology, biology, chemistry, physics) of new patterns, which lead to an additional effect on the environment and to the necessity of new instruments of

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1 Idem, art. 3.

2 S.S. Alekseev and others. The Theory of State and Law: course book for law schools and faculties (under the editorship by V.M. Korelskyi and V.D.Perevalov). Moscow: INFRA-NORMA, 1997. P. 256-272.

3 T.I. Makarova and others. Legal mechanisms of environmental protection and ensuring the environmental safety (under the scientific editorship by T.I.Makarova). Minsk: BGU [Belarus State University], 2016. P. 156.

4 V.V. Petrov. Environmental law of Russia: course book for higher educational institutions. Moscow: BEK, 1995. P. 557.

5 M.M. Brynchuk. Environmental law: course book, 2nd edition, revised and enlarged. Moscow: Urist, 2005. P. 670.

6 S.A. Balashenko and others. Environmental law: study guide (under the editorship of Makarova T.I., Lizgaro V.E.. Minsk: BGU [Belarus State University], 2008. P. 495.

its protection. Therefore, the elements of the environmental protection mechanism give name to corresponding environmental law institutes, for example, environmental expertize, environmental audit, and ecological certification.

The orientation of the environmental protection mechanisms established in the law gives us a possibility to talk about the presence of systems of environmental law institutes, such as legal and organizational ensuring of environmental protection and economic mechanism of environmental protection. These systems correlate with each other and have a self-contained content. Also we can speak about the establishment of a mechanism that has ideological content and that unites the rules of law and institutes, which regulate the environmental education and promotion of ecological awareness; access to the environmental information and public participation in the making of ecologically important decisions[1].

Analysis of the institutes, included in the environmental law mechanism, shows us that they unite around the basic elements of the legal regulation mechanism, such as creation of a rule of law (adopting a law) – the force of law (law enforcement) – monitoring of the implementation of the legislation – liability for the violation of the law. These institutes also contain the specifics, typical for the environmental relations. Therefore, the creation of the legislative framework of the environmental protection is exercised not only by means of adopting laws, which contain the rules of environmental law, but also by the development of technical regulations, that establish environmental requirements for technological processes and corresponding control methods. The main aim of the environmental law is to protect the environment and ensure the human right to favorable environment and this aim is realized in the enforcement practice of public authorities, legal entities, and citizens with the use of different environmental protection instruments, such as, for example, accounting in the field of environmental protection by managing the inventories of natural resources and the enterprises' ecological passports; ecological certification, insurance, monitoring. The controlling function is performed by such environmental law instruments as the assessment of the impact on the environment, strategic environmental assessment, environmental expertize or environmental audit. Compensation of the damage, caused to the environment, including the damage caused by legitimate activity, functions as a government and authority coercion and as a way of ensuring the force of the rules of law.

Thus, in the present time the mechanism of the environmental law regulation is a set of different measures (means), which contain organizational, economical and ideological content, which are provided by law and as a whole are aimed at the preservation of the environment – natural habitat of humans as species. It allows us to confirm the statement, which says that the *main criterion of the efficiency of the law mechanism of environmental protection is also the ensuring of the human right to favorable environment.*

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[1] T.I. Makarova and others. Legal mechanisms of the environmental protection and ensuring the environmental safety (under the scientific editorship of T.I.Makarova). Minsk, BNU, 2016. P. 191.

In order to make a conclusion, we will identify the specific quality of the environmental law (it even may be a quality, typical only for the environmental law). This branch of modern legal system has a *one-goal nature*, because all of the targets of this branch of law (such as the environmental protection, a process of ensuring the environmental safety, the rational environmental management) are aimed at creation of favorable conditions for life and health of a human being as biological species and social individual; these conditions are perceived by the legal science as a process of ensuring the human right to favorable environment. Thus, the single criterion of the efficiency of the whole legal mechanism of the environmental protection and at the same time its value is the enforceability of the person right to favourable environment based on a principle "Achieved right of environment equals the optimal effect of a legal mechanism of environmental protection". This principle is observed even in the opposite direction: immaculate compliance with the environmental protection rules ensures the fundamental imprescriptible right of a human being to favorable environment.

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PERSPECTIVES OF DEVELOPMENT OF INTERNATIONAL LEGAL REGULATION OF COPYRIGHT AND RELATED RIGHTS

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Abstract: Intellectual property plays an important role in the life of society and new trends, such as development of new technologies, require further development of international treaty framework. Evolution of science, education and culture should stimulate copyright and related rights, which is impossible without achieving balance of interests of authors, rights holders and society. It is important to note that the need for renewal of the international legal framework rests on the essential contradictions in this field between developed and developing countries. The existing vectors of copyright and related rights at the international level are constantly updated with new issues and problems that need to be solved by the international community. The article discusses the main trends and vectors of development of international legal regulation of copyright and related rights. The author highlights the positive aspects of the trends, the existing obstacles for their effectiveness and the role of the Russian Federation in fostering some initiatives.

Key words: copyright, WIPO, limitations and exclusions, broadcasting organizations, theatre directors.

In the last years the international regulation of copyright and related rights has received new impulses and challenges. The acceleration of globalization processes, rapidly growing role of intellectual property in the life of society and development of new technologies lead to massive work in development of international law system of treaties according to the realities of the 21st century. Some of the problems are raised not only on the doctrinal, but also on the national and regional levels. The special role is played by World Intellectual Property Organization (WIPO) and its Standing Committee on Copyright and Related Rights.

We propose to look at the main vectors of this work, which in near future may change the international system of intellectual property.

1. The question of preparation and adoption of Treaty on the protection of rights of broadcasting organizations.

Treaty on the protection of rights of broadcasting organizations has been discussed for a long time by the specilized committee of WIPO, so now it is one of the traditional questions on the agenda. At the same time, this does not diminish the importance of the question.

The need for such international instrument is mainly determined by the development of new technologies, that have drastically changed radio and TV broadcasting. Accordingly, more and more organizations switch from traditional means of broadcasting to online-broadcasting on the Internet, the specific traits of which are not reflected by Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations.

Nevertheless, the urging need for renewal of the international legal framework is halted by essential contradictions between developed and developing countries in this question. In the first ones the internet-broadcasting prevails, while in the second ones the traditional means of broadcasting still dominate. Consequently, developed countries insist on the mandatory reflexion of the new technological and concomitant changes of business methods in the new treaty, and developing countries, on the contrary, insist that the new treaty should only deal with the traditional means of broadcasting.

Of course, such approach can lead to the situation when the agreement will not reflect the technological realities by the time it is enforced, but probably the lack of regulation in this sphere is even worse than poor regulation. Therefore the Russian Federation favors the idea of holding a diplomatic conference for adoption of such Treaty as soon as possible, because the questions of radio broadcasting need further harmonization and unification.

2. Questions of limitations and exclusions from copyright for museums, archives, scientific and educational organizations.

The development of science, education and culture, which should stimulate copyright and related rights, is impossible without keeping fair balance between private and public interests (interests of authors, right holders and society). It is generally accepted all over the world that this balance can be achieved by limitations and exclusions from copyright and related rights. However, the legal regulation of these questions significantly varies in different countries, which creates problems for international cooperation and exchange in the sphere of education, science and culture. Because such cooperation is only

increasing in modern world, there is an urgent need for harmonization of this sphere by preparing and adoption of the new international treaty under the aegis of WIPO.

In an attempt to solve the existing problems, WIPO now is conducting a series of important studies, however these studies are done separately in museums, archives, scientific and educational organizations. Therefore the position of the Russian Federation, which is seen as sensible and important, is that the questions of limitations and exclusions should be presented in a single document rather than in different ones depending on the sphere (museums, archives, etc.), which proceeds from a single legal nature of these limitations and exclusions.

3. New initiative of Russia on legal reinforcement of protection of rights of stage directors.

In 2017 the Russian Federation proposed a new idea to WIPO: to reinforce and unify the rights of stage directors on the international level.

Now despite the fact that theatre is one of the oldest forms of art, that had existed long before the creation of copyright and related rights, the rights of stage directors are not provided with the required legal protection and not reinforced by international treaties. Consequently, the level of legal protection of right and interests of these persons is different in different countries of WIPO.

A stage theatre director is a key person in the theatre, because it is due to his work that all the elements of performance come together and form a single creative vision. Of course, the work of stage directors is similar to the work of film directors, but at the same time film directors possess copyright for the created audiovisual work.

Theatre productions are widely used by the third parties without permission given by the stage directors and without paying remuneration to them, and it is a direct consequence of the imperfection of international and national legal mechanisms for protection of relevant intellectual rights.

At the same time one can proudly note that the Russian Federation has adopted and enforced legal regulation that correspond to modern day realities.

According to the Civil Code of the Russian Federation, theatrical performances are objects of related rights. In order to have legal protection the performances have to be expressed in a form that allows its reproduction and distribution with the means of technical tools.

A director of a performance (a person who directs a theatrical, circus, puppet, musical or other stage production) is recognized as a performer (an author of the performance). The result of the creative work of the theatrical director is expressed directly in a form of a life performance and not via technical devices.

In order to strengthen the protection of rights of stage directors, on January 1st, 2018 a new law came into force, according to which a theatrical production put on by a stage director remains to be an object of the related rights, but at the same time it

has to be expressed in a form allowing it to be performed again before the audience while remaining recognizable as a specific production (i.e. it can be expressed in a "life" form), as well as in a form that can be reproduced and distributed via technical tools (i.e. recording)[1].

At the same time a stage director has the right for inviolability of the production, i.e. the right for protection of the play from any distortion or changes that lead to distortion of the meaning or the perception of the production either during a public performance (a "life" form) or in a form of recording[2].

At the same time while defining "performers" neither Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961), nor WIPO Performances and Phonograms Treaty (1996) mention stage directors, therefore these treaties do not apply to the work of such persons.

According to the Rome Convention (art. 3), performers are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works.

According to article 7 of the Roman Convention, performers have the right to prevent the following actions for which they did not give their permission:

– the broadcasting and the communication of their performance;

– the fixation, without their consent, of their unfixed performance (i.e. recording of a "life" performance);

– the reproduction, without their consent, of a fixation of their performance:

a) if the original fixation itself was made without their consent;

б) if reproduction is made for purposes different from those for which the performers gave their consent.

Therefore it can be concluded that, according to provisions of the Rome convention, stage directors are not fixed in definition of "performers" directly. Moreover they cannot be indirectly referred to "other persons who in some way take part in performing literary or artistic works"[3] either.

As a development of the Rome Convention, WIPO Performances and Phonograms Treaty (WPPT) (1996) was adopted. WPPT defines performers as actors, singers, musicians, dancers, and other persons which act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore works.

WPPT sets moral rights of performers (article 5):

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[1] Bliznets I.A. International law. Vector of development of intellectual property. // Kopirayt. Vestnik Rossiyskoy akademii intellektual'noy sobstvennosti i Rossiyskogo avtorskogo obshchestva. [Copyright. Herald of Russian Academy of Intellectual Property and Russian Authors' Community] . 2017. No. 4. P. 7.

[2] Pravo intellektualnoy sobstvennosti [Intellectual property law] : student book, 2nd edition / I.A.Bliznets, E.P.Gavrilov, O.V.Dobrynin [and others]; Under ed. of I.A.Bliznets. M.: Prospekt, 2010. P. 194.

[3] Bliznets I.A International law. Vector of development of intellectual property. // Kopirayt. Vestnik Rossiyskoy akademii intellektual'noy sobstvennosti i Rossiyskogo avtorskogo obshchestva. [Copyright. Herald of Russian Academy of Intellectual Property and Russian Authors' Community] . 2017. No. 4. P. 8.

– as regards both his live aural performances and performances fixed in phonograms, the performer shall have the right to claim to be identified as the performer of his performances;

– performer also has the right to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

WPPT sets economic rights of performers.

As regards their unfixed performances, performers have the right to authorize:

– the broadcasting and the communication to the public of their performance of their unfixed performance;

– fixation of their unfixed performances.

As regards their fixed performance, the performers have the exclusive right to authorize:

– the reproduction of their performances fixed in phonograms;

– the distribution to the public (internet) of the original and copies of their performance fixed in phonograms;

– the commercial rental to the public of the original and copies of their performances fixed in phonograms.

Thus, compared to the Rome Convention, WPPT largely widens the rights of performers in both fixed and aural performances. However, the subjects of these rights remain the same as in the Rome Convention and stage directors are not included into the definition of a "performer".

Therefore the initiative of the Russian Federation on the question of preparation of a new treaty devoted to the protection of rights of stage directors should be welcomed.

In conclusion it should be noticed that the existing vectors of development of copyright and related rights on the international level are always complemented by new issues and problems that need to be solved by the international community. The Russian Federation does not remain indifferent and actively takes part in solving these problems. The author hopes that the initiative of the Russian representative on legal enforcement of the protection of rights of stage directors will receive support from member countries of WIPO and encourages the general public to discuss this question.

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ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN TURKEY

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Abstract: Arbitration is indubitably becoming a common way of resolving disputes. Arbitration provides speed, neutrality, accuracy and enforceability; as a result it has been mainly preferred over litigation. The arbitration process is very important indeed. However, enforcing the arbitral award is as important as the arbitration process itself, because an award that is not enforced does not contribute to the parties in any way. Parties of the arbitration process prefer arbitration, as the judgment has a high chance to be enforced under the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which already has been adopted by 151 of the 193 United Nations Member States. Turkey is one of these 151 countries; however, there are not enough sources in English that discuss the recognition and enforcement of foreign arbitral awards pursuant to Turkish law. This research paper intends to explain the recognition and enforcement of foreign arbitral awards in Turkey, starting with a brief explanation on arbitration and foreign arbitral awards. Next, the Turkish regulation regarding the recognition and enforcement of foreign arbitral awards and the 1958 New York Convention are represented. Furthermore, limited defenses preventing enforcement are explained. Additionally, this research paper does not only stay with the theory, but also discusses the matters in the light of the decisions of the Turkish Court of Cassation. Consequently, the research paper offers profitable information in English regarding the recognition and enforcement of foreign arbitral awards.

Keywords: enforcement, foreign law, arbitral awards, foreign arbitral awards, Turkey, arbitration process

Arbitration and Enforcement of Foreign Arbitral Awards

Arbitration is the resolution of a present or probable arbitrable dispute by one or more arbitrators instead of the of the judicial body of a state.[1] The emergence of arbitration predates the courts, insomuch that it constitutes the initial resolution method of disputes. Arbitration imbedded its place in history before state courts with the object of resolving legal disputes swiftly and fairly. At the present time, as judiciary is a branch of the state power, it is inspected by the state courts. Likewise the arbitral awards constitute a *res judicata,* just like the court judgments, thus they are also enforceable.

There are several factors why the parties prefer arbitration. Foremost among these, arbitration is concluded in a short period of time compared to litigation. Moreover, the procedural rules of arbitration are more flexible, and the parties have a decisive capacity over the arbitrators and the place of arbitration. Furthermore, the arbitrators are generally more proficient compared to judges in dispute resolution, as they have arbitration experience.

A dispute has to be arbitrable if it is to be resolved by arbitration. Arbitrability is the ability of parties to have a freedom of contract over the subject of the dispute. In addition to this, the contract needs to be valid without a court decision. Some disputes are not arbitrable. These disputes are usually related to family law and criminal law. The reason for this is the reluctancy of the state to relinquish its jurisdiction over these important social matters.

An arbitral award is defined as a determination on the merits by an arbitration tribunal. When used with the word "foreign", a debatable notion is created. Firstly, in order to a foreign arbitral award to take effect in another country, the award has to be recognized or enforced. Recognition and enforcement are two different concepts. If the nature of the award is enforceable, then it must be enforced and not recognized. For example, award regarding the collection of an amount requires enforcement. On the other hand, if the arbitral tribunal determines that there is no debt, then that award must be recognized, because the award does not require enforcement.

Enforcement of Foreign Arbitral Awards According to Turkish Law

The Act on Private International and Procedural Law, as known as the act numbered 5718, regulates the law applicable to private law transactions and relations that contain a foreign element, the international jurisdiction of the Turkish courts, and the recognition and enforcement of foreign judgments. The recognition and enforcement of foreign arbitral awards are regulated by articles 60-63 of the Act. However, according to Article 1 of the Act, provisions of international conventions to which the Republic of Turkey is a signatory are reserved. This means that the Act is applicable only if the award is decided by a non-contracting state to the New York Convention, as Turkey has

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[1] Joshua Karton, The Culture of International Arbitration and the Evolution of Contract Law 1 (2013); Thomas E. Carbonneau, Arbitration in a Nutshell 15 (2012)

ratified the New York Convention on July 2, 1992, with two reservations: reciprocity and commercial reservations.

The reciprocity reservation indicates that Turkey may choose to only recognize and enforce arbitral awards from arbitrations with other signatory countries or their citizens. Commercial reservation permits a signatory country to apply the 1958 New York Convention only to those disputes of a commercial nature according to Turkish law.

Turkey has also ratified The International Centre for Settlement of Investment Disputes (ICSID) Treaty on May 27, 1988. According to Article 25 of the Treaty, a dispute qualifies arbitration through ICSID if the dispute is between a contracting state to the ICSID Convention and a national of another Contracting State, if the disputing parties have agreed in writing to submit their dispute to ICSID arbitration and finally if the dispute constitutes a legal dispute arising directly from an investment. Enforcement of ICSID awards is different compared to other foreign arbitration awards, as the Article 54 of the Convention states that contracting states shall recognize an ICSID award as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that state.

A prerequisite for enforcement of an arbitral award is that award has to be foreign. There is not any provision in the Act on Private International and Procedural Law regarding this matter. In order to determine whether an award is foreign or not certain criteria, such as citizenship of the parties or the arbitrators, the place of the award, under which law the award was decided, are used. The Assembly of Civil Chambers in the Turkish Court of Cassation held that if the award is decided under a foreign law, then that award would be indicated as foreign.

Article I of the New York Convention states that the Convention shall apply to arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought. Under the 1958 New York Convention there are two criteria for an award to be indicated as foreign. The first one is that the award should be made in another state territory. The second one is that the award should not be considered as domestic in the state where it is to be enforced. Hence, first the Turkish court would determine whether the award is foreign or not. In this context, if the award is made pursuant to the Turkish procedural law, the award is deemed as a domestic one. However, if the award is made pursuant to a foreign law, the award is deemed as foreign.

It must be noted that there are no specific provisions regarding the procedure for enforcement of foreign arbitral awards in the 1958 New York Convention. However, Article III of the 1958 New York Convention refers to the procedure law of the country where the award will be enforced. Therefore, procedure of enforcement would be determined according to Turkish law. This is regulated by the Act on Private International and Procedural Law. According to Article 60 of the Act, enforcement is demanded from the civil court that parties have decided to apply. If the parties do not have such agreement, the award can be enforced in the civil court where place of residence of the losing party is.

If such place cannot be found, the civil court where the losing party's domicile is should be competent. The party who applies for the enforcement of the award must provide the duly authenticated original arbitration agreement or its duly authenticated copy, the binding award or its duly authenticated copy and finally the translation. This process can be executed even during the judiciary recess, which is between July 20 and August 31, as the courts apply simple trial procedure for the enforcement of awards.

Under Article V of the New York Convention, there are certain circumstances where enforcement of the award may be refused at the request of the party against whom it is invoked. First, it may be refused if the parties to the arbitration agreement were under some incapacity or the said agreement is not valid. Second, the enforcement may be refused if the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case. Third, the enforcement may be refused if the award is beyond the scope of the arbitration agreement. Fourth, the enforcement may be refused if the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place. Fifth, the enforcement may be refused if the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

Moreover, according to Article V/2 of the Convention, the enforcement of the award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that; the subject matter of the difference is not arbitrable under the law of that country; or the recognition or enforcement of the award would be contrary to the public policy of that country. These circumstances are parallel to the ones in the Act numbered 5718.

As the enforcement of the award is fulfilled by a lawsuit, filing a lawsuit requires a certain amount of fee. Pursuant to the Article 3 of the Act on Fees numbered 492, fee for the enforcement of the award is determined by the nature of the decision. Therefore, there are still debates over the fees, whether it should be a proportional fee or a fixed fee. The Turkish Court of Cassation held that the fee for the enforcement of the award must be determined by the nature of the judgment that is sought to be recognized, thus found that demand of a fixed fee was not accurate in a particular case.[1] However, it must be noted that, as the judge solely examines if the circumstances allow the award to be enforced and that the applicant have fulfilled prerequisites in order for the award to be enforced, regulating the fee as a fixed fee could have been more appropriate.

If the applicant is a foreigner, an assurance have to be deposited according to Article 48 of the law numbered 5718. However, if there is an international agreement between Turkey and the foreigner's state of citizenship, then an assurance is not needed.

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[1] Decision numbered 2009/8256, dated 9/15/2009.

The examination of the recognition and enforcement request by the Turkish Courts is limited to determination of the fact that whether the arbitral award and the arbitral proceedings meet the conditions under the law numbered 5718 or the New York Convention. In Turkish legal practice, if trial Courts determine the case in relation to its merits, thereafter the Court of Cassation may overrule the decision of recognition and enforcement accordingly, if filed by the petitioner. Hence, during enforcement proceedings, the court examines whether or not there exists an obstacle for the enforcement of the foreign arbitral award and accordingly the enforcement should be rejected or not.

Partial Enforcement of Foreign Arbitral Awards

"Pursuant to Article V/1-(c) of the New York Convention, in case the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced." Moreover, Article 62/(g) of the Act on Private International and Procedural Law provides that in cases where the arbitral award pertains to a subject that is not included in the arbitral agreement or clause or where the arbitral award exceeds the limits of the arbitral clause, the court of enforcement shall dismiss that part of the request of enforcement of the foreign arbitral award. The Turkish Court of Cassation ruled that the partial enforcement of the foreign arbitral award is possible in a case where there are three separate agreements between the parties of an arbitration procedure and two of them have an arbitration clause:

"In that case, the question of possibility of partial enforcement of arbitral awards arises. As a rule, there is no legal obstacle to partial enforcement of arbitral awards. Hence, in the decision of our chamber dated 3.6.2002 and numbered 9357/4209, it is decided that in case the arbitral award is made based on a matter not included in the arbitration agreement or clause or goes beyond the scope of the arbitration agreement or clause, the court may reject the enforcement (concerning this part of the award) and therefore, the partial enforcement is possible." This Decision of the 19th civil Chamber of the Court of Cassation dated 18.12.2003 and numbered 2003/7270 E., 2003/1288 K provides that partial enforcement of foreign arbitral awards is possible under the Turkish law.

The decision referred to above has been adopted by the Court of Cassation pursuant to the International Private and Civil Procedure Law numbered 2675, which was in force prior to the Act on Private International and Procedural Law. However, the content of the Article 45/(h), which has been referred to in the aforementioned decision corresponds to the content of Article 62(g) of the Act on Private International and Procedural Law. Consequently, the decision above may be taken into consideration in the application of the Act on Private International and Procedural Law as well. In addition to the said

decision, there are other decisions where the Court of Cassation ruled that the partial enforcement was admissible.

The enforcement judge shall take into consideration the prohibition of *révision au fond*, which means prohibition of examination of merits of the case, or conclusiveness of foreign judgments, while giving partial enforcement decisions. It should be emphasized that the partial enforcement shall not involve the examination of merits of the case. In the event that the examination of merits is necessary in order to grant a partial enforcement, the request of partial enforcement shall be rejected. Accordingly, the part of the arbitral award subject to request of enforcement shall be separable from the arbitral award. For example, awards regarding pecuniary debts may be partially enforced, as they can be separated.

The request of partial enforcement may be accepted in case there are valid reasons for refusal of enforcement regarding certain parts of the arbitral award. In this way, a favorable solution for the parties would be obtained; because the parties preferred to resolve their disputes by means of arbitration, and even if the award is not completely enforceable, the enforceable part must be respected. The decisions of the Court of Cassation indicate that the partial enforcement is possible. However, the principle of prohibition of *révision au fond,* which is the most essential principle with regard to enforcement proceedings, must be followed.

Enforcement of ICC Awards

The International Chamber of Commerce, known as ICC, is the utmost business organization in the world and one of its activities is dispute resolution pursuant to its own rules. Briefly, in the commencement of an arbitration procedure in ICC, an arbitral tribunal is appointed. According to ICC Arbitration rules, the arbitral tribunal issues an award in a short period of time, which is six months. The arbitral tribunal submits the award in draft form to the Court. Therefore the award is presented to the ICC International Court of Arbitration before being signed. This Court may modify the form of the award, however, it cannot modify the content of the award. This Court is not a court in a regular sense. It merely assures the application of ICC Arbitration rules. It is the arbitral tribunal who resolves the dispute. The Court on the other hand inspects the ICC arbitration process, the award's form and indicates the fees of arbitrators.

The award is binding on the parties. Article 34 of the ICC Arbitration Rules indicates: "By submitting the dispute to arbitration under the rules, the parties undertake to carry out any award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made." As much as the award is binding, it still has to be enforced under the Turkish law in order to be executed.

In some circumstances, Turkish Court of Cassation deems ICC arbitration award as a national award, not a foreign one. Therefore, there is no need for an enforcement procedure for these awards to be executed. According to the Turkish Court of Cassation,

ICC arbitral awards given under the Turkish procedural law are not foreign awards. The award is Turkish, as it is given under the Turkish authority. In the decision numbered 7099, dated 12/19/1985, the Turkish Court of Cassation indicated that during the arbitration Turkish procedural law was applied and the arbitrator issued the award in Turkey, therefore the award must be regarded as Turkish. In another judgment given by the 19th Chamber of the Turkish Court of Cassation dated 11/9/2000 and numbered 2000/7602, the Court held that it is a valid reason to refuse enforcement of the award if the award is given without giving the losing party right to defense. However, as the losing party had the chance to demonstrate its evidence to the court, the enforcement cannot be refused on such grounds.

Moreover, in another judgment issued by the Turkish Court of Cassation's 15th Chamber, dated 10/25/1996 and numbered 1996/5584, the Court held that, as there was no clear indication of what constitutes a foreign judgment neither in Turkish law nor the New York Convention, the award was not foreign because the arbitration process was executed under the Turkish Procedural Law. Hence, the judgment was issued under the Turkish authority and it is a Turkish judgment. Nevertheless, it must be reiterated that these cases involved awards given under the authority of the Turkish law.

Judgments of the Turkish Court of Cassation

Turkish Court of Cassation may be criticized for its protectionist decisions on the matter of enforcing foreign awards. A prior decision of the Court in 1976 commenced the debates on this issue. The Court did not enforce an ICC arbitration award on the grounds that it was against the public policy. This decision pertained to a dam construction. Turkey and foreign companies signed a contract for the dam construction and there was an arbitration clause in the agreement. Pursuant to the agreement, ICC arbitration rules were to be applied. However, the Court of Cassation held that not applying the Turkish procedural law and approval of the Court of Arbitration would be against public policy. It must be noted that The Act on Private International and Procedural Law was not in force and New York Convention was not ratified when this decision was issued. However fifteen years after this decision, the 15th Chamber of the Court of Cassation held that the application of ICC rules were not against the public policy, and consequently changed its fallacious view (Decision dated 7/10/1991 and numbered 3667).

Pursuant to a decision of the Assembly of Civil Chambers of the Turkish Court of Cassation (dated 5/5/1999 and numbered 1999/273), the Court held that arbitrators are bound with the procedural law chosen by the parties, and since the arbitrators applied Swiss law when Turkish law was chosen by the parties, there is a valid reason for refusal of the enforcement pursuant to Article V/1-(d) of the New York Convention.

In a decision of the 19th Chamber, The Turkish Court of Cassation ruled that (dated 5/8/1997 and numbered 1997/4669) the award was enforceable while a party claimed that there was no written arbitration agreement. The Court held that there was evidently

an arbitration agreement and a sales contract according to rules of The Federation of Oils, Seeds and Fats Associations, as the parties had letters of credit. The Court referred to Article II of the New York Convention, in which the term "agreement in writing" is indicated. According to this article, the term "agreement in writing" includes an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

According to a decision of the 11th Chamber of the Court of Cassation dated 5/25/2000 and numbered 2000/3992, the Court favored a new approach. In this case, a dispute arising between a German firm and two Turkish firms would be resolved under ICC arbitration. The arbitral tribunal would apply ICC arbitration rules, but the interpretation of the contract and the disputes arising from the contract would be resolved according to Turkish law. The dispute arose and the German firm filed for arbitration under the ICC. The arbitral tribunal did not apply Turkish procedural law and found that Turkish side needed to pay a particular amount. German firm filed for enforcement of the award in Turkey. The Court of Cassation stated that the contract should be interpreted by Turkish law, however, it was clearly indicated in the contract that the arbitration procedure would be in compliance with the ICC rules of arbitration. Therefore, as per the Court of Cassation, parties agreed on the resolution of the dispute by the ICC. Finally, the Court of Cassation found that there was no valid grounds to refuse the enforcement of the award.

In the event of determining if subject matter is capable of settlement by arbitration or not, the Court of Cassation discussed whether refunding value added tax was arbitrable or not. On 5//2007, the 11th Chamber held that the payment of the VAT to the applicant stated in the invoice was not possible, as tax could only be paid to tax offices. Therefore, the Court found that payment of value added tax to a firm would not be acceptable under arbitration.

Conclusion

Although arbitration does have certain advantages over litigation, enforcement is still mandatory in order to benefit from a foreign arbitral award. Without the enforcement, solely having the award does not do any good. However, enforcement is not an impetuous procedure due to the 1958 New York Convention.

Turkey who is the 17th largest economy in the world is showing a major progress on the subject of enforcement of foreign arbitral awards. As a member of the New York Convention since more than twenty years, its judiciary is doing its very best to respect the foreign arbitral awards. It is not hard to witness that the grounds for refusing the enforcement of an arbitral award is declining, and the Court of Cassation tends to honor the foreign arbitral awards.

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LEGAL THEORY ISSUES OF ADMINISTERING PROSECUTOR'S FUNCTIONS AT PRE-TRIAL STAGES IN THE REPUBLIC OF TAJIKISTAN

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Abstract: The author of this article analyses legal theory issues of administering different kinds of prosecutor's activity at the present stage of pre-trial proceedings in the Republic of Tajikistan. It is important to emphasize that after becoming independent, the young state was faced with important questions related to improvement of acts, especially in the area of differentiation of kinds of the prosecutor's activity. The author focuses on the analysis of the position of domestic scholars on the implementation by the prosecutor of accusatory and supervising functions when carrying out judicial and law reforms in the country. In addition, the author compares a number of provisions of the existing criminal procedure legislation with the Code of Criminal Procedure of the Tajik SSR (1961) mentioning different kinds of prosecutor's activity during investigation of crimes and law enforcement at pre-judicial stages. As a result of his research, the author offers a number of mechanisms that would help to solve the debatable questions in the implementation of prosecutor's activity in pre-trial proceedings.

Key words: prosecutor, pre-judicial production, prosecutor's activity, modern period, accusatory activity, procedural management, supervising activity.

There is no doubt that investigation of crimes conducted on a high quality level and sufficient evidence collected legally contribute to a justifiable judgment. Otherwise, one unlawful decision or action by the persons carrying out criminal proceedings can call into question all the system of criminal justice. This point corroborates the idea that not only the court but also the authorities representing investigating structures play a significant role in imposing of fair criminal judgement.

To guarantee the rights of individuals to have fair criminal proceedings, the Republic of Tajikistan had to determine the limits of functions of each lawful authority in prosecution, in particular functions of the public prosecutor. Political pressure of illegal armed groups during the civil war was growing every day, delaying and impeding the work of the legislative body on the elaboration and adoption of the legislation. Therefore, the actions of Tajik prosecutors were regulated by the Code of Criminal Procedure of the Republic of Tajikistan of 1961, which having included substantial amendments and additions was in power up to 2009.

The range of prosecutor's procedural functions in pre-trial proceedings was also included in Law no. 652 of the Republic of Tajikistan "Prosecution in the Republic of Tajikistan"[1] adopted on 20 April, 1992. Under the articles 3 and 31 of the Law, the prosecutors not only supervised the lawful authorities of the prosecution, but also had the right to investigate crimes on their own. In particular, they had the power to inspect the requests and complaints about the violation of law (subpara 2, para 1 of art. 21). In case of finding the evidence of criminal act, they had to institute criminal proceedings (subpara 5, para 2 of art. 21) and order under the established procedure (art. 24).

Later all the above-mentioned regulations characterizing the supervisory and accusatorial operation of the prosecutor at the stage of pre-trial proceedings transformed into two Constitutional Laws of the Republic of Tajikistan "The Prosecuting Authorities of the Republic of Tajikistan": they were adopted on 11 March, 1996 (no. 289) and on 25 July, 2005 (no. 107). Exercising the procurator's authority in crime investigation provided by the Constitutional laws often led to difficulties. Apart from that, the existing then Code of Criminal Procedure of the Republic of Tajikistan of 1961 did not comply with the goals and objectives of the independent state to seek the creation of competitive criminal proceeding.

Consequently, taking into account the experience in criminal procedure legislation of the states of CIS and other countries, the legislative body of the Republic of Tajikistan adopted a new Code of Criminal Procedure on 3 December, 2009 that came into force on 1 April, 2010. The implementation of unlimited procedural power of the prosecutor at the stage of pre-trial proceedings has drawn attention of both domestic and foreign experts[2].

Having analyzed art. 36 of the Code of Criminal Procedure of the Republic of Tajikistan that includes individual functions of the prosecutor at the stage of pre-trial proceedings, some of the Tajik scholars came to the conclusion that the public prosecutors

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[1] *Vedomosti Verhovnogo Soveta Respubliki Tadzhikistan* [Gazette of the Supreme Council of the Republic of Tajikistan], 1992, no. 13, art. 211.

[2] *Praktika primeneniya Ugolovno-protsessualnogo zakonodatelstva Respubliki Tadzikistan i rekomendatsii po ego usovershenstvovaniju* [Practice in the application of criminal procedure legislation of the Republic of Tajikistan and recommendations on its improvement], edited by A. M. Madzhitov, E. D. Kamolova. Dushanbe, 2012; *Dostizhenija, problemy i perspektivy razvitija ugolovno-processual'nogo zakonodatel'stva Respubliki Tadzhikistan: materialy Mezhdunarodnoj nauchno-prakticheskoj konferencii* [Achievements, Difficulties and Perspective of Development of Criminal Procedure Legislation of the Republic of Tajikistan: Proceedings of the Scientific Conference] (Dushanbe, 3 December 2014). Dushanbe, Irphon Publ, 2014.

are the key subjects of the pre-trial proceedings. Within their competence, they carry out the accusation on behalf of the State and support it at every stage of criminal proceedings[1]. They also supervise the exact and unified implementation of laws by the inquiry or preliminary investigation authorities as well as the police operations[2].

However, other scholars consider these legislative rules to be breaking the principle of competitiveness in administering criminal proceeding functions in criminal procedure. They emphasize that "the prosecutor representing the prosecution should not have the power that is not confined to the party of the dispute"[3] and on this basis, should not be granted the function of supervision at the stage of pre-trial proceedings. Nevertheless, Professor Z. H. Iskanderov believes that in the Republic of Tadzhikistan prosecutor's office has been carrying out supervision over law and order from the beginning up to the present day[4]. He notes that initiation of criminal proceedings is still the initial stage of the defense. In this regard, the Professor claims that the main function of the prosecutor is supervision over law and order at the stage of preliminary investigation. This point of view was partially supported by the prosecutor's office employees in Republic of Tajikistan, who referred to the history of formation of prosecution in the majority of countries[5].

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1 N.A. Kudratov, Z.I. Kholkhuchaev. *Ugolovno-processual'noe pravo Respubliki Tadzhikistan. Obshhaja chast' i dosudebnoe proizvodstvo (per. s tadzh. jazyka na russkij jazyk)* [Criminal procedural law of the Republic of Tajikistan. The general part and pre-trial proceedings (translated from Tajik into Russian)], edited by Candidate of Legal Sciences, Associate Professor N.A. Kudratov. Dushanbe, Ozar Publ., 2013, p. 99; R.R. Yuldoshev, N.A. Nozirov, F. S. Imimnazarov. *Ugolovnyj process. Obshhaja chast': kurs lekcij (per. s tadzh. jazyka na russkij jazyk)* [Criminal Procedure. The General Part: Set of Lectures (translated from Tajik into Russian)], edited by R.R. Yuldoshev. Dushanbe, R-Graph Publ., 2016, p. 69.

2 *Ugolovnoe sudoproizvodstvo Respubliki Tadzhikistan: uchebnik* [Criminal Procedure in the Republic of Tajikistan: course book], edited by N.S. Manova, Yu.V. Frahciforov, R.R. Yuldoshev. Dushanbe, Tadjiprint publ., 2017, p. 79; *Ugolovnyj process: uchebnoe posobie (per. s tadzh. jazyka na russkij jazyk)* [Criminal Procedure: study guide (translated from Tajik into Russian)], edited by R.R. Yuldoshev. Dushanbe, R-Graph Publ., 2018, p. 91.

3 R.R. Rakhmatulloeva. Ugolovno-processualnye funktsii na osnove printsipa sostyazatelnosti v ugolovnom sudoproizvodstve Respubliki Tadzhikistan [Criminal procedure functions based on the principle of competitiveness in criminal proceedings of the Republic of Tajikistan] // *Problemy primenenija zakonodatel'stva v sovremennom periode: teorija i praktika // Sbornik statei i materialy respublikanskoj nauchno-teoreticheskoj konferencii* [Difficulties in the implementation of legislation in modern times: theory and practice. Collection of articles and proceedings of the Republic Scientific Conference. 28 November, 2013]. Hudzhand, Noshir Publ., 2014, p. 52.

4 Z.Kh. Iskanderov. Rol' prokurora v obespechenii prav i svobod cheloveka i grazhdanina v ugolovnom prothesse: teoretiko-pravovye problemy [The role of the prosecutor in protection of human and civil rights in criminal procedure: Theory and practice issues // *Zakonnost' (Teoreticheskij i nauchno-prakticheskij zhurnal General'noj prokuratury Respubliki Tadzhikistan*) [Legitimacy (Theoretical and Practical Science Magazine of the General Prosecutor's Office of the Republic of Tajikistan)], 2005, no.2, pp. 81-87.

5 Sh. Kh. Kurbonov. Zadachi prokurorskogo nadzora v prothesse obespecheniya zakonnosti I pravoporyadka [The Goals of prosecutor's supervision over law and order] // *Problemy primenenija zakonodatel'stva v sovremennom periode: teorija i praktika // Sbornik stat'i i materialy respublikanskoj nauchno-teoreticheskoj konferencii* [Difficulties in the implementation of legislation in the modern times: theory and practice. Collection of articles and proceedings of the Republic Scientific Conference. 28 November, 2013]. Hudzhand, Noshir Publ., 2014, p. 12.

It is hard to agree with the idea that prosecution authorities of the Republic of Tajikistan have been carrying out only the supervision function since its establishment. Analysis of the individual prosecutor's activities at the stage of pre-trial proceedings since its foundation shows that the functions of Tajik prosecutors are not only of supervisory, but also accusatory character unlike functions of Russian prosecutors. Apart from that, the statements of some authors contravene the provisions of the current Code of Criminal Procedure of the Republic of Tajikistan. Abiding by the law (para 1, art. 36 of the Code of Criminal Procedure of the Republic of Tajikistan), functions of criminal prosecution carried by the prosecutor have priority over the supervision functions. For example, para 1 of art. 36 of the Code of Criminal Procedure of the Republic of Tajikistan states that the prosecutor administers prosecution at every stage of the criminal procedure and only para 2 of the given article provides for the prosecutor's supervision over implementation of laws by the inquiry or preliminary investigation authorities. It goes without saying that every function of the prosecutor at the pre-trial stage serves its own purpose. In particular, if the criminal proceedings are initiated against a specific person, the prosecutor achieves the aim of the criminal proceeding to some extent that includes solving of the crime timely and bringing to justice those responsible.

[Collection of articles and proceedings of the Republic Scientific Conference. 28 November, 2013]. Hudzhand, Noshir Publ., 2014, p. 52.

There is a different point of view on the subject of the theory of criminal procedure. For example, I. T. Makhmudov states in his work[1], that the exercising of supervision function by the prosecutor in this sphere is one of the important ways to fulfil the function of criminal prosecution. He writes: "The prosecutor, in addition to enforcing the law in the pre-trial phase, should also take measures to substantiate the accusation in the committed crime presented against particular individuals." In this regard, the author thinks, that the prosecutor exercises the function of criminal prosecution at all stages of criminal proceedings and considers the supervision over the preliminary investigation to be a way to implement the function of criminal prosecution.

For the comprehensive and constructive conclusion on this issue, we have conducted a survey among investigators of the Ministry of Internal Affairs, as well as investigators and prosecutors of the procuratorial bodies in the Republic of Tajikistan. In particular, 64,7% of respondents expressed the view, that the prosecutor in the pre-trial phase

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[1] I.T. Makhmudov. Protsessual'noe polozhenie prokurora v ugolovnom protsesse [The procedural status of the prosecutor in criminal proceedings] // *Vestnik Tadzhikskogo natsional'nogo universiteta (Seriya gumanitarnykh nauk)* [Bulletin of Tajik National University (Series of Humanities), 2014, no. 3/4 (139), p. 85. I. T. Makhmudov, N.A. Abdulloev. Prokuror v ugolovnom protsesse: tejreticheskie problemy I pravovoe regulirovanie [The prosecutor in the criminal proceedings: theoretical problems and legal regulation] // *Materialy nauchno-prakticheskoy konferentsii na temu: "Aktual'nye voprosy sudebnogo prava, prokurorskoy deyatel'nosti I presechenie prestupnosti v Respublike Tadjikistan"* [Proceedings of the scientific-practical conference "Important issues of the judiciary, prosecution work and suppression of criminality in the Republic of Tajikistan"], ed. by I. T. Makhmudov. Dushanbe, Maorif va farhang Publ., 2013, p. 19.

exercises the criminal prosecution and monitors the execution of law by the inquiry and investigation agencies. 29,5% of respondents expressed the view about the supervision function of the prosecutor in relation to the inquiry and investigation agencies.

In the science of criminal proceedings and procuratorial and investigative practice, this question seems to be ambiguous. In our opinion, at the present moment there are two mechanisms proposed by the procedural scholars and law enforcement officials which can distinguish between functions of participants in the pre-trial proceedings. The first mechanism, which can solve the problem, is in the continuation of the judicial and law reform, and the second one involves the formation of the independent investigative body.

It should be noted, that Tajik scholars and law enforcement officers proposed their conceptions of judicial and law reform based on the numerous messages by the President of the Republic of Tajikistan E. Rahmon to the Parliament[1]. Later three judicial and law reforms were adopted and implemented[2] where the activities of participants in pre-trial and court proceedings were covered. However, as evidenced by recent heated discussions, such innovations of the criminal proceedings in Tajikistan are not all unequivocally supported. Criticizing the developers of the program of legal and judicial reforms, Tajik specialists in procedural law paid attention to the unilateral and inadequate nature of the argumentation in provisions set forth in the conception of judicial and law reform. This argumentations did not contribute to a real change in the quality of crime investigations. In particular, A.A. Muhiddinov notes that success of the legal reform in many respects will depend on the degree of its interconnection with other reforms being carried out in the country, such as reform of agencies, which administer pre-trial proceedings in criminal cases. If the judicial and law reform only concerns the court, then it will not bring the expected results[3]. Similarly, R.R. Yuldoshev repeatedly expressed the opinion that the one-sided direction of the programs of judicial

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[1] [Messages from the President of the Republic of Tajikistan E. Rahmona to the Parliament of the country available on the official site of the President of the Republic of Tajikistan: Message of 20.04.2006, at http://president.tj/ru/node/874, Message of 15.04.2009 at http://president.tj/ru/node/866, Message of 24.04.2010 at http://president.tj/ru/node/865, Message of 23.04.2014 at http://president.tj/ru/node/6599 (accessed 18.01.2018).

[2] The program of the judicial and law reform in the Republic of Tajikistan (approved by President Decree no. 271 of 23 June 2007), available at http://base.spinform.ru/show_doc.fwx?rgn=17481 (accessed 25.01.2018); The program of the judicial and law reform in the Republic of Tajikistan for 2011-2013 (approved by President Decree no. 967 of 03 January 2011), available on the official site of the Presidential National Legislation Center of the Republic of Tajikistan) at http://mmk.tj/ru/Government-programs/programs/court (accessed 26.01.2018); The program of the judicial and law reform in the Republic of Tajikistan for 2015-2017 (approved by President Decree no. 327 of 05 January 2015), available at the official site of the Presidential National Legislation Center of the Republic of Tajikistan) at http://mmk.tj/img/Programma-sydebno-pravovo.doc (accessed 26.01.2018).

[3] A.A. Muhiddinov. *Protsessual'noe polozhenie sledovatelya v ugolovnom protsesse (na materialakh Respubliki Tadjikistan)* [The procedural position of the investigator in criminal proceedings (on material of Republic of Tajikistan)]. Dushanbe, 2015, p. 13.

and law reform does not properly correct anything, but, on the contrary, misleads the old mechanism, which cannot adapt to the new realities. According to the author, the concept of the future reform is not fully understood and poorly reasoned in the provisions. In this situation, the achieved results, the tested institutions will become nothing but a temporary phenomenon, the institutions which now are passing through the stages of formation and development[1].

Some scholars find the way out of this problem by proposing division of the supervisory functions of the prosecutor and management of the preliminary investigation on one hand and formation of a separate apparatus, such as the Investigation Committee[2], on the other hand.

From our point of view, when developing a unified conception, it would be more appropriate to take into account the latest developments, related to the reorganization of the CIS pre-trial production system. Prosecutorial and investigative practice in Russia showed, that creation of the Investigation Committee is not the only way to resolve the problem of distinction of the procedural functions between the participants of the criminal proceedings. In our opinion, this approach made it difficult for the prosecutor to interact with other participants of the criminal proceedings for the prosecution. In particular the restriction of some prosecutorial powers of the prosecutor led to a significant reduction in his supervisory powers, duplication of powers of the prosecutor and the head of investigative body in the pre-trial stages of criminal proceedings.

In order to avoid misinterpretation of the norms of the law concerning types of activities (functions) of the prosecutor at the pre-trial stages, the Tajik legislature decided to choose a different path. For example, the Code of Criminal Procedure of the Republic of Tajikistan, in contrast to the Code of the Russian Federation, regulates each activity (function) of

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[1] R.R. Yuldoshev. On the prospects in the activity of criminal investigation bodies // Publications of the Academy, 2015, no. 3 (27), pp. 236-239; R.R.Yuldoshev, S.V. Vlasova The reform of the preliminary investigation in Russia and Tajikistan: similarities and differences // Bulletin of Nizhny Novgorod Academy of Ministry of Internal Affairs of Russia, no. 3 (35), pp. 116-117; R.R. Yuldoshev Optimization of the pre-trial investigation in Tajikistan // Proceedings of the International Sciencific-Practical Conference devoted to the 25th anniversary of the independence of the Republic of Tajikistan and 20th anniversary of the Russian-Tajik (Slavonic) University (27-28 October, 2016). Dushanbe, RTSU Publ., 2016, pp. 381-382; R.R. Yuldoshev. Reform of Tajik Internal Affairs Bodies in the context of judicial and law reforms] // Proceedings of the International Sciencific-Practical Conference "Important issues of reforming the bodies of internal affairs of the Republic of Tajikistan (27 November, 2015)". Dushanbe,Tipografia MVD [printing house of Ministry of Internal Affairs], 2016, pp. 241 -246.

[2] I. T.Makhmudov., N.A. Abdulloev The prosecutor in the criminal proceedings: theoretical problems and legal regulation // *Materialy nauchno-prakticheskoy konferentsii na temu: "Aktual'nye voprosy sudebnogo prava, prokurorskoy deyatel'nosti I presechenie prestupnosti v Respublike Tadjikistan"* [The proceedings of the scientific-practical conference "Imporatant issues of the judiciary, prosecution work and suppression of criminality in the Republic of Tajikistan"] /ed. by I. T. Makhmudov. Dushanbe, Maorif va farhang Publ., 2013, p. 19; R.H. Zojirov, F. Abduloev. Judicial and law reform in Tajikistan: challenges and prospects // The problems of strengthening the law and order in Tajikistan. Dushanbe, 1996, p. 9; A.A. Muhiddinov. *Protsessual'noe polozhenie sledovatelya v ugolovnom protsesse Respubliki Tadjikistan* [The procedural position of the investigator in the criminal proceedings of the Republic of Tajikistan] // (Publications of the Academy, 2015, no. 3 (27), p. 119.

the prosecutor separately. Thus, both types of the activities (functions) of the prosecutor are disclosed in Part 1 of Article 37 of the Code of Criminal Procedure of the Russian Federation and in Part 1 and 2 of Article 36 of the Code of the Republic of Tajikistan.

However, for Tajik criminal procedural law, the issue of the third type of activity (function) of the prosecutor remains problematic – the procedural management of the preliminary investigation. The bottom line is that the Tajik prosecutor still has extensive procedural power-administrative powers with respect to the bodies of preliminary investigation and inquiry. The question arises as to whether the prosecutor directs the preliminary investigation bodies. For a more substantive conclusion on the implementation of the functions of the procedural leadership concerning the Tajik prosecutor, we consider it appropriate to take into account the many years of experience of the Russian scholars and law enforcement officials. Within the framework of this discussion issue, we can distinguish three following positions.

The first group of scholars believes that the procedural guidance is a form of exercising by the prosecutor functions of supervision over the compliance with the law in the activity of the preliminary investigation agencies. These scholars justify their position by the argument, that talking about the procedural powers of the prosecutor in criminal prosecution is unjustified, because the prosecutor does not exercise this function, but only supervises the legality[1]. The supervision over the compliance with the law by the inquiry and preliminary investigation bodies is, in fact, the procedural guidance of the investigation of the crimes[2].

The second group of scholars take the opposite position and claim, that the procedural guidance is carried out, first of all, to achieve the purpose of the criminal prosecution. Particularly in the case of implementation of the procedural powers by the prosecutor during giving written instructions on the direction of the investigation and performing procedural actions to the investigator and *detective*. The procedural guidance, first of all, is aimed at solving the crime, identifying and prosecuting the perpetrators[3]. Sometimes the procedural guidance is taken for a way to implement the prosecutor's criminal prosecution function[4].

The third group of scholars deny the function of the procedural guidance as an independent function of the prosecutor. In the opinion of these authors, at present

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[1] The criminal proceedings: course book for the undergraduate programme of law schools / ed. by O.I. Andreeva, A.D. Nazarova, N.G. Stoiko and A.G. Tuzova. Rostov on Don, Fenix Publ., 2015, p. 63.

[2] Savickij V.M. Prosecution as a core function of the prosecutor // The Russian Ministry of Justice. 1994, no. 10, p. 26.

[3] Bulanova N. V. The mechanism of exercising by the prosecutor the criminal prosecution in the pre-trial proceedings // Bulletin of the Academy of General Prosecutor's Office in the Russian Federation. 2016, no. 2 (52), p. 52.

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time there is no grounds to talk about the procedural guidance as a main function of the prosecutor in the pre-trial criminal proceeding[1]. To prove their position, they argue that in the current legislation on criminal procedure there is no a single article about this function of the prosecutor[2]. In this regard there is no reason to consider the procedural guidance of a preliminary investigation to be an independent function of the prosecutor[3].

In summary, the analysis leads to the following conclusions regarding the implementation of certain types of activity (functions) of the prosecutor at the pre-trial stages of the criminal proceedings at the present time.

1. The modern period of studying certain types of activity (functions) at the pre-trial stages should be declared from the moment of the adoption of the first law about prosecution after the independence. This conclusion is based on the development of statehood of the Republic of Tajikistan. One should also bear in mind that the Code of Criminal Procedure of the Republic of Tajikistan (1961) made an enormous contribution to the development of the regulation of procedural activity (functions) of the prosecutor in the pre-trial proceedings, and it is not unlikely that it became the main prerequisite for adoption of the current Code of Criminal Procedure.

2. The analysis of the existing procedural legislation on criminal proceedings, positions of the scholars and the results of the survey among law enforcement officials indicate that the prosecutor at the pre-trial stages since the formation of the prosecutor's office to date carries out the following activities (functions): the prosecution and supervision.

3. It is advisable that the procedural guidance does not contain the basic elements (goal, tasks and criminal procedural mechanisms) that characterize an independent type of activity (function). Therefore some scholars treat it as a way to implement supervisory or prosecutorial activities while others do not see the point in recognizing it as an independent kind of activity (function) at all. In this regard, we agree with those scholars who adhere to the procedural guidance, considering it to be a form of implementation of criminal prosecution. In that case, the procedural guidance administered by the prosecutor at the pre-trial stage promotes the timely, in-depth and definitive crime investigation. Moreover, the analysis of certain provisions provided for in a number of departmental acts of the Prosecutor General's Office of the Republic of Tajikistan shows that the prosecutor at the stages of initiating a criminal case and preliminary investigation

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[3] Juk O. D. The correlation between the criminal prosecution and prosecutor's supervision at the pre-trial stages of criminal proceedings // Bulletin of Moscow University of Ministry of Internal Affairs in Russia. 2015, no. 12, p. 115.

administers a procedural guidance for the purpose of full, comprehensive and objective investigation of crimes and imposition of criminal charges against perpetrators[1].

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[1] Order of the Prosecutor General of the Republic of Tajikistan from 17.04.2013 No. 5-25 "On the organization of the prosecutor's supervision for the accurate and uniform execution of laws by the bodies of inquiry and preliminary investigation" // Collection of orders, instructions and methodical recommendations of the Prosecutor General of the Republic of Tajikistan, in the period 2010-2013. Tom-1; Instruction on planning preliminary investigation in criminal cases (approved by the order of the Prosecutor General of the Republic of Tajikistan of June 15, 2011) // Collection of orders, instructions and methodical recommendations of the Prosecutor General of the Republic of Tajikistan, adopted in the period 2010-2013. Volume 1; Instruction on the prosecutor's supervision of compliance with the law on the control and recording of telephone and other conversations in the process of carrying out operational search activity, inquiry and preliminary investigation (approved by the order of the Prosecutor General of the RT of February 21, 2012) // Collection of orders, instructions and methodological recommendations of the General Prosecutor of the Republic of Tajikistan, which were adopted in the period 2010-2013. Tom-2.

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FROM THE «MORAL CORRECTION» TO SOCIAL REHABILITATION IN PLACES OF DETENTION IN THE RUSSIAN FEDERATION

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Abstract: Based on the archival database, the article examines evolution of the concept of correction of criminals in law enforcement structures subordinated to the Ministry of Internal Affairs in the pre-revolutionary period. It is noted that during that time the punitive doctrine prevailed in relation to persons sentenced to deprivation of liberty. The analysis of the correctional policy of the Soviet State from the Gulag to the dissolution of the Union of Soviet Socialist Republics, shows that it was also punitive, and repeat offending among people released from prison was quite high. The article also reviews contemporary approaches to the correction of prisoners, aimed at social rehabilitation, resocialization and social adaptation. The main directions and the mechanisms of social rehabilitation in the activity of the Penal Correction System in the Russian Federation are discussed. The search for an effective and efficient model of correcting of persons sentenced to deprivation of liberty is determined by socio-economic and political conditions and prevailing perceptions of the nature of the crime and views on the possibility and means of correction. Social rehabilitation of prisoners is effective and can give a socially significant result. The article formulates proposals on improving this line of activity.

Key words: Moral correction, punitive impact, social rehabilitation, persons sentenced to deprivation of liberty, penal correction policy

In 1802, Ministry of Internal Affairs of the Russian Empire established a division with the authority to manage prisons and penal labor. In 1879, as part of the Ministry, the General Prison Directorate was introduced. In the course of the 19th and 20th centuries, the

departmental affiliation of the penal correction system changed seven times moving from the Ministry of Internal Affairs to the Ministry of Justice until in 1998 an independent structure was founded – the Federal Penitentiary Service of the Russian Federation.

Created in the antagonistic society, the prison acted as a means of protecting relations based on interclass inequality, protecting property, securing the rule of law in the state and, along with the isolation of the offender, pursued the goal of forming a law-abiding personality. In the Russian Empire, chronologically, there were several approaches to this issue that successively followed. Creation of the prison system as a system of isolation from society of those who committed crimes, was imbued with the idea of not only punishment, but also with humiliation of dignity. Those who served their sentences in prisons and in hard labor establishments were becoming social outcasts. Let us also note the fact that, before the judicial reforms of the 1870s, the existing order of detention concerned, as a rule, representatives of the non-privileged classes.

Starting from the second half of the 19th century the punitive paradigm is changing: the main task of prisons, along with the detention, is now to correct and morally educate prisoners. This was due to a number of circumstances, primarily due to the utilitarian goal of crime prevention and the reduction of repeated offending, as well as due to the humanization of public and scientific thought and the advanced journalism, which was gaining strength and becoming notable. The science of criminal law is being formed, there appear the scholarly writings of M.N. Gernet, S.V. Poznyshev, N.S. Tagantsev, I.Ya. Foynitsky, V.N. Nikitin, who laid the foundations of the national penitentiary science.

In 1880s the criteria for correcting convicts were determined in the internal normative acts of the Ministry of Internal Affairs. The characteristics of reliability of correction of the prisoners consisted of a number of indicators:

- behavior;
- existence of penalties and rewards;
- attitude towards work;
- participation in cultural events;
- attending parish school;
- assistance to the administration of the prison in housekeeping;
- visiting spiritual and religious events;
- fulfilment of the regime requirements of the institution.[1]

To achieve this goal, a set of measures were identified, in the provision of which the decisive role belonged to the church. "More than others in prisons of the present time," I.Ya. Foinitsky, – the religious education has taken root; for this purpose, in all places of detention, care is taken for the presence of a prison priest, and visiting the church is regarded as an indispensable duty of the prisoners ... ".[2]

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[1] National Archive of the RT, F. 3609, op.1, D. 91, D. 100, D. 124, D. 169.

[2] Foinitsky, I.Ya. *Uchenie o nakazanii v svyazi s tyur'movedeniem* [The doctrine of punishment in connection with imprisonment] / I.Ya. Foinitsky. – St. Petersburg., 1889. p. 373.

During the period under consideration, the church was engaged in the organization of prison life, and clergymen through preaching were engaged in religious and moral education of prisoners. Active work was carried out to unite the efforts of prison and clergy workers in the formation of a law-abiding personality; the church was an indispensable attribute of each prison.[1]

The change in social and economic conditions left its imprint on the quantitative and qualitative composition of the convicts, forcing the system to search for and introduce new means, forms and methods of influencing various categories of criminals into prison practice. In the late 19th – early 20th centuries the General Prison Directorate recognized the need to differentiate those who committed crimes, as well as to organize correction and moral education of prisoners, designed not only to enhance human dignity, but also the possibility of excluding the «idleness» of persons held in places of deprivation of liberty. For the first time in the practice of the execution of punishment, the question was raised about the possibility of correcting through labor of those who initially sought to enrich themselves by criminal means.

However, in the conditions of the punitive-educational concept used at that time, it was difficult to achieve a socially significant result. At the heart of the state's relationship with the convicted person were repressive means; cruelty, mockery and arbitrariness reigned in prisons – the inalienable elements of prison life from the day of the formation of punitive institutions.

The attempts of the government to limit arbitrariness, to introduce elements of organization and uniformity of requirements into the system of execution of punishment, to conduct targeted correction and "moral education" of prisoners (in the style of that time) in prisons of Russia, as a rule, were ineffective.

The widespread use of such measures as shaving half of the head, riveting to a wheelbarrow, work in mines, or life imprisonment points to the main goal of prison punishment – to punish the perpetrator and make them repent and fear the punishment, and is unlikely to contribute to correction and moral upbringing.

The structure of pre-revolutionary penitentiary institutions, with the exception of prisons, was destroyed in Russia and new forms of custody were introduced. In the years of the Civil War, forced labor camps were organized for "class alien elements" – former representatives of the nobility, the bourgeoisie, the officers and the Cossacks. During the NEP period special isolators were created, while during the collectivization of agriculture and "liquidation of the kulaks[2] as a class", labor camps were organized. The most vivid manifestation of Stalin's state policy towards convicts is the GULAG. In this period, the punitive function of the state in relation to prisoners sentenced to

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[1] Poznyshev, S.V. *Ocherki tyur'movedeniya* [Essays on prison studies] / S.V. Poznyshev. – M., 1915. p.160.

[2] Kulak – term referring to thriving independent peasants who gained wealth in the beginning of the 19th century (Translator's note)

deprivation of liberty, where declarative slogans were used about the importance of labor in the re-education of «enemies of the Soviet power,» is at the forefront.

Reforming the system of execution of punishment and creation of a new agency, i.e. the Federal Prison Service, led to the reorientation of correctional institutions to solving predominantly corrective and preventive tasks, while retaining punishment for the crime committed as the main component of correction of persons sentenced to deprivation of liberty.

Since the beginning of the 21st century, we can confidently state the formation and further targeted implementation of the penal policy. The scholars make attempts to determine the concept of penal policy. For example, S.M. Zubarev refers to it as the state's activity in determining the goals of criminal punishment, the state-legal mechanism for their implementation, the organization of the process of execution of criminal penalties and the application of corrective actions to convicts[1]. We cannot agree with the author that the definition of the purposes of punishment is included in the goals of the penal policy since this is a prerogative of the criminal-legal policy. Moreover, this definition does not reflect the fact that the goal of the penal policy is to determine the principles, tasks and the order of execution of other measures of the criminal-legal nature.

Nor can we agree with those authors who reduce penal policy to the punitive function[2], which, it seems to us, does not fully exhaust its content. In principle, we can talk about the punitive policy of the state aimed at determining the types of punishment, the content of different types of punishment, the grounds for exemption of persons who committed crimes from criminal liability or only from punishment in criminal law, as well as order and conditions, i.e. the regime of execution and serving a sentence in the penal legislation. However, the penal policy also aims at defining the system of correctional, that is educational influence on convicts, which does not have any punitive content. In addition, the mission of the penal policy is the establishment of organizational and managerial structures in the penal system. The reduction of the penal policy to the punitive policy of the state objectively impoverishes it, returns this policy to former old times, when indeed all the measures for regulating, appointing and executing criminal penalties were reduced to the purpose of punishment for the crimes committed.

The main directions of the penal policy at the present stage of development of the Russian society are:

1) determination of the legal framework for regulating public relations in the sphere of execution of criminal penalties and other measures of a criminal-legal nature, including goals, objectives and principles of the penal enforcement legislation;

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[1] *Ugolovno-ispolnitel'noe pravo* [Penal Enforcement Law] / S.M. Zubarev, V.A. Kazakova, A.A. Tolkachenko; under ed. by A.S. Mikhlin. – Moscow: publishing house Yurayt, 2012, p.13.

[2] Zubkov V.I. *Ugolovnoe nakazanie i ego social'naya rol': Teoriya i praktika.* [Criminal punishment and its social role: Theory and practice]. – M., 2002, p.145.

2) determination of the optimal model of the system of institutions and bodies aimed at the execution of criminal penalties and other measures of a criminal-legal nature;

3) determination of the basic means of correction of convicts, as well as measures for their social adaptation;

4) ensuring the rights, freedoms and legitimate interests of convicted persons, observance of laws and law and order while being in custody;

5) establishment of an optimal combination of punitive means, i.e. measures to enforce criminal penalties, with measures of corrective influence on convicts;

6) further development and detalization of differentiation and individualization of the execution of criminal penalties and implementation of corrective influence on convicts;

7) creation of the most optimal model for the management of correctional institutions and bodies executing criminal penalties, establishing the necessary interaction with other law enforcement agencies;

8) development of measures for further improvement and forecasting the development of the penal enforcement legislation, the activities of the institutions and bodies of the penal system, taking into account the changing conditions in the society;

9) modernization of the content, forms and methods of corrective influence on convicts and rehabilitation of persons released from serving their sentences, first of all, custodial sentences;

10) expanding the interaction of the penal system with other state bodies and civil society institutions.

The indicated directions of the penal policy in its totality constitute its content. The essence of modern penal policy is to create the necessary conditions for the implementation of punitive means, their optimal combination with correctional and educational measures, the development of humane treatment of convicts, the regulation and practical implementation of their rights, freedoms and legitimate interests, as well as a radical improvement of work on social rehabilitation and adaptation of convicts, both during and after the serving of convicted criminal penalties or other measures of a criminal-legal nature[1] .

It seems to us that in scholarly works, the creation of an optimal model for the management of correctional institutions and bodies executing criminal penalties, as well as other measures of a criminal-legal nature, is not identified usually as an independent direction of the penal policy. Meanwhile, the implementation of all other areas (or tasks) of the policy ultimately depends on the organizational structure of the penal system and the quality of management at all its levels.

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[1] Khalilov, R.N. *Territorial'nye organy Federal'noj sluzhby ispolneniya nakazanij kak sub"ekty processa ispravleniya i reabilitacii osuzhdennyh k lisheniyu svobody* [The territorial bodies of the Federal Penitentiary Service as subjects of the process of correction and rehabilitation of prisoners sentenced to deprivation of liberty: dis. ... cand. jurid. Sciences] / R.N. Khalilov. – Kazan, 2015, p.56.

In the opinion of A.L. Remenson, the content of the punitive-educational process is the implementation of the basic means of correcting convicts, taken together[1].

Within the framework of the punitive-educational process, the duties imposed on the convicted persons and the realization of their rights are fulfilled. F.R. Sundurov and L.V. Bakulina noted that the regime of deprivation of liberty punishes and educates convicts at the same time, preventing new crimes and other offenses on their part, as well as it creates conditions for the use of proper correctional means; through the regime, the rights (and duties) of convicts are fixed, implemented and differentiated[2] .

The works of recent years note that the majority of modern scientists of criminalists and penitentiary psychologists and teachers, namely, Yu.M. Antonyan[3], Yu.A. Alferov[4], A.L. Remenson[5], V.I. Belousludtsev[6], M.L. Sturova[7], A.V. Shamis[8], recognize the correction of convicts as the main goal of criminal punishment, which is addressed to the personality of the offender. Not to exert a corrective influence is not an option, otherwise after the release from the places of deprivation of liberty a person can commit a crime again. That is why in the Penalty Code of the Russian Federation the goal of correcting convicts is put in first place.

The scholary works distinguish two aspects of the concept of "correction of convicts": "criminological" (or "moral") and "legal" (or "actual") correction[9]. A legal correction

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1 Remenson, A.L. *Teoreticheskie voprosy lisheniya svobody i perevospitaniya zaklyuchennyh* [Theoretical issues of imprisonment and re-education of prisoners: dis. ... Dr. jurid. Sciences] / A.L. Remenson. – Tomsk, 1965, p. 14-15

2 Sundurov, F.R. *Lishenie svobody i prava osuzhdennyh v Rossii* [Deprivation of liberty and the rights of convicts in Russia] / F.R.Sundurov, L.V.Bakulina. – Togliatti: Volga University. V.N. Tatishcheva, 2000. – 142 p.

3 Antonyan, Yu.M. *Psihologicheskie osobennosti osuzhdennyh za krazhi lichnogo imushchestva i individual'naya rabota s nimi* [Psychological features of persons sentenced for theft of personal property and individual work with them] / Yu.M. Antonian. – Moscow: All-Russia Research Institute of the Ministry of Internal Affairs of the USSR, 1989. – 72 p.

4 Alferov, Yu.A. *Penitenciarnaya sociologiya i perevospitanie osuzhdennyh* [Penitentiary sociology and reeducation of convicts] / Yu.A. Alferov. – Domodedovo: Publishing House of the Russian Ministry of Internal Affairs, 1994. – 177 p.

5 Remenson, A.L. *Teoreticheskie voprosy lisheniya svobody i perevospitaniya zaklyuchennyh* [Theoretical issues of imprisonment and re-education of prisoners: dis. ... Dr. jurid. Sciences] / A.L. Remenson. – Tomsk, 1965. – 860 p.

6 Belosludtsev, V.I. *Pedagogicheskie osnovy ispravleniya osuzhdennyh k dlitel'nym srokam lisheniya svobody* [Pedagogical basis of correction of persons sentenced to long term deprivation of liberty: the author's abstract. dis. ... Dr. ped. Sciences] / V.I. Belosludtsev. – Chelyabinsk, 2000. – 44 p.

7 Sturova, M.L. *Vospitatel'naya sistema ispravitel'no-trudovyh uchrezhdenij* [Educational system of corrective labor institutions: dis. ... Dr. ped. in the form of a scientific paper] / M.L. Sturov. – M., 1991. – 92 p.

8 Shamis, A.V. *Osnovnye sredstva vozdejstviya na osuzhdennyh i mekhanizm ih realizacii* [The main means of influence on convicts and the mechanism for their implementation] / A.V. Shamis. – Domodedovo Publishing House of the Russian Ministry of Internal Affairs, 1996. – 179 p.

9 Makarenko N.I. *Ispravlenie osuzhdennyh k lisheniyu svobody: voprosy teorii i praktiki (ugolovno-ispolnitel'nyj aspekt)* [Correction of prisoners sentenced to deprivation of liberty: issues of theory and practice (penal aspect): author's abstract. dis. ... cand. jurid. Sciences] / N.I. Makarenko. – Chelyabinsk. – 2006, p. 15.

is recognized as achieved if a person who served the sentence does not commit a new crime due to "realization of the inevitable connection of the crime with punishment"[1], that is because of fear of being subjected to a new punishment. However, relying only on the fear of punishment, it is impossible to form a system of internal value orientations of the individual, without which the behavior of a person, their actions are situational, unpredictable, and sometimes immoral and illegal. The second aspect of the correction includes the psychological-pedagogical, personal approaches to correcting the convicted person. In the works of scholars, the problem of correcting prisoners as the purpose of punishment has been thoroughly studied.

Currently, social work is one of the most promising and socially important areas, since it allows to complete one of the most important tasks – the resocialization of former convicts and their inclusion in the active social life.

We now realize that the process of correction is a complex issue, involving a change not only of the personal attitudes of the individual, but also of their social status[2].

The social work with convicts appeared in Russia in 2001. The document regulating the introduction of the position of a specialist in social work with convicts as a member of staff of the Federal Penitentiary Service of Russia is the order of the Ministry of Justice of the Russian Federation No. 75 of March 22, 2004 "On approval of the Regulation on the Social Protection and Calculating Work Experience of convicts in penitentiary institutions of the penitentiary system of the Ministry of Justice of the Russian Federation." It is based on the model, largely borrowed from the EU countries[3]. Prior to this, it was believed that criminals sentenced to imprisonment were serving a fair punishment for the offences committed by them, so social support and social protection should not be extended to them.

The group is a structural unit of the penitentiary institution. The number of penitentiary workers in the group is determined by the limit and the filling of the institution, but not less than 2 positions per institution. The main goal of the group is to create conditions for the correction and resocialization of convicts, their successful adaptation after release.

Penitentiary social work has its own specifics. It is carried out in a prison, in criminal subculture, within the context of criminogenic interpersonal communication with

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[1] Makarenko N.I. *Ispravlenie osuzhdennyh k lisheniyu svobody: voprosy teorii i praktiki (ugolovno-ispolnitel'nyj aspekt)* [Correction of prisoners sentenced to deprivation of liberty: issues of theory and practice (penal aspect): author's abstract. dis. ... cand. jurid. Sciences] / N.I. Makarenko. – Chelyabinsk. – 2006, p. 23-25.

[2] Sukonshchikov, A.A. *Etapy institucializacii penitenciarnoj social'noj raboty v ispravitel'nyh uchrezhdeniyah federal'noj sluzhby ispolneniya nakazanij Rossii* [Stages of institutionalization of penitentiary social work in correctional institutions of the Federal Penitentiary Service of Russia]. / A.A. Sukonshchikov, D.Yu. Kryukova, T.S. Ukhanova. Prospects for the introduction of information technology // Bulletin of Voronezh Institute of the Ministry of Internal Affairs of Russia. – 2010. – No. 3. – P. 53-56.

[3] On approval of the Regulations on the social protection group of convicts in penitentiaries of the penitentiary system: Order No. 262 of the Ministry of Justice of the Russian Federation of December 30, 2005.

limited normal communications, with the prevalence of criminal methods of resolving contradictions, the presence of various forms of violence and oppression, an increased risk of being insulted and infringing on human dignity.

A.S. Luzgin emphasises the creation of conditions for the conscious choice of strategies of non-criminal behavior by the persons sentenced to imprisonment, work on their life perspectives, as well actualization and stimulation of self-correction among the main tasks of penitentiary social work, along with ensuring the rights of convicts, prevention of recidivism[1]. The most important thing is to assist the implementation of the main strategic goal of the execution of criminal punishment – the correction of the convict. In each specific situation at the personal level, taking into account the specifics of the problems and individual characteristics of the convict, the general goals of social work are personified.

In order to achieve the objectives effectively, social workers interact with other services of the correctional institution, as well as with the families of convicts, social organizations, employment services, institutions of social protection of the population and with other public bodies.

The result of completing the above tasks is the development of the sociality of convicts – a formed integrative quality of the individual, which characterizes the degree of entering into society, the acceptance of public interests and perceptions; life activity in accordance with the accepted in society rules, norms, laws, and values; achievement of a certain level of social well-being[2].

The correctional measures applied to convicted criminals will be effective if they are based on humanistic and personality-oriented approaches.

Within the framework of the first approach, any person is understood as an integral being whose life unfolds in a sociocultural environment, in the context of relations with other people. A person is capable of self-knowledge, has the right of choice and has the properties of the subject, creating their own experience. A person is facing the future and has purpose, values and meaning in their life. And if something is wrong in a person's life, then a person needs help in revealing.

The personality-oriented approach is based on the individual work, taking into account the level of the intellectual development, abilities and capabilities of individuals, and contributes to the formation in convicts the skills in self-control, self-training, self-education and self-development.

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[1] Luzgin, S.A. *Social'naya rabota s osuzhdennymi v Rossii: istoricheskaya retrospektiva, sovremennost' i budushchee / S.A. Luzgin. – Ryazan': Akademiya prava i upravleniya Federal'noj sluzhby ispolneniya nakazanij* [Social work with convicts in Russia: historical retrospective, the present and the future / S.A. Luzgin. – Ryazan: Academy of Law and Administration of the Federal Penitentiary Service], 2006, p. 117-118

[2] Khachaturian, S.D. *Osnovnye psihologo-pedagogicheskie komponenty processa penitenciarnoj social'noj raboty* [The main psychological and pedagogical components of the process of penitentiary social work] / S.D. Khachaturyan, V.V. Vinogradov // Scientific notes of the Russian State Social University. – 2010. – No.6, p. 140.

Among the principles of social work for the correction of convicts are the following:

1. the principle of education in a group results from the social conditioning of the correction of convicts;

2. the principle of activity via performing socially useful activities by a convicted person (educational, public, cultural and sports) contributes to their social reorientation, re-education;

3. the principle of a differentiated approach in the process of education means that among the convicts are people with different social, socio-psychological, socio-economic, socio-demographic indicators, which allow to identify the most significant traits in the personality of the convict, and this should be incorporated into the social work at any stage;

4. the principle of reliance on the positive core in the personality is aimed at ensuring that in the educational work with the convict the staff of the institution stresses the influence not only of the person's shortcomings, but also of their positive qualities;

5. the principle of an integrated approach results from understanding of the person as an integrity, to which a set of precautionary measures must be applied for correction; it requires to involve all employees of the units and the public in the educational work and to study the personality of convicts comprehensively at all stages of the educational process.

Correction of convicts in penitentiary institutions is carried out in several directions:

1) legal education contributes to the formation of legal awareness, the organization of lawful, responsible and socially active behavior, and the development of law-abiding;

2) moral education is aimed at overcoming moral qualities and convictions alien to society; it should result should in the formation of moral sentiments, consciousness and moral behavior among convicts;

3) labor education of persons serving sentences lies in reinforcing individuals' skills and abilities, as well as development of psychological readiness for work, moral attitude to work, and a conscious need to work;

4) physical and sanitary-hygienic education of convicts allows to prevent degradation of the personality of the convict, to preserve their human dignity, to develop physical abilities, and to strengthen health.

The means of the process of correction as an integral part of the social work process ensuring its effectiveness are labor, a regime, cultural and recreational activities, public work, etc.

Among the indicators of the effectiveness of social work to correct convicts are the following: the change in their values and change in attitude to various activities in the penitentiary community, as well as conscious participation in social, educational and labor activities; positive changes in the motivational structure of their activities and in real relations with other convicts; increased social responsibility; voluntary participation in the socially significant activities.

The analysis of the state of social rehabilitation in the activities of the Federal Penitentiary Service of Russia shows that the re-socialization of former convicts and rendering them assistance in domestic and labor arrangements is although regulated by the Penalty Code, but the mechanism for resolving these issues has not been regulated; in the implementation of measures for social rehabilitation, there is fragmentation, duplication of functions and actions, the lack of a unified strategy. In accordance with the existing regulatory framework, the territorial departments of the Federal Penitentiary Service of Russia for the constituent entities of the Federation are now carrying out a number of activities aimed at social adaptation of convicts in places of deprivation of liberty[1].

At present, there is a need to develop a comprehensive regional program aimed at improving the activity of the penitentiary system for the rehabilitation of persons released from prison. Persons released from places of deprivation of liberty who do not have a livelihood, who have difficulties in finding work and therefore lack life prospects, represent the uncontrolled potential of recessionary crime, therefore their social rehabilitation and adaptation is necessary.

From the perspective of the theory of social management, social rehabilitation of convicts is a scientifically controlled process, the levels and stages of which determine the structure of the system for preventing social deviations of convicts[2]. From the psychological and pedagogical point of view, the process of social rehabilitation is a process of forming a person's spiritual world, which involves taking into account the psychobiological and psychological features, as well as social pedagogical factors that determine negative deviations. The structure of preventive measures for the deviant behavior of convicts includes the medical aspect – the process of preventing and eliminating the psychobiological determinants of social deviations. From the criminological point of view, we are talking about the process of identifying and eliminating criminogenic factors of the social environment and correcting the antisocial personality. Social rehabilitation of convicts must also include the legal aspect, since the prevention of social deviations is a normatively regulated process and cannot be reduced only to a combination of social impacts.

Thus, the process of social rehabilitation of persons sentenced to deprivation of liberty can be presented as a complex of legal, organizational, pedagogical, medical, social and psychological measures aimed at preventing social deviations of former convicts, carried out on the basis of scientifically defined needs, and simultaneously oriented along three main lines:

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[1] Khalilov, R.N. *Social'naya adaptaciya i reabilitaciya lic, osvobozhdaemyh iz ispravitel'nyh uchrezhdenij* [Social adaptation and rehabilitation of persons released from correctional institutions // Social rehabilitation: a course book.] – Kazan: KSTU, 2010, p. 461.

[2] Chernova, E.V. *Social'naya rabota v uchrezhdeniyah penitenciarnoj sistemy: teoretiko-metodologicheskie podhody k organizacii i soderzhaniyu deyatel'nosti specialistov po social'noj rabote* [Social work in the institutions of the penitentiary system: theoretical and methodological approaches to the organization and content of the work of specialists in social work] / E.V. Chernova // Bulletin of the Buryat State University. – 2010. – No. 5, p. 226.

1) neutralization of unfavorable social influence that can determine the formation of antisocial personality;

2) elimination of direct and indirect immoral and criminal influence on the convict;

3) implementation of a set of measures aimed at reorienting the antisocial personality.

The process of social rehabilitation is a complex multi-level process, which includes a whole series of activities. It is necessary to develop, first of all, the theoretical foundations of this process, which should include: developing a methodology for an interdisciplinary approach to the study of social rehabilitation as a system for preventing social deviations in correctional institutions; the development, substantiation, pilot testing and implementation of a set of proposals on the organization of the system of social rehabilitation of persons sentenced to deprivation of liberty; the identification of the main factors determining the effectiveness of the social rehabilitation process; systematization of the main aspects (criminological, legal, socio-psychological, socio-demographic, managerial) of the question of social rehabilitation; theoretical development of the structure and content of the process of adaptation of convicts to the conditions of life outside prison; defining the leading principles of vocational training, taking into account the specifics of its implementation in the centers of labor adaptation of convicts, in production workshops and educational colonies, at federal industrial enterprises, and also using the possible modern forms of employment of convicts in relation to the needs of the region in working specialties; a clear definition of the legal status and mechanism of functioning of bodies engaged in the process of labor adaptation of convicts; the analysis of the existing legal framework for the organization of vocational training for persons sentenced to deprivation of liberty and the development of draft normative acts that will ensure the labor adaptation of prisoners to deprivation of liberty in relation to the needs of the region; the evaluation of professional training of correctional personnel having to work in the new conditions; carrying out research work on the issues of general and professional education of persons serving sentences in places of deprivation of liberty, providing methodological and psychological and pedagogical support for the educational process at secondary schools, vocational schools, taking into account the specifics of the above institutions, the introduction of new organizational forms of education.

The territorial divisions of the Federal Penitentiary Service for the constituent entities of the Federation, correctional institutions (institutions, enterprises at correctional institutions, centers for the preparation of convicts for release in correctional institutions), religious and public organizations (trustees' councils, etc.), executive state bodies (committees for coordinating the activities of law enforcement agencies, commissions on pardon and rehabilitation, management of social welfare, management of healthcare, management of the comprehensive and vocational education, management of youth and physical education, management of culture and the arts, management of financial and tax policy, management of the analysis and coordination of social programs, the Department of Internal Affairs, the republic departments of the Federal Public Employment Service, local authorities).

Thus, the activities of subjects of social rehabilitation of convicts should be a continuous, multidimensional and multilevel process containing the necessary set of preventive measures, different in content, scope and mechanism of action. In order to understand what the social rehabilitation of ex-convicts is supposed to be, it is necessary to build a single generalized theoretical model in which all the named aspects should adequately present as interacting elements of the system. To ensure that the model was not only theoretical and it was possible to implement it, the following conditions must be met.

First, the social rehabilitation of persons who have served a sentence can be provided if the specialist can develop a comprehensive description of all possible combinations of various adverse psychobiological, psychopedagogical, psychological, socio-psychological and socioeconomic factors affecting the behavior of the former convict, and on the basis of their analysis recommend an effective set of socio-economic, medical and pedagogical measures[1]. At the same time, it is necessary to take into account that all precriminal and criminal variants of the personality development of the former convict are based on the specifics of the social and economic situation in the society as a whole.

Secondly, the effectiveness of the social rehabilitation will be possible if the subjects of rehabilitation become a functioning systemic formation, in which organizational, functional, personnel, information and scientific issues are resolved, and the organizational structure corresponds to the functional one. In addition to the development of the meaningful characterization of the process of social rehabilitation, it seems that there is a need to adopt a special law on the basis of rendering assistance in the social rehabilitation of former convicts. The law should form the mechanism of interaction between the territorial administration of the Federal Penitentiary Service and federal executive bodies, state authorities of the constituent entities of the Russian Federation, and local government bodies.

The following activities are proposed:

1) to provide domestic correction institutions with highly qualified social educators and psychologists, to raise the status of commanders of detachments as the main organizers of the life of convicts;

2) to create a network of diagnostic centers in pre-trial detention centers as an intermediate link between investigative isolators and the IC wherever convicts underwent a comprehensive survey – sociological, medical, psychological and pedagogical;

3) to create a center for social adaptation of convicts on the basis of a colony-settlement. In such centers convicts would have to serve the final part of the sentence in a semi-free regime under the surveillance and supervision of specially trained staff. Staying in the center should become a launching pad for restoring skills to solve vital problems and the emergence of new socially useful links;

4) to solve the task of forming a specialized service for the provision of post-penitentiary assistance to convicts who have served a criminal sentence in the form of

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[1] *Social'naya rabota v ugolovno-ispravitel'noj sistem*e [Social work in the criminal correction system] / Ed. Yu.I. Kalinin. – Ryazan, 2006, p.176.

deprivation of liberty. This service should perform the following tasks: to help the former convicts in employment, provide temporary housing, provide counselling services by teachers, psychologists, psychotherapists, and social workers. Public, charitable and religious organizations should get involved more widely in assisting the local authorities in post-penitentiary work.

Under favorable social and economic conditions, creatively using the positive domestic and foreign penitentiary experience, it is possible to create and implement in practice the domestic concept of rehabilitation of persons who have served a criminal penalty in the form of deprivation of liberty, which will reduce the level of recidivism.

The historical and legal analysis of the activities of bodies that carry out criminal penalties leads to a number of conclusions. First of all, the foundations of the correctional concept were laid in the activity of the Ministry of Internal Affairs from the outset; as the goals and tasks of managing become more complicated and the functions of the Ministry for combating crime expand, the administrative structure itself becomes more complicated. During the period under consideration, the most effective and efficient model of management in the specified direction is being searched for. Formation of the state policy in the field of correction of persons committed a crime was determined by socio-economic and political conditions and prevailing in society views on the nature of the crime, the possibility of correction and remedies.

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COMMENTARIES

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ON THEORETIC FRAMEWORK OF J.CH. FINKE'S NATURAL LAW THEORY

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Abstract: The authors of the article outline the foundations of the theory of natural law of the famous scholar of Kazan University J.Ch. Finke, which was described in his work "Natural, private, public and national law", 1816. The article shows the practical applicability of natural law theories and the implementation of the norms of natural and positive law in modern society as we can see a symbiosis of these norms, whereby the implementation of natural law is ensured by the state. The study gives examples of the implementation of the norms and analyzes various components of Finke's theory and its characteristic features. The originality of J.Ch. Finke's views is in the attempt to give natural law some practical, applicable character and link it to the international and national legal systems. The authors point out that the theory of J.Ch. Finke should be seen in the context of the interaction of all its components. It is also noted that understanding of the freedom of the individual as the main value was far ahead of the theory and practice of state development in Russia of that time. According to Finke's theory, a complex system of natural law ultimately reveals the

mechanism of protection of the main value, i.e. the internal and external freedom of the individual.

Key words: J.Ch. Finke, I. Kant, natural law theory, theory of law, legal doctrine.

The history of political and legal thought reflects different legal doctrines, and the natural law concept occupies an important place among them. It has been developed by different scientists, philosophers; its content is multifaceted. This leads to the fact that we should speak not about a single theory, but about a variety of different opinions united by common worldview.

Natural law, having arisen from the human nature and being given to a human being by birth, is vulnerable. From time to time, we come across the attempts to push aside the natural law and to replace it by the rules of the positive law. And this is one of the key problems in this field – the practicality of the natural law theories.

In modern society a symbiosis of the rules of natural law and the rules of positive law can be observed. As a result, realization of the natural law is provided by the State. The positive law, in its turn, becomes not so formal and caters to the needs of the natural law. A classic example of such alliance is the Constitution of the Russian Federation. One should bear in mind that according to Article 2 of Russian fundamental law "man, his rights and freedoms shall be the supreme value. The recognition, observance and protection of human and civil rights and freedoms shall be an obligation of the State."[1]

This situation is the result of a long and thorny way of the natural law evolution. It took a long time for humanity to understand the importance of this paradigm. Although ancient philosophers already studied natural law, raising the question of supremacy of law, significant steps in this area were made in the modern and contemporary times.

In this regard, studying the natural law, we should not ignore the works of the famous scientist of Kazan University – Johann Christopher Finke (1773-1814). He was born in Germany; in 1809 he moved to Russia and began his work at Kazan University. In 1814 he was elected as Dean of the Department of Moral and Political Sciences. J.Ch. Finke had interest in different spheres of the legal matter. In particular, he studied Roman law and criminal procedure[2]. J.Ch. Finke contributed to the development of methodology of legal research practice. He used a comparative legal method both in science and in education[3]. Nevertheless, one of the main scientific directions of his work

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[1] Article 2 of the Constitution of the Russian Federation dated 12 December 1993 (as amended on 21 July 2014, No.11-FCL) // Russian Federation Code dated 4 August 2014, No. 31., Art. 4398.

[2] See: Bulich N.N. *Iz pervyh let Kazanskogo universiteta (1805-1819): rasskazy po arhivnym dokumentam N. Bulicha* [From the first years of Kazan Federal University (1805-1819): stories based on archive documents of N. Bulich]. – Kazan, Printing house of the Imperial University, 1891. Part 2. P. 49-51, 54, 57-59.

[3] See: Gubaydullin A.R., Shigabutdinova A.L. The Relation of J.Ch. Finke's Theory with the Features of Constitutional State // Journal of Legal, Ethical and Regulatory Issues. Volume 19. Special Issue. 2016. P. 44–50.

was the natural law study, expounded in his magnum opus *"Natural, private, public and national law"* (1816).

What is the essence of his theory? In order to answer this question, it is necessary to examine the basic elements of his doctrine.

Defining the concept of law, J.Ch. Finke follows I. Kant, who distinguished the scope of law and morality. Kant considered it very important that the mechanisms of impact of the moral law and the juridical law, which regulate human behavior, differ.

Morality is a sphere where freedom of will and internal impulse are in action. According to I. Kant, a man, while making a decision, is capable of distracting himself from external factors of different kinds, from interests, wishes, and follow just his sense of duty. In other words, moral law is the internal, unconditional regulator of the behavior – categorical imperative. The necessity of obedience to the law is not connected with achieving any goals, even good ones. The only incentive in this case may be the understanding of importance of the law itself, so the duty is fulfilled just for the sake of duty.

I. Kant defines the Categorical Imperative in two provisions: firstly, "… act only according to that maxim whereby you can at the same time will that it should become a universal law"[1]; secondly, "… act in such a way that you always treat humanity, whether in your own person or in the person of any other, never merely as a means, but always at the same time as an end"[2].

These postulates are a general measure of moral behavior. The content of the first principle is not specified, it is universal. Evaluating the morality of his actions, a man should think about the applicability of these actions as a rule for the society in general. The second principle contains a more defined meaning. The morality of an action implies the universal equality and it is incompatible with using one person in the interests of another one.

The law, as distinct from morality, deals with the sphere of external constraint area. An action is considered legal if it is performed not because of the internal compliance with the moral law, but when affected by extraneous reasons, such as fear of punishment or material interest. In other words, juridical law regulates the external side of the actions only, not touching upon the motives of the actions.

Developing these ideas, J.Ch. Finke supposed that a man as a sentient being acts in accordance with his moral law. The intellect is autonomous in establishing the requirements of the moral law and it can induce a person to take certain actions, regardless the external conditions of his life or propensities (J.Ch. Finke defined it as ethical law). In this way, the highest moral law should be based on the rules, defining "the highest good for a man, his internal and external freedom"[3]. As we can see, in this

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[1] Kant I. Writings in 6 volumes. Vol. 4. Moscow, 1965. Part 1. P. 280.

[2] Idem. P. 270.

[3] See: Finke J.Ch. *Estestvennoe, chastnoe, publichnoe y narodnoe pravo* [Natural, private, public and national law]. Kazan, Printing house of the Imperial University, 1816. P. 2-3.

statement Finke consequentially describes Kant's thought about the autonomy of a man's will: it is non-compliant with the mechanism of sensual motivation and can even act against this mechanism[1].

Since the ethical law, according to J.Ch. Finke, is connected just with the internal freedom or the freedom of will, independent of the external circumstances, its force goes beyond the limits of legal regulation. The legal rules cannot regulate the decision-making, which is based on the "internal dignity" of a man only.

However, a man's behavior is guided not only by the moral duty, but also by external motives. The actions, caused by external factors (that may be sensibility, propensity, or abomination) should be legally regulated. In this case, the moral law (called juridical) defines the limits of his external freedom – "ability by free will to perform one's external actions"[2].

Considering the external freedom to be the right of everyone, Finke believed that the task of the juridical law is establishing the reasonable limits to this freedom. Exercising the external freedom by one person should not "oppress the external freedom of others"[3].

In other words, the moral law (presented in two forms – ethical and juridical), being general and universal, establishes and protects the main human value – internal and external freedom[4]. At the same time, the sphere of effect of the law and of the morality (as two sides of the moral law) are fundamentally different. The morality covers the internal motives of a person, whereas the law regulates the external manifestations of their behavior.

Building on understanding of the moral law as the true regulator of human behavior, J.Ch. Finke defined the right at the subjective level as moral ability to do or not to do something and responsibility as moral necessity of action or inaction. At the same time, the author emphasised the mutual connection of the rights and the duties, the connection that suggestes that only the combined realization of the rights and the duties makes the universal external freedom possible.

J.Ch. Finke allowed for the use of coercion as a way to protect the right. Injustice encroaches not just upon the personal freedom (of a particular person), but also upon the universal external freedom. The coercion may be used only when dealing with the external duties, which are the subject of the juridical law. Internal (based on virtue) duties are the subjects of the ethical law.

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1 *Filosofiya: uchebnik dlya vuzov* [Philosophy: textbook for higher educational institutions] (under the general editorship of Mironov V.V.) -Moscow, Norma Publ., 2008. P. 120.

2 See: Finke J.Ch. Above-mentioned work. P. 2

3 See: Idem. P. 3, 19-22.

4 Gubaydullin A.R., Shigabutdinova A.L. The theory of natural law of J.C. Finke and its impact on the state structure and the system of law in Russia // Kazan law schools: evolution of educational and scientific traditions in modern jurisprudence]. Moscow, Statut Publ., 2016. P. 53.

Such statements are not new for the modern legal science. Understanding of the subject of the legal regulation through the lens of social relations (including behavior and activities) is well-established. But one should not forget that these ideas were presented in the first quarter of the XIX century with significantly different political and legal development of society. Furthermore, these provisions need to be clarified in order to reach complete understanding of his theory.

J.Ch. Finke viewed the natural law in the context of legal philosophy, which, in its turn, covers what, from the point of view of practical reason, is the law of external freedom. Here the pluralism of the similar phenomena leads to complications. For instance, unlike the natural law, a moral precept is connected with the internal freedom. Also we need to mention the politics, which is, according to J.Ch. Finke, a doctrine of prudence and proper means to an end, defined by the natural law (in case of state policy). Lastly, we should not forget about the philosophy of the positive law, which examines this law according to the rules derived from the natural law and the politics[1].

Making a preliminary conclusion, we can argue that understanding of the natural law is pluralistic due to complexity of the social regulation. The natural law should be one of the vectors for the development of the positive law.

This natural law model presumes the original understanding of its structure. Here the following components can be identified.

The subject matter of the J.Ch. Finke's theory is the legal relation of a man, which exists in two forms: *natural state and civil state*. A criterion for distinguishing between the two is the relation to the State. In the first case, a citizen is considered regardless his relation to the state; in the second, he is considered as a member of some state[2].

Following the traditions of natural law thinkers, J. Ch. Finke allowed for the existence of a natural state, connected with the natural or general private law.

What is the basis of the natural rights? According to this theory, it can be freedom, derived from the human nature itself, and equality.

Therefore, it is obvious why identifying of natural and civil state defines the system of the natural law. Particularly, the natural state is a basis for *the natural (universal) private law* which, in its turn, exists in two forms. Firstly, it is the absolute natural private law – a complex of rights and duties, derived from the nature of a human as a free rational being. Secondly, we can speak about the conditional natural private law, which defines rights and duties of a person when proposing certain actions[3].

As for the civil state, it is *the basis of the natural (universal) state law and of the natural (universal) civil law*. If in the first case the relations between the head of a State and its members individually are defined, then in the second case it is the relations between the

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[1] See: Idem. P. 7-8.

[2] See: Idem. – P. 9-10.

[3] See: Idem. – P. 10-11.

members of a State (citizens) with each other[1]. Here J. Ch. Finke used the same approach that he used while studying the natural private law. In other words, the natural state law and of the natural civil law are also divided into absolute and conditional.

The absolute state law, in author's words, "defines the rights and the duties of a State, regardless the relation to any specific constitution"[2]. Putting it another way, the absolute state law establishes the general principles of the organization and of the exercise of state power. The conditional state law, defining the rights and the duties of a state only in relation to a specific constitution, in fact, establishes specific procedures of organization and of realization of the state power, inherent in some or other form of government.

The absolute civil law establishes private rights and duties of citizens, that belong to them "generally", that is regardless of them performing any action. The conditional civil law contains the rules that define the rights and the duties of citizens, arising from performing some sort of legitimate action by them[3].

The theory of J.Ch. Finke also incorporated the international law regulation: on the basis of the general private law, which can be applied to different nations, it identified *the natural (universal) national law*[4].

The originality of J.Ch. Finke's views lies in the attempt to make the natural law more practical and applicable. At the same time, international and domestic law systems are affected.

It is important to mention that the J.Ch. Finke's model is holistic, it takes into account all main components of the system (natural private law, state, civil, national law). Each of them is a specific subsystem and may be characterized in the following way.

As it was mentioned before, the absolute natural private law is derived from the nature of a human being, who is a physical and rational subject and who can exist in a physical and moral way. That is why J.Ch. Finke, making a list of human birthrights, also included the rights that are aimed at improvement of human beings. The author believes that the purpose of people, consistent with the reason, is in the development of their moral and physical nature, because it serves as a basis of internal and external freedom[5]. This presumes the ability to freely use one's body and to maintain it at the proper level of development. The most important factor is to remember about the certain limits. These limits are established by the rule, according to which the rights of one person should never infringe on the rights of other individuals. The same limitation is applied to the birthright of a person to freely use his or her intellectual capacity.

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1 See: Idem. – P. 11.

2 See: Idem. – P. 125.

3 See: Idem. – P. 227.

4 See: Idem. – P. 11.

5 See: Idem. – P. 113.

That is also the reason why a person has the right to freedom of thought, conscience and religion. The freedom of thought, according to J.Ch. Finke, is a right to express one's thoughts and communicate them to others; the freedom of conscience is a "power to act according to one's moral values"; the freedom of religion is being free to act according to one's religious views[1].

In the modern society these juridical freedoms are still relevant: a person should be able to think freely and to express their thoughts, to act according to their moral values and religious views[2].

Human nature determines the right of existence, that is why the absolute natural law covers the possibility of using the objects of environment to achieve personal goals and targets. Nevertheless, again one should remember the limits of realization of their rights and respect the rights and freedoms of other people. The right to use objects assumes the right for appropriation and purchase of those objects.

In the natural state the right to use objects, that also includes the right to purchase objects, belongs equally to all people, that is why J.Ch. Finke allowed for the existence of the "original right to the unity of possession"[3]. It means that no one has the exclusive right to external objects, and everyone is free to use them and, therefore, to purchase the exclusive rights to them. In other words, following I. Kant, Finke thought that the private law presumes a prior communism stage. However, it can be assumed that in the J.Ch. Finke's theory the unity of possession, equally to the natural state, is only a hypothetical construct. As a matter of fact, I. Kant himself "considers communism to be not a historical reality, not an empirical fact, but a pure idea of mind: maybe it was not this way, but it should have been."[4]

The main principle of the theory, i.e. "the freedom of every person is interrelated with the freedom of others", is consistently pursued also in the content of the limits of the realization of the imprescriptible rights of a human being in natural state.

Once again we need to bear in mind that the theory of J.Ch. Finke should be perceived in the context of the interaction of all its components. That is the reason why the absolute natural private law has to be assessed relative to the absolute state law and the absolute civil law.

The absolute state law is connected with the essence of the state power, its role in the society. The State is a complex mechanism, which exercises control over the society.

In Finke's theory, one may notice the elements of the contractual basis of the statehood. After all, the state should be considered as an alliance of people, whose goal

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[1] See: Idem. P. 34.

[2] See: Gubaydullin A.R., Shigabutdinova A.L. The theory of natural law of J.C. Finke and its impact on the state structure and the system of law in Russia // Kazan law schools: evolution of educational and scientific traditions in modern jurisprudence]. Moscow, Statut Publ., 2016. P. 57.

[3] Finke J.Ch. Above-mentioned work. P. 37.

[4] Shershenevich G.F. *Istoriya filosofii prava* [History of philosophy of law]. 2nd edition. Saint-Petersburg, Bashmakovy Brothers Publ., 1907. P. 502.

is the protection of their rights. Therefore, the aim of the State is to protect the rights of the citizens and to ensure their external freedom. But happiness and wellbeing of an individual citizen is not a target of the state, because that is the sphere of the internal freedom of a person. The state, in its turn, protects only the external freedom of the citizens by using coercion. Thus, J.Ch. Finke, following I. Kant, defines clear limits of the State interference in private life of a person, presenting the State as a protector of the rights and the freedoms, but not as a guardian.

In the state status a person retains the rights given to them by nature. But the realization of these rights depends on whether such behavior corresponds with the goals of the State and with the protected rights of the others. The interaction between the basic elements of the whole system of the natural law is presented here in the following way.

J.Ch. Finke wrote that the ruler, if it serves the purpose of the State, can limit or eliminate the acquired rights[1]. The latter relate to the conditional natural law, which will be further discussed. But are such limitations possible for the absolute natural law?

Here we should also mention the natural civil law. Within its framework a citizen has the same inalienable human rights as a person in the natural status, untill the citizen harms other citizens or State by using them[2]. It should be pointed out that this limitation is enshrined exactly within the natural civil law, which regulates the relations between the citizens. The vertical relations, characteristic more of the natural civil law, are not so strong here. Perhaps this is why in this case it is about stopping the abuse of the inalienable human rights and not about an active invasion in their content. J.Ch. Finke developed these provisions in his reasoning about the absolute (universal) civil law. In particular, he wrote that a citizen has the absolute right to their body and efforts, untill he or she harms other citizens or State by using them. With regard to moral virtues, a citizen has the absolute right to freedom of thought and conscience in the legal sense. The most important thing here are not to infringe people's rights and not to stand in the way of governmental goals[3].

Thus, we inevitably arrive at a conclusion that the absolute natural law is fundamental to the theory under consideration. Of course, every idea has an imprint of its time. J.Ch. Finke wrote about his theory cautiously, some of its provisions are disputable and contradictory. In this case, it is important to keep in mind that he was developing his theory in the Russian Empire, which was a huge bureaucratic state.

We shall now proceed to discuss the conditional natural private law, which is based on the absolute natural law. The conditional natural private law lays the emphasis on the civil-legal regulation such as proprietary right or obligations. For instance, tenure, property rights, content and modes of acquiring are discussed in the context of a proprietary right. This approach is not accidental, of course. A realization of the

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[1] See: Finke J.Ch. Above-mentioned work. P. 126.

[2] Idem. – P. 222.

[3] See: Idem. – P. 224.

conditional natural law and absolute natural law is based on the idea that a human being is free. The genuine freedom is possible when a citizen has property, because in this case you do not depend on your physical needs and can focus on the moral development[1].

Free will is a keystone of the private law in general and the law of obligations in particular. It is probably not coincidence that J.Ch. Finke paid much attention to the contract law, addressing different contract types and their terms and conditions. Among barriers for validity of contract obligations, J.Ch. Finke mentioned a mistake, fraud, extortion or violance. Of course, for the private law, such provisions are not a novelty. However, they show the necessity of a freedom, which is one of the keystone of J.Ch. Finke's theory.

J.Ch. Finke also discusses the inheritance law, which in his view is also a part of the system of the conditional natural private law. Here the concept of free will stands out again and it is especially pronounced in the drafting of a will. J.Ch. Finke brings his idea to its logical conclusion by emphasizing the presence of the natural law in a testamentary succession. The absence of a will, in his opinion, makes the connection to the natural law impossible[2].

The natural public law is holding a special place in the system of the conditional natural private law. The discourse about society inevitably raises the question of qualitatively new type of legal entity. From the point of view of the modern legal science, we can talk about a juridical person. However, in the case of J.Ch. Finke's theory of natural law, this issue needs to be clarified.

J.Ch. Finke understood society in two ways. Society in a formal sense is a large number of people united by a common goal. From the material point of view society is an aggregate of people where every individual is called a member of society and non members are called foreigners[3]. Here we can observe a systematic approach, since it allows to describe a person individually and in relations with others.

It should also be born in mind that in the context of the theory of natural law, society is based on the contract. One can draw a parallel with the State, which is also based on the contract.

What types of aggregates of people can be identified? First of all, there is marriage, a purpose of which is childbirth and child-rearing. Marriage, of course, presupposes a marriage agreement, which enshrines the rights and obligations of spouses[4].

Church is also a treaty-based aggregate of people, united for public worship[5]. Here we also find connection between different ideas of J.Ch. Finke's theory of natural law.

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[1] See: Gubaydullin A.R., Shigabutdinova A.L. The theory of natural law of J.Ch. Finke and its impact on the state structure and the system of law in Russia // Kazan law schools: evolution of educational and scientific traditions in modern jurisprudence]. Moscow, Statut Publ., 2016.P. 59.

[2] See: Idem. P. 69-70.

[3] See: Idem. P. 79-80.

[4] See: Idem. – P. 90-91.

[5] See: Idem. – P. 96, 98.

The fact is that church is based on faith, which is focused on the inner world of a person. Moreover, the absolute natural law includes freedom of religion.

This leads to the following conclusion. The absolute natural private law, which is connected with human nature, physical and moral needs of a person, determines the content of the conditional natural law. For example, the right to use external objects leads to legal regulation of property relationships. The right to family life preconditions the institution of marriage. This also brings about the regulation the inheritance rights. Finally, as stated previously, legal regulation of church relations is related to freedom of religion.

The natural law is a complex model with many levels, each of which provides the possibility of existence of another level. One of them is the conditional civil law, which is part of the system of natural civil law.

The need to study the conditional civil law is caused by the fact that it limits the universal natural law and puts it into certain constraints.

How these boundaries become set? We can give the following example. J.Ch. Finke noted, that in civil society, there is no such way of the termination of ownership as unwarranted repossession of someone else's property. Arbitrariness is constrained by litigation[1]. Of course, in the natural state everyone protects their own property and bears the related risks. However, this can provoke chaos. The Government intervene in these relations by setting civilised boundaries.

The main purpose of the State is protection of common good. If natural law deviates from this purpose, the State tries to take it back to its original constraints. Thus, the civil law acts as a regulator of the natural private law.

It follows that in his theory of natural civil law, J.Ch. Finke consistently advances I. Kant's idea that fair civil administration is a combination of possibly greater freedom with decisive authority[2].

J.Ch. Finke also distinguished the natural people's law. Two hundred years ago the international legal regulation was different from the modern one. Nevertheless, the ideas under consideration may be very interesting.

In J.Ch. Finke's opinion, the people's law regulates both the relations between nations and the relations between a nation and foreign persons. In this, the existence of the positive people's law is denied because nations are free and have the right to self-determination. Following the tradition, J.Ch. Finke divided people's law into absolute and conditional. The former is based on the principles derived from "the only possible natural relations between nations", while the latter is rooted in "special circumstances or acts"[3].

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[1] See: Idem. – P. 229.

[2] Novgorodtsev P.I. Lektsii po istorii filosofii prava. Ucheniya novogo vremeni. XVI-XVIII vv. i XX v. [Lectures on the history of philosophy of law. Studies of Modern time. XVI-XVIII centuries and XIX century] 2nd edition revised and expanded. M., 1912 (Association "Publishing house of S.P. Yakovlev"). 226 p.

[3] See: Finke J.Ch. Above-mentioned work. P. 235-236.

Thus, the people's law is connected with nation's freedom, which can be limited only by the nation itself through entering into treaty obligations. Although the natural law needs the positive law for reasons of ensuring it, in this case the absence of the positive law is emphasized. The rules of the people's law are ensured by nations themselves when they enter into relations. Finally, it is worth stressing that the system of people's laws here comes close to the system of modern international law. Clearly, the differentiation between two groups of social relations reflects the existence of the public-law and private-law principles in the people's law.

Most vividly the natural law manifests itself in the absolute people's law. It represents the idea of freedom and equality of nations to the fullest extent possible, defines the nature of conditional people's law.

The content of the latter, according to Finke, is diverse. Here we can find thoughts about property and modes of its acquisition between nations, about international treaties, sovereignty and legal status of foreigners, about legal regulation of diplomatic relations, waging war and bringing peace[1].

From the point of view of the modern researcher, many institutions of modern international law are missing here. But one should not even attempt to find them. Firstly, Finke based his works on the state of international legal regulation, existing at his time. Secondly, the content of the conditional people's law should be viewed through the prism of the main categories of the theory of natural law under consideration: freedom, morality, justice, etc.

What is the significance of Finke's works? On one hand he did not stay for long in the Russian Empire. On the other hand he made an impact on legal science, education and legal culture.

Particularly, N.N.Bulich noted that J.Ch. Finke taught natural, Roman and private civil law to government officials for two years, starting from 1811[2]. This, he contributed to the enlightenment of governmental officials, which to some degree could influence the development of the State.

It should be noticed that the ideas about freedom and justice, represented in the natural law, influenced the views of decembrists[3], who assembled in Senate square[4].

If we look at Finke as a teacher, we should note his desire to improve the educational process. Understanding acutely the difficulties of the language barrier, he raised a question of giving lectures in Russian language. His thought of students using the textbook prepared by the teacher and containing a summary of lectures was very

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1 See: Idem. – P. 238-292.

2 See: Bulich N.N. Above-mentioned writing. – P. 54.

3 Decembrist revolt – an attempt of uprising against the succession of the crown by Tsar Nicholas I

4 Yuridicheskiy fakultet Kazanskogo universiteta: tretiy vek obrazovaniya, nauki i vospitaniya [Law faculty of Kazan university: third year of education, science and upbringing] / sc. editor. I.A. Tarkhanov. – Kazan: Publ. house of Kazan state university, 2009. – p 61.

positive[1]. Undoubtedly, these ideas are relevant today. The development of modern jurisprudence is unthinkable without being familiar with jurisprudence overseas, and for that reason a legal scholar should know foreign languages. The timely preparation of course books for students in conditions when the content of disciplines is constantly changing is also a prerequisite for high-level educational process.

At the same time it is difficult to make compelling conclusions about the impact of J.Ch.Finke's natural law theory on the Russian legal system. As we know, until the October revolution of 1917 it was based on the Code of state laws of the Russian Empire issued in 1832 under the direction of M.M.Speransky. However we can presuppose that Finke's natural law theory that accumulated progressive legal ideas of the time could influence Speransky's views and consequently influence the main vector of systematization of the Russian legislation in the first half of the 19th century[2].

The structure of the Code of state laws of the Russian Empire took into account the division of law into private and public that prevailed in the Western European tradition. While working on the project of state reconstruction in Russia, Speransky wrote: "The common object of all laws is to institute relation of people to the common security of persons and property. In view of the great complexity of these relations and laws derived from them, we should establish their main divisions. At the core of these divisions should be the very objects of the laws: relations of people living in a society. These relations are twofold: every person has a relation to the whole state and all persons have relations between each other. Therefore there are two main types of laws: Governmental laws define relation of individual persons to the state. Civil laws establish relations between people"[3].

As we see, Speransky alike Finke had an intention of making a clear division between two spheres of legal regulation: relations between a state and a citizen and relations between citizens. Such approach was consistently implemented in creation of Code of state laws of the Russian Empire, that implied division of laws into two types: governmental and civil laws, which corresponds to the traditional Western European division of law into public and private law.

Finally, we can link Finke's views with the idea of the constitutional state. This term was not mentioned explicitly, but the main provisions of this political-legal construction were reflected in his works. And at the core these provisions was the idea of internal and external freedom.

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[1] See: Bulich N.N. Above-mentioned work. P. 55-56.

[2] Gubaydullin A.R., Shigabutdinova A.L. The theory of natural law of J.Ch. Finke and its impact on the state structure and the system of law in Russia // Kazanskiye yuridicheskiye shkoly: evolutsiya obrazovatel'nykh i nauchnych traditsiy v sovremennoy yurisprudentsiya [Kazan law schools: evolution of educational and scientific traditions in modern jurisprudence] / Under editorship of I.A. Tarkhanov, D.Kh. Valeev, Z.A. Akhmet'yanova – Moscow, Statut Publ., 2016. – P. 68.

[3] Speransky M.M. Plan gosudarstvennogo preobrazovaniya (vvedeniye k Ulozheniyu gosudarstvennykh zakonov 1809 g.). [Plan of state reconstruction (introduction to Code of state laws 1809 y.) M. 1905 (Printing house with lithography body of I.N.Kushnerev and K.Pimen association). P. 2.

As is known, one of the key ideas of the constitutional state theory is acknowledgement by the state of the inalienable human rights, outlining the sphere of its freedom and autonomy. At the same time the boundary between freedom of a citizen in the state and their arbitrary acts is defined by law. In the works by J.Ch.Finke, the boundary between freedom and arbitrary acts of a citizen is set by the natural civil law.

People in a constitutional state are not a passive object of power, but its source, a bearer of sovereignty. Organization and functioning of the state power, its relations with a citizen are based on the legal foundations. In J.Ch.Finke's natural law theory, the regulator of these relations is the natural state law.

Therefore, three phenomena – law, state, and freedom – reflecting the essence of the constitutional state theory, are defined by Finke in the complex system of the natural law.

In conclusion, we can argue that at the basis of the natural law theory of J.Ch.Finke there is a traditional for the Western European political-legal thinking of modern time understanding of rational nature of a human being. The discussed views are creative interpretation of Kant's rational philosophy.

The rational basis that defines the reason and content of person's decisions is the necessary premise of the existence of natural rights. Although the natural laws do not depend on the governmental will and are an inalienable feature of an individual, their full realization is possible only under supervision of the state. At the same time, the state intervention into realization of the natural law is minimal. Its purpose is to protect the interests of other individuals in the process of implementing rights and freedoms that belong to a human being.

The complex system of natural law, created in J.Ch.Finke's theory, ultimately defines the mechanism of protection of the main value – internal and external freedom of a person. While the freedom of will or the internal freedom of a person is realized in the framework of the natural private (universal) law, the natural state law and natural civil law provide for external freedom of a person in their interaction with the state or other citizens. The boundaries of internal freedom are defined by the immanent ethical law. The limits of the external freedom are set by the judicial law.

Although J.Ch.Finke's political ideas in general did not go beyond the outlook of the Age of Absolutism, placing the personal freedom in position of the main value by far outpaced the theory and practice of state development in Russia.

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LOAN AGREEMENT: URGENT QUESTIONS OF LEGAL REGULATION

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Abstract: The article discusses the question of a bilateral character of the loan agreement contract. It validates a conclusion about the existence in the loan agreement of the rights not only for the lessor (traditional approach), but also for the borrower. In educational and scientific literature in connection with the subjective rights and obligations of the loan agreement parties there prevails an opinion that the obligation under the contract of a monetary loan is unilaterally binding as the authorized party (the creditor) is always a lessor and the bound party (the debtor) is always a borrower. At the same time, it is necessary to differentiate a contract of a monetary loan and a contract of a commodity loan in connection with differences in a set of the bilateral rights and duties of the lessor and borrower. The article also studies the question of a weak party in the loan contract. A conclusion is drawn that not only the borrower is a weak party, but also the lessor in the presence of certain circumstances can be in a weak position. It establishes that the frame of the loan agreement uses a so-called "floating" model of the weak party when depending on certain conditions it is either the borrower or the lessor that are recognised as a weak party. On the basis of the analysis of the doctrine and jurisprudence, the author justifies the use of the term "weak party". Further, the article discusses which of the parties in the obligation – the debtor or the creditor – should be recognised as week. Various approaches to the issue under consideration are given. According to the traditional approach, the weak party of the loan agreement is a borrower. However, on the basis of the analysis of the current legislation, opinions expressed in educational and scientific literature and jurisprudence, the author finds it possible to recognise the lessor as weak party of the loan agreement as well. The statistical data and the bills submitted for consideration of the Parliament of the Russian Federation are provided to support this conclusion. On the basis of the conducted research it is proved that the legislator recognises the borrower as a weak party of the

loan agreement as a general rule, while in case of non-execution by the borrower of the obligation to return the loan, the lessor is considered to be a weak party.

Keywords: bilaterally binding, borrower, loan agreement, lessor, rights of the borrower, weak party.

At the current stage of the reform of the civil law and its implementation by the law enforcement agencies, the study of the legal protection of the rights of the parties comes to the forefront of the national civil science and practice. Among the most urgent issues is the question of civil law protection of the rights of the parties under the loan agreement. As noted by the Russian Federation President, Vladimir V. Putin, "the most pressing problem now is concentrated in the service sector, including the financial services. Thus many difficult questions arise among citizens-consumers in relation to so-called micro-loans."[1] According to statistics, every year an increasing number of disputes arise from loan contracts. If in 2013 more than 1.3 million (!) claims were filed for the recovery of amounts under the loan or credit agreement, in 2016 the number of claims increased by almost two-and-a-half times amounting to more than 3.2 million claims. The total amounts awarded to recover have significantly increased as well – from 359.7 billion roubles in 2013 to 840.7 billion roubles in 2016[2].

The past two decades in Russia are marked by substantial economic changes, providing a boost to rapid development of the market economy and, as a consequence, the rapid growth of the market of loans and credits. According to the statistics of the Bank of Russia, the amount of loans granted to individuals has considerably increased: if in 2009, the lending amounts equaled 2.6 trillion roubles, in 2017 they came to more than 8.1 trillion roubles. With the increase in crediting there inevitably grow the debt and social tension in society. While at the end of 2009, the debt on credits and loans granted to private individuals-residents stood at 3.5 trillion roubles, as of December 1, 2017 debt has risen to nearly 12 trillion roubles, including 2.7 trillion roubles in overdue accounts.

Vladimir Putin gave an example that on short-term loans for small amounts the maximum figures of the total cost of the loan exceed the reasonably acceptable level. For example, it is "800% on the loan of 30 thousand roubles for up to 1 month, which exceeds 600 roubles of citizens' expenses for daily servicing of such a loan, if the borrower, in the course of one year, does not fulfil its obligations. The famous old lady in Dostoevsky's novel is a very humble woman, compared with our present usurers."

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[1] V.V. Putin, speech at the meeting of the State Council Presidium on development of the national system for the protection of consumer rights, 2017. [An electronic resource]. URL: http://kremlin.ru/events/president/news/54328 (date of the address: 13.04.2018).

[2] Statistics of the Judicial Department of the Supreme Court of the Russian Federation [An electronic resource]. URL:http://www.cdep.ru/index.php?id=79 (date of the address: 23.03.2018).

(Vladimir Vladimirovich Putin, speech at the meeting of the State Council Presidium on development of the national system for the protection of consumer rights, 2017).

Recent years have been marked by the adoption of special laws and amendments to the existing normative legal acts regulating legal relationship in the sphere of issuing loans and protection of the rights of the parties to the loan agreement. The quintessence of all the changes were the amendments to chapter 42 of the RUSSIAN CIVIL CODE, which came into effect on June 1, 2018. The need to protect the subjective rights of individuals and organizations in general and the rights of the parties to the loan agreement in particular remains one of the main objectives of the civil law and requires further theoretical understanding. One of the causes of the violation of human rights and freedoms in Russia is the absence of strict procedures and mechanisms for their protection. At the same time, the mechanism of civil rights protection remains to be one of the phenomena that has not been studied sufficiently enough by the legal science. Most often it is the implementation of the subjective right which is the object of the tort. In this regard, one should agree with D.A. Medvedev, who noted that the current system of civil law "requires not a reconstruction or radical change, ... but an improvement, disclosing its capacity, and development of implementation mechanisms[1].

In the science of civil law the traditional opinion adheres to the position that "the content of the loan agreement, proceeding from its unilateral nature, makes it the duty of the borrower to return the loan sum (Article 810 of the Civil Code) and correspondingly the right of the lessor to require it."[2] Therefore, the borrower has no rights under the contract in question, and the lesser is not charged with any duties apart from an all-creditor duty to accept appropriate execution[3]. Thus, for example, E.A. Sukhanov points out to the so-called creditor duties of the lessor (item 2 of Article 408 of the Civil Code) which appear in the majority of obligations and do not turn this contract into bilaterally binding. The lessor is obliged to issue the borrower with a note of receipt of the subject of the loan, or to return the relevant debt document (for example, the receipt of the borrower), or to make a record about return of the debt on the returned debt document, or, at least, to indicate in their note of receipt that the debt document issued by the borrower cannot be returned (in particular, if it was lost)[4]. K.A. Mikhalev and A.P. Sofronov emphasize that in loan legal relationship there are no counter duties, making a reservation that the lessor has the so-called creditor obligations to discharge they service (Article 406, item 2 of Article 408 of the Civil Code of the Russian

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[1] D. A. Medvedev. New Civil Code of the Russian Federation: codification issues. Moscow, 2008. P. 32

[2] Civil law: course book, in 3 vols. / under the editorship of A. P. Sergeyev. Moscow: Prospectus, 2017. Vol. 2. P. 430.

[3] A.I. Habirov. To the question of abuse of the right of the lessor according to the loan agreement// Collection of postgraduate scientific works of law department of K(P)FU. Kazan, 2014. No. 15. P. 127-132.

[4] Russian civil law: course book, in 2 vols. / Editor E. A. Sukhanov. Moscow: Statute, 2011. Vol. 2: Liability law. P. 211.

Federation)[1]. O.V. Sgibiyeva also thinks that the loan agreement is unilaterally binding[2]. V.V. Vitryansky notes that the loan agreement is a unilaterally binding contract which "does not raise doubts and is accepted by all authors"[3]. Thus, in the science of civil law there prevails an opinion that the existence of counter duties of the creditor in the loan agreement, having a general character, does not influence the unilateral character of the contract. However, there is another position which is presented in this work.

D.I. Meyer pointed out that it is possible to sign a bilaterally binding loan agreement which will make the lessor to grant the subject of the loan[4]. A.G. Karapetov, A.I. Savelyev[5], P.N. Vishnevsky[6] and others also wrote about the possibility to sign the loan agreement based on consensual model[7]. A similar position also occurs in judicial practice (for example, The resolution of Arbitration court of the East Siberian Federal District of March 20, 2016, no. F02-833/16 on the case no. A33-6853/2015). One can draw the conclusion that is possible to impose the obligation for granting the subject of the loan on the lessor.

According to the current legislation the following rights are distinguished: 1) the right of the borrower to return the sum of the interest-free loan ahead of schedule and the corresponding duty of the lessor to accept this sum from the borrower; 2) the right to challenge the loan agreement on lack of the monetary value of the contract and the duty of the lessor corresponding to this right to accept the objections of the borrower or to produce the evidence of the monetary value; 3) the right to demand the appropriate execution to be accepted; 4) the right to demand to have a note of receipt of the execution fully or in the corresponding part, the debt document, and when the return is not possible, to indicate this in the receipt.

In case the subject of the loan is not money, but other things determined by generic characteristics, there is a question of responsibility of the lessor for the quality of the transferred things. We can draw a conclusion that the provisions of Article 822 of the Civil Code of the Russian Federation on the quantity, range, contents, quality, about the container and/or packaging of the provided things apply to the loan agreement of things as well. We should agree with Y.V.Romanets who points out that in relation to

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1 Civil law: course book, in 2 vols. / under the editorship of B. M. Gongalo. Moscow, 2017. Vol.2. P. 390, 393.

2 Civil law: course book / under the editorship of prof. O.N.Sadikov. Vol. 2. Moscow, "Contract", "INFRA-M", 2006. P. 273.

3 M.I. Braginsky. Contract law / M. I. Braginsky, V. V. Vitryansky. Book 5, vol. 1: Contracts on a loan, bank credit and factoring. Contracts aimed at creation of collective formations. Moscow: Statute, 2006. P. 116, 166.

4 D.I. Meyer. Russian civil law, in 2 vols. M.: Statute, 2003. 831 pages of [An electronic resource] URL: http://civil.consultant.ru/elib/books/45 (date of the address: 12.11.2015).

5 A.G. Karapetov. Freedom of contract and its limits. T. 2: Limits of freedom of definition of contract terms in foreign and Russian law / A.G. Karapetov, A. I. Savelyev. Moscow: Statute, 2012. P. 79.

6 P.N. Vishnevsky. Legal regulation of contract of the international loan: Law Sci. PhD Thesis / P.N. Vishnevsky. Moscow, 2015. P. 12-13.

7 A.I. Khabirov. On the value of historical development for formation of modern institute of loan // Civil law. 2017. No. 3. P. 38.

certain types of the loan agreement one can also apply other norms from chapter 30 of the Civil Code of the Russian Federation – Articles 455-457 – which do not contradict the nature of the consensual contract of the commodity credit. Article 459 on the transition of risk of casual destruction of goods, as well as Articles 460-462 could add to the regulation of relations of the real loan agreement of things[1].

A wide range of the rights is provided for the borrower by the Federal Law "On Consumer Loan" which can be classified according to several parameters. We join with the classification by E. V. Fedulina[2] who divides the rights of the borrower under consumer loan contract according to their character into *property rights* (the right for compensation for harm, caused to the borrower by the inadequate performance of obligations under the contract; the right for compensation of the size of the paid interest fee and other payments under consumer loan contract on the return of goods of inadequate quality, etc.) and *non-property rights* (the right for information, the right for the free choice of the services offered within the credit (loan) agreement (for example, insurance), etc.).

By analogy with consumer rights granted in a retail contract or contractor's agreement, it is possible to differentiate *precontract* and *contract rights* of the borrower. The first group of rights includes, first of all, the right for information. Works on civil law note the importance of those legislative provisions that regulate the precontractual relations, namely informing the borrower of the terms for crediting[3]. Often a precipitate conclusion of loan or credit agreements (including the consumer contract) on enslaving for the borrower terms is caused by the fact that the borrower does not have full and clear information about the terms of the contract and consequences of their violation[4].

The second group of rights of the borrower is connected with the execution and termination of the loan agreement. In particular, the set of rights related to the execution of consumer loan contract includes: the right to use the loan sum for particular purposes established in the contract, as well as at the discretion of the borrower if the loan agreement does not specify a particular purpose; the right of the borrower to forbid the creditor to concede the rights (requirements) to the third parties; right for stability of the contractual conditions.

Also the right of the borrower to observe conditions of interaction with the creditor belongs to the set of rights connected with the execution of loan agreement[5]. Respect

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1 Y.V. Romanets. System of contracts in civil law of Russia. 2nd edition, revised and expanded. Moscow: Norm, Infra-M, 2013. P. 55-56.

2 E.V. Fedulina. Civil protection of rights of the borrower under the contract of consumer credit (loan): Law Sci. PhD Thesis. Moscow, 2015. P. 60.

3 N.A. Shvachko. Problem of recognition of the credit agreement with consumer's participation as a contract of adhesion // Lawyer of higher education institution. 2012. No. 6. P. 59.

4 Speech of the Russian President V. V. Putin at the meeting of Presidium of the State Council "On the National System of Consumer Protection" [An electronic resource]. URL: http://www.kremlin.ru/events/president/ news/54328/videos (date of the address: 23.04.2017).

5 E.V. Fedulina. Civil protection of rights of the borrower under consumer credit (loan) contract: Law Sci. PhD Thesis. Moscow, 2015. P. 69.

for this right has become very urgent which is connected, first of all, with unfair and sometimes illegal behavior of the persons who are engaged in the return of debt being the so-called "collectors". For a long time in court practice and in the doctrine,[1] there was no unanimity of opinions on the possibility of concession of the rights (requirements) under the loan agreement[2]. At the present moment these disputes have no foundation since Article 12 of law "On Consumer Credit (Loan)" directly allows such concession (see also Article 4 of the Federal Law "On protection of the rights and legitimate interests of natural persons performing the activities aiming at the return of arrears and on introduction of amendments to the Federal law 'On microfinancial activity and the microfinancial organizations' ").

Within the set of rights connected with performance of the contract, the borrower has a right for free execution of the monetary liability under consumer loan contract. This right is exercised by providing the borrower with at least one way of free repayment of debt (item 19 of Article 5 of the Federal Law "On Consumer Credit (Loan)"). Moreover, when opening a bank account provided by the contract, the operations have to be carried out free of charge (item 17 of Article 4 of the Federal Law "On Consumer Loan"). This right aims to protect the borrowers from the hidden payments and fees (see also subitem 5 of item 5 of Article 6 of the Federal Law "On Consumer Credit (Loan)").

The set of rights connected with the termination of consumer loan contract include the right of the borrower to return of the sum of consumer loan ahead of schedule within 14 days (30 days when receiving a loan for particular purposes). Works on civil law point out the importance of fixing these rights of the borrower[3]. Thus, the borrower, under the contract of monetary loan, especially under consumer loan contract, as well as under the contract of commodity loan, is granted with a large set of rights which allows us to draw the conclusion on the bilaterally binding character of the loan agreement.

Under the consumer loan agreement, the lessor (creditor) also has a certain set of the rights which can be classified according to several characteristics. Thus, by analogy with the above-stated classification of the rights of the borrower as property and non-property rights, it is possible to distinguish *property* and *non-property rights* of the lessor. The property rights of the lesser are the following: the right to receive a fee for use of a loan, the right to receive a fee in case of the enforced cancellation of the contract ahead of schedule due to violation on the part of the borrower; the right to demand to return the sum of the loan. The non-property rights include the right for information about the borrower and the right for free choice of the contractor under the contract.

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[1] A.A. Lupu, I.I. Oskina. Is the activity of collection agencies legitimate? // Economy and law. 2011. No. 3. P. 102.

[2] A.I. Khabirov. Protection of interests of citizens-consumers in the obligation regarding return of a monetary debt // Collection of postgraduate scientific works of Law department. Kazan: KFU, 2013. No. 14. P. 535-539.

[3] S.V. Rybakova. What new aspects the Civil code will introduce in regulation of credit relations? // Bank right. 2012. No. 5. P. 34.

The rights of the lessor can be also subdivided into *precontractual* and *contractual rights*. The precontractual rights comprise the right to receive reliable information about the borrower and the right for coordination of contractual conditions. According to item 3 of Article 7 of the Federal Law "On Consumer Credit (Loan)", the creditor handles the application and other documents of the borrower. Within the precontractual relations, the lessor (creditor) has the right to refuse to grant a consumer loan.

On this basis, we conclude that the loan agreement has a bilaterally binding character. First, both under loan agreement in general, and under consumer loan contract in particular, the borrower is given certain rights that allows to draw a conclusion on the bilaterally binding character of the loan agreement. The rights of the loan agreement parties can be classified as pre-contractual and contractual, as the rights connected with signing, execution or termination of the loan contract, and as property and non-property rights. A system of information rights of the borrower is separately distinguished; classification of information rights of the borrower is developed and proved.

Secondly, the set of legal powers of the parties under the contract of monetary and commodity loan differs, so does the scope of legal powers of the borrower under the consumer loan contract. Under the contract of commodity loan the borrower has the same rights, as the buyer under the contract of purchase and sale in the part relating to the characteristic of the transferred thing (goods) (owing to the corresponding application of Article 822 of the Civil Code of the Russian Federation).

Thirdly, it is necessary to differentiate the mechanism of protection of the rights of the parties under the contract of monetary loan and under the contract of commodity loan. In case of violation by the lessor the relevant duties under the contract of commodity loan, the borrower can protect the rights in non-jurisdictional form. Measures of operational impact are applied, such as refusal of a contract or refusal of acceptance of the inadequate execution. Such way of protection as the termination or change of legal relationship is used, as well as awarding specific performance of duties. Means of protection are a statement, claim. Under the contract of monetary loan the parties exercise protection of the rights in jurisdictional order by means of such security measures as a statement of claim. Therefore, depending on the subject of the loan agreement, there are differences in form, means and ways of protection.

The scientific results received during the conducted research allowed us to put forward a number of suggestions for improvement of the current legislation. First, a new edition of item 1 of Article 807 of the Civil Code of the Russian Federation: "According to the loan agreement one party (the creditor) transfers or undertakes to transfer into the ownership of the other party (borrower) money or other things determined by generic characteristics, and the borrower undertakes to return to the creditor the same sum of money (the loan sum) or equal quantity of other things of the same sort and quality. The loan agreement in which the creditor is a citizen and the subject is money is considered to be concluded at the moment of money transfer." Secondly, a new edition of the offer 2 of item 6 of Article 7 of the Federal Law "On Consumer Credit (Loan)":

"The consumer loan contract is considered to be concluded when parties of the contract reached an agreement on all individual terms of the contract specified in part 9 of article 5 of this Federal Law."

Further to the above considerations we would like to address the question of the weak party of the loan contract. On the 3rd of July, 2016, a new law came into force, i.e. Federal Law No. 230-FZ "On protection of rights and legitimate interests of natural persons repaying the arrears and on the introduction of amendments to the Federal law 'On Microfinancial Activity and Microfinancial Organizations' ". Adoption of law in this sphere was long overdue because of numerous violations committed by the so-called collectors during interaction with debtors when debtors are, in fact, deprived of an opportunity to protect themselves from collector's arbitrariness. In some cases the rights of the third parties, which are not a party of the loan obligation, are also violated. Indeed, debtors in such situations are a weak, unprotected party of legal relationship[1] which is also confirmed by conclusions of Review of Presidium of the Higher Court of the Russian Federation of 22.05.2013 on jurisprudence in civil cases connected with the settlement of disputes about execution of credit obligations: it is specified in subitems 3, 4.1 that in the relations with bank citizens-investors and borrowers are economically a weak party in the contract.

In this regard it is necessary to examine the question of protection of rights of the weak party in a loan agreement. The concept of a "weak party" of the obligation is a legal term used for convenience to characterize the distribution of rights and duties between parties of the obligation and to state the importance of indicating asymmetry and incomparability of the rights and duties of subjects. The term under consideration is mentioned neither in the Civil Code of the Russian Federation, nor in other regulations. However, the use of the term "weak party" has official legal and doctrinal (scientific) justification[2]. For example, the Constitutional Court of the Russian Federation uses the term "weak party" in its resolutions.

We should distinguish four meanings of the concept "weak party". The first meaning – the nominative meaning – assumes that out of two parties in the obligation the party responsible to take certain actions or to refrain from them is a weak party. It is the debtor who runs the risk of not fulfilling their duties and can face the adverse effects of measures of civil liability taken against them[3]. Thus, in case of violation by the borrower of the loan agreement (Article 811 of the Civil Code of the Russian Federation) for the sum of a loan, a penalty must be paid for illegal use of someone else's money (Article 395 of

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[1] A.I. Habirov. Protection of interests of citizens-consumers in the obligation regarding return of a monetary debt // Collection of postgraduate scientific works of Law Department. Kazan: KFU, 2013. No. 14. P. 535-539.

[2] E.V. Kobchikova, O.A. Cheparina. On the question of legal nature of contracts on target training and target reception // Law and education. 2015. No. 2. P. 4-10.

[3] E.V. Vavilin. Mechanism of implementation of the civil rights and fulfilment of duties: Law PhD Thesis. Moscow, 2009. P. 425.

the Civil Code of the Russian Federation) irrespective of penalty payment according to Article 809 of the Civil Code of the Russian Federation are subject to payment. However, in our opinion, an exception to this rule should be made. And it follows from the second meaning of the term "weak party".

The second meaning of the concept "weak party" is "formal" or "statutory" as it is based on the analysis and systematic interpretation of civil legislation. In 1923, N.G. Vavin noted that to lend property is the most risky transaction[1]. The importance of referring to the doctrine and the legislation of the past is stressed by many scholars[2]. S.A. Khokhlov emphasizes that "strengthening the protection of the rights of creditors constitutes one of basic features of the second part of the Civil Code. Those who have right should be protected, not those who violate them. From this point of view, the debtor should not be protected by law at all"[3]. Therefore, in the loan agreement the lessor should be recognized as a weak party. Indeed, the situation in the sphere of repayment of debt leaves much to be desired today: according to the data of Central Bank of the Russian Federation on 01.01.2016, in general across the Russian Federation natural persons received credits totalling nearly 6 trillion rubles. Debt volume in the Russian Federation exceeds 10 trillion rubles, while the volume of arrears approached 1 trillion rubles[4]. Apart from that, according to the data of Federal Bailiff Service in the Republic of Tatarstan in 2015, the total number of enforcement proceedings exceeded 2 million, only 791 thousand (43,2%) of them were executed completely[5]. In the Russian Federation, the figure of enforcement proceedings executed completely in 2015 constituted 38,6%.

According to the third possible understanding of the term, a weak party is a party that has fewer resources (material, information, or other resources) in comparison with the counterparty. Comparing the opportunities available for the parties, one can distinguish "strong" and "weak" parties in a legal relationship. Considering the concept of a "weak party" from this point of view in relation to the loan agreement, we should recognize that in the case when the lessor is a professional participant of the corresponding market (for example, a credit institution that issued a consumer loan), it is the borrower who is generally a weak party. This conclusion is based on the analysis of offers of consumer credits (loans) in financial sector. Thus, there are general terms of the consumer loan contract (microloan, credit) developed by organizations unilaterally which corresponds

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1 N.G. Vavin. The loan agreement under the Civil Code. A dogmatic sketch with the appendix of the corresponding legislative material. M.: Prod. Vserokompom, 1923. P. 34.

2 A.I. Habirov. On the value of historical development for formation of modem institute of loan // Civil law, 2017. No. 3. P. 36-39.

3 S.A. Khohlov. Selected work, edited by P.V.Krasheninnikov. Moscow: Statute, 2017. P.304.

4 Statistics of Russian Central Bank [An electronic resource]. URL:http://www.cbr.ru/statistics/UDStat.aspx? Month=01&Year=2016&TblID=302-02M (date of the address: 16.03.2018).

5 Office of the Federal Bailiff Service in the Republic of Tatarstan: performance indicators for December 2015 [An electronic resource]. URL: http://r16.fssprus.ru/2260123/ (date of the address: 16.03.2018).

to legislatively established regulation (Article 5 of the Federal Law "On Consumer Credit (Loan)"). Therefore, it is possible to draw a conclusion that the legislator considers the borrower to be a weak party in the consumer credit (loan) contract.

If a nonprofessional person acts as the lessor, then the borrower has more legal tools to conclude the contract on favourable terms. Nevertheless, we should recognize that natural and legal entities, as a rule, borrow money when they need it. And vice-versa usually a person acts as the lessor when they have money to spare. Therefore, we can state that the borrower has more interest in conclusion of the loan agreement, and so depends more on the will of the lessor.

And, at last, the fourth interpretation of the term is that a weak is a party that has a subjective right, however, forms and ways of its realization are insufficient in a particular civil legal relationship. An additional legal specification, i.e. legislative, judicial or administrative support, is required. In fact, court rulings often take into account interests of the weak party in civil legal relationship. Upon availability of special legal tools allowing in each case when one of the parties is a weak party to provide a fair ruling, E.V. Vavilin rightly points out the existence of a certain legal shortcoming – a lack of a universal legal basis. In civil legislation there is no general provision which would bring to official level the concept of derogation from the fundamental civil principle of legal equality of the parties existing in domestic legal doctrine in the case when one of the parties is weak in relation to the other for clearly objective reasons. It is necessary to make an alignment of legal opportunities of the parties taking into account the principles of rationality and justice. One more reason indicated by E.V. Vavilin to enshrine in legislation the provisions about a weak party in civil law is that in some cases a financial situation or status of the weak party is not clearly shown. For example, in the loan agreement signed between citizens any of the parties can be recognized as weak depending on circumstances. In particular, the lessor can face a problem of not receiving back the money or other things determined by generic characteristics they lent. The borrower enters loan legal relationship, as a rule, being in need. Also as V.V. Vitryansky notes "... the opposition of "strong" and "weak" party when the latter needs at least a minimum level of assurance for protection of rights and legitimate interests quite often occurs also with contracts in business sector."[1] Thus, we should agree with E.V. Vavilin that chapter 2 of the Civil Code of the Russian Federation must stipulate a general, universal mechanism which will allow to exercise or protect the subjective right of the weak party.

The first meaning of the concept "weak party" allows us to realize the importance of and the need for protection of rights and interests of the debtor. In order to develop a balanced and effective civil circulation the debtor (borrower) has to be faced with a fair and rational mechanism to exercise their subjective civil obligations and be liable

[1] V.V. Vitryansky. Special contractual designs in the conditions of reforming of the civil legislation // Civil law and the present: M.I. Braginsky's memories / Under the editorship of V.N. Litovkin, K.B. Yaroshenko. Moscow, 2013. P. 53-58.

for the failure to fulfil them. In particular, in our opinion, the size of the interest fee for use of the loan and the size of the penalty (fine) for violation of the terms of the loan agreement, including exceeding the time limit for repayment, in total cannot exceed the sum of the loan itself (the "loan body").

The second of the discussed meanings of the weak party in obligation rightly establishes that the main objective of civil norms is finding a source of money to compensate the losses of the creditor. The creditor who was deprived of certain material benefits acts as a central figure in the question of liability. Thus, in our opinion, in case when the borrower does not return the sum of the loan (credit) in time without reasonable excuse, the lessor (creditor) should be recognised as a weak party of the loan (credit) agreement. The lack of reasonable excuse can be testified, for example, when the debtor goes on holiday, especially abroad; or if the debtor uses the vehicle not for work purposes; or when the borrower carries out gratuitous transactions to give their own property to the third parties, etc. In order to prevent unfair actions, the Ministry of Justice of the Russian Federation suggests to include in the list of documents required for registration of legal persons and individual entrepreneurs, a certificate of lack of outstanding debt in enforcement proceedings. Apart from that, if the bank suspends the operations with the money available on the accounts of the debtor organization, according to the item 6 of Article 81 of the Federal Law "On enforcement proceedings" it is proposed to forbid the bank to open accounts, give loans or deposits, or to grant the right to use new corporate electronic instruments of payment for the debtor organization. We believe that the amendments proposed by Ministry of Justice of the Russian Federation are a logical continuation of already available restrictions of public law character and can be an effective way to protect the rights of the lessor.

From the third position, a weak party is not a particular party of the contract, but such a subject of legal relationship which owing to objective opportunities is weaker in a particular type of contract. The strong party, on the contrary, has an objective opportunity to impose their terms on the counterparty. Thus, the law stipulates that the consumer credit (loan) contract consists of the general conditions to which according to item 2 of Article 5 of the Federal Law "On Consumer Credit (Loan)" the provisions of Article 428 of the Civil Code of the Russian Federation are applied (the contract of accession). Such conditions are determined by one of the parties (in this case the creditor) in forms or other official lists and can be accepted by other party only by adding them to the proposed contract as a whole.

This research is one of the first scientific works to apply an integrated approach to lay down the rules about the definition of a weak party of the contract and it concludes by arguing that both the borrower and the lessor depending on particular conditions can be recognized as a weak party of the loan agreement. It is established that the design of the loan agreement incorporates the so-called "floating" model of a weak party when depending on particular conditions either the borrower or the lessor can be considered to be a weak party. The conducted research proves that as a general rule the legislator

recognizes the borrower as a weak party of the loan agreement, while in case when the borrower does not fulfil the obligations to return the subject of the loan, the lessor becomes a weak party.

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CONFERENCE REVIEWS

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REVIEW OF THE INTERNATIONAL SCIENTIFIC AND PRACTICAL CONFERENCE "ENFORCEABILITY OF THE ENVIRONMENTAL SECURITY IN RELATION TO ENERGETICS AND ENVIRONMENTAL MANAGEMENT" HELD AT THE LAW FACULTY OF KAZAN (VOLGA REGION) FEDERAL UNIVERSITY 8-9 DECEMBER 2017, KAZAN

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Abstract: The overview of the International scientific and practical conference "Enforceability of the environmental security in relation to energetics and environmental management" is a study devoted to the Year of Ecology in the Russian Federation. It presents the chronological sequence of events at the conference, greetings and the most interesting and significant papers. The excursion programme within the Conference also received some attention. Conclusions that were drawn mark the influence that this Conference has not only on the competitive performance of the Law Faculty, but also on Kazan (Volga region) Federal University overall. The University's competitive

capacity has grown owing to intensification of the scientific links between Kazan Federal University and legal scholarships from Germany, Republic of Belarus, Kyrgyzstan and the constituent entities of the Russian Federation that deal with the problems of environmental security arising in the sphere of environmental management and energetics. Furthermore, the cooperation with public authorities' representatives of the Russian Federation and the Republic of Tatarstan has been enhanced. The cooperation with potential employers has been strengthened as well, which is very important for the graduates. By the end of the conference the participants made the following conclusions: 1. General legal acts, political legal acts and other legal instruments which have an ecological focus give no division between the environmental security and the protection of the environment in the Russian Federation. The issues being covered within the environmental security and the environmental protection coincide on the legislative level, as it was noted in the Ecological law doctrine. The further development of the environmental legal regulation must move towards the subject matters of the legal regulation of the environmental security and environmental protection being divided. 2. An effective legal enforcement in the field of environmental management and energetics can only be achieved when there is a joint collaboration between law practice, legal science and other studies. 3. Legislative harmonization in protection and use of the transboundary natural systems, environmental objects and cross border contamination undertaken by different countries is inevitable under present-day conditions.

Keywords: environmental law, legal regulation of ecology, economic governance, environmental security, environmental culture, environmental management, energetics, conservation areas, land plots, waste productions.

On December 8-9, 2017 Kazan (Volga region) Federal University was holding International scientific and practical conference *"Enforceability of the environmental security in relation to energetics and environmental management"* devoted to the Year of Ecology in the Russian Federation (hereinafter referred to as the Conference). It was organized by the Law Faculty of KFU (Department of Environmental, Labor Law and Civil Process).

Law Faculty served as a platform for integration of scholars and experts interested in the legal issues of environmental management and energetics. Among the participants were the leading legal scholars and scientists of other studies in the environmental management and energetics not only from Russia, but also from Germany, the Republic of Belarus and Kyrgyzstan. There were also representatives of public bodies of the Russian Federation and the Republic of Tatarstan.

Representatives of the following universities and scientific organizations took part in the Conference:

Institute of Energy and Regulatory Law (Berlin),

Belarusian State University (Minsk),

International University of Central Asia (Bishkek),

Lomonosov Moscow State University (Moscow),
The Institute of State and Law of the Russian Academy of Sciences, ISL (Moscow),
Institute of legislation and comparative law under the Government of the Russian Federation (Moscow),
Russian Academy of Justice (Moscow),
Kutafin Moscow State Law University, MSAL (Moscow),
State University of Land Use Planning (Moscow),
St Petersburg State University (St Petersburg),
St Petersburg State Forest Technical University (St Petersburg),
Bashkir State University (Ufa),
National Research Tomsk State University (Tomsk),
Ogarev Mordovia State University (Saransk),
Mari State University (Yoshkar-Ola),
Saratov State Academy of Law (Saratov),
Ulyanov Chuvash State University (Cheboksary),
Crimean affiliated branch of the Russian Academy of Justice (Simferopol),
Institute for Problems of Ecology and Mineral Wealth Use of Tatarstan Academy of Sciences (Kazan),
Kazan National Research Technological University, KNRTU (Kazan),
Kazan affiliated branch the Russian Academy of Justice (Kazan),
Russian Islamic University (Kazan),
Timiryasov Kazan Innovation University (Kazan).

Among other participants of the Conference were judges of the Constitutional Court of the Republic of Tatarstan, judges of the Supreme and the Arbitration Court of the Republic of Tatarstan, deputy prosecutor of the Volga interregional environmental Prosecutor's office, Kazan interdistrict environmental prosecutor of the Volga interregional environmental Prosecutor's office, Tatar interdistrict environmental prosecutor, representatives of the Prosecutor's office of Moskovsky district of Kazan, representatives of the Ministry of ecology and natural resources and of the Ministry of forestry, and also representatives of other public authorities.

The Conference was opened by Head of the Department of Environmental, Labor Law and Civil Procedure, Doctor of Legal Sciences, Professor, an Honorary lawyer of the Republic of Tatarstan *Zavdat Safin*. To start with he mentioned that the present Conference was devoted to the Year of Ecology in Russia. Its topic had not been chosen accidentally. First of all, the Strategy of the environmental sustainability of the Russian Federation up until 2025 was adopted in 2017. Secondly, the scientific work of the Law Faculty of KFU is based on grounds of national security encompassing international and intersystem legal regulatory and law enforcement issues, so as the issues of a particular legal branch concerning the national security and sovereignty maintenance of the Russian Federation. Thirdly, the topic of scientific research within the Environmental, Labor Law and Civil Process Department is also related to the legal enforcement of national security through the environmental sustainability relations being legally regulated.

The Conference topic allows many scientists to combine their interests in legal aspects of environmental management and energetics. Moreover most of them coincide within the framework of the environmental security enforcement.

Ildar Tarhanov, the scientific supervisor of the KFU Law Faculty, Doctor of Legal Sciences, Professor, an Honorary Lawyer of the Russian Federation and Republic of Tatarstan, referred to the fact that he is not directly involved in the sphere of environmental law. However the scientific interests of I.A. Tarhanov and his Ph.D. students include the concept of liability to prosecution for environmental crime as a part of a criminal law. The scientific supervisor also noted the significance of the Conference topic and traditions of legal protection of the environment maintained at KFU affirms this significance. These traditions had been earlier established by a well-known Doctor of Legal Sciences, Professor Vladislav Petrov.

After that *Damir Valeev*, Vice-Dean of the Law Faculty, Doctor of Legal Sciences, Professor of the Environmental, Labor Law and Civil Procedure Department, addressed the Conference. He welcomed everyone and expressed his appreciation to the foreign colleagues for coming to the Conference. He also highlighted that within the Law Faculty there is a specialization for the Masters of Law, which almost coincides with the topic of the Conference.

On behalf of the Tatarstan Supreme Court, the participants of the Conference received a welcome address from the chairman of Judicial Assembly, Candidate of Legal Sciences *Rafail Shakiryanov*. A renowned expert, he acknowledged the topicality of the issues raised at the Conference pointing out that today's society witnesses a constant anthropogenic impact on the environment. That determines the necessity to form effective legal regulatory mechanisms that would focus on conserving, restoring, rational managing of natural resources and so on preventing and eliminating the consequences of this adverse impact on the environment.

Environmental security is implemented not only through regulation of manufacturing and other economic activity that influences the environmental safety state. The elements of environmental security are also considered while defining the legal methods of using natural objects, their conservation areas and other legal phenomena.

This area includes a considerable number of jurisdictional actors, among which there are not only the specialized entities, but courts and public prosecution offices as well. In the course of the dispute resolution regarding challenges of ensuring the environmental security, courts adjudicate on the following issues (sometimes upon the prosecutor's claim): compensations for the environmental damages caused, liberation the water bodies' conservation areas, demolition of the structures that were illegally constructed due to the breach of land plots usage and other cases. Despite the numerous litigation processes, environmental safety issues remain unresolved.

After the welcome address, *Zavdat Safin* presented a book by *Elena Luneva*, a Docent of Environmental, Labor Law and Civil Procedure, Department of KFU, Candidate

of Legal Sciences, **"***Legal status of land plots in specially protected natural areas*". The monograph is devoted to the legal reglamentation of civil circulation and the limit of usage of land plots in specially protected natural areas.

In the course of the whole Conference the moderators were *Zavdat Safin* and *Tatyana Petrova*. After each paper moderators not only commented on them, but also gave extra explanations on the discussions.

The scientific-practical part of the conference started with the paper by Professor *Tamara Makarova*, Head of the Environmental and Agrarian Law Department of Belarus State University, Doctor of Legal Sciences (Belarus, Minsk). The paper examined the *problems of legal enforcement of environmental safety in the context of integration processes of the Republic of Belarus and the Russian Federation.* Professor started with international documents that contribute to the integration processes of the two countries in the sphere of environmental safety enforcement. By the Treaty on the Creation of a Union State of Republic of Belarus and Russian Federation among the spheres of joint responsibility were named: protection of environment, providing environmental safety, prevention of natural and technogenic disasters and elimination of their consequences, including the consequences of Chernobyl NPP accident. Having an intention to create a unified economic and customs space, the Treaty on EEU[1] creates a new environmental-legal space. According to art. 52 of the Treaty on EEU, the technical regulations of the Union and standards are aimed at protection of life and health of a human being, property, environment, life and health of plants and animals, providing effective usage of energy and resource efficiency.

Pursuing the coordinated environmental policy is not stated as a specific goal of creation of EEU. But due to the fact that it is impossible to escape the impact on the environment during the process of creation of unified market of goods, services, capital and labor, it would be consequential for the Union to adopt another document on the questions of environmental security and providing environmental safety in EEU.

*Maria Fromann***,** PhD, LL.M., senior scientist of Institute for Energy and Regulatory Law Berlin (Germany, Berlin), presented a report *"Providing environmental safety in power engineering in Germany and EU".* She pointed out that in October 2014 EU adopted a program of development of ecological and energy policy until 2030. As a result it is planned to reduce the greenhouse gas emission by 40% compared to 1990. However there are some doubts in achieving this goal, as the speaker noticed. Today the emissions are reduced only by 30% and there are no solutions to achieve 40% reduction by the planned year. By 2030 it is planned to receive 27% of all energy by the sources of renewable energy in EU, which should provide for the growth of energy efficiency by the same numbers. But the question of dividing these 27% between all member states of EU is not solved.

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[1] Eurasian Economic Union – political and economic union of Russia, Belarus, Kazakhstan, Kyrgyzstan, Armenia founded in 2014.

Similarly, Germany adopted a strategy of reducing the emission of greenhouse gases by 40% by 2030, and by 80% by 2050. Power generation by renewable sources in Germany should be 30% by 2030 and 80% by 2050. Compared to the first numbers, these are achievable. Energy usage should decrease by 20% by 2020 and by 50% by 2050.

After the accident of Brunsbüttel NEP in Germany in 2001, a decision was made to desist from using nuclear energy completely. In 2022 the last NEP should be closed, which should lead to the growth of the role of renewable sources of energy.

For the development of renewable sources of energy in Germany the following measures were introduced. First, all generated energy from the renewable energy sources now comes to the network as a matter of priority. Secondly, the voltage in the network should stay even. This causes a problem because it is impossible to calculate the precise amount of energy, which is heavily dependent on weather conditions.

In Germany there is also a program in automobile construction based on electric engines but it is not popular yet.

EU, and particularly Germany, are interested in energy provision independent of other countries. At the same time energy provision that is based solely on renewable sources of energy is linked to serious problems and costs.

Then the floor was given to *Nurgul Salpiyeva***,** Executive director of the Association of lawyers of Kyrgyzstan, Head of the program "Law", senior scientist of the International University in Central Asia, Candidate of Legal Sciences (Kyrgyzstan, Bishkek). In her report, *"Constitutional foundations of the environmental protection in Kyrgyzstan"*, she showed that Constitution of Kyrgyzstan plays the main role in regulating the environmental protection. Thus, sec. 5 art. 12 of Constitution of Kyrgyzstan states that land, subsoil, water, forests, flora, fauna and other natural resources are the exclusive property of the Kyrgyz Republic, and they are used in order to preserve the united environmental system as a basis of life and activity in Kyrgyzstan, therefore they are under a special protection of the government. Land can be in private, municipal and other forms of property, except for pastures, which cannot be in private property.

Kyrgyzstan belongs to the list of countries with the worst ecological situation. No country nowadays can provide 100% guaranteed protection of right to favourable environment for everyone. Still, all countries shall stimulate the related actions of governmental bodies.

The right to favourable environment is directly connected with the right to environmental information. However the latter is not developed in Kyrgyzstan on the constitutional level. In Kyrgyzstan there should be set an obligation to reveal true, full and up-to-date ecological information to people when they request it from the government bodies. Russia has a positive experience in it. Taking into account art. 42 of Constitution of the Russian Federation, art. 12 of Constitution of Kyrgyz Republic should be written as follows: "Everyone has a right to the favourable environment. The state guarantees everyone the right to true information about the environment and

to reparation for the harm to health or to property caused by the environmental law violation."

Tatiana Petrova, Professor of the Environmental and Land Law Department at Law Faculty of Moscow State University, Doctor of Legal Sciences, started her talk with defining the correlation between economic and administrative regulation. The economic means of legal regulation was chosen by her to be preferable in the sphere of environmental protection. A conclusion was made about the need for systematic usage of such means which was backed by the example of correlation error between Tax Code of the Russian Federation and the legislation on environmental protection.

Professor also paid attention to the main legislative novelties in the sphere of environmental protection (new list of pollution-intensive goods, categorization of pollution objects, arranging a system of accounting of the organizations that badly influence the environment, etc.), to the mechanism of payments for the negative influence on the environment (ecological fee, utilizational fee, etc.). The main problem in the sphere of the environmental protection was considered to be finding not the legal, but economic balance especially in the conditions of growing economic pressure on the business.

T. Petrova also noted the incompetence of the supervising bodies (excess of the "environmental" fee over the total sum of companies' actives). She finds that the main goal of the payments is – first, levelling the competition, everyone should pay for pollution, and secondly, introduction of new technologies. These problems should be solved in the first place.

Zavdat Safin, Doctor of Legal Sciences, Head of the Department of Environmental, Labor Law and Civil Procedure of KFU, Professor, Honorary Lawyer of Tatarstan Republic, presented his paper *"Legal problems of environmental safety at processing wastes"* where he emphasized the problematic questions of building a waste incinerator in Tatarstan Republic. He criticised certain ideas of the project "Zero waste disposal" pointing out that even after burning of the wastes there are still some wastes left that need to be processed further.

Creation of new wastes by the thermal processing is taken into account by the court practice. Thus, the Ruling of the Supreme Court of the Russian Federation of March 2, 2017, no. 308-ES17-412 on the case no. A63-14037/2015 contains a conclusion that as a result of thermal processing of wastes a new type of waste appears (leftovers from burning slag-ash masses), that is different from the initially taken wastes in its inner composition, hazard category and the level of toxicity. Consequently, as a result of burning wastes, the zero disposal is impossible, because the wastes will appear, even if only in small proportion to the original number.

A special attention was drawn to the fact that before burning the wastes need assortment and primary processing. The main point is that both assortment and utilization of wastes should be completed before burning them, and only those wastes should be

burned, from which no useful components can be extracted anymore at a given level of technology development.

Fanis Ryanov, Doctor of Legal Sciences, Professor of Department of Theory of Law and State of Bashkir State University, gave a paper *"State legal institutions of the society of sustainable development."* The Professor started with The Concept of Sustainable Development of UN, 1992, placing emphasis on preserving nature for future generations, especially in large cities. The author spoke about The concept of sustainable development of Europe and pointed out that the environmental problem is very relevant especially on a global scale. He believes that there must be a civil society in the state. If Russia strives for the concept of sustainable development, then people will live better.

The Professor concluded that the society of sustainable development is a society where there is a corresponding social contract, a full-fledged civil society, a genuine state of law, a state power divided into three branches, the rule of law. Therefore, everything should contribute to the establishment of genuine state legal institutions in our country, then national and environmental security will be ensured.

Artem Nikolaev, deputy Prosecutor of the Volga Interregional Environmental Prosecutor's Office, spoke about *prosecutor's supervision in the sphere of ensuring environmental safety.* The Volga Interregional Environmental Prosecutor's Office is the first interregional environmental prosecutor's office. It has been operating since 1990. The Prosecutor's Office consists of 15 inter-district prosecutor's offices in 14 regions of the Russian Federation in the Volga River basin. It has been found that such a need exists in other regions. In August 2017, the Office of the Prosecutor General of the Russian Federation established the Amur Nature Protection Prosecutor's Office, which supervises 6 subjects of the Russian Federation. The Baikal Interregional Prosecutor's Office began operations on December 1, 2017. At the moment, the issue of setting up the Arctic Environmental Prosecutor's Office is being considered. At the same time, the organization of new specialized prosecutor's offices is carried out through the reduction of normal prosecutor's offices.

In 2017, the Volga Interregional Environmental Prosecutor's Office revealed more than 34,000 violations. 2,860 protests were registered over illegal legal acts, and 2,600 acts were revoked after considering the protests. 5600 submissions were made. At the initiative of the Prosecutor's Office, 280 criminal cases were launched and more than 1,000 lawsuits were sent to courts, most of which were examined and satisfied. One of the main goals is to coordinate the work of all controlling bodies in this sphere and to identify violations precisely on the part of state and supervisory bodies. It is also important to cooperate with territorial, transport prosecutor's offices through joint inspections and actions.

The priority project for the conservation and prevention of pollution of the Volga River was approved by the Presidium of the Presidential Council for Strategic Development of the Russian Federation. Therefore, further hard and painstaking work is expected in the area of environmental safety, despite the fact that the Year of the Ecology has ended.

Nikolay Kichigin, Lead Researcher of Environmental Legislation Department of the Institute of Legislation and Comparative Law of the Government of the Russian Federation, Candidate of Legal Sciences, presented a paper *"Ensuring environmental safety as a subject of legal regulation in the field of environmental protection"*. The author finds that the concepts of "environmental protection" and "ensuring environmental safety", fixed in the Strategy of Environmental Safety of the Russian Federation for the period up to 2025 (approved by Decree of President on 19.04.2017, no. 176), coincide on the range of issues covered and cannot be differentiated. In his opinion, it is rather a defect than a virtue. Therefore the author concludes that a separate concept of "environmental safety" with its own subject and legal support are absent from the legislation.

Next, Nikolay Kichigin compared the Fundamentals of state policy in the field of environmental development of the Russian Federation for the period until 2030 (appr. by Decree of President on 30.04.2012) to the Strategy of Environmental Safety of the Russian Federation. He came to conclusion that these documents are not essentially different, and the same legal mechanism is described there only in different words.

The speaker believes it to be wrong, the legal mechanism of "environmental safety" and legal mechanism of "environmental protection" must be distinguished in both legislation and practice. For example, the state sanitary and epidemiologic supervision, social and hygienic monitoring, increase of efficiency of supervision over execution by the state authorities of the subjects of the Russian Federation of powers delegated by the Russian Federation in the field of protection and use of wildlife are absolutely groundlessly considered as the mechanisms for ensuring environmental safety by political and legal documents.

Regarding the source of impact, N. Kichigin believes that the environmental safety could be based on the following categories: environmental insurance, environmental audit, environmental risk, technical regulation and standardization, and environmental certification. However, the concept of environmental risk has not been developed by the environmentalists or lawyers, methods for calculating environmental risk are absent and environmental risk assessments are not defined by legislation. Therefore the speaker concludes that "environmental risk" cannot be involved in the regulation of environmental safety.

Azat Khisamov, Associate Professor of Department of Civil Procedure of Kazan branch of the Russian State University of Justice, Candidate of Legal Sciences, Judge of the Supreme Court of the Republic of Tatarstan, spoke about *topical issues of court practice in land disputes*. He drew attention to the cases related to provision of the legal order for forest fund plots adjacent to the lands of settlements and agricultural lands. The courts receive a large number of applications demanding forest fund plots to be taken from someone else's illegal possession, or requesting removal of obstacles in their use, demolition of capital construction sites erected on disputable sites or bringing them to their original position.

Claimants, justifying the fact of occupation of the forest fund site, as well as violation of the Russian Federation rights, refer to the data of the state register of forest fund and forest management, the compilation and introduction of which is carried out in accordance with the forest management instructions of various years. In claimants' opinion, this documentation is sufficient to determine the boundaries of the forest fund site and to settle the claim. However, the boundaries of the forest fund are largely determined only by the material of the forest inventory, while the works on the design and surveying of forest areas have not been carried out. At the same time the coordinate system of forest management documents and the state register of real estate are different, which led to the imposition.

In the summer, Federal Law no. 280-FZ of 29.07.2017 "On Amendments to Certain Legislative Acts of the Russian Federation with a view to eliminate contradictions in the data of state registers and to determine belonging of a land plot to a certain category of land" was passed. The Law has received the unofficial name "The Law on Forest Amnesty". The document has removed a number of contradictions: for example, it established the priority of a single state register in relation to the data of the state forest registry.

However, problems related to proper resolution of the disputes in question still remain. For example, Part 5 of Article 10 of the Law on Forest Amnesty needs further clarification. The Part stipulates that if court decisions were taken before the enforcement of this law, it is possible to apply to the court for calling for rights to objects that were previously terminated due to the action of the judicial act. On the one hand, the legislation has changed and, in fact, can be applied in a different way by the court in resolving a dispute, on the other hand, the previous decision was also based on the norms of legislation, entered into legal force and was not abolished.

Galina Misnik, Associate Professor, Professor of Department of Land and Environmental Law of Russian State University of Justice, Doctor of Legal Sciences, gave a talk on *legal problems of land zoning at the present stage of development of land legislation*. The speaker pointed out that the existing in legislation model of rational use of land based on its categorization and zoning does not justify itself, since it does not provide for the need for multilateral use of land. The drawback of the current system of land zoning is the absence of legal correspondence between acts of land zoning and acts on the formation of land plots.

The implementation of the new legislation on state registration of real estate is hampered by the existence of contradictions in legal regulation of relations arising in connection with the zoning of land, the formation of land plots and their land surveying. For example, a legislative solution to the issue of legal connection of these procedures is absent.

In professor's opinion, two main tasks should be solved in order to move to a unified zoning system. First, it is necessary to integrate the public legal framework of a land plot into the structure of subjective right to it through recognition of the public framework as a restriction of the right. Secondly, a unified system of grounds for limiting the rights to a land plot should be formed.

Ilsur Gilmutdinov, the Prosecutor of the Tatar Interdistrict Environmental Protection Prosecutor's Office, presented a paper "*Extraction of common mineral resources by owners of land plots, land users, landowners and tenants of land plots*". According to the speaker, while implementing the prosecutor's supervision, it was in fact not possible to bring the perpetrators to justice under Article 171 of The Criminal Code of the Russian Federation (illegal entrepreneurship) for the formation of «unauthorized quarries». The reason is that it was impossible to prove the infliction of major damage or the extraction of income on a large scale, the criteria of which are disclosed in Article 170.2 of the Criminal Code of the Russian Federation. Violators who carry out illegal mining operations do not keep accounts or prepare financial reports. Therefore, it is practically impossible to prove that they extracted widespread mineral deposits, sold and received income. It is impossible to determine whether there was a quarry prior to the start of production by specific individuals or the quarry has long been developed by other actors.

Taking administrative legal action under article 7.3 of the Code of Administrative Offenses of the Russian Federation for unauthorized quarries has shown its inconsistency. Legal persons acted through private persons whose fines were much lower and were easily covered by means of money received from illegal mining of widespread mineral deposits.

The situation changed when this acts began to be considered as a theft according to Article 158 of the Russian Criminal Code. This article allows to confiscate equipment and take back the stolen minerals.

I. Gilmutdinov pointed out that article 19 of the Russian Federation law "On Subsoil" allowing extraction of widespread mineral deposits for "own needs" contains a drawback in the legal writing. The volumes of extraction have remained unregulated which negatively affects the provision of environmental security.

*Stanislav Lipsky***,** Associate Professor, Head of the Department of Land Law of the State University for Land Use Planning, Doctor of Economics, spoke about *the main tendencies in the development of the legislative regulation of the seizure of land plots*. The first global innovation in this sphere is a new order of land plots seizure for state and municipal needs, which became more detailed. The amended legal procedure enshrined in Chapter VII.I of the Land Code of the Russian Federation has in many ways summed up the trends manifested in other federal laws that regulated the seizure of land plots in some territories. The following novelties were introduced: 1) simplification of the procedure for making of plots in the framework of compulsory seizure of the land rights; 2) widening of the list of reasons for seizure and simplification of the procedure accordingly; 3) reducing the time for taking managerial and judicial decisions; 4) non-judicial order of seizure of land plots from state or municipal institutions and unitary enterprises; 5) changing of approach to compensation of the seized land plot cost.

The second global innovation identified by the speaker in the sphere stated, is the concretization of the consequences of improper use of agricultural lands. Despite a number of changes introduced by Federal Law no. 354-FL of July 3, 2016 "On the

amendments to individual legislative acts of the Russian Federation improving the procedure of withdrawal of land plots from agricultural lands in case of their use for other than designated purposes or use in violation of the legislation of the Russian Federation", one of the key issues has remained unresolved. Until now the basic criteria and attributes of illegal using of land plots have not been qualitatively defined. In this respect, S. Lipsky proposed to develop and approve at a local level the rules (regulations) for use of land areas intended for agricultural production (by analogy with building regulations), which will become a part of the land management process.

Lyubov Yao, Professor of the State, Municipal Management and Sociology Department of Kazan National Research Technological University (KNRTU), Doctor of Sociology, gave a paper "*State policy in the field of development of renewable energy sources in the Republic of Tatarstan*". The Professor described the barriers that hold back the intensive development of renewable energy sources in the Russian Federation, among which she mentioned financial, information and institutional obstacles.

L.Yao focused on the Modernization Program of the Electric Power Industry until 2020 (developed jointly by the Ministry of Energy of the Russian Federation and Krzhizhanovsky Power Engineering Institute). It is based on the principle of unification and typification including the unification of power equipment, technological solutions and assembly, the typification of design solutions. The introduction of unification will lead to the increase of seriality and reduction in the cost of equipment. According to the speaker, the implementation of the program will fundamentally improve the industry performance in terms of energy losses and fuel consumption for electricity generation. This approach will allow to transfer to renewable energy sources sooner.

Albert Khabirov, Kazan Inter-District Environmental Prosecutor of the Volga Interregional Environmental Prosecutor's Office, focused on *the procuracy supervision of execution of the laws on protection of water bodies*. In most cases economic executives violate standards of maximum permissible concentrations of pollutants in wastewater. Unfortunately, judicial decisions in the field of ecological regulation of water objects are being enforced for years due to significant expenses for the modernization of production. Private enterprises are subject to suspension of wastewater discharges, however, in relation to socially important facilities (for example, in the housing and communal services sector) such a legal measure is not applicable. The Prosecutor's Office provides both an administrative-legal and criminal-legal assessment of discharges of pollutants into water bodies.

There is also a problem of the actual seizure of areas of water bodies and their coastal strips during compilation of a cadastre. The parts of water areas fall into the category of land plots both in negligence and as a result of filling them up, which is illegally carried out with the aim of increasing the land area. In order to identify such facts, the prosecutor's office uses a satellite-geodetic measurement. The prosecutor's office files a suit in court disputing land surveying, cadastral registration, legal acts, transactions with land plots and the ownership of them.

As part of the event, an internet conference was held with Saratov State Academy of Law. The internet connection allowed the merging of two parallel international scientific and practical conferences in Kazan and Saratov *(International Scientific and Practical Conference "Ecologization is the main task of sustainable development of society").* Saratov State Academy of Law was represented by judge of the Twelfth Arbitration Appeal Court, Associate Professor of the Department of Land and environmental law *Tatyana Volkova*, Candidate of Legal Sciences *(Legal support for the effectiveness of rights protection in the area of land management)* and the Head of the Arbitration Process Department, Professor *Sergey Afanasyev,* Doctor of legal Sciences *(Procedural features of judicial protection in the sphere of ecology).*

After the Internet connection, the Conference welcomed the following speakers:

Roza Salieva, Professor, Head of the Laboratory of the Institute for Problems of Ecology and Mineral Wealth Use of Tatarstan Academy of Sciences and Head of the Laboratory of Energy Law at KFU, Doctor in Legal Sciences *(Legal basis of state policy in the field of ensuring environmental security in modern Russia);*

Olga Romanova, Associate Professor at Environmental and Natural Resources Law of Kutafin Moscow State Law University (MSAL), Candidate of Legal Sciences *(Problems of application of legislation in the sphere of using land plots for energy);*

Tatyana Malaya, Associate Professor at the Department of Civil Law and Civil Procedure of Ogarev Mordovia State University, Candidate of Legal Sciences *(Influence of integration processes on ensuring environmental security);*

Tatyana Rednikova, Researcher of the Sector of Ecological Legal Studies at the Institute of State and Law of the Russian Academy of Sciences, Candidate of Legal Sciences *(Criminal-legal protection of biodiversity and its components);*

Nail Mustakimov, Associate Professor and Head of the Department of Private Law in Russia and foreign countries of Mari State University, Candidate of Legal Sciences *(Implementation of public environmental control in the municipality: legislation and practice);*

Nadezhda Semenova, Associate Professor at the Department of Civil Law Disciplines of Ulyanov Chuvash State University, Candidate of Biological Sciences *(Ecological and legal competence of students as one of the conditions for ensuring environmental security);*

Zarina Kondratenko, Associate Professor at the Department of Civil Law and Civil Procedure of Mari State University, Candidate of Legal Sciences *(Some issues of implementing the principle of the unity of destiny of a land plot and real estate object firmly connected to it);*

Marat Khamidullin, Head of the Legal Department of JSC "Tatenergo" branch Kazan heating networks, postgraduate student at Entrepreneurial and Energy Law Department of the Law Faculty of KFU (*The issue of protecting the security zones of heating networks);*

Gayaz Fayzullin, Assistant Professor at the Department of Humanities and Islamic Economics and Management of the Russian Islamic Institute, Candidate of Legal Sciences

(*The role of economic and ecological functions of the state in implementation of the agrarian policy of post-Soviet Russia);*

Viktoriya Dokuchaeva, Senior Lecturer at the Crimean branch of the Russian State University of Justice, Candidate of Legal Sciences *(Features of consideration of land disputes on the use of land plots in state or municipal property, without the provision of land or establishment of an easement);*

Andrey Mikhailov, Associate Professor and acting Head of the Department of Entrepreneurship and Energy Law of KFU, Candidate of Legal Sciences *(Environmental security: problems of optimizing inter-branch relations of environmental and business law);*

Sergei Sagitov, Associate Professor at the Department of Environmental, Labor Law and Civil Procedure of KFU, Candidate of Legal Sciences *(Civil liability in the system of environmental safety measures);*

Elmira Nigmatullina, Associate Professor at the Department of Environmental, Labor Law and Civil Procedure of KFU, Candidate of Legal Sciences *(Regulatory functions of institutes of public and private law in subsoil management with the participation of foreign nationals);*

Elena Luneva, Associate Professor at the Department of Environmental, Labor Law and Civil Procedure of KFU, Candidate of Legal Sciences *(Legal characteristics of rational nature management as a way to ensure environmental safety);*

Maxim Vasiliev, Associate Professor at the Department of Environmental, Labor Law and Civil Procedure of KFU, Candidate of Legal Sciences *(Labor protection and its role in environmental security in the field of nature management and energy);*

Leysan Gazizova, Senior Lecturer at the Department of Theory of Law and State of Bashkir State University *(Normative work of subjects of the Russian Federation in the field of environmental security);*

Vera Guryanova, Senior Lecturer at Timiryasov Kazan Innovation University *(Ecological offenses: the essence, the reasons for their commission and preventive measures);*

Ksenia Valiullina, Senior Lecturer at the Department of Environmental, Labor Law and Civil Procedure of KFU *(The concept of "pollution of the World Ocean" in international environmental law);*

Robert Izmailov, Assistant at the Department Entrepreneurial and Energy Law of KFU *(Public-private partnership in the sphere of housing and communal services: problems of environmental protection);*

Alexandra Petrova, post-graduate student at St. Petersburg State University, head of the group on judicial work of Interleasing Ltd. *(The target component of the legal regime of security zones of linear objects on the basis of analysis of materials of judicial practice);*

Aigul Valeeva, Assistant at the Department of Entrepreneurial and Energy Law of KFU *(Protective zone: opposition of private and public interests. Solutions);*

Timur Abdreev, Assistant at the Department of Theory and History of State and Law of KFU *(Legal aspects of valuation of property rights in the process of withdrawal of land plots for public needs);*

Ksenia Sitdikova, post-graduate student at the Department of Environmental, Labor Law and Civil Procedure of KFU *(State policy in the field of environmental security);*

Timur Siraev, post-graduate student at the Department of Criminal Law of KFU *(Legal liability for the violation of environmental and natural resources legislation).*

Almost every talk was accompanied by an intense discussion and questions from the listeners.

Thus, participants of this scientific event discussed the current problems of enforceability of the environmental security in relation to energetics and environmental management. Among them were enforceability of ecological and industrial security, enforceability of effective waste management, limiting the property rights to natural resources, payment for environmental pollution, legal liability for the violation of environmental and natural resources legislation, land plots seizure for state and municipal needs, consideration of certain land and environmental disputes, protection of land rights in energy land parcels, legal regime of security zones, etc. Academic discussions led participants of the Conference to the following conclusions:

1. General legal acts, political-legal acts and other legal instruments which have an ecological focus give no division between the environmental security and the protection of the environment in the Russian Federation. The issues being covered within the environmental security and the environmental protection coincide on the legislative level, as it was noted in the Ecological law doctrine. The further development of the environmental legal regulation must move towards the subject matters of the legal regulation of the environmental security and environmental protection being divided.

2. An effective legal enforcement in the field of environmental management and energetics can only be realized through joint collaboration between law practice, legal and other studies.

3. Legislative harmonization of protection and use of the transboundary natural systems, environmental objects and cross border contamination undertaken by different countries is inevitable under present-day conditions.

Despite the fact that a participation in absentia was not permitted, upon request of both legal experts of environmental law and young scholars the virtual participation in the Conference was allowed. Remotely the following experts took part in the Conference:

Mihail Brinchuk, Professor and Head of the Sector of Ecological Legal Studies of the Institute of State and Law of Russian Academy of Sciences, Doctor of Legal Sciences, Honoured Scientist of the Russian Federation *(Current problems of enforceability of the environmental security under present-day conditions), Elena Boltanova,* Professor of the National Research Tomsk State University, Doctor of Legal Sciences *(Issues of legal regulation of the reparation of environmental damage), Elena Chmykhalo,* Professor at the Department of Land and Ecological Law of Saratov State Academy of Law, Candidate

of Legal Sciences *(Some problems of the land plots seizure for state and municipal needs), Oksana Ganyuhina,* Associate Professor at the Department of Land and Ecological Law of Saratov State Academy of Law, Candidate of Legal Sciences *(On the issue of the industrial security), Alexey Kozodubov,* Associate Professor at the Department of Theoretical and Public Law Disciplines of Economics and Law Institute (branch) of Sevastopol Academy of Labor and Social Relations, Candidate of Legal Sciences *(Legal regulation of radioactive waste management in the Russian Federation), Victor Shenshin,* Lecturer at the Department of Constitutional and Administrative Law of Saint Petersburg Military Institute of National Guard Troops of the Russian Federation, Candidate of Legal Sciences *(Environmental security as an object of criminal ecological policy of Russia), Anton Revyakin*, Assistant at the Department of Environmental Law of Faculty of Law at Saint Petersburg State University *(Recognition of the structures that were illegally constructed due to the breach of land plots usage to be unauthorized buildings as a factor of environmental security).*

The first day of the Conference ended with the gala dinner at Hayal Restaurant. Teachers and students of the KFU Law Faculty wanted to give creative performances at the dinner. Spectacular caucasian and middle eastern dances, as well as vocal performances were prepared.

On the second day, a general tour around Kazan was organized for the participants of the Conference. The acting Head of the Department of Entrepreneurship and Energy Law of KFU *Andrey Mikhailov* became a tour guide for the evening and told to sightseers about the top sights of the capital of the Republic of Tatarstan. There was also an opportunity to visit the Raifa Bogoroditsky Monastery and the Raif sector of the Volga-Kama Nature Reserve. The Associate Professor *Elena Luneva* told to participants of the Conference about features of the legal regime of these conservation areas.

The event had an impact not only on competitiveness of the Law Faculty but also on competitiveness of the whole KFU. Due to the growth of scientific links between the KFU Law Faculty and law scholars from Germany, Belarus, Kyrgyz Republic and federal subjects of the Russian Federation, who work on the legal issues of the environmental security in the sphere of energetics and environmental management, the competitiveness of the University is increasing. Further more, collaboration has been strengthened with the representatives of state authorities of the Russian Federation and the Republic of Tatarstan, as well as with potential employers which is important to graduating students.

The organizers of the Conference wish to express their gratitude for assistance to the Dean of the KFU Law Faculty *Lilia Bakulina,* the scientific supervisor of the KFU Law Faculty *Ildar Tarhanov*, the Vice-Dean of the KFU Law Faculty *DamirValeev,* staff of the Department of Ecological, Labor law and Civil procedure of the KFU Law Faculty, staff of the Department of the Entrepreneurial and Energy Law of the KFU Law Faculty, student scientific society, leaders of student scientific groups such as "Land law",

"Environmental law", post-graduate students, master's students and student activists of the KFU Law Faculty.

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REVIEW OF THE XII ANNUAL COMPETITION AMONG STUDENTS OF THE KAZAN (VOLGA REGION) FEDERAL UNIVERSITY "KFU STUDENT OF THE YEAR 2017"

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Abstract: Kazan University is famous worldwide not only for its celebrated and great scientists, rectors, graduates, but also for talented students. The article describes a long history of participation of the Student Legal Science Society team in the annual competition among students of Kazan (Volga region) Federal University "KFU student of the year 2017". The goals of this competition are to identify the best students, to support the leaders of youth public associations and to increase the activity of students. In 2017, the competition was held for the twelfth time. The main part of the article describes the participation of the KFU Law Faculty team in the competition. It describes the student moot court "All-Russian Judicial Debates", individual merits of the team members, the activity of the Legal Center at the Primary Union of Students of Kazan University, headed by the students of the faculty. The article also reports on the students and the teaching staff of the faculty, who were awarded by the jury of the competition.

Keywords: Law Faculty of Kazan (Volga region) Federal University, KFU, students, Student Scientific Society, Student of the year, Students competition

Kazan University is the oldest continuously operating university in Russia after Moscow State University. It has a rich history, honors its centuries-old traditions and preserves the continuity of generations.

For the years of its existence the university has acquired different statuses and names. Since the establishment in 1804 by the Emperor Alexander I and before the February Revolution of 1917, it was known as the "Kazan Imperial University". In 1918 Kazan University was transformed into "Kazan State University".

And now we are witnessing a new age of the development of Kazan University in the status of the federal university, which was awarded to it by order of the Government of the Russian Federation on April 2, 2010, in accordance with the Decree of the President of Russia Dmitry Medvedev "On the establishment of federal universities in the North-West, Volga Region, Ural and Far Eastern Federal Districts ".

Thus, for 213 years Kazan University has thrived and been famous all over the world not only for its renowned and great scientists, rectors, graduates, but also for talented students who represent Kazan University in conferences and contests, competitions and festivals not only in Kazan and the Republic of Tatarstan, but also at the federal and international levels. Each of these individuals makes a huge contribution to the development of their beloved Alma mater, which deserves special respect.

In order to find the best students in each sphere, the annual competition "KFU student of the year" was established. In 2017, this traditional competition was held for the twelfth time. On December 18, a solemn ceremony of awarding winners and laureates of the annual contest took place at the KFU Imperial Hall. Finalists, honorary guests and laureates of the event took part in it.

"Student of the Year" is the most anticipated event in the student life, the university equivalent of "Oscar", summarizing the student activity during the year. The competition is aimed at supporting the leaders of youth public associations in the development of student self-government and raising the scientific, creative and social activity of students.

Following the good old tradition, the start of the event was given by the anthem of the students "Gaudeamus" performed by the Choir named after Leonid Ustsov. Then Ilshat Gafurov, the rector of the university made a welcoming address and solemnly opened the award ceremony:

> Students of the Kazan Federal University are unique people. Thanks to the best students and professors, our university achieves great results in scientific, social, cultural, mass and sports spheres. The support of talented youth, the development of the scientific movement, the implementation of creative, sports and social projects are the important directions in the work of Kazan Federal University. From year to year the competition "KFU student of the year" discovers new talents and new names. ... We are proud of the fact that there is a large number of talented students in our university. And today in the historic hall of the university we honor the finalists of the competition. You are the best in your activities

among thousands of students, you do what you like, you work for the benefit of our university and reach the most unprecedented heights. And this event is a serious victory for all of us! We are proud of you – the best students of Kazan Federal University.

At this point the opening ceremony was over and the floor was given to the pro-rector for international activities – Lenar Latypov, who summarized the results in several nominations.

Thus, one of them was "The Best Student Project", and the project of the Student Legal Science Society of the Law Faculty "All-Russian Judicial Debates" became a laureate in it.

The fact that this project made it to the Finals is because the lawyer's profession today, as well as 213 years ago, requires knowledge of both theory and practice by the students. And one of the important tools for this aim is an event created in 2005 at Law Faculty of Kazan University – student moot court "All-Russian Judicial Debates". Now the calling card of the law faculty of KFU is a high level of preparation of its graduates. However, this is due not only to lectures and seminars, but also to additional scientific and educational activities, even games, one of which is the Judicial Debates.

This project is aimed at understanding the issues of legal reality in the area of national law, the exchange of theoretical and practical knowledge in the area of jurisprudence, as well as preparing students for participation in real trials, in an atmosphere as close as possible to the real courtroom.

During the debates teams compete with each other in several rounds, defending their own positions, arguing and proving the correctness and validity of their legal position. Making convincing speeches before the court, the students represent the positions of both the plaintiff and the defendant.

Preparation for the competition begins almost a year before. Students of the Law Faculty are training in the clubs "Judicial Debates" and "Judicial Debates. Junior League", where, under the guidance of experienced teachers, they hone their skills in order to show them at the contest itself. In achieving this they are assisted by Marat Vladimirovich Fetyukhin – the ideological inspirer and the permanent head of the club, the founding father of the Project and a practicing lawyer, as well as by the head of the student research work of the faculty and concurrently practicing lawyer Yury Mikhailovich Lukin. The preparation of teams for participation in the criminal justice section is carried out by the Department of Criminal Process and Criminalistics. Similar clubs, whose goal is to prepare for the Judicial Debates in Kazan, function at almost all the law faculties of the country.

It is remarkable that there are no losers in this contest: every participant leaves with new knowledge, new friends and new goals, and comes to Kazan again and again to compete, to rival and to exchange views with friends and colleagues, to meet with a large and friendly family of "debaters", the home of which is the Law Faculty of KFU, and after that like a fully feathered chick to flit out of the nest to the difficult adult life full of court trials, having the knowledge, expertise and skills.

It was due to the perennial work of the mentors, club's team and Student Legal Science Society team that Nikita Makolkin – the project student curator – managed to put this award into the money box of the Project and SLSS.

The first award of the project dates back to 2013 when a nomination "Project of the year" appeared in the competition "KFU student of the year 2013". After that there were other awards in different places but in Alma mater the repeated acknowledgement was grunted only four years later.

Another victory of SLSS team was achieved by Mingazova Lyaysan – Deputy Chairman of the the Student Legal Science Society of the Law Faculty Council, the 4th year student. She won the title of "Laureate" in the nomination "Intellect of the Year in the field of humanities and social and economic sciences". At the same time, it is worth noting that Lyaysan is the winner of all-Russian and international scholarship competitions (Oxford Russian Fund Scholarship, scholarship of the Government of the Russian Federation), conferences and olympiads, which also demonstrate the high level of academic success and wide recognition of her merits.

The money box of SLSS team was also filled by Yafizova Liliya – Deputy Chairman of the Council of the Student Legal Science Society of the Law Faculty Council, student of the master's program "International Protection of Human Rights", who became the winner in the nomination "The best master's degree in the field of humanities and social and economic sciences". Winners and laureates in this nomination were awarded with flowers, valuable prizes and diplomas among others by the pro-rector for educational activity of KFU – Dmitry Tayursky.

Also it should be noted that over the years the SLSS team has become the winner of this competition in 2011 in the nomination "Best science society" and in 2015 it was awarded as "Best student public organization". Moreover, the honor roll of the SLSS contains the title of the laureate in the nomination "Best student science society" which was gained thrice at the competition "Student of the year of Tatarstan Republic" in 2011, 2012 and 2015, after which the title "Winner" was finally received. Also we cannot keep silent about the victory of Dinar Valeev – the SLSS chairman in 2014-2017 – at the competition "KFU student of the year" in nomination "Grand-prix".

The awards to the Faculty in this year's competition were brought also by other organizations and students such as Legal Center at the Primary Union of Students of Kazan University. It is an organization run by students of the Law Faculty. Legal Center became a laureate in the nomination "Best student public organization"

Legal Center at the Primary Union of Students of KFU is a structural unit of Student Union of KFU the aim of which is raising the level of legal culture of our University and providing students with legal information.

The work of Legal Center has several strategic directions. Among them are participation in adoption of local acts of Student Union, conducting workshops on relevant problems of educational law, preparation of informational letters of up-to-date legislation, holding educational events and offline and online consulting of University students.

Since the time of its establishment in the end of 2016, the Legal Center helped more than 250 students. The high level of consultation is obtained due to the fact that both law students and practicing lawyers take part in the work of the Center. Thus, the founder of the Legal Center is the assistant professor of International and European Law Department of the Law Faculty of KFU – Valeev Dinar Ayratovich, while the academic advisor is the attorney of the attorney bar of Tatarstan Republic, practicing lawyer, senior lecturer in theory and history of Law Department of the Law Faculty of KFU – Lukin Yuriy Mikhailovich.

One of the main activities of the Center is creation of legal educational projects. For example such projects as Union debates or Legal Fort Boyard have become highly popular among KFU students.

Among the students of the Law Faculty who were also awarded at this year's competition were the following: Ivan Guschin – Chairman of the student council of the Law Faculty – a laureate in the nomination "Grand Prix"; Daria Kuznetsova – the 2nd year student of the Law Faculty – a laureate in the nomination "Discovery of the Year".

It should be also noted that Zukhra Ildarovna Gadylshina, the vice-dean of Law Faculty, has received the title "Best guidance counsellor teacher of KFU".

On December, 18 Alma mater heard the names of its best students. And they, of course, set an inspiring example for the whole youth. After their victory students will not stop their activity, but will further work fruitfully for the benefit of their university. And the experience that they gain during their student life will be noticed by Tatarstan Republic, which is proved by the annual competition "Student of the year."

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Master program
«INTERNATIONAL BUSINESS LAW»
(in English language)

The Head of the master's program – Doctor of Legal Sciences, assoc. prof.
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The Head of the direction on work with master students at Faculty of law,
KFU – Doctor of Legal Sciences, assoc. prof. **Roustem Davletguildeev –**
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Disciplines of the program:

Compulsory courses (ECTS equivalent points):

Philosophy of law (2)
History of political and legal doctrines (2)
Legal technics and technology (2)
History and methodology of judicial science (2)
Academic communication (3)
Comparative legal studies(4)
Methodology of teaching the jurisprudence in higher school (2)
Actual problems of international law in modern world (4)
International economic law and law of WTO (3)
International financial and banking law (4)
International labour law (4)
International commercial arbitration (4)
Jurisdictional immunity of the State and its property (4)
Diplomatic and consular protection in international business (4)
International legal protection of intellectual property (2)

Elective courses (credit points):

International migration law (4)
International civil process (4)
International economic organizations (4)
International business and human rights protection (4)
Law of international treaties (4)
International trade contracts (4)
Islamic trade law (4)
Preparation for the UN model and international Moot Court competitions (4)

Practice (credit points):

Educational practice (9)
Pre-Diploma practice (39)

Teaching method:

Full-time/ distant; Fee-paid/ free-paying (selection on competitive basis)

Career perspectives:

Organizations, conducting external economic activity, representative branches of the Republic of Tatarstan abroad, governmental entities all over the world, courts and attorney offices, international organizations, Eurasian Customs Union, embassies, consular agencies.

More information
about the application rules for 2017-2018 academic year on the website of KFU:
http://admissions.kpfu.ru/vyssee-obrazovanie/priem-2017

Address of admission committee:
rooms 114, 115, 35, Kremlyovskaya St., Kazan, 420008.

Phone number: +7 (843) 292-73-40, e-mail: priem@kpfu.ru;
official site: http://kpfu.ru/priem

KAZAN (VOLGA REGION) FEDERAL UNIVERSITY

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Journal "Kazan University Law Review"
Call for papers

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The journal has an International Editorial Council and a Russian Editorial Board. All articles are reviewed by a professional copyeditor whose native language is English.

Requirements for submissions:

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  Issue no. 4 – October 15 (launch of printed issue is December).
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