

# KAZAN UNIVERSITY LAW REVIEW

Volume 1, Fall 2016, Number 1

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# KAZAN UNIVERSITY LAW REVIEW

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Dear Readers,

Welcome on behalf of the scientific community of Kazan Federal University.

The establishment of our own English-language international legal journal, the KAZAN UNIVERSITY LAW REVIEW, is truly a significant event, not only for the Law Faculty, but also for the whole University.

Kazan Federal University was founded in 1804. Today it is one of the leading universities in Russia and a member of the Russian Academic Excellence Project TOP-5/100. Academic publications are one of the main indicators of the scholarly status of a university. Kazan Federal University has been awarded four stars under the QS Stars Rating system, in recognition that it aims for the highest academic achievements and internalization of academic activities.

It is noteworthy that the Law Faculty is one of the oldest institutions of our University, and it has always held an important place in the development of the University and Russia generally. There are fourteen journals published by Kazan Federal University and now two of them are issued under the direction of the Law Faculty.

I sincerely wish everyone involved with the KAZAN UNIVERSITY LAW REVIEW great success in this ambitious and meaningful undertaking for Kazan Federal University and the Russian Law Project.

*With regards,*  
*Rector of Kazan Federal University*  
***Ilshat Gafurov***



Dear Readers,

I am very pleased to introduce the first English-language law journal in the history of the Law Faculty and Kazan (Volga region) Federal University, the KAZAN UNIVERSITY LAW REVIEW, which was established, and not coincidentally, on the 17<sup>th</sup> of November 2016, the 212<sup>th</sup> anniversary of the founding of Kazan Federal University and on the threshold of Lawyer's Day.

Traditionally, the Law Faculty has devoted its attention to both legal education and legal science activities. The tradition continues today through the Dissertation Committee's work under the direction of the Law Faculty, in the one-third of our lectures presented by Doctors of Legal Sciences, in the Faculty as a frequent setting for major international conferences, through our issuing of textbooks and collections of research papers, and in the schools of legal thinking which were formed here.

The idea of establishing the LAW REVIEW originated in 2015 as a breakthrough research project of the Law Faculty, with the aim of strengthening and broadening the international relationships between our Faculty and leading schools of law abroad, and also of becoming a platform for the discussion of progressive ideas of eminent scholars and practitioners in the sphere of jurisprudence. There are few journals with a similar conception in Russia, and we hope that the LAW REVIEW will become one of the main sources on Russian legal scientific ideas for scholars and lawyers abroad, as well as a forum for foreign legal ideas for Russian readers.

If your academic pursuits are original and your legal practice is exceptional, and if you are open to exchanging your ideas and proposals, then I invite you to join in a unique opportunity and become one of our contributing authors appearing in the KAZAN UNIVERSITY LAW REVIEW.

*Dean, Law Faculty  
Kazan (Volga region) Federal University  
**Lilia Bakulina***



Dear Readers,

It is a great pleasure to present the new journal KAZAN UNIVERSITY LAW REVIEW, which is given birth through the shared efforts and cooperation of Kazan Federal University, the Moscow publishing house of legal literature “Statut” and the “LawLit LLC” IT company.

The appearance of English-language legal writings for a broad audience is not an accidental event at Kazan Federal University. The idea had been discussed for a long time because of the expanding international contacts of the University and the Law Faculty. Another incentive for the realization of this project came from our foreign colleagues through their expressed interest in Russian law and desire for joint legal science and educational programs. In addition, leading law schools around the world set the trend for developing beyond local-language periodical publications and creating independent English-language journals. The concept is to make contemporary Russian law in all its richness accessible for the experienced foreign reader.

The issuance of the certificate of registration by the federal communications and IT regulatory agency Roskomnadzor shifted the work on our new journal into high gear and saw the entire Faculty come together in support.

With the first issue in your hands, I am very pleased to introduce the articles contributed by academics of Kazan Federal University and our friends and colleagues from universities abroad. Particularly significant is the cover article prepared by former, long-standing Dean of the Law Faculty Ildar Tarchanov, who is now Research Adviser of the Faculty. His article is devoted to two remarkable past students of the Law Faculty: Lev Tolstoy and Vladimir Ulyanov (Lenin) — this is part of the history of our University.

We are grateful to Professor Valery Lazarev, a bright graduate and teacher of the Law Faculty of Kazan Federal University, now living and working in Moscow, for his support of our first issue through his insightful and important article on integrative perception of law.

For us, it is symbolic and memorable to mention here the last article in the issue, one which was not published within the lifetime of our dear friend Professor Mikhail Chelyshev. Professor Aidar Tufetulov and I co-authored the article with Professor Chelyshev in 2013. We trust the material has not lost its edge and will be found to stand the test of time.

I hope our readers will enjoy and find valuable the contributions of our colleagues from abroad, articles by Professor Jean-Marc Thouvenin (Center of International Law of Paris, France), Professor Nina Kršljanin (University of Belgrade, Serbia) and Professor Jaroslaw Turlukowski (Warsaw University, Poland). We endeavor to present the finest legal writings by Russian and foreign authors on the pages of the journal, and KAZAN UNIVERSITY LAW REVIEW aims to become a leading international platform for the discussion of current challenges and issues across the globe relating to jurisprudence.

This first issue is the beginning of the history of the KAZAN UNIVERSITY LAW REVIEW. Congratulations!

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



## ARTICLES

**ILDAR TARKHANOV,**

Doctor of Legal Sciences, Professor  
Research Adviser of the Law Faculty  
Kazan Federal University (Kazan, Russia)

### **STUDENT YEARS OF LEO TOLSTOY AND VLADIMIR ULYANOV (LENIN) AT THE SCHOOL OF LAW OF KAZAN UNIVERSITY**

**Abstract:** Law Faculty of the Kazan University is well known in Russia and abroad for its scientific schools, students and alumni. Among the graduates, there are those who glorified themselves and alma mater by outstanding work in the field of their creative life – in politics, art, and literature. The article is devoted to two world famous law students of the Kazan University: the great writer Leo Tolstoy and politics, the revolutionary leader Vladimir Ulyanov (Lenin). They have common student destinies, as they both were not able to complete their education at the Law Faculty of the Kazan University, and also our Faculty was the only educational institution where they had been studied. Periods of life of these people in Kazan and studying in the Kazan University are the object of attention of Kazan citizens who are interested in the millennial history of the city; some works of famous historians, memoirs of contemporaries were dedicated to Leo Tolstoy's period at the university as a student, as he was in the center of secular and cultural life of the city of Kazan at the same time. Faculty of Law honors the memory of Vladimir Ulyanov (Lenin), there was reconstructed classroom in its previous form, where he had been studied, and there is a unique monument of the young Vladimir Ulyanov, established in Soviet times before the main university building.

**Key words:** Leo Tolstoy, Vladimir Ulyanov (Lenin), Kazan University, School of Law of Kazan University, culture life in Kazan, students, university

The Law School of Kazan University is well known in Russia and abroad for its academic programs, students and alumni. Most of them are renowned themselves and by alma mater through outstanding activities within the legal field. Others expressed themselves in creative fields; in politics, art, and literature. There are two outstanding students among the others who at various times studied legal sciences at the Kazan University. They are the future great writer Leo Tolstoy, and the world-famous politician, revolutionary activist, and the founder of the first socialist state V.I. Ulyanov (Lenin). Their academic fates are similar because neither of them could complete his education at the Law School for various reasons. Also, our department was the only educational institution where they were students. Leo Tolstoy elevated himself and Russian literature by realizing his talent through self-education, without any courses at the University, and Ulyanov (Lenin) received a law degree by passing the exams as an external student at the St. Petersburg University.

1. Count Leo Tolstoy is a talented writer, a brilliant philosopher and public figure. However for us it is very pertinent to know about his attempt at legal education at the University of Kazan and his attitude toward the law and the law school.

The life and works of the great Russian writer have been studied by many researchers in various different languages. Voluminous works about the biography of Leo Tolstoy are published. The period of his life in Kazan, and the Kazan University, is the object of attention of Kazan citizens who are interested in the millennial history of the city, as are the biographies of other people whose lives were connected to Leo Tolstoy. Some works of famous historians, memoirs of contemporaries, were dedicated to Leo Tolstoy's stay at the University<sup>1</sup>. There are some materials about Kazan social life of the period at the Museum of Kazan University<sup>2</sup>. However, that part of the young Tolstoy's life, when Leo Tolstoy was a law student, is less known. At the same time he was at in the centre of secular and cultural life in the city of Kazan. His views on principles and manners are dominated by society of the period.

Leo Tolstoy was born September 9, 1828 in the estate of Yasnaya Polyana, Tula Province. Tolstoy's parents died when he was young, so relatives brought up him and his siblings. Their aunt Alexandra Ilinichna Tolstaya (in marriage – Osten-Sacken) became guardian of the children, and after her death in 1841, Pelagia Ilinichna Tolstaya took

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<sup>1</sup> Zagoskin N.P. Graf L.N. Tolstoj i ego studencheskie gody. [Zagoskin N.P. Count L.N. Tolstoy and his student years]– Ist. Vestnik, 1894, № 1. (in Russian)

<sup>2</sup> Bushkanec E.G. Molodoj L.N. Tolstoj i kul'turnaja zhizn' Kazani / Kopija stat'i iz fondov Muzeja istorii Kazanskogo universiteta. Emel'janova I.A. Lev Tolstoj na juridicheskom fakul'tete Kazanskogo universiteta [Bushkanec E.G. Young L.N. Tolstoy and cultural life in Kazan / A copy of the article from the collections of the Museum of History of Kazan University. Emelyanova I.A. Leo Tolstoy at the Law Faculty of the University of Kazan] // Sovetskoe gosudarstvo i pravo = Soviet state and law. 1979. № 11. S.128-132. (in Russian)

care of the orphans. She was the younger sister of Tolstoy's father, and her husband was an aristocrat, Vladimir Yushkov. In 1841 they moved to Kazan.

Kazan has always occupied a special place in the Russian space. Kazan Imperial University, founded in 1804 by decree of Alexander I, was the cultural, scientific and educational center of the city.

Kazan University was the largest European center of orientalism. Leo Tolstoy chose the eastern branch of philosophy school. His choice was obviously linked to his ability to learn languages and family traditions (his ancestor was the ambassador in Turkey). On October 3, 1844, Leo Tolstoy enrolled at Kazan University.

It turned out that Leo Tolstoy was not interested in the study on east offices of philosophical school. In April 1845, he was not allowed to take the forthcoming end-of-year examinations for "very rare attendance of lectures and low-success". After that Leo Tolstoy submitted the application for transfer to the law school. The choice of new school could have been caused by a variety of reasons: Tolstoy's unwillingness to repeatedly study the same course, advice of relatives to change education and search of a new sphere of direction for proven abilities. At the same time, he noted that the application of jurisprudence "to our private life becomes easier and more natural than any other"<sup>1</sup>. It must be considered that at the Kazan University there were only 3 schools outside mathematics: philosophical, medical and law faculty. The Count Tolstoy could not be a doctor according to his social status.

From memoirs of professor N. P. Zagoskin we can find out that at the time a lot of students were "aristocrats". In his opinion they were interested not in studies, but in horses, women, parties and fashionable trousers.

The charter of university of 1835 showed the following departments of study at the law school: encyclopedia and system of jurisprudence, Russian state laws, laws on states and public institutions, Roman legislation and its history, civil laws, the general, special, local; laws of improvement and deanery, laws on state duties and finance, laws police and criminal, principles of public jurisprudence.

It is necessary to recognize that, in the middle of the 19th century, there were not enough qualified teachers at the law faculty of Kazan University.

At the same time, a number of professors who were actively and honestly devoted to students in fundamentals of law creatively worked at the law school. So, a great impression was made on the student Leo Tolstoy by the lectures of professor Stanislavsky of the encyclopedia of the law. He was also interested in debates about punishment in the form of capital punishment, which professor Vogel had organized. However

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<sup>1</sup> Tolstoj L.N. *Sobr. soch.*, v 90 tomah, t. 59. [Tolstoj L.N. *Collected works*, in 90 issues, issue 59] M., 1935, S. 10. (in Russian)

Dmitry (Dietrich) Meyer was especially distinguished from teachers of the law school. Having experience at the Berlin University, during his working at law faculty of the Kazan University, he became the center of gravity for a progressive body of students and teachers. It is necessary to emphasize that origin of the Russian civil law is always connected with a name of D.I. Meyer, wherein; D. Meyer was the big scientist. Leo Tolstoy became one of D. Meyer's students.

The meeting of these two talented people, student and teacher, was fruitful. D.I. Meyer gave Leo Tolstoy a task to make the report on the subject: The comparative analysis of "Order" of Catherine II (1767) and Charles Montesquieu's work "The spirit of the law" (*Esprit des Lois*) (1748). Leo Tolstoy was so fond of this work that it led him to deep reflections about sources of precepts of law, about the principles of a state system. In his diary Leo Tolstoy especially noted that "work with 'Order' and 'Esprit des Lois' opened for me the new field of intellectual independent work and the university with the requirements, not only did not promote such work, but disturbed it"<sup>1</sup>.

This note allows us to evaluate more about the talents of the student who began to comprehend social science and its reflection in the law. It is possible to speak as well about some elements of the attitude of the student, Leo Tolstoy, to formalism, dominating in educational institutions of Russia, strict requirements to observance of educational discipline. The students were obliged to attend lectures. For absence of lectures, students could be subject to punishments up to being arrested.

Meanwhile, young Leo Tolstoy sought to think more independently and to build his own conclusions, and to draw conclusions on the basis of his own deep, specially focused analysis of scientific sources and study of literary works. Thus, L. Tolstoy's priorities lay mainly in the sphere of individual, independent work. To the contrary, regular attendance of lectures, simple listening to professors, their conservative narration of the essence of social processes was not the main form and method of studying the law for the young scientist.

Obligation to attend lectures depressed Leo Tolstoy. He felt the content of the taught subjects disturbed cognition of reality, does not allow critically thinking about the meaning of the established and existing law, and to form in his mind different approaches to the legal regulation of social life.

It can be assumed that the active rejection of strict disciplinary rules and principles prevailing in the Kazan University and other educational institutions of Russia, the situation of deep formalism and unjustified severity of consequences contributed to the formation of certain traits, especially the independence of judgment and integrity

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<sup>1</sup> Birjukov P.I. Biografija L.N. Tolstogo (kniga pervaja) / serija «Genij v iskusstve» [Birjukov P.I. Biography of L.N. Tolstoy (Book One) / lot "The genius in art"]. M., «Al-goritm», 2000. S.78. (in Russian)

in the emerging personality of Leo Tolstoy. It is hardly possible to explain his actions only by the desire for absolute freedom, a desire not to limit him to compliance with mandatory requirements. Of course, youth, combined with the obvious talent, does not always appreciate excessive external constraints. Count Leo Tolstoy himself wrote later that he was “very grateful for the fact that early youth was spent in a place where it was possible from an early age to be young, without affecting the back-breaking issues and living, though idle, luxurious, but not evil life.”<sup>1</sup> It is known that the Kazan period of his life is reflected in a number of works of the writer Leo Tolstoy: *Ispoved’* (1884), *«Otrochestvo»* (1854), *«Junost’»* (1857), and *«Posle bala»* (1911).

However, the University authorities drew attention to the reluctance of student Leo Tolstoy to obey the mandatory requirements. Therefore, even in his first year of study, he was punished for violating university rules. For skipping lectures on history, he was once imprisoned in solitary confinement.

The student Leo Tolstoy had a difficult relationship with a teacher of history, professor Ivanov (even though he was the husband of his cousin – Alexandra Sergeevna Tolstaya).

Meanwhile, Leo Tolstoy completed the task of Professor Dmitry Meyer for the writing of the essay. After comparing the “Order” of Catherine II and Charles Montesquieu’s “The Spirit of Laws”, the student Leo Tolstoy noted that the positive laws must conform to morals. Public morality and laws should not contradict each other. There appear elements of the Tolstoy’s future ideology, according to which public life should be based on moral law.

For example, penalties imposed by the state must be “proportionate” crimes. At the same time, the young researcher is opposed to the death penalty. Leo Tolstoy strongly criticized the monarchical form of government that existed in Russia. He believed that limitation of the power of the monarch by only certain ethical standards does not really limit the power. For this reason Leo Tolstoy recognizes that, in a despotic state, people have right not obey the all-powerful despot.

In his work, the student, Count Leo Tolstoy, considers reduced aristocracy economic participation, economic life. He is critical of the growing influence on the economy of the representatives of the emerging bourgeoisie. From an economic point of view, the existence of serfdom, according to Leo Tolstoy, inhibits the development of agriculture and trade in Russia. He also makes an original and ingenious conclusion that the “Order” of Catherine II “Brings her more fame, than benefit for Russia”.

Meanwhile, he continued to violate the rules of the university. He spent most of his time having fun. Professor N.Zagoskin said: “Kazan old-timers remember him at all the balls, parties and fashionable gatherings, invited everywhere, everywhere dancing.”

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<sup>1</sup> Birjukov P.I. Ukaz.soch. [See: aforesaid work] S.73. (in Russian)

First romantic attraction of Tolstoy's, which he felt toward Zinaida Molostvov, was also connected with Kazan.

Leo Tolstoy actively attended different concerts and theaters. Sometimes he acted in the theater himself. For example, on April the 19<sup>th</sup> (1846) in the events hall of Kazan University he took part in performances of «Magazinshhica» and «Predlozhenie zheniha».

Meanwhile, some historians and biographers of Leo Tolstoy believed that the spirit of our provincial city negatively affected the behavior of the future genius of Russian literature and did not contribute to his studies at the university. However, it should be noted that in spite of an active social life, first-year student of the law school, Leo Tolstoy, was able to pass the established educational examinations successfully and his knowledge was assessed as positive: the logic and psychology were graded as a five on a five point system, on the encyclopedia of law, history of Roman law and Latin language – four, in general and Russian history and theory of rhetoric and German language – three. In the end, Leo Tolstoy advanced to the 2nd year of the law school.

In January of next year, Leo Tolstoy attended the half-year examinations, but did not take them, because he regarded them as a mere of formality, as he already had devised a plan in his head to leave the university to finish his studies. Indeed, on April the 12<sup>th</sup> (1847), Leo Tolstoy sent to rector I.M. Simonov, who was a famous geographer, a petition to dismiss him from the university. He refers in his letter to “poor health” and “family circumstances”<sup>1</sup>. In the biography of L.Tolstoy, one can see the text of the certificate, which was given to Leo Tolstoy about his stay at the university. Here are excerpts from the text of the document: “The initiator of the following, Count Lev Nikolaevich Tolstoy ... from the Arab-Turkish Literature class moved in the first year to the Law School ... was transferred to the second year, but it is unknown how successful he was, as there were no annual examinations. His, Tolstoy, conduct while being at the University was excellent. ... Mr. Tolstoy, as a person who did not complete the full course of university science, can not enjoy the rights accorded to students ... valid for admission to the civil service ... and belongs to the second category of civil servants. In witness whereof, and given to him, Count Leo Tolstoy, these things evidence of the board of the University of Kazan ... on plain paper.”<sup>2</sup> On April the 23<sup>rd</sup> (1847) Leo Tolstoy left Kazan.

Regarding the reasons that prompted him to leave in 1847, the Law School and Kazan, Tolstoy spoke himself in 1909, shortly before his death. In his “Letter to a student about law”, written in response to an appeal to him from one of the students/lawyers,

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<sup>1</sup> A copy of the petition from the collections of the Museum of History of Kazan University.

<sup>2</sup> Birjukov P.I. Biografija L.N. Tolstogo (kniga pervaja) / serija «Genij v iskusstve». [Birjukov P.I. Biography of L.N. Tolstoy (Book One) / lot “The genius in art”] M., «Algoritm», 2000. S.76-77. (in Russian)

he wrote: "I myself was a lawyer, and I remember in my second year I was interested in the theory of law, and I did not study it only for the exam, thinking that I would be able to find in it an explanation that seemed normal and clear in the device of life. But I remember that the more I delved into the meaning of the theory of law, the more and more convinced I became that, either there is something wrong in this science, or I could not understand it. Simply saying, I gradually became convinced that one of us two must be very stupid: either Nevolin, author encyclopedia of law, which I have studied, or I was devoid of the ability to understand the wisdom of this science. I was 18 years old and I could not admit that I was stupid, and therefore decided that the juridical studies are beyond my mental capacity and left the class.

It is important that, spending only 2 years at the Law School of the Kazan University, Tolstoy firmly chose a different form of education – "independent field of mental work." However, the study of law in the student's desk, getting acquainted with the basics of Russian law of that period, had already formed a sharply critical attitude to the violation of legal norms in the idea of equality of citizens before the law. The evaluation of the system of law of that time, its negative role in the regulation of social life had become even more pronounced, uncompromising toward the end of the life of the genius of literature; the author of "War and Peace", "Anna Karenina" and other outstanding works. In his "Letter to the law student" he advised him not to engage in further jurisprudence under the supervision of the professors, who hid from the lectures the true nature of Russian law of that period. According to Leo Tolstoy, other professors preached of the non-existent value in it, so the students have formed false legal views.

2. In 1887 a graduate of Simbirsk gymnasium (now Gymnasium № 1 of Ulyanovsk) Vladimir Ulyanov (later – Lenin) himself wrote: "I wish to enroll in the Kazan University in the School of Law". Five of his classmates also wanted to become lawyers. The choice of Law School of Kazan University, Vladimir Ulyanov explained to his cousin N. Veretennikov in the following way: "Now it is the time one needs to study the science of law and political economy. May be in a different time, I would have chosen the other sciences." <sup>1</sup>

The multi-talented young man, Vladimir Ulyanov, really could choose any profession. Teachers of Simbirsk gymnasium of Russian and ancient languages believed that he should enroll the philological school. The assistant professor of mathematical physics at Kazan University, G.N. Shebuev, recommended Ulyanov to the Mathematics School as Vladimir Ulyanov had "a definitely mathematical turn of mind."

Choosing the judicial profession, the future founder and leader of Soviet Russia also hoped to have a free legal practice, which provides a strong bond with people of different social strata.

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<sup>1</sup> Veretennikov N. Volodja Ul'janov. M., 1960. (in Russian)

In addition to St. Petersburg and Moscow universities, there were still other institutions: Dorpat, Kharkov, Kiev, Novorossiysk (Odessa). Vladimir Ulyanov had chosen Kazan University, as its scientific schools were well known throughout Russia. The Ulyanov family also knew that: his father, Ilya Ulyanov, who graduated from the Physics and Mathematics School, studied at Kazan University. Also, his uncle Dmitry Ulyanov, studied there.

In connection with the intention of their son to enter the University of Kazan, his family decided to move to Kazan.

On July the 29<sup>th</sup> Vladimir Ulyanov petitioned the rector of Kazan University his enrollment for the first year of law school. A brilliant certificate and a gold graduate medal were attached to this petition. In characterization, the headmaster stressed Ulyanov as a promising student with regard to the further passage of sciences. On receipt of such a characterization, the Rector of the University, Professor N.A.Kremlev, issued the decision: "Accept".

Thus on August the 13<sup>th</sup> Vladimir Ulyanov became a first year student of law school, and he was given a student ID card № 197.

The list of specialized departments and discipline suggests that Vladimir Ulyanov, in the first half of 1887/8 had the opportunity to attend a course of lectures: history of Russian law, the Roman law and the encyclopedia of law. The divinity course was required for all. Vladimir Ulyanov as a student signed up in the following courses:

1. Professor Zagoskin: the history of Russian law (6 lectures per week).
2. Professor Zagoskin: encyclopedia of law (2 lectures per week).
3. Professor Dormidontov: History of Roman law (5 lectures per week).

Students were given the opportunity to improve their languages at the literature department of History and Philology. Vladimir Ulyanov signed up for an English course. He was forced to enroll in the required lecture course on theology (4 lectures per week).

At that time, the education at the law school was on paid basis. So, in September of 1887, Vladimir Ulyanov petitioned for exemption from tuition fees. The board of the university, on the basis of the evidence submitted on poverty, marks and good characterization, freed Vladimir Ulyanov from tuition fees.

At university, the first year student Vladimir Ulyanov signed the following commitment: «I undertake not to be a member and not participate in any of the communities without permission in each case, the nearest superior».

However, in September 1887, Vladimir Ulyanov entered a group that studied the political economy of Karl Marx as well as some works of the revolutionary democrats. That unofficial organization became one of the preparation centers of student meetings and demonstration at the Kazan University on December the 4<sup>th</sup>, 1887.



Vladimir Ulyanov was also a member of the Simbirsk association of fellow-countrymen and was elected to the Board of affinity group, which had a general power on a nationwide scale in Kazan.

Vladimir Ulyanov began to appear in front of the students with his first reports. In one of them he tried to present a popular «Capital» of Marx, revealing that not only tsarism in Russia, but capitalism as a whole that showed the plight of the working class.

At that moment students were preparing for overt actions throughout Russia with criticism of the current order within the county. On November the 5<sup>th</sup> (1887) a boycott was organized at Kazan University which was convened to express devotion to the emperor. The Vladimir Ulyanov, like most of the students, did not come to the university at that day.

The culminating phase of the revolutionary movement of students in Kazan University was the gathering on December the 4<sup>th</sup>, 1887. That event was conceived as an act of protest and was prepared in secret. A few years later the Kazan police chief, reporting to the student-proctor about anti-government meetings of students in 1887, said: «In apparent calm and complete tranquility, preparations were made for the demonstration at the same meetings and then on December the 4<sup>th</sup> (1887), all of a sudden, it concluded with disorder and resulted in the expulsion from Kazan a significant number of students and the closing of the university».

The main cause of the student meetings was student disturbance in St. Petersburg and Moscow because of an encounter with the police that killed two students.

On December the 4<sup>th</sup> 1887 at 9 am, students began to gather at the lecture of professor Zagoskin and Kremlev. The large accumulation of students did not cause anxiety of university staff. However, later the trustee of educational district reported to the Deputy Director of the Ministry of Education about V.Ulyanov: «A couple of days before the gathering he gave reason to suspect him of a preparing something bad: he spent much time in the smoking room, chatting with the most suspicious students, went home and came back again, brought something at the request of others, and generally behaved very strange.»

The audience were read the petition and appeal «To society.» The petition began with the words: «We have gathered here because of the awareness of the impossibility of any conditions of Russian life in general, and student's life in particular, as well as the desire to draw public attention to these conditions and to provide the following general requirements to the Government». The petition was presented to the rector. The rector of the University Professor Kremlev, read the first paragraph of the petition, said: «How can you speak on behalf of the entire Russian society, and then what will you achieve by the open resistance?» The students said: «Bulgaria has made constitutional change by open resistance!»

After a few hours under the threat of the invasion and in order to avoid bloodshed, students ended the gathering. 99 students, including Vladimir Ulyanov, threw their students cards on the floor.

After that student meetings V. Ulyanov's education in Kazan University was over. For revolutionary activities, before the winter session he was expelled, despite the fact that on December the 5<sup>th</sup> (1887) he sent an application for dismissal from Kazan University. Vladimir Ulyanov was arrested on political grounds and was exiled to Kokushkino (near Kazan). Previously it was thought, that V. Ulyanov left Kazan as a Marxist, ready for professional revolutionary activities.

A classroom in Kazan University, where V.Ulyanov (Lenin) had studied, was reconstituted in its present form. Kazan University museum guides always show the student's desk where V. Ulyanov had sat during a lecture on the history of law. In front of the university, the unique monument of the young V. Ulyanov – law student- is situated where it was erected during Soviet times.

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**INTEGRATIVE PERCEPTION OF LAW**

There is very significant reason to believe that law is the most powerful tool for the formation of a unified consistent basis of human activity, and hence for the integration and association of people, territories and state entities.

*S.S. Alekseev*

**Abstract:** “There are diverse approaches to the law ...”. So begins the author in his discussion and reasoning in favor of an integrative approach to the law. He provides the philosophical backdrop to the development of this approach, with special attention to the views of Russian-French Professor G.D. Gurvich, whose sociological worldview was of right as existing apart from the state, as well as the theoretical origins of an integrative approach to the law, with note given to Jerome Hall’s “integrative jurisprudence” and the “pure” theory of Kelsen, the modern French theorist Jean-Louis Berželė, whose conclusions seem to fit into the mainstream of integrative jurisprudence, as does the position of American professor Harold J. Berman. Mention is made to the social foundation of an integrative approach to the law and how integrative jurisprudence is relevant to current demands inspired by the process of globalization. The author offers his own integrative definition of law, which reflects reality and thereby claims practicality.

**Keywords:** philosophy of law, integrative perception of law, integrative law, social law, G.D. Gurvich

## **The philosophy of an integrative perception of law**

There are diverse approaches to the law, fundamental differences in its understanding, a variety of definitions of the law in modern legal science in Russia. This differs today in Russian legal science from the legal science of the “developed socialism” times, when, and not without the influence of the ideology of the Party, the philosophy of materialistic and class-volitional notions of the law was the only recognized legal philosophy. It is not possible to characterize the Marxist approach to the law, which is also today sometimes proclaimed the *only* scientific approach.<sup>1</sup> But it is only to be noted that this kind of limitation contradicts the essence of Marxism itself, because Marxism declared the perception of everything valuable that humanity had developed before its appearance. Marxism has a profound basis for integrative studies of the law and, therefore, for recognizing the different philosophical approaches to the development of the law. It is no accident that until adopted under the influence of Vyshinsky that volitional decision should be considered as the law, prominent soviet Marxists (Reisner, Stuchka, Krylenko and others) showed a sociological and psychological vision of the law along with legalism.

Professor V.G. Grafsky, in one of his articles devoted to integrative law, drew attention to the simplification or blurring of the methodological orientations in many modern variants of understanding of the law, and at the same time, to the persistence of methodological pluralism and its prospects, even into the distant future.<sup>2</sup> While agreeing with both of these approaches, sharing the opinion of the author in his quest for synthetic views on the law, I think it is possible to draw attention to the harmony, the current value and doubtless prospects of one of the checked methodological positions, expressed by one of the adherents of a deep integrative perception of law. I refer here to the rationale of the law by the Russian-French Professor G.D. Gurvich.

The following is taken from the preface to *THE WORLD OF THE LAW* BY G.D. GURVICH:

The social philosophy of Gurvich is a very interesting attempt to connect the various methodological orientations (from the subjective idealism of I. Fichte, the phenomenology of E. Husserl and ending with the historical materialism of K. Marx, the vitalism of

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<sup>1</sup> Syryh V.M. Logicheskie osnovanija obshhej teorii prava. Tom 3. Sovremennoe pravoponimanie. [Syryh V.M. The Rationale of the General Law Theory. Contemporary Understanding] M.: RAP, 2007, p. 11. (in Russian)

<sup>2</sup> See: Grafskij V.G. Integral'naja (obshhaja, sintezirovannaja) jurisprudencija kak teoreticheskoe i prakticheskoe zadanie. V kn.: Nash trudnyj put' k pravu: Materialy filosofsko-pravovyh chtenij pamjati akademika V.S. Nersesjanca. [Grafskij V.G. Integral (general, synthesized) jurisprudence as a theoretical and practical task. In the book: Our difficult way to the law: Materials of Philosophical and Legal Readings in Memory of Academician V.S. Nersesyants] M., Norma, 2006, p. 142. (in Russian)

A. Bergson, the realism of S.L. Frank, N.O. Lossky, N. Gartmann, the psychological of L.I. Petrazhitsky, not to mention the effect on Gurvich of his friends – L. Brunschwig, L. Levy-Bruhl, M. Moss, J. Val, M. Halbwachs, etc.). It is difficult to say how successful this synthesis was, but in the history of the sociological thought of the XX century there are not many such attempts to build an integrated methodological concept, applicable to the analysis of all aspects of social reality and at the same time free from the details of such an analysis to any one monistic principle.<sup>1</sup>

The synthesis of methodological orientations pursued by Gurvich bore some success, though further development is needed (e.g. in the light of new advances in science), but the approach of the author is to draw the attention of lawyers. In the search for truth in respect of the law, his dialectic removes the opposition of one method to another as part of methodological pluralism, allowing the construction of a unified synthetic line in understanding the law. However, normative and natural-legal positions are also capable of understanding, if we exclude the orthodoxy of both of them, if not initially qualify for the creation of the only correct scientific concept of explaining the surrounding reality.

The natural sciences provide us with compelling evidence of the coexistence and complementarity of theories in the framework of the exact sciences, of the admissibility and fruitfulness of different ways of explaining the surrounding reality. Unprovable theorems are proved, intersecting theories of the origin of the universe are put in question. Jurisprudence has to wait for its own nanotechnologies to converge on the recognition of the relativity of a single definition or concept of law in a variety of conceptions of its essence and in a rich palette of opinions.

The researcher into the creative heritage and translator of the works of G.D. Gurvich M.V. Antonov writes: “The main way of learning and explaining social reality for Gurvich was to study the typologies of social structures based on a kind of empirical-realist dialectic in conjunction with intuitivism and phenomenology (like Fichte Gurvich describes his concept as ideal-realistic). Surrelativism, hyper-empirism ... of social reality are principles of the sociology of Gurvich.”<sup>2</sup>

According to Gurvich, in order to understand the essence of the law of integration, it is necessary not only to formulate an adequate idea of the immanent totality as an ideal of social life, but also to abandon individualistic prejudices associated with the current interpretation of the concept of “law”. “We need to realize that the law is not only the

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<sup>1</sup> Gurvich G.D. Gurvich G.D. *Filosofija i sociologija prava. Izbrannye sochinenija* [Gurvich G.D. *Philosophy and Sociology of Law. Selected Writings*]. Izdatel'skij Dom S. – Peterb. gos. un-ta. 2004, p. 13. (in Russian)

<sup>2</sup> Antonov M.V. *Mir prava G.D. Gurvicha. V kn.: Gurvich G.D. Filosofija i sociologija prava. Izbrannye sochinenija* [Antonov M.V. *The World of the Law by G.D. Gurvich. In the book: Gurvich G.D. Philosophy and Sociology of Law. Selected Writings*]. Izdatel'skij Dom S.– Peterb. gos. un-ta. 2004, p. 14. (in Russian)

constraining and restrictive order which only prohibits. It should give the report that the law is also the order of positive cooperation, support, assistance, coordination ... The right of objective integration, the right of uni-totally cannot be anything other than the right which directly formed from this totality in which it carries out regulatory functions.”<sup>1</sup>

From Gurvich’s point of view, all subordination of right in general is a deformation and distortion of the law of social integration – “... the law, where unity, collaboration and cooperation are dominated; the distortion of right and social power to the individualistic legal order, based on a heterogeneous system of coordination”.<sup>2</sup> Moreover, Gurvich links “subordinated law” to the constitutional order of undemocratic regimes (autocracy, aristocracy, dictatorship, etc.), because the law of social integration of the political community is deformed and the “integrative law of cooperation and unity” is distorted. “Social law”, in Gurvich’s opinion, is “*an autonomous law of unity, which is interfaced by any active, particular, real totality; it is the integration of law ...*”<sup>3</sup>.

This philosophical view on the right is focused on the study of life itself in its diverse social facts, including opinions, ideals and laws – the whole experience in all its diversity, including both sensual and intuitive perception. Science cannot ignore any of the parties’ multifaceted experiences. In any event, if we distinguish between the right-conferring process and the law-making process, we will come to realize that the right is formed without a state, without its public authorities.

Through a sociological worldview Gurvich believed that the right exists apart from the state. There is no single source of law, no matter how it is declared in one or the other conceptions of law. Each of them has its empirical and theoretical justification, but no one of them is able to give a comprehensive explanation of the phenomenon of law. The incompleteness of each theory (public or *jus naturale*) should be filled not only by the abstract and philosophical approach, but by the sociological, pluralistic approach to law. Gurvich demonstrates an integrative approach to the law. This means that he accepts the existence of different “centers of legal experience”. He does not want to base his definition exceptionally on the principle of private autonomy, on the liberty principle, on the idea of limiting or on the idea of prohibition ... The law is not the will of the legislator, not natural law, not ideal rule, not social fact, not psychological phenomenon. The right includes all these different aspects. It always represents something more than a set of them. “Only the *ideal-realistic* approach may be enough for understanding the legal reality.”<sup>4</sup>

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<sup>1</sup> Gurvich G.D. *Filosofia i sociologiya prava. Isbrannye sochineniya* [Gurvich G.D. *Philosophy and Sociology of Law. Selected Writings*]. 2004, p. 58. (in Russian)

<sup>2</sup> *op. cit.*, p. 51.

<sup>3</sup> *op. cit.*, p. 51-52.

<sup>4</sup> *op. cit.*, p. 144.

Dogmatization and politicization of Marxism in soviet legal science prevented the creative development of integrative views. So V.A. Tumanov refers to the position taken by Jerome Hall, who complained about sophistical separation values, facts and legal forms, offered to connect the truth of natural law doctrine, legal realism and positivism, and also figuratively compared this methodology with the choice of Gogol's character Agatha Tikhonovna as to her suitors.<sup>1</sup> It seems as if an integral jurisprudence offers simply a sum of already raised issues and formulated decisions. That is why V.A. Tumanov did not agree with the fact that it is necessary "to mix into a single whole[,] versatile in its original theoretical and methodological basis of the approaches to the right."<sup>2</sup> But it is also necessary to notice Tumanov's reservations: "Hall's statement about the 'one-sidedness' of directions is correct"; "there is nothing bad in the problems of 'integrated law'; "every new theory can summarize the conclusions of a number of other schools. Succession, and the use of the results in sublated form and on a new basis, is a regularity of the development of any science."<sup>3</sup>

Yes, if we are talking about the integration of ideas on the formal dogmatic basis, we will get a compilation-eclectic construction. But it is possible to carry out the integration on the dialectical basis and approach the issue just historically, considering the different understanding of the law at different times in different nations. We are talking though about the high-level integration of legal philosophy. Such possibilities open up, for example, the dialectic of Hegel, whose teaching is at the junction of three legal doctrines: natural law, the historical school and legal positivism. Because of this, "joint" sparks of insight are created, a new way to reignite the old ideas and ignite new ones. Incidentally, the scientific aphorism of German authority says, "All the rational is real, and everything real is rational." Is it not the starting methodological basis for integrating the views? In my opinion, it is indeed so, because both combine (integrate) a whole variety of what exists and what is due generally, and in the field of law, particularly.

Opponents of an integrative approach to the law believe that the truth can only be one of the conflicting concepts of law. And perhaps they would be right if we were talking about radical conflict in the form of opposition in relation to a particular matter (whether at the level of the rational or the real). However, the contradictions between the known concepts of law, reflecting the real contradictions of legal conditions, are not so radical; they coexist in the form of differences, they involve analysis and synthesis (removal of

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<sup>1</sup> Tumanov V.A. Izbrannoe [Tumanov V.A. Selected works]. M.: Norma: Infra-M, 2010, p. 122-123. In light of the above it is necessary to impartially assess the attempt by Hungarian academician I. Sabo to synthesize various approaches to the law on a Marxist basis (Tumanov V.A., cited, p. 329). (in Russian)

<sup>2</sup> *op. cit.*, p. 123.

<sup>3</sup> *Ibid.*

contradictions). Contradictions are mostly removed at a level of abstraction that provides infinitely much for the understanding of the legal reality in order to understand the value of the law. In its turn, this is a real step in transforming the legal reality. A doctrinal definition of the law, as a synthetic “clot” reflecting the legal matter of all time, of course, needs to be translated into an operational definition for the implementation of justice in a given country at a given historical condition. That general and reasonable, claimed by some of the concepts of law, does not always have the ability to be translated into reality, no matter how categorically imperative we have called it. The decisions of practitioners (judges, prosecutors, police officers, legal counsel) being expressed in equal measures of freedom and justice, there should be available all the conditions of the actual protection of the law in society. “Going down to the ground”, even if sharing the methodology of the integrative approach, it is not necessary to insist on the fact that one or the other sign of law is inadmissible or, alternatively, as an essential, necessary, without which law does not exist at all. Apparently there are some qualities the lack of which makes the law imperfect, flawed, conservative, reactionary and so on. It is unlikely that in reality perfect law is conceivable. But the search for the essential features of the right should be separate with respect to the content and the form of law.

The standards of equality and justice, regulating the struggle and the approval of free wills in their relationship with each other, will characterize the content of the law, and the formal properties of a material nature is universal validity, based on coercion on the part of the dominant structure of society (usually the State). Thus, for the theorist it is not so important which contains norms that should guide practitioners – in documents, acts, in legal relations in the sense of justice (the intellectual or sensual part of it). He accepts, if only to provide real protection is important, that is the essence of law. Similarly, the “pure” practitioner will not be burdened with “lofty matters”. He must know “where lays” the fact that it is prescribed as mandatory.

At the end of the last century Russian philosophy of law was marked by the emergence of the concept of the libertarian law studies of Academician V.S. Nersesyants, a follower of Hegelian ideas. It seems to me that his views are not alien to integrative methodology, to an integrative perception of law. The integrative approach can be seen in the fact that to the author of *PHILOSOPHY OF RIGHT* there are different definitions of law, which represent different directions specifying the meaning of the principle of legal equality, express a single (and only) essence of law. And each of these definitions involves other commonsensical definitions in the context of the principle of legal equality.

“Hence, the internal semantic equivalence of outwardly different definitions, such as: ... Law is a formal equality, the law is a universal and essential form of freedom in public relations between people, the law is universal justice, etc. The formal equality also involves freedom and justice, the latter – the first and each other.” It is important



to note that ultimately V.S. Nersesyants integrates the legal approach with the legit, once the law is embodied, as soon as the laws are legal, as soon as the functioning of a constitutional state starts. “Legal act is an adequate expression of law in its official recognition, general validity, clarity and specificity required for the current positive law.” And here is in fact a straightforwardly declared commitment to a synthetic approach to the understanding of the law: “The combination of the various definitions of positive law, the relevant objective requirements of law, one concept is their union (alignment, sealing, synthesis, concretization) on the same base, since we are talking about the various forms and definitions of a single legal entity.”

### **Theoretical origins of an integrative approach to the law**

Monism and pluralism within the meaning of the law are due to the nature of cognitive activity that, in turn, is associated with the object and method of cognition. For various reasons, various sides are learned in advanced, distinct partitions of the corresponding object, and methods to achieve the truth in their knowledge, too, for various reasons, are different. Meanwhile, each of them offers something unknown to favorite sites and, ultimately, there appears a synthetic mind, which is able to reach the object entirely, which is capable of escaping from the insignificant parties of the object (phenomenon) and gives the essential (deep) characteristics, presenting object as it really is.

Of course, different objects and, respectively, opening truths towards complex objects is often just a goal. However, a kind of integrative knowledge always accompanies the search for truth. Science has long been equally using inductive and deductive methods of cognition. The accumulation of a large amount of knowledge obtained as a result of differentiation and classification of the results relating to the same object demanded generalization, abstraction, distraction from unimportant moments in the knowledge of individual aspects (objects of cognition).

As a result of such generalizations even opposing concepts tend to find a compromise, the result of which is the development of integrative knowledge. Legal science is no exception.

Many various works about understanding law have been written. But is there any sense in this diversity? – a question which is asked by modern French professor Norbert Rulan. And he cannot find a clear answer to it, “because it belongs to the realm of faith”.

“If one rejects God, then we can also believe that there is a general historical trend of progress, material development, the class struggle, the rule of law, democracy, the complexity of structures, etc. Or one can make a simple statement that diversity is prone to relativism.” But there is another option – to recognize all of the aforementioned,

including God and relativism, and present it all in a kind of integrative system. The approaches to the understanding of law and rights (law) are integrative, because the law itself is integrative.

This is a complex, multifaceted and multi-faceted phenomenon. If legal phenomena are synthetic themselves, then their reflecting concepts, reflecting rules cannot be different. Thus it can be explained by the appearance of an integrative theory of law. The right has been vested and is vested nowadays with different epithets, different names and definitions are given to it. And most of all thinkers advocate their own understanding. But there were those who, not without a reason, tried to unite the proposed approaches, who covered their attention and existence, and the ideal and the reality, who drew their eyes to the economy, to politics, and to the class struggle and to social cohesion.

The founder of a special direction in jurisprudence known as “integrative jurisprudence” was Jerome Hall (*STUDIES IN JURISPRUDENCE AND CRIMINAL THEORY*, New York, 1958). Science is obliged to him for this term. Indeed, integration had been limited mainly to two approaches in the philosophy of law: the traditional natural law approach and the axiological (valuable) approach.

At the same time, the “pure” theory of Kelsen was implicated in the integration. After all, values are becoming indispensable attributes of a legal norm. And in vain natural law theory did not pay enough interest to the development of basic legal concepts. They always make an initial base of any judicial theory. And this aspect is best designed for Hall’s opinion, in the normativism of Kelsen.

Kelsen himself, as it is known, defended the “pure theory of law”. But understanding of the law has access to an integrative perception. There is an interesting episode in this regard that occurred in one of the scientific meetings held in Italy by the supporters of natural and legal views. Their opponent, Hans Kelsen, was invited as a keynote speaker. However, during the debate one of the opponents put it in this way: “We with Mr. Kelsen enter the woods of law from different angles, but meet on the same glade.” Indeed, the famous *Grundnorm* of Kelsen can be interpreted from each direction, each school in a specific way. For some, it is the will of God, for others the nature of things, for the third sovereign will, for the fourth the phenomenon of the conscious or unconscious, and for the fifth – a fact of life, with its conflicting interests.

Modern French theorist Jean-Louis Berželė draws attention to the fact that the classic French lawyer Eugene distinguished between, on the one hand, the “given” law, coming from the actual reality and the laws of nature to the general structure of the world, which is fraught with a certain constancy and dominates over us, and, on the other hand, “created” law (“construct”) – a set of elements, created by artificial means, variable and contingent, the value and effectiveness that gives the human will, and which constitutes the necessary funds for the revitalization of the main directions of development resulting from the

basics of human society. In other words, according to Berželė, it is about understanding what the basics of law are and regardless of whether the law is inherent in any society, and it exists as nothing more than a set of artificial rules, the source of which are the decisions of society. And he concludes: “The peculiarity of the legal phenomenon is the fact that it is essentially relative: ... moralists, theologians, and some philosophers understood in the sense of ‘fairness and justice’, while for lawyers, this term refers to a set of legal rules and regulations.” For one the law is an ideal; for another – positive rule. Some see the law only as “rigorous procedures” aimed at instituting or maintaining a certain status quo, that is, ordinary social science; others try it and see a set of rules of good conduct. For some the law is just one of the aspects of the social order of phenomena, along with sociology or history. For others the law is the “system of intellectual ideas formed in accordance with its inherent principles and quite independent of the effects of sociological or historical order”.<sup>1</sup> Berželė’s conclusions seem to fit into the mainstream of integrative jurisprudence. In any event, in the use of the integrative method: “In this case the law is both a product of the social order of events and manifestations of the will of man, the phenomenon of the material and a set of moral and social values, ideal and reality, the phenomenon of the historical plan and normative order, complex internal volitional acts and acts of submission to the outside, acts of freedom and coercive acts ...”<sup>2</sup>

Such arguments are reviewed in the published writings of Russian researchers. In the works of G.F. Shershenevich and many other well-known Russian scientists equally recognized is an understanding of the law from the standpoint of the philosophy of law and legal theory. In the works of B.N. Chicherin the history, dogma and politics of law are recognized equally. A. Yaschenko even wrote a special work (*Teorija federalizma. Opyt sinteticheskoy teorii gosudarstva*, Jur’ev, 1912) which demonstrated the idea of the synthetic nature of legal phenomena. The “synthetic” theory of pre-revolutionary Russia became the subject of special investigations.<sup>3</sup> But they are inherent in the current research. For example, Yu. Kozlihin writes:

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<sup>1</sup> Berželė Jean-Louis. *General Theory of Law*. M., 2000, p. 35.

<sup>2</sup> *Ibid.*, p. 36. Professor Berželė’s integrative approach to the law dictated by the needs of the modern world’s development of the law, which generally requires the integration of legal systems. Comparative law, stressing the difference in the organization of modern legal systems, allows for the possibility of their comparison, allocating in them moments, which could be based on their convergence, and the practice of qualitative improvement of national laws. From Berželė’s point of view, a comparison of the systems cannot be limited by codes and laws, but should cover all sources of the law. Compared components have value only when they are placed within the framework of the legal system, on which they depend, and within its historical, sociological, political, economic and cultural contexts.

<sup>3</sup> Relevant views of Solovyov V., Yaschenko A., Gurvich G., Sorokin P. were authoritatively presented by V. Grafskiy in his article “The significance of the total (integral) law in a pluralistic concept of law and legal cultures” (see *Jurisprudencia XX veka: gorizonty razvitiya. Ocherki*. Pod red. Romashova R.A., Nizhnik N.S. [See: *Jurisprudence of XXI century: development horizons. Essays*. Ed. Romashova R.A., Nizhnik N.S.] Saint Petersburg, 2006). (in Russian)

The contrast between legal positivism and natural law is essentially opposed to science in the positivist sense of the word, having its subject to verifiable facts of social reality and philosophy, talks about proper. If we consider the ratio of these approaches to the study of law, the conflict seems somewhat contrived between them, the more that any theory of natural law (European version) requires a system of positive law.<sup>1</sup>

Incidentally, since fairness has been understood differently, natural law may also be seen as good or bad. The right to private property is often declared as a natural right, but is it fair? Even the right to life in certain situations is rejected as the just and a value. Thus, from this side the opposition of positive and natural law is very relative.<sup>2</sup>

The position of the American professor Harold J. Berman fits the theory of integrative law: “We need to overcome confusion about ... exclusively political and analytical law (‘positivism’), or exclusively philosophical and moral law (‘natural law’), or exclusively historical and sociometric law (‘historical school’, ‘social theory of law’). We need a law that integrates all three traditional schools and goes beyond them.”<sup>3</sup> “Integral legal consciousness as a phenomenon of post-nonclassical science” has become a special section in one of our domestic textbooks.<sup>4</sup>

### Social foundation of an integrative approach to the law

Unfortunately, the theory of convergence of political and legal systems has become a thing of the past. Conceptions of political and legal systems of a unipolar world now prevail in the West, while in Russia for some time a single aspiration to cut ties with

<sup>1</sup> Kozlihin Yu. Positivism i estestvennoe pravo. “Gosudarstvo i pravo” [Kozlihin Yu. Positivism and Natural Law]. 2000 № 3, p. 5. (in Russian)

<sup>2</sup> We have to admit one of the “most persistent” prejudices: the relativistic conception of the law. I.A. Ilyin wrote: “Human consciousness is surprisingly easy and well accustomed to the fact that the right is ‘due to’ the time and place, interest and power, perseverance and the will of blind chance. That ‘now’ and ‘here’ – right, ‘tomorrow’ and ‘here’ or ‘now’ and ‘there’ – [each] has no right; today forbidden – allowed tomorrow, and maybe it is the responsibility after one month; organized interest becomes power and ‘proclaims’ fair ‘that will be disproved tomorrow.” (I.A. Ilyin. O suchnosty pravosoznaniya. M. “Rarog” 1993, p. 22 [I.A. Ilyin. On the essence of sense of justice]). The thinker believed that this prejudice is towards selfish interest, feeds it, and in its turn, serves it. But we may say that “self-seeking interest”, even the most valuable ideas could turn in their favor. And if we do not ignore the real story, nothing more than what I.A. Ilyin saw as prejudice, in fact is not true. He is locked in a perfect world of ideas, and there looking for true foundations of natural law.

But for the success of legal activity in the interests of social value and effectiveness of the law, it is advisable to integrate what is valid and reasonable.

<sup>3</sup> Berman G. The Formation of the Western Legal Tradition. M., 1994, p. 16-17. “Law in action [he writes] includes legal institutions and procedures, legal values and legal concepts and ways of thinking, as well as legal rules. It includes what sometimes is called the ‘legal process’, or in German *Rechtsverwirklichung*” (p. 22). “The law contains the science of the law – the law, the meta-rules by which it is possible to analyze and evaluate” (p. 25).

<sup>4</sup> See: A.V. Polyakov, E.V. Timoshina. Obschaya teoria prava. [Polyakov, E.V. Timoshina. General Theory of Law] Saint-Petersburg, 2005, p. 55-58. (in Russian)

the Russian past prevailed and to carry over institutes from the West. An integrative approach stands against both isolationism and unexacting dissolution of the national values of the opposing world.

Globalization is the emergence of a single economic space and information on a worldwide scale; it is the elimination of communication barriers in trade; it is the integration of national economies; it is an objective process due to the development of communications, transport, new technologies, etc. This is also a kind of objective reality that should be evaluated and improved.

Globalization itself is neither good nor bad. One or the other, it is made in the mechanisms of life. And if for many people it did not bring them good and expected benefits, but rather turned into a disaster for them (destroyed habitats, rampant corruption, increased unemployment, disintegrating social structures, ethnic conflicts, etc.), it happened in the authoritative opinion of Nobel laureate in economics (2001) Joseph Stiglitz for the reason that globalization benefits the interests of transnational corporations and financial institutions, which are closely linked with commercial interests, and that is why, "Opposition to globalization in many parts of the world is ... to the particular set of doctrines, the Washington Consensus policies that the international financial institutions have imposed."<sup>1</sup>

For the negative consequences of globalization, caused by a lucrative ideological attitude of control over relevant processes, the important issue of increasing the role of law and interstate cooperation becomes actual in overcoming the tragic social costs of globalization. This acceptable position is that of those who view the role of the state, generally, as designed to correct the market mechanism in order to deliver social fairness. The addition of a legal principle in the solution to globalization problems will ensure more efficient collaboration in providing national and international security in the fight against terror and other crimes against humanity in general. In the solution of global problems (thus not only those within a country) the law is able to limit any structures, including states and the interests of other entities, if their activities run counter to survival interests, in the interest of peace and justice.

Integrative jurisprudence is relevant to current demands inspired by the process of globalization. Different legal systems can convert their national legal systems. For sometime past the tendency to integrate the law has been apparent. The forming of European law and the emergence of the elements of world law are observed in practice and in theory. If we look to the right in terms of its instrumental role, if the question is put in terms of practical international cooperation, we should seek a single point of reference, a single aspect, a single position. First of all – in understanding the law.

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<sup>1</sup> Joseph Stiglitz. Globalizacija: trevozhnye tendencii / Perevod s angl. G.G. Pirogova [Joseph Stiglitz. Globalization: alarming trends / Translation from English by G.G. Pirogova] – M., Mysl', 2003, p. 256, 28, 41. (in Russian)

Since 1992 I have set down my own integrative definition of law: Law – is a complex of recognition and is provided by official protection standards of equality and justice in society, adjusting the fight and coordination of free wills in their relations with each other.<sup>1</sup> This definition is submitted to qualify for what the law is in the community of a people at a given time. This definition reflects reality and thereby claims practicality. Standards can become established not only in normative acts, but also in individual solutions. They can express the formal requirements of equality and justice. The legitimation of these standards through official recognition is a necessary attribute. The protection is provided not only by the state, for there is the possibility of public enforcement. It is the regulator of interpersonal relations. The self-determined wills of free people may conflict or, conversely, be willing to cooperate. The law is the measured scale of justice in solving problems. It remains to be noted that the integration of approaches within the meaning of law can be held at separate levels. At the highest philosophical level it is the abstraction of Kant and Hegel; at a high level the sociology of law – the definition of Gurvich. Definitions of a general theory of law start out from the realities of the legal systems in their practical functioning.

It is important to put an emphasis on the importance of integrative (integrated) approaches in the dialogue of contemporary cultures. In the very early stages of development of civilization it became apparent that positive law is not only a powerful social control, but also a cultural phenomenon – an objectified expression of creativity and the collector of mankind's material and spiritual wealth accumulated by society, by social values. And now in our time it has become evident that over a continuous series of historically succeeding, one after another, thousands of years of public and governmental entities, cultures, entire eras the *continuity of law* is an indicator and expression (and perhaps even “protector”) of the continuity of human civilization, and of the fundamental institutions of human culture, that is to say, in all that expresses the value of law as a mechanism of continuous reproduction of the social system.<sup>2</sup>

It is believed that in the introduction to the realities of the civilized world – this is one of the conditions of survival, and Russia, and its Renaissance, as well as the Russians gained a worthy place and position among other nations.<sup>3</sup> The national philosophy

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<sup>1</sup> See: Lazarev V.V. *Teorija gosudarstva i prava*. Uchebnoe posobie. M., 1992, p. 121-123; Obshhaja teorija prava i gosudarstva. Uchebnik. Pod red. V.V. Lazareva. Chetyre izdanija [Lazarev V.V. General Theory of State and Law. Textbook] – M., 1994, 1996, 1999, 2005 (Tema Sovremennye podhody k ponimaniju prava i ih znachenie dlja juridicheskoi praktiki). (in Russian)

<sup>2</sup> Alekseev S.S. *Izbrannoe* [Alekseev S.S. Selected works]– M.: Statut, 2003, p. 312. (in Russian)

<sup>3</sup> Vadim Rozin. *Osnovnye jetapy formirovanija prava v Zapadnoj Evrope i Rossii: kul'turno-istoricheskij i filosofskij analiz*, [Vadim Rozin. The main stages of the formation of the law in Western Europe and Russia: a cultural-historical and philosophical analysis] p. 12 ([www.culturalnet.ru/main/getfile/1284](http://www.culturalnet.ru/main/getfile/1284)); Ionin L.G. *Sociologija kul'tury*. M., 1996, s. 186-187. (in Russian)

of Russians in terms of initiation to world civilization (here and convergence and integration) can be found in a true patriot of the Motherland – P. Chaadaev.<sup>1</sup>

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## 'GRADOZIDANIJE' – DUTY OF BUILDING AND REPAIRING FORTIFICATIONS IN MEDIEVAL SERBIA<sup>1</sup>

**Abstract:** The article deals with the institution of *gradozidanije* in medieval Serbian law – a duty of the population to take part in the building of fortifications of both cities and monasteries. The author explores the roots of *gradozidanije* in the Rhomaian (Byzantine) institution of *kastroktisia*, and then gives an analysis of the development of *gradozidanije* in Serbian law, through various charters of Serbian monarchs and the Code of the Emperor Stefan Dušan. Both its standard form and some exceptions to the general rule are analysed. Finally, the text seeks to explain the difference between *gradozidanije* and its Rhomaian model.

**Keywords:** *gradozidanije*, *kastroktisia*, medieval Serbian law, Rhomaian (Byzantine) law, Emperor Stefan Dušan's Code, charters

### 1. Introduction:

#### What is a grad and why must one build it?

One of the legal obligations of the population of medieval Serbia was *gradozidanije* (градозиданије, *gradozidanije*) or *grada zidanije* (града зиданије, *grada zidanije*) – the duty of building and repairing fortifications. It is sometimes mistranslated (or

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<sup>1</sup> A large part of the following research has been taken and adapted from the author's PhD thesis (unpublished), *Srpske srednjovekovne povelje kao izvor Dušanovog zakonika*, defended at the University of Belgrade Faculty of Law in 2014.

misunderstood) as ‘city-building’, due to a change in the meaning of the Serbian word град / grad. In the modern Serbian language, it means ‘city’ or ‘town’; but in the Middle Ages it signified a fortress, any sort of fortified space that was used for protection during times of war.<sup>1</sup> This etymology is still preserved in the verb градити / graditi, meaning ‘to build’.

A good explanation of how this terminological change took place was given by Marko Popović:

The word *grad*, in Old Serbian, as well as in other Slavic languages, originally denoted a walled, defended, i.e. fortified[,] enclosure, regardless of its size or the complexity of its layout. Even the enclosures of monasteries were designated with this term during the Middle Ages. ... With the growth of settlements, however, the term *grad* became extended to include fortified outlying wards or urbanized areas, and subsequently even unfortified urban settlements, whereby it acquired its modern meaning.<sup>2</sup>

Thus, beyond any doubt, the duty of *gradozidanije* was established for reasons of military safety, and not urbanization.

This institution of Serbian law traces its origins back to Rhomaian (Byzantine) law. The Rhomaian Empire had instituted a duty called *καστροκτησία* (*kastroktisia*) as early as the 10th century.<sup>3</sup> *Gradozidanije* shows great similarities with it.<sup>4</sup> However, there is also a significant difference. Although *kastroktisia* had initially required the direct

<sup>1</sup> Thus Taranovski: “The original city in Serbia, just as in other countries, was a walled and thus fortified place, where the population took refuge in case of an enemy attack.” (“Prvobitni grad je u Srbiji, kao što i u drugim zemljama, bio ograđeno pa dakle utvrđeno mesto, kuda se stanovništvo sklanjalo u slučaju neprijateljskog napada.” All translations from Serbian are the author’s own unless specified otherwise.) Teodor Taranovski, *Istorija srpskog prava u Nemanjičkoj državi*, Službeni list SRJ, Beograd 1996, p. 122. This monumental analysis of medieval Serbian law during the Nemanjić period, still unsurpassed, was first published in four volumes in 1931-1936.

<sup>2</sup> “Reč *grad*, u starosrpskom, kao i u drugim slovenskim jezicima izvorno se odnosila na ograđeni, branjeni, odnosno fortificirani prostor, bez obzira na njegovu veličinu ili složenost struktura. Čak su i manastirska obzida tokom srednjeg veka označavana tim pojmom. [...] Razvojem naselja, pojam grada se širi na utvrđena podgrađa, odnosno urbanizovane prostore, a potom i na neutvrđene urbane naseobine, dobijajući tako svoje sadašnje značenje.” Marko Popović, “Zamak u srpskim zemljama poznog srednjeg veka”, *Zbornik radova Vizantološkog instituta*, 43/2006, p. 190. (Translation partially based on Popović’s English abstract on p. 201.)

<sup>3</sup> As Bakirtzis points out, “[T]he system of *kastroktisia* (castle building or castle ownership) was implemented extensively from the tenth century to secure the good condition of defensive enclosures.” Nikolas Bakirtzis, “The practice, perception and experience of Byzantine fortification”, *The Byzantine World* (ed. by Paul Stephenson), Routledge, Abingdon 2010, p. 355. For a detailed outline of the development of *kastroktisia*, see S. Trojanos, “Kastroktisia: Einige Bemerkungen über die finanziellen Grundlagen des Festungsbaues im byzantinischen Reich”, *Byzantina* 1/1969, pp. 41-57.

<sup>4</sup> As the Greek word *καστρον* (*kastron*) had the same duality of meaning (or, rather, evolved meaning) as the Serbian *grad*, signifying a castle, fortress, but also a city, Bartusis correctly remarks that even the translation of the term is precise. Mark C. Bartusis, *The Late Byzantine Army: Arms and Society, 1204-1453*, University of Pennsylvania Press, Philadelphia 1992, p. 290.

participation of the local population through mandatory physical labour, a tendency of its transformation into a special tax that was then used to hire construction workers emerged very soon.<sup>1</sup> This seems never to have happened in Serbia.<sup>2</sup> We shall now give an outline of the development of *gradozidanije* in medieval Serbian law, and then attempt to explain the reason for this difference.

## 2. *Gradozidanije* in Serbian legal sources

Many charters that Serbian kings had granted to churches and monasteries had liberated the monasteries – or, rather, the population of their lands – from various duties and labours towards the state. The formulations in the charters vary greatly. Some contain very short, general clauses, for example: “ДА КЕЉЕ СВОБОДНО ОТЬ ВСѢХЪ РАБОТЬ КРАЛКВѢТВА МИ И ПОДАНЫКЪ”<sup>3</sup> (“let it be free from all the labours of my kingdom and all fees”). Some name a few duties *exempli causa* along with a general formulation, while some contain long and extensive lists of obligations that the church in question was exempt from. In a significant number of these cases, from the late 13th century on, *gradozidanije* is explicitly mentioned, sometimes descriptively, and more and more frequently by this term towards the middle of the 14th century.<sup>4</sup> The exemption itself is very much in accordance with the Rhomaian model: the Byzantine emperors had also frequently freed monasteries from this and many other duties.<sup>5</sup> Unfortunately, there is no way to determine when this duty first emerged in Serbian law. Similarly, the state

<sup>1</sup> Mark C. Bartusis, “State Demands for Building and Repairing Fortifications in Late Byzantium and Medieval Serbia”, *Byzantinoslavica* 49/1988, pp. 205-206; Bartusis, *The Late Byzantine Army*, 290; Harvey, *Economic Expansion*, p. 109.

<sup>2</sup> Another difference that bears mentioning, although it does not concern *kastroktisia* directly, is that it was only a part of a larger package of duties aimed at the creation and maintenance of infrastructure: its frequent companions were γεφύρωσις (*gephyrosis*) or γεφυρωκτισία (*gephyroktisia*) and ὁδοστρωσία (*hodostrosia*), the duties of bridge-building and road-building, respectively. See Alan Harvey, *Economic Expansion in the Byzantine Empire 900-1200*, Cambridge University Press, Cambridge 1989, p. 109. Neither of these duties existed in medieval Serbian law. However, *gradozidanije* had a different companion in Serbian sources – *gradobljudenje*, the equivalent of the Rhomaian βιγλιάτικον (*bigliatikon*), or the duty of keeping watch in fortifications. See Aleksandar Vasiljevič Solovjev, *Zakonik cara Stefana Dušana*, SANU, Beograd 1980, pp. 280-281.

<sup>3</sup> The charter of King Stefan Uroš III Dečanski to the Episcopate of Prizren on the Leviša river, issued in 1326; quoted according to Stojan Novaković (ed.), *Zakonski spomenici srpskih država srednjega veka*, Državna štamparija Kraljevine Srbije, Beograd 1912, p. 639.

<sup>4</sup> A detailed analysis of these church privileges in charters up to the Code of Emperor Stefan Dušan was made in Kršljanin, *Srpske srednjovekovne povelje*, pp. 102-118. For the evolution of the terminology, see Bartusis, “State Demands”, pp. 210-211.

<sup>5</sup> Bartusis, “State Demands”, pp. 206-210.

of Serbian sources does not allow for a comparative analysis of charters issued to other addressees, since very few of the charters granted to noblemen or cities have survived the period of Ottoman rule in Serbia.<sup>1</sup>

However, not having to take part in *gradozidanije* for the state did not necessarily mean never having such a duty at all. As mentioned before, many churches and monasteries had fortified walls of their own, and those were, naturally, mostly erected by the labour force gathered from their own lands. It was not the nature of a particular settlement or complex that determined whether the local population would be subject to this duty, but its need for fortifications.<sup>2</sup>

The earliest explicit regulation of this institution is in the charter of King Milutin to the Monastery of Saint Stefan in Banjska, issued between 1313 and 1316. The charter proclaims: “И како вси које сѣно, такожде да и гради граде.”<sup>3</sup> (“And just like all mow hay, let them also build fortifications.”) It is obvious from the phrasing that this rule did not mean the participation of the people from the monastery’s lands in the general obligation of building fortresses for the King (that so many churches were exempt from), but their obligation to take part in fortifying the monastery itself.<sup>4</sup>

The aforementioned regulations for the mowing of hay in the same charter stipulated that all commoners on the lands of the monastery who were “able to hold a scythe”, regardless of their status (with the sole exception of priests),<sup>5</sup> had to take part in the mowing. They had to spend a total of three days per year working with the hay<sup>6</sup> – but, of course, this timeframe could not have applied to *gradozidanije*. Three days would

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<sup>1</sup> This does not include some charters issued to foreign addressees (frequently referred to as international agreements by modern researchers) that were often preserved abroad. For example, many charters of Serbian rulers to Ragusa (Dubrovnik) have been preserved in the Ragusan archives.

<sup>2</sup> Cf. Kršljanin, *Srpske srednjovekovne povelje*, 218-219. Mihaljčić, for example, believes that this duty, as well as *gradobljudenje*, was mostly established for fortresses near the border, since during periods of stability the fortresses in the interior part of the country would have mostly been in a state of disrepair. See Rade Mihaljčić, *Zakoni u starim srpskim ispravama: pravni propisi, prevodi, uvodni tekstovi i objašnjenja*, SANU, Beograd 2006, p. 207.

<sup>3</sup> Novaković, *Zakonski spomenici*, p. 625. Cf. Vladimir Mošin, Sima Ćirković, Dušan Sindik (eds.), *Zbornik srednjovekovnih ćirilčkih povelja i pisama Srbije, Bosne i Dubrovnika: Knjiga I, 1186-1321*, Istorijski institut, Beograd 2011, p. 464.

<sup>4</sup> Cf. Miloš Blagojević, *Zemljoradnički zakon – srednjovekovni rukopis*, SANU, Beograd 2007, p. 297.

<sup>5</sup> The commoners (*sebri*) in medieval Serbia were divided into several sub-classes, each of which had its special duties: *meropsi* (farmers, the largest part of the population), *vlas* (cattle herders), *sokalnici* (a type of specialised workers, although the exact nature of their duties is still disputed) and other craftsmen, *otroci* (essentially slaves, albeit with a decent degree of legal protection), as well as village priests, who could have different status depending on their property rights. This division is based primarily on the needs of rural life, and there was no distinct class or estate of citizens as such. For more on this subject, see Taranovski, *Istorija srpskog prava*, pp. 78-156.

<sup>6</sup> Novaković, *Zakonski spomenici*, p. 625.

have been insufficient even for repairs of the fortifications, save the most minor ones – and grossly inadequate for any new construction works. The prescribed parallel had obviously extended only to the people who had this duty – all commoners, save priests, who were physically able to take part in the construction. As for the duration, it must have been determined by the amount of work that needed to be done.

Even if the interpretation of this rule on its own might still be subject to debate, a much clearer one was given in Emperor Dušan's charter to the monastery of the Holy Archangels near Prizren: “И ако се згодѣи вѣсьмь црѣквѣмь на градѣ, а они да не идоу; да направѣи свои градѣ.” (“And if it happens for all churches to go (building) a fortress, let them not go; let them build their own fortress.”<sup>2</sup>) Although one might be tempted to think that the position of these two monasteries was specific, it was, in fact, essentially the same as that of all the others that were freed from the general duty of *gradozidanije*, but had their own fortifications. It also proves quite explicitly that not all churches were exempt from this duty.

Dušan's Code (in its first part, in 1349) gives the first and only general designation of this duty for the entire country in its article 127: “За града зиданіе: гдѣ се градѣ овори или коула да га направѣи граждане тога-зѣи града и жоупа што крѣтѣ прѣдѣлѣ тога града.”<sup>3</sup> This rule makes apparent the dual meaning of the word *grad*, and could be translated in the following way: “Regarding the building of a fortress (city): where a fortress (city) is toppled, or a tower, let it be built by the citizens of that city (fortress) and the *župa* that is the area of that city.” A *župa* was a unit of territorial administration that the country was divided into; it usually had a fortified city as a centre of its management.<sup>4</sup> As Solovjev has pointed out, the spread of the duty was only fair, since it is in the city (fortification) that all the residents of the *župa* would take refuge in case of an enemy attack.<sup>5</sup>

Apparently, the building of fortifications for cities was the only form of *gradozidanije* that the legislator was expressly interested in. Naturally, that does not mean that the duties of the inhabitants of monastery lands towards their churches was now abolished, but merely that there was no need to codify it, as it was already regulated by customary law

<sup>1</sup> Novaković, *Zakonski spomenici*, p. 698.

<sup>2</sup> The word *church* was used in medieval Serbia to denote monasteries as well.

<sup>3</sup> Quoted according to the Prizren manuscript in Stojan Novaković (ed.), *Zakonik Stefana Dušana, cara srpskog, 1349 i 1354*, Državna štamparija Kraljevine Srbije, Beograd 1898, p. 97.

<sup>4</sup> See Aleksandar Deroko, *Srednjevekovni gradovi u Srbiji, Crnoj Gori i Makedoniji*, Prosveta, Beograd 1950, p. 5 For more information, see Stojan Novaković, *Narod i zemlja u staroj srpskoj državi* (ed. by Sima Ćirković), Zavod za udžbenike i nastavna sredstva, Beograd 2002, pp. 11-16 and Gordana Tomović, “Župa” in Sima Ćirković and Rade Mihaljčić (eds.), *Leksikon srpskog srednjeg veka*, Knowledge, Beograd 1999, pp. 195-197.

<sup>5</sup> Solovjev, *Zakonik*, 1980. Once again, this shows a similarity with *kastroktisia*, since it “likewise touched landowners whose property laid outside urban areas”. Bartusis, “State Demands”, p. 211.

and individual charters in a way that caused no problems in practice. Furthermore, it must be underlined that Serbian inland cities did not have autonomy or any other form of special legal status.<sup>1</sup> According to Mišić's classification, most of the active inland cities in this period (before the decline of the Serbian Empire), with the exception of some mining centres, were "strong fortification[s] on important strategic points" ("*jaka utvrđenja na važnim strateškim tačkama*") that frequently had no or little economic significance.<sup>2</sup> Thus, once again, it cannot be denied that the Code had focused on this type of *grad* for reasons of a military, defensive nature, and not any legal or economic particularities.

As can be seen from the sources, the only extant form of *gradozidanije* was that of a corvée, and not any form of tax. Although the formulation of Dušan's Code could, theoretically, mean either form (it could be read to imply that the forts were being built with the money gathered from the local population), the charters preceding the Code do not allow for such an interpretation. Their phrasings obviously meant that the people were obliged to personally take part in the construction. And if that was the only form of *gradozidanije* present in Serbian law before the Code, the only way it could have turned it into a tax would have been by explicit mention, which clearly was not the case. Hence, the Code adopted the same standard that existed in previous charters, but merely phrased it in a slightly different way. If any doubt remains, the frequently quoted passage from John VI Kantakuzenos about Dušan's rebuilding of the fortress of Verrhoia can serve as final proof: he claims that Dušan brought over ten thousand labourers to reconstruct the fortress.<sup>3</sup> Even if the number is an exaggeration (and if not – it was surely an exceptional endeavour), this episode is still a good illustration of what *gradozidanije* could have looked like in practice.

But what was the relation of this general provision of Dušan's Code to numerous exemptions from *gradozidanije* in monastery charters? Were the commoners from the lands of churches and monasteries obliged to take part in the building of lay fortifications located in the same *župa* unless expressly freed from this duty by a charter? Or were they automatically exempt, and not even counted as residents of that *župa*?

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<sup>1</sup> On the other hand, the merchant cities on the banks of the Adriatic Sea – such as Kotor, Bar, Budva, Ulcinj, etc. – had broad autonomy, passing their own statutes, determining their own form of government and having their own (sometimes fully independent) judiciary. The duty of *gradozidanije* had nothing to do with them. Similarly, although less pronouncedly, the so-called 'Greek cities', i.e. conquered cities that used to belong to the Rhomaian Empire, were also left a certain degree of autonomy that they had enjoyed under the Byzantine emperors; but the oldest, original Serbian cities did not have any special status. They were centres of defence, trade and administration, but their residents did not have any special rights. For more on this subject, see Taranovski, *Istorija srpskog prava*, pp. 122-128.

<sup>2</sup> Siniša Mišić, "Gradovi i trgovi srpskog srednjeg veka," in Siniša Mišić (ed.), *Leksikon gradova i trgova srednjovekovnih srpskih zemalja – prema pisanim izvorima*, Zavod za udžbenike, Beograd 2010, p. 13.

<sup>3</sup> Ludovic Schopen (ed.), *Ioannis Cantacuzeni eximperatoris Historiarum libri IV: graece et latine, volumen III*, Ed. Weberi, Bonn 1832, pp. 124-125.

Good leads for answering these questions can be found in articles 26 and 34 of Dušan's Code. Article 26 proclaims: “Цркви въсе што се обрѣтан по земан царства ми освободи царство ми отъ възѣхъ работъ малыхъ и великыхъ.” (“All the churches that are located in the land of my empire were freed by my empire from all the labours great and small.”)<sup>2</sup> *Gradozidanije* must have fallen into this category. Furthermore, article 34 forbids the forcing of church peasants to work on the Emperor's (or other lay) lands under the threat of confiscation of the perpetrator's entire property:

И што соу села црковна и людїе црковны, да не гредоу оу меропшинне царства ми, ни на сѣно, ни на оранїе, ни на виноградъ, ни на едноу работоу, ни малоу ни великоу; оутъ свѣхъ работъ освободи царство ми, тькмо да работану цркви. Кто ли се нанде изыгнавъ метоуиоу на меропшинноу и прѣчне законн царскїи, тьзи властникъ да се распе и накаже.<sup>3</sup>

[And the villages that belong to churches and the people of churches, let them not go to the demesnes of my empire, not to work on hay, not on ploughing, not in vineyards, not for any labour, neither great nor small; from all the labours my empire had liberated them, except for labouring for the church. Whoever is found to have forced church villagers onto a demesne and disobeyed the imperial law, that official is to be stripped of his property and punished.]

These provisions show that the Code had freed all the churches and monasteries from all duties towards the state without exception, thus proving that they were not implicitly included in the residents of the *župa* who had the duty of *gradozidanije* according to

<sup>1</sup> Novaković, *Zakonik*, p. 27.

<sup>2</sup> The phrase ‘my empire’ (before the proclamation of the Empire – ‘my kingdom’), analogous to ‘my majesty’, was used by the Emperor to designate himself in the third person, in a manner very similar to that of the Roman emperors. See Andreas E. Müller, “Documents: Imperial Chrysobulls”, in Elizabeth Jeffreys, John Haldon and Robin Cormack (eds.), *The Oxford Handbook of Byzantine Studies*, Oxford University Press, Oxford – New York 2009, pp. 132-133.

<sup>3</sup> Quoted according to the Atos manuscript in Đorđe Bubalo (ed.), *Dušanov zakonik*, Zavod za udžbenike, Beograd 2010, p. 82. The Prizren manuscript of Dušan's Code, dominantly used by researchers for a long time due to Novaković's annotated edition, contains a slightly different formulation, but there is no essential change in meaning: “И што соу села меропшинне царства ми по Загорїи и иноуде; црковны людїе да не гредоу оу мѣропшинне ни на сѣно, ни на оранїе, ни на едноу работоу, ни на малоу ни на великоу; отъ възѣхъ работъ освободїи царство ми; тькмо да работану цркви; кто ли се нанде изыгнавъ метоуиоу на меропшинноу, и прѣчне законн царскїи, тьзи властникъ да се распе и накаже.” Novaković, *Zakonik*, p. 32. The meaning of the term *Zagorje* is not settled: Bubalo, for example, mentions that it was frequently used to designate Bulgaria and believes that this article originated from a special case in some area, Bulgarian or not, called *Zagorje*. Bubalo, *Dušanov zakonik*, p. 161. However, it also seems quite possible that the term was used in its archaic meaning, to designate inland territories of Serbia, as opposed to *Primorje*, the coastal region: it was used in that context, for example, in the *Gesta Regum Sclavorum*. See Dragana Kunčer (ed.), *Gesta Regum Sclavorum, tom I: Kritičko izdanje i prevod*, Istorijski institut / Manastir Ostrog, Beograd 2009, pp. 14-16, 58. Cf. Relja Novaković, *Gde se nalazila Srbija od VII do XII veka (istorijsko-geografsko razmatranje)*, Istorijski institut i Beogradu / Narodna knjiga, Beograd 1981, 95-98, and Kršljanin, *Srpske srednjovekovne povelje*, 101.



article 127. Finally, another argument could be put forward to confirm this yet further. If one of the reasons why this duty was justified was the fact that the population was protected from enemy incursions by the very fortifications it had to build and repair, then the inhabitants of monastery lands did not need such protection, as they could take refuge in the fortresses of the monasteries – that they, in turn, had to build and maintain.

One might wonder why then do the long liberation clauses still appear in many charters granted to various monasteries by Emperor Dušan himself and his successors *after* the Code. The answer is a very simple, yet important one: tradition. Dušan's codification was an innovation following in the footsteps of the Rhomaian emperors, the very first code of laws to govern the entire territory of Serbia.<sup>1</sup> The tradition of monarchs granting charters that guaranteed various privileges had been in Serbian law for centuries and was not to be pushed aside easily. Monasteries, as well as other recipients (e.g. the Serbian nobility, Ragusan merchants) were used to relying on such documents, considering them a sign of the monarch's benevolence and disposition towards them. Freeing churches from duties to the state was also considered to be the proper behaviour of a pious ruler. And thus charters kept being issued with all the old formalities, even though many of them were no longer strictly necessary.

However, in the 15th century, as the economic situation was worsening, and the threat of the Ottoman conquerors (who had already reduced the country's territory) kept growing, exceptions were made in the earlier rule. Thus Despot Stefan Lazarević, in his 1427 charter to the Lavra of Saint Athanasius on the Holy Mount, granted to the monastery three villages that were generally freed from *gradozidanije* – except in the case of works on the fortifications of the capital city of Belgrade: “... и ако се би згодило нини метохѣн лаврьскон поки на зиданіе Бѣлграда, тѣди и овази више реченна села да походе съ ними заедно, а на ино градозиданіе ни на едно.”<sup>2</sup> (“[A]nd should it happen for another *metochion* of the Lavra to go for the building of Belgrade, then these aforementioned villages should go together with them, and not to any other *gradozidanije*.”) The fact that this provision mentions other villages of the Lavra having the same duty shows us that this was not an isolated case. The reasons of state defence took precedence over tradition and ideology.

Another interesting piece of information can be gleaned from two charters issued to Dubrovnik (Ragusa) in 1387 by the rulers of then fragmented Serbia – Lazar Hrebeljanović

<sup>1</sup> The tripartite codification was comprised of Dušan's Code itself, the Abridged Syntagma of Matthew Blastares, and the so-called Law of Justinian. For more information on the nature of the codification, the methods and the motivation for its creation, see Aleksandar Vasiljević Solovjev, *Zakonodavstvo Stefana Dušana, cara Srba i Grka*, Skopsko naučno društvo, Skoplje 1928, pp. 58-91.

<sup>2</sup> Novaković, *Zakonski spomenici*, pp. 500-501. Cf. Aleksandar Mladenović, *Povelje i pisma Despota Stefana, Čigoja štampa, Beograd 2007*, p. 260.



and Vuk Branković.<sup>1</sup> Both stipulate, with only slight differences in phrasing, that those citizens of Ragusa who have become residents of a city in Serbia (specifically, who have gained *baština* – real property – there) have to take part in building the fortifications and keeping watch on them, while those who are merely visitors have no such duties.<sup>2</sup> Thus, this duty affected all long-term residents, even if they were foreigners, and not subjects of Serbian rulers. Given the fact that their own safety was also at risk, this seems perfectly sensible. Still, given the lack of similar provisions in earlier charters to Ragusa, it is fairly likely that this was a novelty caused by the impending Ottoman threat and general instability in the region.

Finally, having outlined the position of *gradozidanije* in Serbian law, we should now explain its deviation from the contemporary Rhomaian model – the fact that it always remained in the form of a corvée, and never turned into a tax. The reason for this is fairly simple. Serbian feudal society was for the most part based on a subsistence agriculture economy. The 14th century did see a significant increase in trade and overall economic prosperity (indeed, the first extensive regulations of the law of obligations, taken from the Rhomaian Empire, can be found in the Abridged Syntagma of Blastares), but that mostly affected cities and the nobility, while the majority of the rural population still had very little need for money. Even the land tax, *soće*, could still be paid in wheat as well as money in the time of Emperor Dušan: his Code prescribes both alternatives as equally valid options.<sup>3</sup> Thus a more direct approach to the duty of *gradozidanije* made perfect sense. It did not even have to be borrowed from older Rhomaian law: we can easily imagine that the Serbian rulers took the later *kastroktisia* as a basic model, but adapted it to suit the needs of their own society. It is even imaginable that the duty developed independently (as it is a very logical one for a medieval society, and similar institutions had existed in other countries as well<sup>4</sup>), and that only its name was later taken from its Rhomaian counterpart.

<sup>1</sup> For more details on their relations, see Rade Mihaljčić, “Doba oblasnih gospodara”, in Jovanka Kalić (ed.), *Istorija srpskog naroda, druga knjiga: Doba borbi za očuvanje i obnovu države (1371-1537)*, Srpska književna zadruga, Beograd 2000, pp. 21-35.

<sup>2</sup> The provision in Knez Lazar’s charter deals with the city of Novo Brdo (New Hill), an important mining centre: “И кон се к доуѣровчанинь забаштинилъ оу Новомь Брьдоу, тьзи да зиѣ градъ, и да чоува: кон ли соу горчине, и не соу се забаштинили, да ниль к на воли, што ниль годѣ.” (“And the citizen of Ragusa that has gained *baština* in Novo Brdo, let him build the fortress, and guard it; those that are guests, and have not gained *baština*, let them do at will, what they please.”) The only essential difference in the charter of Vuk Branković is that it speaks not of a particular city, but of cities in general: “И кон се соу доуѣровчане забаштинили по монухъ градовехъ, тьзи да зиѣ градъ и да чоуван: тко ли соу горчине и не соу се забаштинили, да ниль к на воли, како ниль годѣ.” (“And those citizens of Ragusa that have gained *baština* in my cities, let them build the fortress and guard it; those that are guests and have not gained *baština*, let them do at will, whatever they please.”) S. Novaković, *Zakonski spomenici*, pp. 201, 204.

<sup>3</sup> Art. 198 of Dušan’s Code. Novaković, *Zakonik*, 146.

<sup>4</sup> Cf. Trojanos, “Kastroktisia”, p. 56.

### 3. Conclusion

*Gradozidanije* had existed in medieval Serbian law from at least 13th century onwards. We cannot tell for certain whether it was created after the model of Rhomaian *kastroktisia*, or arose independently and was then turned into its likeness – but either way, strong Byzantine influence in the development of this institution is clear and undeniable. For a country that was, like Serbia, frequently faced with external military threats, having an efficient system of fortification building and maintenance was of the greatest importance. Thus it makes perfect sense that this duty was widespread, frequently mentioned in legal sources and finally instituted as a general legal obligation on the whole territory of the country. But it is also logical for the very same reason that *gradozidanije* was not a blind copy of *kastroktisia*, but that it was adapted to the local conditions in a way that guaranteed its efficiency – by imposing on the people a direct duty of building and repairing fortresses, and not merely a tax that would have been used for that purpose.

The exemption of many, albeit not all, churches and monasteries from this duty through charters they were granted by the Serbian rulers – and finally the general exemption of all the churches by the provisions of Dušan's Code – also correspond both to the Rhomaian model and to the spirit and tradition of the Serbian society of that time. (Naturally, it is equally understandable why the people living on monastery lands continued to have the duty to fortify the monasteries themselves.) Still, as danger approached in the period of the Serbian Despotate, tradition and piety had to give some way to needs for protection, and thus some church lands were under the obligation of *gradozidanije* towards the state once again.

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## **FIGHTING CORRUPTION IN RUSSIA: THE SYSTEM OF CIVIL LAW MEANS<sup>1</sup>**

**Abstract:** The article discusses the phenomenon of corruption and shows its supranational and transnational character. The authors substantiate the position that the fight against corruption is possible not only with the help of public law means, but also through private law means and, mainly, a system of civil law remedies (instruments). The article focuses on those civil law remedies that are offered by the Concept of development of civil legislation of the Russian Federation and the draft amendments to the Civil Code. In particular, civil law means of combating corruption examine the new legal structure of the course the law is taking, along with the general system of the instruments and the problem of the invalidity of transactions, including their composition, under Article 169

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of the Russian Civil Code. The authors express the idea of improving civil policy through integrating a holistic view of the system of civil law means of combating corruption. The article especially draws attention to the need for greater efficiency in the legal framework by improving its civil and interrelated components to combat corruption.

**Keywords:** corruption, international conventions, civil law, system of civil law means of combating corruption

## Introduction

Russian law is in a state of constant development. Every year new legislation is the subject of the modernization of the entire legal system and touches civil, tax, administrative, and procedural law, among other fields of law.

One example of the dynamic development of Russian legislation is in the sphere of the fight against corruption.

Corruption (from Lat. *corruptio* – bribery, damage; *corrumpere* – to defile) is a word usually denoting the use of official power and authority, which is entrusted to one and associated with one's official status, for personal gain.

Transparency International and other international organizations are aware of corruption as “the abuse of entrusted power for private gain.”<sup>1</sup> There are other definitions which clarify or make use of more stringent legal wording.<sup>2</sup> However, it is obvious that the modern world is characterized by the versatility and transnational nature of corruption, for corruption that exists in any one country may negatively affect the affairs of other countries.<sup>3</sup>

This fact motivated the authors to study the phenomenon of corruption. Unlike other studies that have primarily investigated public law means to combat corruption (administrative law, criminal law), this paper analyzes the system of civil law as a means of combating corruption in Russia, and in the world. Thus, private law, in general, and some of its norms and institutions can also provide help in fighting this transnational, negative phenomenon.

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<sup>1</sup> The Anti-Corruption Plain Language Guide.

<sup>2</sup> See Habrieva T.Ja. Korrupcija i pravo: doktrinal'nye podhody k postanovke problemy [Corruption and the Law: the doctrinal approaches to the problem] (in Russian) // Russian Law Journal. 2012. № 6. P. 5-17. Naryshkin S.E., Habrieva T.Ja. Mehanizm ocenki antikorrupcionnyh standartov GREKO (sravnitel'no-pravovoe issledovanie) (in Russian) // Journal of Foreign Legislation and Comparative Law. 2011. № 3. P. 4-10; Shishkarev S.N. Konceptual'nye i pravovye osnovy rossijskoj antikorrupcionnoj politiki [Conceptual and legal bases of Russia's anti-corruption policy] (in Russian). M., 2010. P. 240-241.

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### **The system of regulations to combat corruption**

In the system of regulations in the fight against corruption, the following Acts stand out.

#### **International Agreements**

OAS Inter-American Convention Against Corruption, adopted March 29, 1996

EU Convention Against Corruption Involving Officials, adopted May 26, 1997

OECD Anti-Bribery Convention, adopted December 17, 1997

COE Criminal Law Convention on Corruption, adopted January 27, 1999

COE Civil Law Convention on Corruption, adopted November 4, 1999

UN Convention Against Corruption (UNCAC), adopted October 31, 2003

#### **Basic Russian laws and other official documents**

Federal Law of December 25, 2008, No. 273-FZ “On Combating Corruption”

Model Code of Ethics and Official Conduct of Employees of the Russian Federation and Municipal Officials, December 23, 2010 No. 21

Civil Code of the Russian Federation, October 21, 1994, in the wording of Federal Law No. 100-FZ dated May 7, 2013

Criminal Code of the Russian Federation, June 13, 1996, as amended by Federal Law No. 59-FZ dated April 19, 2013

Code of Administrative Offenses, December 30, 2001, as amended by Federal Law No. 49-FZ dated May 9, 2013

The Concept of development of civil legislation of the Russian Federation, adopted on the basis of the Decree of the President of the Russian Federation, July 18, 2008 No. 1108 “On Improvement of the Civil Code of the Russian Federation”

### **The system of civil law means of combating corruption in Russia**

In the current domestic legal literature devoted to fighting corruption, it is noted that the study of this phenomenon is still dominated by the “limited criminal law approach.”<sup>1</sup> However, today, in fact, it is an accepted thesis that criminal law and criminal procedure alone do not provide sufficient means to fight against corruption. At the same time, civil law does not in itself aim to direct the fight against corruption in all its forms. In this particular field of law other fundamental concepts inform the subject of civil rights, normative expressions adopted in Article 2 of the Civil Code of the Russian Federation.

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<sup>1</sup> Habrieva T.Ja. Korrupcija i pravo: doktrinal'nye podhody k postanovke problemy [Corruption and the Law: the doctrinal approaches to the problem] (in Russian) 2012. № 6. P. 5-17// Russian Law Journal, 2012. № 6. P. 5-17.

The primary purpose of civil legislation is the regulation of particular areas of economic and moral relations, based generally on the legal equality, the autonomy of will, and the independence of the parties.

However, given the current economic, political, and legal realities in Russia,<sup>1</sup> including the features of the state of the business environment, it seems reasonable to argue that virtually all legislation relating to business activities should provide for a general process aimed at solving the problem of corruption by the inclusion of anti-corruption regulations. Moreover, there are two aspects that should be noted. First of all, every area of legislation should have an anti-corruption focus, that is to say, legislative norms expressed therein as procedures that should be established clearly and specifically, and ultimately in the most effective way, and which do not admit of grounds for their abuse. Second, each section of the legislation should contain its own legal instruments to fight against corruption relevant to and in respect of its particular subject. It seems right that both of these aspects should certainly be taken into account in the formulation and implementation of policy, and in every avenue of the law in general in Russia. Essentially, the need exists to take these aspects into account and admit them as a model of modern ideas in all Russian legal policy. Naturally excluded here is legal policy falling within the scope of civil rights as a key regulator of business and, in general, of all normative life of the country.

Two of the most important areas of civil law provisions related to anti-corruption activities are the use of the law and law-making. The fight against corruption through the use of the law is largely based on the emerging network of relevant civil prohibitions. Much work in this direction is accomplished by means of the information capabilities of the Internet in the country's system of arbitration courts. For example, virtually every judicial act of processing a case can be found on the website of the Supreme Commercial ("Arbitrazh") Court of the Russian Federation (<http://www.arbitr.ru>). This type of information transparency of judicial practice significantly reduces the level of corruption related to the consideration and discharge of pending cases.

Moreover, on April 26, 2013, in the State Duma (the Russian Parliament), a bill passed the first reading on issues that obliges judges to publicize all non-procedural applications (i.e. violations) which occur in the cases under their review. The changes, which were developed with the participation of the Ministry of Justice, the Supreme Court of the Russian Federation, the Supreme Commercial Court, and the Judicial Department of the Armed Forces, will affect Article 10 of the Federal Law dated June 26, 1992 No. 3132-1 "On the Status of Judges in the Russian Federation:" judges will have to publish such applications on the websites of their courts.

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<sup>1</sup> Vavilin E.V., Chelyshev M.Ju. Grazhdansko-pravovaja politika [Civil legal policy] (in Russian)// Problems of innovation in the civil law: a collection of scientific works (based on the Intern. Conf., dedicated. 90<sup>th</sup> anniversary N.A. BARINOVA, Saratov, March 1, 2012)/ ed. T.I. Hmeleva. Saratov 2012. № 1. P. 14-18.



The fight against corruption today through the use of law-making is largely carried out in response to the implementation of the new Concept of development of civil legislation of the Russian Federation<sup>1</sup> (hereinafter, the Concept) which was developed based on the draft amendments and additions to the Civil Code and adopted by Decree of the President of the Russian Federation on July 18, 2008 No. 1108 “On Improvement of the Civil Code of the Russian Federation.” The Concept highlights a number of issues that can be broadly characterized as fairly closely associated with corruption. This is largely due to the fact that civil structures can be used in corrupt activities. If we are in agreement with the authors of the Concept, it is possible to generalize that such use must be characterized by the legal nature of breach of law – an abuse of civil rights, with civil and legal structures used for corrupt purposes. At the same time what is quite interesting to note is the terminology, where the word “abuse” is used eleven times, and also very commonly used is the term “bad faith.”

For example, paragraph 1.9, Section III of the Concept, titled “The legislation on legal persons” acknowledges the existence of the problem of bringing within Russian control the implementation of the legal capacity of foreign legal entities registered abroad in various offshore locations to operate in Russia, foreign legal entities which, nevertheless, are actively involved in business and own real estate in major Russian cities. According to the authors of the Concept, such entities are often used in the commission of various abuses. In fact, in this part of the Concept there is an open-ended list of abuses: the artificial creation of an imaginary bona fide purchaser, the concealment of illegal manipulation of shares and stocks, “raider attacks,” etc. Accordingly, the Concept is aimed to consolidate in Russian law the mandatory legal mechanisms for the legalization of these actors and the disclosure of their founders (participants) and the beneficiaries of offshore entities. These mechanisms are aimed at significantly reducing the economic impact on the operations of offshore entities.

Generally, it should be noted that the Concept addresses the very controversial issue of the disclosure of information in the field of business, including the disclosure of information about the beneficiaries, i.e. the actual rights-holders of commercial entities, as well as the related issue of affiliation (dependencies) in the area of business activity. On the one hand, it is clear that in order to protect the rights of public entities an indefinite number of persons engaged in contracting ensures that stakeholders receive relevant and reliable information on needed processes, products, and services. On the other hand, it is important to determine the extent of the disclosure of this information so as not to harm the businesses in the use of information systems. In other words, we may explain that with the help of civil law means a reasonable and fair balance in

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<sup>1</sup> Portal of international private law: [Web resource]. URL: [www.privlaw.ru](http://www.privlaw.ru).

matters of disclosure of information about entrepreneurs may be found. The search for this balance in legislative action is still on-going. Perhaps this is why discussions on the issues of affiliation and disclosure of information in business are so lively.<sup>1</sup>

Also, paragraph 2.1, Section III of the Concept addresses the problem of the imperfections in the existing system of state registration of legal persons that supports fertile legal ground for a range of abuses – corporate absorption and the creation of so-called “one-day firms.” The latter are used for the commission of such offenses as the exclusion of illegal property, avoiding legal liability (its minimization), and tax avoidance, among others.

Exploring the issues of abuse indicated in civil law practice, the basic aim of the reforms made under the Concept should be noted. The aim is to ensure a stable civil turnover that will correspond to current market realities, including by removing abuses from the field of civil relations, and by limiting the possibility of such abuses, particularly in the area of invalid contracts. It seems that with regard to the content of current judicial practice, the legal structure in reference to the abuse of law is increasingly used in commercial courts to deal with these abuses.<sup>2</sup> One proof of this is the evaluation of the Concept as a kind of anti-corruption code of proposals for improving Russian civil legislation. Thus it can be argued that the stability of the civil company, its sustainable development, depends on the effective use of all the capacity of the civil law, all of its designs, including as regards abuse and considered within the framework of law enforcement.

In the fight against corruption, one expression that has drawn particular attention is the new term to “circumvent the law,” from the Federal Law dated December 30, 2012 No. 302-FZ; at the same time, this term appears in the slightly modified form of “circumvention of the law for an unlawful purpose” in paragraph 1, Article 10 of the Civil Code. As stated in that paragraph, the initiation of civil proceedings is not permitted solely for the purpose of causing harm to another person, for actions in circumvention of the law for an unlawful purpose, and otherwise deliberately for the unfair exercise of civil rights. If proceedings are nevertheless initiated for such designs, as a general rule, the court or arbitral tribunal can take into account the nature and consequences of the abuse, fully or partially reject the claim for protection of rights, and apply other measures stipulated by law. However, the consequences of this rule apply only if other consequences of such abuse are not set out elsewhere in the Civil Code.

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<sup>1</sup> Interview with the President of the Supreme Commercial (Arbitrazh) Court of the Russian Federation Ivanov A.A. by the newspaper “Kommersant” [electronic resource] // Official site of the SAC. News from 31.07.2012, [www.arbitr.ru:80/press-centr/news/57874.html](http://www.arbitr.ru:80/press-centr/news/57874.html).

<sup>2</sup> Resolution of the Presidium of the Supreme Commercial (Arbitrazh) Court of the Russian Federation of 13.12.2011, number 10473/11 on case number A07-16356/2009 // Bulletin of the SAC. 2012. № 4.

The proposed mechanism to counteract the circumvention of the law for an unlawful purpose is a rather controversial legal construction, for it leads to a certain arbitrariness in court practice, meaning, at least in the form of how it proposes to consolidate civil legislation, the unlimited discretion of the court. To a large extent this situation is due to the lack of a legal definition of the category “circumvention of the law for an unlawful purpose.” However, in doctrine and in practice, in the understanding of its nature for example, the circumvention of the law is sometimes based on a purely literal interpretation of existing legal norms.

The legal category “for an unlawful purpose,” which was absent in the Concept, is thus a matter of some debate. In particular, some questions arise in connection with the addition of these words (to the original “circumvention of the law”): What is an “unlawful purpose” for evading the law? Does it follow that there is a circumvention of the law for a lawful purpose? In answer to the second question we often hear that there cannot be the circumvention of the law for a legitimate object. But why, then, did the legislator make this addition?

In the legal category of “circumvention of the law for an unlawful purpose,” civil law provides a real legal means of combating abuse in civil turnover, such as bypassing via donation property rights to acquire shares for third parties (gift of a share, the subsequent sale of the entire “package”), violation of the right to participate in the privatization of public property by the construction of a unitary enterprise, and so on. It should be noted that this kind of legal construction has already been applied in court practice, for example, in relation to the area of the invalidity of transactions, an area in which the legal structure demonstrates its efficiency in countering the circumvention of the law and to which we shall shortly turn our attention.

In general, from the above it is clear that civil law provides a range of legal instruments that can be used in the fight against corruption and which can be described in general as a system. By its nature this is the legal system of prevention and combating abuse in the civil sphere, which provides, in addition, a certain openness of information on the implementation of the civil law. Such a system is expressed in the Civil Code of the Russian Federation and in other acts of civil legislation, for example, in the law on state and municipal procurement.

Let us now focus on one part of the designated system – the invalidity of transactions. In the overall system of the civil law legal instruments that can be used to fight against corruption, the invalidity of transactions has a relatively independent position. An important element of the legal structure, enshrined in civil law, must be the legal consequences of the invalidity of transactions. Just consider the impact of Article 169 (“Invalidity of transactions made with a purpose contrary to the principles of public order and morality”) of the Civil

Code, which is set out in the Federal Law dated May 7, 2013 No. 100-FZ. (A number of jurists believe that the statutory, adverse consequences of committing such a transaction, i.e. the collection and retention by the State of all that the parties gained by the transaction, is not consistent with the nature and principles of private law.)

Paragraph 5.2.2, Section II of the Concept states that in respect of transactions carried out with an aim opposed to the principles of public order and morality, the withholding by the State of everything received under the transaction shall be applicable as an alternative consequence of the invalidity of the transaction. This action may be used within a limited range of cases which do not receive adequate sanctions in criminal or administrative law.<sup>1</sup>

In general, we may agree with such a doctrinal and practical course. Currently, this approach is embodied in the new Article 169 of the Civil Code. Nevertheless, noting only the private nature of the civil law regulations, especially with regard to Article 169, in general, it is not quite accurate. The sanctions of this article, all in all, are complex, in both private and public character. Consequently, Article 169 can be fairly broad in its reach. It is designed to protect both individuals (i.e. the public) and the parties to the transaction and is interconnected with the public interest, including the fight against corruption within the scope of civil rights. In our view, the result of the total application of the formula of Article 169 is as follows: it is subsidiary to public and legal regulation, but self-sufficient in the field of civil law.

With respect to the legal mechanisms to address this issue, use is made of the provisions outlined above and set out in Article 169 of the Civil Code, which, in fact, uses a similar design, namely, unjust enrichment. Thus, the person who receives property by corrupt transaction will be obliged to turn over to the State all the illegal income and interest as unjust enrichment.

Another legal instrument to fight against corruption is a binding obligation and compensation for damage caused due to the fact of the completion and execution of a corrupt transaction. Unfortunately, Russia has not yet signed and ratified the Council of Europe Civil Law Convention on Corruption. In particular, Article 3 “Damages” of the Convention states that each signatory state shall provide in its national legislation guarantees of the rights of persons who have suffered damage as a result of corruption to file a lawsuit in order to obtain full compensation for the damage. And such compensation may cover real damage caused, loss of profits, and compensation for other types of damage.

On the basis of the text of the Convention, the defendant stands as a person who committed an act of corruption. As stated in Article 2, the definition of corruption is

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<sup>1</sup> Krjazhevskih K.P. Nedejstvitel'nost' sdelki, sovershennoj pod vlijaniem vzjatki i inyh korrupcionnyh dejstvij [The invalidity of transactions made under the influence of bribery and other corrupt practices] (in Russian) // Bulletin of the civil law. 2012.

“the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any ... [public official], for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions.”<sup>1</sup>

The inclusion of this provision in Russian legislation requires an answer to the following question: Who can be considered a victim of corrupt offenses (transactions)? First of all, states and local government institutions themselves, in that their administrative interests have suffered as the result of corruption. However, the victims, in our view, are those natural and legal persons who have not received expected lawful benefits and preferences as a result of the commission of unlawful corrupt transactions. Thus, victims also include those many third parties that are not direct participants to the corrupt transaction,<sup>2</sup> but, as a consequence of it, suffer violations of their rights, freedoms, and legitimate interests. This fact requires, in our opinion, the active use of domestic law enforcement practices in the fight against corruption, for the protection of legitimate rights and interests.

Current legislation on consumer protection provides specific legal instruments by which quite effective legal protection of individuals with the status of consumers is made. One such legal instrument, which is set down in Article 45 of the Federal Law “On Protection of Consumers Rights,” is consumer associations. Our proposal in the fight against corruption is to make use of this approach, of course with the necessary legal modifications, by the statutory formation of special non-profit organizations, functioning similarly to consumer associations, which could, in conjunction with the appropriate law enforcement authorities and for a certain fee, directly established by law, file claims for actual damage suffered, loss of earnings, and compensation for moral injury resulting from corrupt transactions.<sup>3</sup> In addition, in our opinion, these special non-profit organizations should qualify for some form of financial compensation for assisting the competent law enforcement authorities in the detection and investigation of corruption violations.<sup>4</sup>

<sup>1</sup> Novak D.V. Kommentarij k Postanovleniju Plenuma Vysshego arbitrazhnogo Suda Rossijskoj Federacii ot 10 aprelja 2008 goda №22 «O nekotoryh voprosah praktiki rassmotrenija sporov, svjazannyh s primeneniem stat' 169 Grazhdanskogo kodeksa Rossijskoj Federacii» [Commentary to Decree of the Plenum of the Supreme Arbitration Court of the Russian Federation on April 10, 2008 № 22 “On some issues of practice dealing with disputes relating to the application of Article 169 of the Civil Code of the Russian Federation”] (in Russian) // Bulletin of the civil law. № 2. P. 188-199

<sup>2</sup> Blinova M.L. Nedejstvitel'nost' sdelki, sovershennoj s cel'ju protivnoj osnovam pravoporjadka i npravstvennosti [The invalidity of the transaction, in order to perfect the opposing principles of public order and morality] (in Russian): Thesis Diss. Candidate of Legal Science. M., 2003.

<sup>3</sup> Ispolnitel'noe proizvodstvo: processual'naja priroda i civilisticheskie osnovy [Executive production: a procedural nature and civil basis] (in Russian) / ed. D.Kh. Valeev and M.Ju. Chelyshev. M., 2007. P. 80-87.

<sup>4</sup> Borkov V.N. O neobходимosti kriminalizacii uchastija v korrupcionnoj sdelke i organizacii korrupcionnoj grupy [On the need to criminalize participation in corrupt transactions and the organization of corruption] (in Russian) // Russian Law Journal. 2012. № 2; Iljushina M.N. Nedejstvitel'nost' sdelok kak grazhdansko-pravovoe posledstvie korrupcionnyh pravonarushenij [The invalidity of transactions as the civil law consequences of corruption offenses] (in Russian) // The laws of Russia: experience, analysis, and practice. 2009. № 12. P. 26-31.

The statutory formation of special non-profit organizations creates the legal personality of a civil law remedy that would serve the purpose of legal support of the public interest in fighting, and if not eliminating then minimizing, corruption. It should be emphasized that without the use of a variety of legal forms the realization of this public interest in any civilized society is, in fact, unlikely.

### Conclusion

The effectiveness of the civil law means of combating corruption to a large extent depends on the use of the legal means of other branches of the law, primarily branches of public law. As such, it can be argued that the anti-corruption mechanism should be unified, cross-sectoral, and sub-divided to take into account the interacting components of the business environment and society. In this regard we find expression of the general legal principle of unity and differentiation in regulation.

Quite clearly, the interdisciplinary nature of the legal instruments used in the fight against corruption is shown by the example used here of terminology. Moreover, this terminology – as a whole, this activity – often of a cross-sectoral nature, is formed at the intersection of civil (private) law and public law and includes the use of both. Generally speaking, as long as it is necessary to recognize that in domestic legislation a unified interdisciplinary terminological system has not yet fully developed, the government cannot provide effective control of the various manifestations of corruption.

The famous Russian jurist Professor G.F. Shershenevich wrote that a legal transaction refers to an expression of will which is directly aimed at a specific legal consequence, that is, the establishment, modification, or termination of legal relations.<sup>1</sup> Accordingly, in contrast to legitimate transactions, corrupt transactions violate the foundations of law and order, those normative legal acts which regulate social relations in both the public and the private sector. However, a corrupt transaction from the purely formal, external viewpoint can meet the requirements of all the legal private law statutes. Nevertheless, its unlawful aim, such as the legalization of income obtained through corrupt activities, should witness its illegality. This is the “duality” of such transactions, revealed as well in their skill in the use of the legal instruments on the invalidity of transactions (Arts. 168, 169, 170, etc. of the Civil Code).

On the basis of the marked qualitative characteristics of the corrupt transaction, it is possible to offer the following definition: it does not correspond to the law or other normative legal acts; it is an anti-social transaction that violates the foundations of

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<sup>1</sup> Shershenevich G.F. *Uchebnik russkogo grazhdanskogo prava* [Russian civil law textbook] (in Russian). M., 1911. P. 310-312.

morals and public order; the transaction is invalid for other reasons which, from the standpoint of the interests of at least one of the parties, have a clear orientation of unlawful course. We must recognize that for practical purposes this definition is still in need of doctrinal modernization.

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## COMMENTS

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**HEADS OF STATE AND OTHER OFFICIALS  
AND THE INTERNATIONAL CRIMINAL COURT:  
A COMMENTARY ON ARTICLE 27 OF THE ROME STATUTE  
OF THE INTERNATIONAL CRIMINAL COURT**

**Abstract:** The article is a commentary on Article 27 of the Rome Statute of the International Criminal Court. The two paragraphs of Article 27 relate to two distinct concepts: *criminal responsibility* of government officials and procedural *immunities* attached to officials. Thus the author argues that in order to correctly interpret Article 27 each paragraph must be assessed separately. Which is what the author then embarks upon, with particular focus on “substantial immunity”, in relation to Article 27(1), and “personal immunity”, in relation to Article 27(2), in respect of the Court’s activities, with case examples, and providing observations and critique along the way.

**Keywords:** International Criminal Court (ICC), Rome Statute, principles of criminal law, immunity, criminal responsibility, *rationae materiae*

Article 27 of the Rome Statute establishing the International Criminal Court (ICC or “the Court”) reads:

### **Irrelevance of official capacity**

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

1. The two paragraphs of Article 27 in Part III titled “General Principles of Criminal Law” express two different principles as to their origin and their object. The first is related to *criminal responsibility* of government officials; the second deals with procedural *immunities* attached to officials. These are two distinct concepts. As the International Court of Justice has held:

[I]mmunity from criminal jurisdiction and individual criminal responsibility are quite separate concepts. While jurisdictional immunity is procedural in nature, criminal responsibility is a question of substantive law. Jurisdictional immunity may well bar prosecution for a certain period or for certain offences; it cannot exonerate the person to whom it applies from all criminal responsibility.<sup>1</sup>

2. It is thus opportune, for correctly interpreting Article 27, to assess Article 27(1) and Article 27(2) separately.

#### **I. Article 27(1)**

3. Article 27(1) is about *criminal responsibility* and states that the responsibility of a person for having committed a crime under the Rome Statute cannot be excluded, or alleviated, for the reason that this person is a State “official”, whatever his rank as an “official”. It “clearly refers to immunities *rationae materiae*”.<sup>2</sup> Its object is to neutralize the so-called “substantial immunity” (or immunity *rationae materiae*) that could otherwise be argued against the exercise by the Court of its jurisdiction.

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<sup>1</sup> *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, I.C.J. Reports 2002, p. 3, p. 26, par. 60.

<sup>2</sup> P. Gaeta, “Official Capacities and Immunities”, in A. Cassese et al. (eds), *Commentary on the International Criminal Court* (2002), vol. I, p. 975, spec. p. 978.

**(a) “Substantial immunity” before national and international courts**

i) Before National Courts

4. Under “substantial – or *rationae materiae* – immunity”, a State official should not be sued by another State for the acts he has performed in the discharge of his functions. But the scope and *rationale* of this rule is unclear. As a matter of fact, where national courts commonly apply it in civil matters, their practice as regards criminal proceedings has always been more confused.<sup>1</sup>

– *A confused position*

5. The famous *Caroline* case first illustrates this confusion.<sup>2</sup> In the context of the Canadian rebellion of 1837, a British officer, Captain Alexander McLeod, ordered his troops to attack the rebel ship *Caroline* in the US port of Fort Schlosser. The British killed a number of men and set the ship on fire. Among the dead were two Americans. Captain McLeod was later arrested in the United States on charges of murder and arson. In replying to the request by the British Government for the immediate release of McLeod on the ground that he had been performing an act of public duty for which he could not be made personally and individually answerable,<sup>3</sup> US Secretary of State Daniel Webster accepted “[t]hat an individual forming part of a public force, and acting under the authority of his Government, is not to be held answerable, as a private trespasser or malefactor, is a principle of public law sanctioned by the usages of all civilised nations, and which the Government of the United States has no inclination to dispute ... [W]hether the process be criminal or civil, the fact of having acted under public authority, and in obedience to the orders of lawful superiors, must be regarded as a valid defence; otherwise individuals would be holden responsible for injuries resulting from the acts of Government, and even from the operations of public war.”<sup>4</sup> It must be underlined that this was the position of the administration only. For its part, the New York Supreme Court of Judicature denied that McLeod was entitled to immunity and did not confirm the position of the US executive branch.<sup>5</sup>

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<sup>1</sup> D. Akande and S. Shah, “Immunities of State Officials, International Crimes, and Foreign Domestic Courts”, *EJIL*, 21(2011), 815-852, p. 826.

<sup>2</sup> R. Y. Jennings, “The *Caroline* and *McLeod* Cases”, *AJIL*, vol. 32 (1938), p. 82-99.

<sup>3</sup> C. I. Keitner, “Adjudicating Acts of State”, in J. N. Moore, *Foreign Affairs Litigation in United States Courts*, 2013, 49-66, at 55-56.

<sup>4</sup> Quoted in the *Blaskic Subpoena* Decision, *op. cit.*, at fn. 43.

<sup>5</sup> C. I. Keitner, “Adjudicating Acts of State”, *op. cit.*, p. 57.

6. More recently, concerning crimes committed by officials in their home territory, a line was drawn in the *Pinochet* case between those crimes which are “ordinary” and those which are international, and the UK House of Lords considered that Pinochet could rely on functional immunity for the “ordinary crimes” committed in Chile in his capacity as Head of State, on the ground that they were governmental acts despite their criminal nature. Concerning crimes committed by the officials of a State in the territory of another State, it is not clear whether they could be seen as “ordinary crimes” – and therefore covered by functional immunity. Arguments in this sense are less than convincing. It is sometimes suggested that in such a situation functional immunity would be due to the extent that the presence of the State official is known and accepted by the foreign State,<sup>1</sup> but it seems clear that such consent could hardly be deemed to cover the commission of crimes.

7. Concerning *international* crimes committed abroad, it seems largely accepted that they cannot give rise to a functional immunity. In this sense, it is accepted that the commission of war crimes or acts of espionage and sabotage carried out in the territory of a foreign State are not “normal” acts of States,<sup>2</sup> and one can assume that the position is the same concerning any type of international crime. More generally, as for acts committed in the home territory as well as abroad, some authors have suggested that crimes under international law would not qualify as acts of States because they would not fall within the *normal* functions of the State.<sup>3</sup> This approach, focused on the very nature of the act, has been challenged by arguing that such crimes are always “committed by or with the support of high-ranking officials as part of a state’s policy”,<sup>4</sup> but this misses the point, because the fact that an act has been committed by an official does not necessarily mean that it has the nature of a “normal” act of a State. This is indeed what the *Eichmann* judgment suggests when it states that notwithstanding the fact that the crimes in the case were the fact of a “State”, they were to be defined as the fact of a “gang of criminals”.<sup>5</sup> The same idea emerges from the *Pinochet* case, about which Brigitte Stern commented as follows: “[W]hatever the restrictions in the reasoning used by the Lords, it seemed that what emerged is that ‘international crimes in the highest sense’ cannot

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<sup>1</sup> *Ibid.*, p. 13.

<sup>2</sup> See, e.g., J. Foakes, *Immunity for International Crimes? Development in the Law on Prosecuting Heads of State in Foreign Courts*, Chatham House, Briefing Paper, International Law Programme, Nov. 2011, IL BP 2011/02, p. 12-13.

<sup>3</sup> *Ibid.*, p. 124, par. 191.

<sup>4</sup> *Ibid.*, p. 126, par. 192; see also D. Akande and S. Shah, “Immunities of State Officials, International Crimes, and Foreign Domestic Courts”, *op. cit.*, p. 832, spec. fn. 78.

<sup>5</sup> See Secretariat of the ILC, *Memorandum on “Immunity of State officials from foreign criminal jurisdiction”*, *op. cit.*, p. 37, par. 57.

per se be considered as official acts.”<sup>1</sup> A more convincing argument stressed against the relevance of the “normal act of State” standard consists in saying that “at the stage of proceedings during which immunity is raised it will not yet have been established that the State has acted illegally”,<sup>2</sup> so that the “standard” is not workable. In order to avoid these inconsistencies, another approach is simply to consider that there is an exception in international law according to which there is no functional immunity in cases where the individual is responsible for crimes under customary international law.<sup>3</sup>

8. In any event, the position has not stabilized, leading one author to go as far as to deny the very existence of the rule, arguing that “recent practice points to, if anything, non-immunity from criminal proceedings and provides no authority in favour of immunity”,<sup>4</sup> with notable reference to the *Rainbow Warrior* case in which New Zealand never accepted to lift the personal responsibility of the two French officers involved in the bombing of the Greenpeace ship *Rainbow Warrior*, despite the admission by the French Government that they had been acting as State officials.<sup>5</sup> If the denial of the rule as a consequence of these hesitations seems excessive, still the reasons why a different solution should be adopted in civil and criminal proceedings should be clarified. Precision regarding the *rationale* of the “substantial immunity” rule can shed some light on this question. Two avenues have to be envisaged: the “attribution” avenue and the “State immunity” avenue.

– *The “attribution” avenue*

9. A first approach contends that when a State official has acted on behalf of a State, these acts have to be seen as attributable to the State, not to its official. Accordingly, State officials should not suffer the consequences of wrongful acts not attributable to them personally but to the State on whose behalf they have acted.<sup>6</sup> Apparently, this *rationale*

<sup>1</sup> Brigitte Stern, “Immunities for Heads of State: Where Do We Stand?”, in M. Lattimer and P. Sands (eds), *Justice for Crimes Against Humanity* (Hart Publishing, forthcoming, November 2003), p. 103.

<sup>2</sup> D. Akande and S. Shah, “Immunities of State Officials, International Crimes, and Foreign Domestic Courts”, *op. cit.*, p. 830.

<sup>3</sup> S. Zappalà, Do Heads of State in Office Enjoy Immunity from Jurisdiction for International Crimes? The Ghaddafi Case before the French Cour de Cassation, *European Journal of International Law*, 12/2001, p. 595 ff., at p. 601; Secretariat of the ILC, Memorandum on “Immunity of State officials from foreign criminal jurisdiction”, *op. cit.*, p. 127 ff.

<sup>4</sup> M. Tomonori, “The Individual as Beneficiary of State Immunities, Problems of the Attribution of Ultra Vires Conduct”, 29 *Denver Journal of International Law and Policy*, (2001), 101-127, at p. 103.

<sup>5</sup> See also J. Charpentier, “L’affaire du Rainbow Warrior: le règlement interétatique”, *AFDI*, vol. 32, 1986. p. 873-885, at p. 882.

<sup>6</sup> A. Cassese, “Peut-on poursuivre des hauts dirigeants des États pour des crimes internationaux?” À propos de l’affaire Congo c. Belgique (CIJ) in *Revue de science criminelle et de droit pénal comparé*, vol. 3 (2002), p. 479-499, at p. 682; H. Kelsen, *Principles of International Law* (New York, Holt, Rinehart and Winston), 1952, p. 358 and 359; E. David, *Éléments de droit international pénal et européen*, Bruylant, Bruxelles, 2009, p. 58; M. Tomonori, “The Individual as Beneficiary of State Immunities, Problems of the Attribution of Ultra Vires Conduct”, *op. cit.*, p. 117.

has been strongly supported by the Appeal Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) in the famous *Blaskic Subpoena* Decision:

Such officials are mere instruments of a State and their official action can only be attributed to the State. They cannot be the subject of sanctions or penalties for conduct that is not private but undertaken on behalf of a State. In other words, State officials cannot suffer the consequences of wrongful acts which are not attributable to them personally but to the State on whose behalf they act: they enjoy so-called ‘functional immunity’.<sup>1</sup>

10. According to the “non attribution” justification, a foreign domestic court should not immediately decline its jurisdiction but should rather consider, on the merits, that the State official is not responsible for the act contested, if this court is convinced that the act is effectively to be attributed to the State. This is not a question of immunity, which is procedural in nature – and the notion of “substantial immunity” is therefore misleading, rather it is a question of attribution. Even if, as argued, it “must logically be considered before”,<sup>2</sup> it still pertains to the merits. The jurisdictional proceedings, in this context, will be directed to enquire whether the act contested should or should not be attributed to the State only. If this is the case, the court will decide that the person sued cannot be held responsible for this act. A recent decision of the French Cour de Cassation (19 March 2013) seems to adopt this approach.<sup>3</sup> In this decision, the court acknowledges that “la coutume internationale, qui s’oppose à la poursuite des Etats et de leurs dirigeants devant les juridictions pénales d’un Etat étranger, s’étend à ses organes et agents en raison d’actes qui relèvent de la souveraineté de l’Etat concerné”, but holds that “le juge d’instruction a l’obligation d’informer sur tous les faits résultant de la plainte, sous toutes les qualifications possibles, et que cette obligation n’est pas contraire en son principe à l’immunité de juridiction des Etats étrangers et de leurs représentants”. This recent decision clearly contrasts with the 2009, often-cited Rumsfeld proceedings in which a French prosecutor immediately rejected a complaint against former US Secretary of Defence Donald Rumsfeld, which was based on allegations of acts of torture at Guantanamo Bay and Abu Ghraib, for the reason that he was immune from prosecution for acts performed in the exercise of the functions of his office.<sup>4</sup>

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<sup>1</sup> *Prosecutor v. Blaskic*, IT-95-14-AR108bis, Judgment on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, 29 Oct. 1997 (“*Blaskic Subpoena* Decision”), par. 38.

<sup>2</sup> R. A. Kolodkin, Special Rapporteur of the ILC, Second report on immunity of State officials from foreign criminal jurisdiction, A/CN.4/63, p. 14, par. 25.

<sup>3</sup> Cass. Crim., 12-81676, 19 mars 2013.

<sup>4</sup> See, e.g., D. Akande and S. Shah, “Immunities of State Officials, International Crimes, and Foreign Domestic Courts”, *EJIL*, 21(2011), 815-852, p. 826, fn. 51.

11. The standard for the verification that the act is to be attributed to the State is of course controversial.<sup>1</sup> Under a first evaluation, the act should be deemed to be that of the State only to the extent that the person has acted in his or her official capacity – whatever the nature of the act. For some authors, and this could seem quite logical, the attribution of an act to a State – and, consequently, not to a person – in this context should be made in the light of the Articles on Responsibility of States for Internationally Wrongful Acts of the International Law Commission (ILC).<sup>2</sup> As a consequence, conduct will qualify as official provided it has been accomplished under the colour or in ostensible exercise of a State's public authority. The problem with this approach is that if accepted, the admitted rule that a State has the possibility to waive the immunity of its officials, which is common practice,<sup>3</sup> would be groundless. First, it would be absurd to accept that the entity to which the fact is attributable may decide to “waive” this attribution by way of a unilateral act. Second, the rules of attribution codified in the ILC Articles do not permit such a waiver. For these reasons, it could be contended that the reference to the ILC Articles of 2001 is not convincing in relation to criminal responsibility.<sup>4</sup> Moreover, criminal responsibility is not addressed by these Articles, neither directly nor indirectly, because the customary rules of attribution regarding the responsibility of States for internationally wrongful acts, which is “civil” in nature, are clearly not relevant concerning criminal responsibility. Finally, after a cautious examination one could submit that the rules of attribution in criminal responsibility matters should be those applied in international law concerning international crimes.

– *The “protection of State immunity” avenue*

12. Another legal argument can offer a justification for the so-called “functional immunity” of State officials, namely the jurisdictional immunity of States themselves, which could easily be bypassed if State officials could be sued before foreign courts. Indeed, the ILC has observed: “[A]ctions against ... representatives or agents of a foreign Government in respect of their official acts are essentially proceedings against the State they represent.”<sup>5</sup> Obviously, States cannot act but through organs and, ultimately,

<sup>1</sup> See, e.g., M. Tomonori, “The Individual as Beneficiary of State Immunities, Problems of the Attribution of Ultra Vires Conduct”, *op. cit.*

<sup>2</sup> R. A. Kolodkin, Special Rapporteur of the ILC, Second report on immunity of State officials from foreign criminal jurisdiction, A/CN.4/63, p. 14, par. 24; Secretariat of the ILC, Memorandum on “Immunity of State officials from foreign criminal jurisdiction”, 31 March 2008, A/CN.4/596, p. 102, par. 155.

<sup>3</sup> See Secretariat of the ILC, Memorandum on “Immunity of State officials from foreign criminal jurisdiction”, 31 March 2008, A/CN.4/596, p. 160-176, par. 246-269.

<sup>4</sup> It thus seems that functional immunity is generally, save in rare cases, not recognized in *ultra vires* cases; see M. Tomonori, “The Individual as Beneficiary of State Immunities, Problems of the Attribution of Ultra Vires Conduct”, p. 122-123.

<sup>5</sup> Draft articles on Jurisdictional Immunities of States and Their Property, with commentaries, 1991, Yearbook of the International Law Commission, 1991, vol. II, Part Two, p. 18, par. 18.



natural persons, so that denying immunity to State officials would lead to depriving the jurisdictional immunity of States of any protecting effect. Surprisingly, it seems that this *rationale* is also reflected in the *Blaskic Subpoena* Decision:

It is well known that customary international law protects the internal organization of each sovereign State: it leaves it to each sovereign State to determine its internal structure and in particular to designate the individuals acting as State agents or organs. Each sovereign State has the right to issue instructions to its organs, both those operating at the internal level and those operating in the field of international relations, and also to provide for sanctions or other remedies in case of non-compliance with those instructions. The corollary of this exclusive power is that each State is entitled to claim that acts or transactions performed by one of its organs in its official capacity be attributed to the State, so that the individual organ may not be held accountable for those acts or transactions.

The general rule under discussion is well established in international law and is based on the sovereign equality of States (*par in parem non habet imperium*).<sup>1</sup>

13. Under this second justification, the *rationale* of the “substantial immunity” – which is, in this case, a true immunity – is that a State may not try a person for a criminal act that constitutes an act of another State. The immunity is due to the act, not to the person. The difficult question here is not to know in what capacity the person acts, but to ascertain whether the act is an act of the State. Different standards are possible to apply. An “organic” standard would be to consider that an act is an act of the State if it is attributable to the State, in the same manner as under the first justification discussed above – this would lead to merging the two *rationales*. Another standard would be that an act is an act of the State if it presents the nature of such an act. This position supposes the establishment of a standard of “normality” for State conduct and therefore recalls the standard of “reasonable conduct” traditionally applied in common law. It finds some support in practice,<sup>2</sup> as seen at paragraphs 6 and 7 above, but it is of course difficult to assess what normal conduct of a sovereign and independent State is. For this reason, the first avenue explored above appears more practicable in interstate relations.

#### ii) Before International Tribunals

14. Whatever its *rationale*, “substantial immunity” is generally inapplicable before international criminal tribunals. In effect, Article 7 of the Charter of the International Military Tribunal states:

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<sup>1</sup> *Prosecutor v. Blaskic*, IT-95-14-AR108bis, Judgment on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, 29 Oct. 1997 (“*Blaskic Subpoena* Decision”), par. 41.

<sup>2</sup> *Ibid.*, p. 125, fn. 539.

The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment.

Building on this precedent, Principle III of the Principles of International Law recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal, adopted in 1950 by the International Law Commission<sup>1</sup> and approved by the UN General Assembly,<sup>2</sup> expresses:

The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

According to Article 6 of the Charter of the International Military Tribunal for the Far East:

Responsibility of Accused. Neither the official position, at any time, of an accused, nor the fact that an accused acted pursuant to order of his government or of a superior shall, of itself, be sufficient to free such accused from responsibility for any crime with which he is charged, but such circumstances may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

In the same vein, Article IV of the 1948 Genocide Convention states:

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

The Statute of the International Criminal Tribunal for the former Yugoslavia states at Article 7(2):

The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

But paragraph 4 adds:

The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.

Article 6(2) and Article 6(4) of the Statute of the International Criminal Tribunal for Rwanda reproduce these provisions. According to Article 6(2) of the Statute of the Special Court for Sierra Leone: “[T]he official position of any accused persons, whether as Head of State or Government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment.”

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<sup>1</sup> *Yearbook of the International Law Commission*, 1950, Volume II.

<sup>2</sup> Resolution 488, 12 December 1950.

15. In view of this generalized conventional practice, it is not surprising that the Rome Statute also contains a provision to the effect of neutralizing the so-called “substantial immunity” of any kind of “officials”.

***(b) No “substantial immunity” before the ICC***

16. The first sentence of Article 27(1), which is a particularity of the Statute, has given rise to controversies in relation to Article 63(1) of the same Statute. The former establishes –

This Statute shall apply equally to all persons without any distinction based on official capacity,

while the latter states –

The accused shall be present during the trial.

These two provisions have given rise to questions in cases where the accused requested to be released of their obligations to assist at all the hearings, in order to keep the possibility, during the trial, of performing their duties as State officials. Indeed, as observed by the ICC:

[This] necessarily provokes the question whether the accused’s request for excusal from the duty to be present during the trial may be properly granted to him on the grounds that he requires the indulgence in order to permit him to perform the duties of his office.<sup>1</sup>

17. In the case of *Mr Ruto’s Request for Excusal from Continuous Presence at Trial*, the Trial Chamber based its answer on an interpretation of Article 27(1) and held that the central principle captured by this provision is that the official position of the accused does not shield him against the jurisdiction of the Court for purposes of inquiring into his or her own individual criminal responsibility for crimes proscribed in the Statute, and that excusing an accused from continuous presence at trial under certain circumstances does not defeat that purpose.<sup>2</sup> This contention is nevertheless far from convincing, since it does not question the sense of the first sentence of Article 27(1), and in the end seems to deny it any effect. On appeal, the Appeal Chamber took the more cautious position that the interpretation of Article 63(1) should not be “unduly rigid” and thus permits exceptions,<sup>3</sup> and observed that in Mr Ruto’s case: “[T]he test for excusal set out by the Trial Chamber was not premised on Mr Ruto’s important

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<sup>1</sup> *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, ICC, Decision on Mr Ruto’s Request for Excusal from Continuous Presence at Trial, Trial Chamber V(A), ICC-01/09-01/11, 18 June 2013, par. 65.

<sup>2</sup> *Ibid.*, par. 70.

<sup>3</sup> *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Judgment on the appeal of the Prosecutor against the decision of Trial Chamber V(a) of 18 June 2013 titled “Decision on Mr Ruto’s Request for Excusal from Continuous Presence at Trial”, ICC-01/09-01/11 OA 5, 25 October 2013, par. 50.

function, but on the more general requirement of exceptional circumstances.”<sup>1</sup> But here again this argument aims at demonstrating that the *second* sentence of Article 27(1) has been respected (no “substantial immunity” has been granted), and brings no clear answer concerning the interpretation of the *first* sentence which reverts to the question of equality before the Court.

18. Finally, the interpretation of the first sentence of Article 27(1) has been addressed in the case of *Uhuru Muigaikenyatta’s Request for Conditional Excusal from Continuous Presence at Trial*. In this case, the Trial Chamber discussed the notion of equality and held that the first sentence of Article 27(1) provides indeed that the Statute ‘shall apply equally to all persons without any distinction based on official capacity’. However, the Prosecution’s submission is that this requirement of equality before the law precludes taking into consideration the particular circumstances and responsibilities of an accused.

113. The submission is misconceived. For one thing, such an interpretation of Article 27 will provide a basis for an accused to insist upon identical treatment between him and the Prosecutor herself. But more importantly, the ad hoc tribunals have repeatedly rejected the view that equality demands identical treatment of parties in all circumstances. Rather, the concept of equality, as explained by the Appeals Chamber of the ICTY, is to ensure that each party has ‘equal access to the processes of the Tribunal, or equal opportunity to seek procedural relief where relief is needed’. This does not equate to a right to equal relief ‘when the circumstances are quite different in each case’, unless of course some basis for granting equal relief has been shown.<sup>2</sup>

19. The second sentence of Article 27(1) of the Rome Statute establishes the now classic conventional rule that “[i]n particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence”. As held by the ICC:

The central principle captured in Article 27 then is that the official position of the accused does not shield him against the jurisdiction of the Court for purposes of inquiring into his or her own individual criminal responsibility for crimes proscribed in the Statute. Indeed, the struggle against impunity for crimes that shock the conscience of humanity, being the *raison d’être* of the ICC, is a hopelessly lost cause without that cardinal principle of modern international criminal law.<sup>3</sup>

<sup>1</sup> *Ibid.*, par. 58.

<sup>2</sup> *The Prosecutor v. Uhuru Muigaikenyatta*, Decision on Defence Request for Conditional Excusal from Continuous Presence at Trial, ICC-01/09-02/11, 18 October 2013, par. 111 ff.

<sup>3</sup> *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, ICC, Decision on Mr Ruto’s Request for Excusal from Continuous Presence at Trial, Trial Chamber V(A), ICC-01/09-01/11, 18 June 2013, par. 69.

20. If *prima facie* this provision suggests no particular problem of interpretation, and if there is obviously no reason to believe that such a provision could be seen as contrary to a peremptory norm,<sup>1</sup> one could nevertheless wonder whether it covers officials of States not party to the Statute. It is true that if the rule reflected in this provision is a customary exception to the so-called “substantial immunity”, as held by the ICTY,<sup>2</sup> then its coverage is not limited to the States Parties. But if it is a conventional rule only, then its applicability to an official of a non-State Party is more controversial. Nevertheless, the Pre-Trial Chamber of the ICC did not hesitate to consider this provision applicable to the Head of State of Sudan, Al Bashir, even though Sudan is not a State Party to the Rome Statute, on four grounds: i) the goal of the Statute is to put an end to impunity for the perpetrators of the most serious crimes; ii) Article 27 pursues this objective; iii) Article 21 of the Statute states that the interpretation of the Statute must not be made in regards to other sources, save in case of lacuna; iv) the UN Security Council referred the situation to the ICC.<sup>3</sup> None of these arguments rely on the customary nature of the rule. The three first arguments seem to suggest that the Statute is *erga omnes*, and they are disputable. The last one is the most interesting,<sup>4</sup> but not really convincing if one carefully reads the relevant resolutions of the UN Security Council.<sup>5</sup> Nevertheless, the Pre-Trial Chamber I elaborated a more convincing demonstration of the existence of a customary exception to “substantial immunity” in 2011 (see par. 29 above).

## Article 27(2)

### (a) Object and purpose of Article 27(2)

21. Article 27(2) concerns the so-called “personal immunities”, or “immunities *rationae materiae*”. They are not to be confused with the “substantial immunities” discussed above. They prohibit the exercise by a State of criminal jurisdiction against

<sup>1</sup> *Prosecutor v. Charles Taylor*, Special Court for Sierra Leone, Appeal Chamber, Decision on immunity from jurisdiction, Case No. SCSL-2003-01-AR72(E), 31 May 2004, par. 53.

<sup>2</sup> *Prosecutor v. Anto Furundzija (Trial Judgement)*, IT-95-17/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 10 December 1998, par. 140: “Article 7(2) of the Statute and Article 6(2) of the Statute of the International Criminal Tribunal for Rwanda, hereafter ‘ICTR’, are indisputably declaratory of customary international law.” See also P. Gaeta, *op. cit.*, p. 982-983, or S. Zappalà, *op. cit.*, p. 601-605.

<sup>3</sup> *Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09, Pre-Trial Chamber I, 4 March 2009, par. 41-45.

<sup>4</sup> S. Zappalà, *op. cit.*, p. 601-605.

<sup>5</sup> See in this sense P. Gaeta, “Does President Al Bashir Enjoy Immunity from Arrest?”, *Journal of International Criminal Justice*, 2009, vol. 7, p. 315, p. 329.

foreign officials protected by immunities in cases involving their public as well as private acts, even if the relevant acts were done before entry into office.<sup>1</sup> International law recognizes such personal immunities to a limited number of officials, and only as long as they are officials. While there is no argument regarding the fact that full personal immunity from criminal jurisdiction and inviolability are recognized for Heads of State, there has been debate over their extension to Heads of Government and ministers for foreign affairs.<sup>2</sup> But the International Court of Justice has clearly held:

[I]n international law it is firmly established that, as also diplomatic and consular agents, certain holders of high-ranking office in a State, such as the Head of State, Head of Government and Minister for Foreign Affairs, enjoy immunities from jurisdiction in other States, both civil and criminal.<sup>3</sup>

Furthermore, the ICJ has decided that a Minister of Foreign Affairs is entitled to full immunity:

[T]he functions of a Minister for Foreign Affairs are such that, throughout the duration of his or her office, he or she when abroad enjoys full immunity from criminal jurisdiction and inviolability. That immunity and that inviolability protect the individual concerned against any act of authority of another State which would hinder him or her in the performance of his or her duties.<sup>4</sup>

22. Article 27(2) aims at conventionally neutralizing personal immunities. But in any event these immunities make no real sense before an international tribunal. As explained by the Pre-trial Chamber I in December 2011, referring to Cassese:

[T]he *rationale* for foreign State officials being entitled to raise personal immunity before national courts is that otherwise national authorities might use prosecutions to unduly impede or limit a foreign State's ability to engage in international action ... this danger does not arise with international courts and tribunals, which are 'totally independent of States and subject to strict rules of impartiality'<sup>5</sup>

23. On its face, Article 27(2) seems quite clear and self-evident: it means in particular that a State Party cannot refuse to enforce a warrant of arrest delivered by the Court for

<sup>1</sup> D. Akande and S. Shah, "Immunities of State Officials, International Crimes, and Foreign Domestic Courts", *op. cit.*, p. 819.

<sup>2</sup> See Secretariat of the ILC, Memorandum on "Immunity of State officials from foreign criminal jurisdiction", 31 March 2008, A/CN.4/596, p. 77-84, par. 118-129.

<sup>3</sup> *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, I.C.J. Reports 2002, p. 3, p. 22-23, p. 21-22, par. 51.

<sup>4</sup> *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, I.C.J. Reports 2002, p. 3, p. 22-23, par. 53 and 54.

<sup>5</sup> *Decision Pursuant to Article 87(7) of the Rome Statute on the Failure by the Republic of Malawi to Comply with the Cooperation Requests Issued by the Court with Respect to the Arrest and Surrender of Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09, Pre-Trial Chamber 1, 12 December 2011, par. 34.

the reason that the person sought is an official from another State, and that this person is covered by immunities recognized by international law. Nevertheless, a question arises as soon as one tries to determine the articulation between this principle and Article 98(1) of the Statute, which states:

The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.

24. Certainly, it is beyond doubt that no high official of *States Parties* to the Statute can be granted personal immunities by other States Parties to which the Court addresses a request for surrender or transfer. The “construction of Article 98 according to which state parties were entitled to grant immunity to the nationals of other state parties” must be rejected.<sup>1</sup> Article 27(2) appears as a conventional agreement between States Parties, and under it States Parties have accepted to ignore immunities when the Court exercises its jurisdiction. Therefore, Article 98(1) is not relevant in this hypothesis. The Court has clearly held:

[A] waiver of immunity would obviously not be necessary with respect to a third State which has ratified the Statute. Indeed, acceptance of article 27(2) of the Statute, implies waiver of immunities for the purposes of article 98(1) of the Statute with respect to proceedings conducted by the Court.<sup>2</sup>

### ***(b) Article 27(2) and non-States Parties***

25. But problems do arise in situations where the Court addresses to a State Party a request concerning an official from a non-State Party. Article 27(2) does not contemplate this hypothesis, thus it could be interpreted as applicable in all situations, notwithstanding the fact that the person sought is an official of a non-State Party. Yet, Article 98(1) of the Statute seems to point to another solution.

26. As the Court has acknowledged, “there is an inherent tension between articles 27(2) and 98(1) of the Statute”.<sup>3</sup> Indeed, this latter provision seems to admit that a State has no obligation to arrest an official of another State that is not a Party to the Statute, in the situation where international law recognizes diplomatic immunities to the said

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<sup>1</sup> A. Paulus, “Legalist Groundwork for the International Criminal Court: Commentaries on the Statute of the International Criminal Court”, *EJIL*, 14 (2003), 843-860, p. 857.

<sup>2</sup> *Ibid.*, par. 18.

<sup>3</sup> *Ibid.*, par. 37.

person, which is normally the case concerning Heads of State in particular. In such a case, the Court must first obtain the cooperation of that third State.<sup>1</sup>

27. But the Court has followed another trend. In 2011, after having been requested by the Court to arrest the President of Sudan, the Republic of Malawi invoked Article 98(1) to reject the request, arguing that Al Bashir had been normally accorded all immunities and privileges guaranteed to every visiting Head of State and Government. The Court rejected this contention. According to the judges, Malawi simply cannot claim that it has the obligation, under international law, to grant immunities to Al Bashir, because “customary law creates an exception to Head of State immunity when international courts seek a Head of State’s arrest for the commission of international crimes”. As a consequence, “there is no conflict between Malawi’s obligations towards the Court and its obligations under customary international law”.<sup>2</sup> Of course, this position renders Article 98(1) completely meaningless. But this does not render this interpretation absurd, because this provision merely evokes the hypothesis of diplomatic immunity, without prejudging its existence.

28. More precisely, the reasoning of the Court in its December 2011 decision is twofold.

29. The first argument is based on an appreciation of current customary international law of immunities of Heads of State with respect to requests for arrest and surrender. But the four following arguments developed by the Court to demonstrate this customary rule excluding immunities when an international court requests a State arrest the Head of State of another State are rather weak, to say the least. First, the Court recalls that “immunity for Heads of State before international courts has been rejected time and time again dating all the way back to World War I”.<sup>3</sup> This is not correct: what has been rejected time and time again is the contention that a person cannot be held *responsible* for international criminal acts accomplished in an official capacity; it is related to “substantial immunities”, not to “personal immunities”. A close examination of the quotations referred to by the Court reveals that they all relate to criminal responsibility (or legal liability), not to procedural immunities in interstate relations.<sup>4</sup> Second, the Court notes that since 2002 initiating international prosecutions against Heads of State

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<sup>1</sup> See, e. g., P. Gaeta, “Official Capacity and Immunities”, in Cassese, Gaeta and Jones (eds), *The Rome Statute of the International Criminal Court: A Commentary* (Oxford, 2002), p. 1000.

<sup>2</sup> *Decision Pursuant to Article 87(7) of the Rome Statute on the Failure by the Republic of Malawi to Comply with the Cooperation Requests Issued by the Court with Respect to the Arrest and Surrender of Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09, Pre-Trial Chamber 1, 12 December 2011. par. 43.

<sup>3</sup> *Ibid.*, par. 38.

<sup>4</sup> See *ibid.*, par. 23-32.



have gained widespread recognition as accepted practice, including the “present case”.<sup>1</sup> But once again, if this shows that criminal justice is now in action, this is not relevant as far as procedural immunities in interstate relations are concerned. Third, the Court underlines that “the Statute has now reached 120 States Parties ...”.<sup>2</sup> Yet this is not sufficient to demonstrate the existence of a customary rule. On the contrary, the very fact that all the other States did not become Parties to the Statute could be seen as reflecting the absence of *opinio juris* in favour of the rule discussed. Fourth, the Court explains that Malawi cannot interpret Article 98(1) “in such a way as to justify not surrendering Omar Al Bashir on immunity grounds [because this] would disable the Court and international criminal justice in ways completely contrary to the purpose of the Statute Malawi has ratified”.<sup>3</sup> Again, this argument is clearly irrelevant as far as customary law of immunities is concerned.

30. The second argument proposed by the Court is more convincing. According to it, “when cooperating with this Court and therefore acting on its behalf, State Parties are instruments for the enforcement of the *jus puniendi* of the international community whose exercise has been entrusted to this Court when States have failed to prosecute those responsible for the crimes within its jurisdiction”.<sup>4</sup> Consequently, the customary rule of immunity applicable in interstate relations is simply not relevant when a State acts under the request of the Court, because in this case the requested State does not act as a State but as an instrument of the international community. The reasoning is interesting, but dangerous, because it takes for granted that the Court, an international organization with 120 States Parties “only”, *does* represent the international community as a whole. This could be an open door for any other international criminal court established by any group of States to contend that it is not bound by the customary rules of immunities of Heads of State. This danger could explain the position of the Security Council, which at the moment of the writing of this commentary, did not follow the Court in this trend, despite the Court’s insistence.<sup>5</sup>

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<sup>1</sup> *Ibid.*, par. 39.

<sup>2</sup> *Ibid.*, par. 40.

<sup>3</sup> *Ibid.*, par. 41.

<sup>4</sup> *Ibid.*, par. 46; see in this sense C. Kress, “The international Criminal Court and Immunities under International Law for States Not Party to the Court’s Statute”, in Morten Bergsmo and LING Yan (eds), *State Sovereignty and International Criminal Law*, FICHL Publication Series No. 15 (2012) TOAEPublisher, Beijingn 2012, p. 223-265, spec. p. 246-250.

<sup>5</sup> According to a press release of 13/12/2011: “The Chamber has informed the United Nations Security Council and the Assembly of States Parties to the Rome Statute of Omar Al Bashir’s visits to Djibouti, Chad and Kenya, as well as of the non-cooperation of the Republic of Malawi in arresting Mr Al Bashir. The Chamber had also informed the Security Council of the non-cooperation of Sudan with the Court concerning the arrest and surrender of Mr Ali Kushayb and Mr Ahmad Harun. It is for the United Nations

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## **JUDICIAL INDEPENDENCE OR A PREDICTABLE JUDICIARY: THE WRONG QUESTION OR A DIFFICULT CHOICE?**

**Abstract:** The article discusses the fundamental role of the concept of judicial independence in countries of the Continental legal family. The idea of the separation of powers gives the possibility for judges to rule according to their own conscience. But then there appears the problem of the stability and predictability of the judiciary. The main question is how to reconcile freedom in making decisions and sentencing by judges with the necessity for predictable interpretation of legislation. The author illustrates this issue through several examples taken from the judicial systems of Poland and the Russian Federation, each with a different approach to the problem. The issue is systemic in nature, thus judicial service should be viewed as a system requiring coordination.

**Keywords:** judicial independence, predictable judiciary, Supreme Court's supervision, Polish law, judicial systems, Poland, the Russian Federation

### **Introduction**

From the Continental point of view, i.e. the legal system of civil law countries or case law countries, in spite of many differences, the concept of judicial independence plays an absolutely vital and fundamental role. A self-evident part of this concept is the possibility (and at the same time duty) for judges at any level of the judicial system to rule according to their own conscience. Mostly we think of this as part of the idea of separation of powers. If, according to the foregoing, in the Continental system every judge can make a decision based on his or her own interpretation of the law, there appears the problem

of whether the judiciary is stable and predictable. Judges even from the same High Court could interpret identical norms of law expressed in bills and codes in different ways. The main question therefore is how to reconcile freedom in making decisions and sentencing by judges with the necessity for predictable interpretation of legislation. I shall illustrate this issue through several examples taken from the judicial systems of Poland and the Russian Federation. These legal frameworks have been selected due to their different approaches to the aforementioned problem. I should remark that the issue under consideration is universal, and reviewing certain legal frameworks may only show us the legislator's preferences and, what is more important, methods of solving this problem. As it would seem, the issue before us did not arise via a specific "local" conditioning of any national legal system, but is systemic in nature.

### **Freedom to adjudicate and the Supreme Court's supervision in Polish law**

In accordance with paragraph 1, Article 178 of the Constitution of the Republic of Poland, "Judges, within the exercise of their office, shall be independent and subject only to the Constitution and statutes."<sup>1</sup> Such guarantees for judges have been reinforced in legislative acts regulating the judicial systems (both common and administrative). Regarding common courts in Poland (which include district, regional and appellate courts), the internal administrative supervision over the courts is carried out by presidents of courts, whereas the external administrative supervision over the courts is carried out by the Minister of Justice through supervisory services consisting of judges delegated to the Ministry of Justice.<sup>2</sup> At the same time, it should be emphasized that the Law on the System of Common Courts Act expressly states that "administrative supervision cannot infringe upon the field in which court judges and associate judges are independent".<sup>3</sup> Such a field of absolute independence is the area of substantive adjudication in a given case. As to influence of state or self-government authorities, the case is clear – it is strictly forbidden. Nevertheless, the very same act expressly states that "supervision over court activities in relation to adjudication is carried out by the Supreme Court in accordance with acts." The literature on the subject adequately points out that the multitude of courts as adjudication centres carries a real danger of creating interpretative discrepancies, with obvious loss to legal security, or even to the very

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<sup>1</sup> The Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483.

<sup>2</sup> Law on the System of Common Courts Act of 27 July 2001, consolidated text: Dz.U. [Journal of Laws] of 2015.133, as amended, Article 9a.

<sup>3</sup> Law on the System of Common Courts Act of 27 July 2001, consolidated text: Dz.U.2015.133, as amended, Article 9b.

principle of a state under the rule of law. Therefore, judicial supervision is necessary, i.e. supervision over substantive adjudication carried out by the Supreme Court.<sup>1</sup>

The Supreme Court conducts its supervision primarily in two ways:

- providing, as part of supervision, compliance with the law and uniformity of adjudication of common and military courts through examination of cassations and other means of appeal,

- passing resolutions to settle legal issues.<sup>2</sup>

The first situation concerning examining cassations does not raise doubts – the Supreme Court examines the cassation, the result of which is binding on the court of lower instance, regardless whether the cassation is settled in favour of the outcome or not. Here, the Supreme Court directly influences lower courts.

On the other hand, in the second situation, the Supreme Court passes:

- resolutions that settle important legal issues that raise doubts of an appellate court during the examination of certain cases. For example, if a debatable legal issue arises in a civil case examined by an appellate court, the appellate court may, in fact, request the Supreme Court to settle it. Such a resolution by the Supreme Court will then bind that appellate court in respect of the case;

- resolutions that explain provisions of law, the exercise of which in judicial practice has raised discrepancies in the interpretation of law – the so-called abstract resolutions. Only enumerated entities may pass such resolutions, e.g. the First President of the Supreme Court or the Polish Ombudsman.<sup>3</sup> These resolutions do not concern a single specific case, but, for example, interpretations of a specific legal institution or provisions relevant to many cases. However, the Supreme Court does not adjudicate issues in relation to a specific case, but interprets the law in general, which is why the term “abstract resolutions” is assumed in the doctrine. Resolutions of the Supreme Court at full complement, the adjudication panel of joined chambers, and the adjudication panel of the entire chamber, gain the power of legal principles when passed. On the other hand, adjudication panels composed of seven judges may render judgments on granting an act the power of a legal principle.<sup>4</sup> Without going into further detail, it should be noted that such legal principles are binding at the level of the Supreme Court, i.e. they bind

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<sup>1</sup> A. Górski, Komentarz do art. 7 ustawy – Prawo o ustroju sądów powszechnych, stan prawny 2013.06.30 [*Commentary to Article 7 of the Law on the System of Common Courts Act, legislation in force as of 2013.06.30*], Lex, <http://lex.online.wolterskluwer.pl>.

<sup>2</sup> Act on the Supreme Court of 23 November 2002, consolidated text: Dz.U.2013.499, as amended.

<sup>3</sup> Cf. Article 60 of the Act of 23 November 2002 on the Supreme Court, consolidated text: Dz.U.2013.499, as amended.

<sup>4</sup> Cf. § 6, Article 61 of the Act of 23 November 2002 on the Supreme Court, consolidated text: Dz.U.2013.499, as amended.

adjudicating panels of the Court; however, this principle can be waived in various ways, depending on how many judges passed the resolution. For example, a legal issue settled by a resolution passed by seven judges may be submitted for rehearing before a full panel of the chamber. The most important fact regarding our considerations is that even abstract resolutions do not bind lower courts, i.e. appellate, regional or district courts. In other words, a situation may arise wherein a district court, i.e. a court of the lowest instance, may adjudicate contrary to the interpretation formed by the Supreme Court. Therefore, abstract resolutions influence lower courts rather by authority. Although breaching the Supreme Court's resolutions cannot constitute a formal basis for seeking cassation, it may, in fact, happen that a party to the court dispute, who is left unsatisfied by the district court ruling, and without support from the appellate court, will, in consequence, seek cassation before the Supreme Court and win the dispute. Even so, it sentences such a party to a long, time-consuming and expensive way of seeking justice. Regardless of the adjudication independence principle, such a situation seems pathological, because it involves ignoring higher court resolutions by lower courts. A specific negative role in this situation is the fact that judicial practice in the Continental law system does not constitute a source of law, like an act or international agreement; it also does not have the nature of a precedent, which could be invoked when examining other cases. Moreover, freedom to adjudicate can also be seen in the fact that different settlements of identical cases (i.e. identical factual circumstances) must take place even among different adjudication panels of the Supreme Court. In fact, such differing interpretations in judicial practice are the basis for the Supreme Court to finally pass the resolution with a judicial panel of seven judges, thus removing discrepancies at least at the level of this court. In my opinion, this undermines the uniformity of adjudication and confidence in courts in general. It is interesting that before the political changes in Poland in 1989, which ended the Polish socialist regime, there was an institution of so-called guidelines for the judicial system which were issued by the Supreme Court. These guidelines, i.e. the actual interpretations of individual provisions of law issued by the Supreme Court, were binding for all courts to the same extent as provisions of the commonly applicable law. This institution, however, was deemed undemocratic by the legislator and infringing upon judicial independence when adjudicating, and it was, therefore, revoked by the Parliament.

### **Russian law approach**

In accordance with Article 2 of the Federal Constitution Act of Russia, the Supreme Court, in order to protect the uniform use of legislation of the Russian Federation, gives the courts explanations concerning issues of judicial practice, based on its examination and unification of the law roles. In principle, these explanations are abstract in nature,

because they are meant to generalize for a certain number of cases. Furthermore, “courts” are mentioned as recipients of these explanations; therefore, this cannot mean the Supreme Court itself, but lower courts. It is clear that the Constitution of Russia and particular legislative acts also speak to the independence of adjudication by the courts of all instances; however, this clearly does not constitute the basis for limiting the power of the Supreme Court. Various decisions of the Plenum of the Supreme Court with general (not an individual) nature are binding for lower courts. In a technical sense, one may pass a judgment contrary to the provisions of the Plenum of the Supreme Court, but it will most certainly be revoked. A characteristic of Russian legal doctrine is the long-running dispute whether such acts of the Supreme Court or the Constitutional Tribunal constitute sources of law.<sup>1</sup>

### Conclusion

First, we need to note that the orthodox interpretation of judicial independence as absolute independence in adjudication, even in relation to higher courts, seems to be improper. It leads to a lack of uniformity in judicial practice, unnecessary costs and, in consequence, to the loss of confidence in the courts. The principle of independence should be absolute insofar as influence of legislative or executive authorities on the courts is concerned. Judicial service should be viewed as a system, perhaps not uniform, but requiring coordination. Issuing actually binding decisions by higher courts might be compared to activities of higher officials – no one punishes a minister for issuing orders to the minister’s secretary. Such an approach is possible even without acknowledging decisions as sources of law, which is still a legal cultural taboo in Continental states. At the same time, and in my opinion correct, acknowledging decisions of at least higher courts as sources of law brings Continental judicial service closer to the judicial service of case law countries. It does not result from some convergence or legal reception, but rather from identical functions of judicial service.

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M.N. Marczenko, *Źródła prawa [Sources of Law]*, Moscow 2015, p. 385-403. (in Russian)

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<sup>1</sup> Cf.: M. N. Marczenko, *Źródła prawa [Sources of Law]*, Moscow 2015, p. 385-403.



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## CONFERENCE REVIEW

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## **THE FIRST INTERNATIONAL SCIENTIFIC-PRACTICAL CONVENTION FOR UNDERGRADUATE AND POSTGRADUATE STUDENTS “LEGAL SCIENCE AND PRACTICE 2.0: VIEW FOR A FUTURE”**

**Abstract:** The article relates the story of the First International Scientific-Practical Convention for undergraduate and postgraduate students that took place 17-19 November 2016 at the Law Faculty of Kazan (Volga region) Federal University, Kazan, Russian Federation. The main stages leading up to the idea of holding the Convention are highlighted, and the program of the event is described. The article reveals important issues of the legal reality and the results of discussions of legal issues, which were touched upon during the event. The article covers the academic, research and practice, and cultural aspects of the Convention.

**Keywords:** Law Faculty of Kazan (Volga region) Federal University, International Scientific-Practical Convention, Student Scientific Society

All should change; invariability is the enemy of the good. Everyone got accustomed to the November international conferences at the Law Faculty, and as this conference became a tradition, there is a place for abrupt turnabout and beginning a new cycle. So, the Convention became the beginning of something new, a previously untested form, when “the situation is not the same anymore”, and now lectures step up after speeches, sections go on after roundtable discussions. There is not a moment’s peace, three days in the rhythm of eventful life, and no one could stop even afterwards. I always say that everything in life must have a goal, it is impossible without it. So the main goal of the Convention is not an ordinary organization of the event, the goal is to inflame hearts and ignite the inner engine of Law Faculty students; it should become a starting point, like the moment of stoking the furnace of a train, from which movement forward stirs to develop legal science and the education of those who will become the next generation of the Russian legal professional elite. And it seemed to me on the third day of the Convention that it was marked by a train’s whistle, as if there were a train, that had visited the Convention for three days and then departed for the future, to new horizons.

*Yu.M. Lukin*

### **History of conferences and educational events at the Law Faculty of Kazan Federal University**

The establishment and development of the Law Faculty as a center of classic legal education, a cradle of various talented scholars and research areas of contemporary jurisprudence, was largely determined by keeping to scholarly traditions. A spirit of freedom, creative work and the democratic nature of teaching at Kazan Federal University, the impact of the best achievements from the cultures of the East and the West still make the atmosphere special. And it is not due to coincidence that the foundation of the Law Faculty was formed by the merger of theory and practice, in the harmony of the educational process and the research work of professors and students.

One of such forms is the Annual November International Conference for undergraduate and postgraduate students. The tradition of holding this annual student conference was established on 12 November 2004. It began only at the Russian national level, but soon entered the international arena in 2006. The first Russian national student conference “Two Centuries of Legal Science at Kazan Federal University: Student Scientific Society” was organized at the initiative of the Student Scientific Society of the Law Faculty and with the support of the Faculty Administration. And there were impressive results already

in 2008: 350 people participated via the Internet and 150 as full-time participants, from among whom 70 participants were from different regions of Russia and three from foreign countries, all of whom participated in the work of the International Scientific-Practical Conference for undergraduate and postgraduate students, dedicated to the 60th anniversary of the proclamation of the Universal Declaration of Human Rights of 1948. By 2013 the scope of the annual conference for undergraduate and postgraduate students had become truly impressive. There were about 1,000 entry submissions, 500 participants, dozens of conference partners and full media coverage – a great step in the development of this kind of event. Even with such diverse forms of participation, new forms of participation still appeared during this conference. Every year prominent representatives in legal science and practice attend to lead master classes. Distinguished guests in 2013 included V.-A. Petrushkin, Doctor of Jurisprudence, sitting judge of the Federal Arbitration Court of the Volga region, and Victor Pasternak, partner in the law firm Martynuk, Pasternak and Partners. The conference was organized on the topic “Intersystem and Inter-branch Relations in the Legal Sphere” and dedicated to the memory of Professor M.-Yu. Chelyshev. The tenth conference in 2015 summarized and opened a new stage in the legal science activities of an entire generation of students of the Law Faculty.

### **Background of the First International Scientific-Practical Convention**

A complete and thorough rebranding and restructuring of the conference became a cornerstone for the new stage of its development, which resulted in the creation of a brand new product: the “Legal Convention”.

The International Scientific-Practical Convention for undergraduate and postgraduate students is the successor and continuator of the traditional November international conference held by the Law Faculty.

During the more than ten years of the November conferences great work was done, as evidenced by the more than one thousand applications for participation submitted by undergraduate and postgraduate students from a variety of Russian cities and foreign countries, and also by the collection of written materials, which were published in 2015, filling five volumes. Over these ten years the November event became not only widely known, but also obtained the status of a “brand” of the Law Faculty of Kazan Federal University. The conferences were attended by many outstanding scholars, including our foreign colleagues. Additionally, the event established itself not only as a talent factory, but also as a forum in which to make professional contacts in the various fields of the law.

Over the course of this period of time, the Law Faculty welcomed over 4,000 students from more than 10 countries and 300 cities. More than 30 percent of senior students

were not only involved in legal science, but here they refined their theoretical knowledge in practice.

In 2016, the Student Scientific Society came to the decision to change the format of the event. The Convention is a synthesis of the best practices of organizing conferences, summer schools, scientific forums and roundtables. It allows not only the exchange of opinions on current issues of law, but also to pose questions on legal practice and its developing trends and to have those questions answered. It includes an extensive educational program.

### **The concept of symbiosis and synthesis of science and practice**

The key idea behind the Convention is to put great focus on the educational part of the program. The event is unique, not only for its legal science content, but also for the specifics of its organization, as it merges the theoretical (scientific) and educational (practical) components (the Convention program includes workshops moderated by leading legal experts, the work and discussions at roundtables, legal science panel meetings); in addition, there is a cultural component for participants (which includes visits to Kazan Federal University and excursions around Kazan city).

This year the event continued for three days instead of the usual two. This change allowed the creation of a platform upon which students were able to encounter scientific and educational as well as practice-oriented fields of law in the first block of the Convention during the first and last day of the program. This block was devoted to workshops moderated by practicing lawyers, and included open lecture and specialized profile roundtables in which both academics and practitioners were present. Moreover, the last day gave participants an opportunity to view legal practice in a very different light through the game of “Legal Quest”, which allowed them the experience of finding themselves in various theoretical and practical situations: from legal analysis of normative acts to dactyloscopy (identification by comparison of fingerprints).

The second block presented the familiar standard framework of conference organization. It contained panel meetings on more than fifteen branches of legal science. Within the framework of each panel attendees presented their research papers, ideas, comments and opinions on current issues of legal science and law enforcement practice to the competent jury.

In this way the Convention combined the best practices and the best experiences of past events, and presented participants with the possibility to get their bearings in practice-orientation, as well as bringing forward discussion points in law-enforcement practice, which were resolved by the participants themselves.

### Scientific and educational component

Following the ovation in the Assembly (Imperial) Hall of Kazan Federal University – which expressed great appreciation to Ilсур Metshin, Mayor of Kazan and Head of the Supervisory Board of the Law Faculty; Dmitry Tayursky, Vice-Rector of Education at Kazan Federal University; Liliya Bakulina, Acting Dean of the Law Faculty; Vasilii Lihachev, member of the Central Election Committee of the Russian Federation; Elkin Iskanderov, President of the regional youth social organization “League of Students of the Republic of Tatarstan”; Dinar Valeev, Head of the Student Scientific Society of the Law Faculty, and other honorable guests of the event – for their warm welcoming speeches, the educational block of the Convention commenced. This was opened by Professor Askhat Kuzbagarov, Doctor of Jurisprudence, Head of Helsinki International Commercial Arbitration, who presented a lecture on the topic “Tort Liability: Theoretical and Practical Aspects”. Within the framework of the lecture, Professor Kuzbagarov tackled tort liability through the prism of law-enforcement practice and personal experience, which was noted and highly appreciated by many participants, who, throughout the lecture, were eager in anticipation to pose their questions and receive answers.

Immediately after the lecture the work of the roundtables began. The interactions proceeded inside four auditoriums, in each of which an atmosphere of heated discussion was very noticeable among the participants on the level of highly qualified specialists alongside professors and practicing lawyers from across Russia. Inside one auditorium, at the roundtable moderated by Professor Kuzbagarov, participants specializing in civil law discussed the unified civil procedural code and the unification of civil, arbitral and administrative procedures. The result of the work was the formation of a thesis on the necessity of procedural unification as an objectively correct and indispensable way of further development of the law and the stabilization of court practice. In an auditorium next door, the head of the law firm StroyCapitalInvest, which is one of the top one-hundred Russian law firms, discussed the issues and trends in legislation regulating entrepreneurial activity with the students. The roundtable on criminal law worked alongside the representatives of the civil law branch of the Faculty. Its work was conducted under the supervision of the Head of the Department of Criminal Law at Kazan Federal University, Doctor of Jurisprudence, Professor Maria Talan and Associate Professor Igor Antonov, the Head of the Department of Criminal Procedural Law and Criminalistics. Participants had the opportunity to discuss legislative gaps in Russian criminal law, the ways of overcoming them from the point of view of legislation and its practical realization, and also the trends in legal development in general. And, of course, how can we exclude the issues of international law during an international event? This exact issue was pinpointed in the framework of the roundtable on international law.

It was remarked upon by the moderator of the roundtable, the Head of the Department of International and European Law of Kazan Federal University, Doctor of Jurisprudence, Professor Abdullin, that nowadays students not only understand the true sense of international documents relating to the protection of human rights, but also contribute new ideas and interpretations of their provisions.

The first day of the Convention did not end with this rich educational program only. The final part was the series of master classes by professionals in their legal craft, who shared their deep and invaluable experience with participants. Vasiliy Likhachev's master class aroused genuine excitement among the attendees. The speaker, a member of the Central Election Commission of the Russian Federation, Permanent Representative of the Russian Federation to the European Union, and graduate of Kazan Federal University Law Faculty, spoke on "Diplomatic and International Law of the Russian Federation Environment". After delivering the lecture, Vasiliy Likhachev answered all questions, sharing his knowledge in the field, and also gave useful tips to the future lawyers. In this way the workshop flowed seamlessly into a conversation lasting more than two hours. The topic "Peculiarities of Proceedings in Military Courts" was presented by the Chairman of the Kazan Military Garrison Court Eduard Safonov. There is no doubt that this discussion was equally valuable and interesting. Another class for participants was held by Yury Lukin, practicing lawyer, the head of the scientific-research work of students of the Law Faculty, on "Legal Marketing: Collective or Individual". In parallel, Assistant Professor of Business Law at Lomonosov Moscow State University Alexander Molotnikov delivered a presentation on the project "ProStranstvo" ["Area"], the main idea of which is the creation of a special platform upon which to improve and develop applied skills and competencies of students and university graduates.

### **Educational and cultural component**

The third day of the Convention allowed participants to "relax" and enjoy the cultural component of the event. However, even a simple game at Kazan Federal University may provide small rest. The traditional game "What? Where? When?" within the walls of our alma mater charmed our guests: it included a block of legal issues to be resolved and a "quest" that left an indelible impression in the memory of the Convention participants.

"Legal Quest" gave participants the opportunity to try to pass a series of exciting tests, for which they received tips after solving tasks. They needed these tips (clues) in order to solve the main puzzle of the "quest": Who is the murderer? To begin, the teams were shown a video to help them to eventually solve the main puzzle. The video was about the tests soon to come. Some teams passed the tests with difficulty, others considered them

quite easy. The “quest” consisted of twelve tests altogether, following each of which the teams received the tips (clues). Here are some of the tests.

“Knowledge is Power”. Before beginning, the team was required to recite some poems, ditties, sing “Vladimir Central” [a famous song of criminals in Russia] and other songs to create a particular atmosphere. The task was for three members of the team to crawl their way through the “ventilation pipe” (arranged desks) to an exit, but it was not so simple, for at the critical moment they found that at the exit there was a biometric lock, which could be opened only with the leader’s fingerprints, and, pre-planned and thus to their consternation, the leader was the last one crawling.

In the “Legal Mosaic” one member of the team was blindfolded and the others had to follow him or her around, telling the person where to go. During the test it was necessary to collect together eight pieces of a picture and only after that did the team receive the tips.

“Save Evidence-Material Objects”. At first, the teams were asked to hold hands and perform twenty squat exercises. The next task was more interesting: one team member had to transfer to another an orange, and this had to be done by using any part of the body – except the hands. The same task was repeated with a pen and then with a bottle of water, again without using the hands.

“The Department of Document Management”. Teams had to find the mistakes in selected procedural documents in the fields of civil and labor law.

“Legal Speech Therapist”. One team member with a mouth full of popcorn had to try to explain to the team an Article of the Constitution.

And, of course, other tests and tasks as well.

Teams also were given additional tasks to perform during the breaks between tests: for example, to have a photo taken with the Dean of the Law Faculty. What is more, if answers given by the representatives of a team were not correct, the team members could be sent to “jail”.

The final test for the teams was called “Crime of the Century”, where with the help of the team leader’s tips team members had to figure out the way in which the unknown perpetrator had committed the crime. After collecting all the clues and examining and matching them together, the teams had to solve the puzzle and answer the fundamental question: Who is the murderer?

## Conclusion

We can confidently say that the Convention is significantly different in format from the usual scientific conference and forum for students. It is the unique project of the Law Faculty of Kazan Federal University, inspired by its traditions.



Above all, it is the work of the roundtables. This form of interaction between the participants admits to avoid competition as in a fight to see who will win and who will lose, but rather it contributes to the creation of a dialogue between equals on existing legal science issues. Also, this form of interaction allows participants to concentrate on one issue, and not try to take on every issue extending throughout the entire legal realm. As the recent Convention showed, this manner of work is much more productive in terms of real results.

Additionally, the event lasted for three days instead of two. This was owing to the strong emphasis put on the educational program. The participants of the Convention had the opportunity to attend master classes oriented in four different legal directions.

Also worthy of mention is that the Convention's cultural program generated only positive feedback from the participants. Students from all over Russia and the Commonwealth of Independent States gathered together for the Convention and to visit the beautiful thousand-year-old city of Kazan, the third capital city of Russia.

In conclusion, it must be said that the Convention, as the new trend in the field of student legal science advancement, will continue to develop and grow, and should surely find admirers and loyal friends in the future.

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