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EDITORIAL:

A missão da Revista Gênero e Direito (G&D) destina-se a informar a comunidade acadêmica sobre os desafios e perspectivas que revestem a discussão interdisciplinar do gênero. O objetivo da G&D é estimular o debate e produção científica com o propósito de produzir conhecimentos e atuar como transformador social e instrumento de reflexão para uma isonomia entre os indivíduos. O público-alvo de nossa revista é pós-doutores, doutores, mestres e estudantes de pós-graduação. Dessa maneira os autores devem possuir alguma titulação citada ou cursar algum curso de pós-graduação. Além disso, a G&D aceitará a participação em coautoria. A Revista possui um conjunto de Seções para recebimento de trabalhos científicos, como:

➢ **Seção Livre:** Seção interdisciplinar que recebem trabalhos de língua inglesa ou francesa produzidos através de pesquisas ou reflexões acadêmicas, podendo os temas abordarem ou não a temática do gênero e dos direitos humanos.

➢ **Ensaios:** Recebe relatórios de pesquisas em andamento ou concluídas.

➢ **Gênero, Sexualidade e Feminismo**: Trata com a discussão de gênero referente a gênero x sexo, discurso sexual, contrato sexual, identidade de gênero, existencialismo x naturalismo, filosofia social, teorias feministas e feministas do direito, diversidade sexual e efetividade de direitos sexuais.

➢ **Direitos Homoafetivos, lutas LGBTI e teoria queer**: Versa sobre a efetividade e garantias de direitos homoafetivos, a evolução histórica e social das lutas LGBTI, desenvolvimento social, teoria queer, categorias sociais, desigualdade, alteridade, relações culturais, homofobia, diversidade sexual

➢ **Direitos Humanos e Políticas Públicas de Gênero**: Aborda temas sobre filosofia do direito, teoria crítica dos direitos humanos, feminismo, interseccionalidade, consubstancialidade, igualdade de gênero e direitos LGBTI.

➢ **Movimento feminista, história da dominação e gênero**: Feminismo, história dos direitos de gênero, história da dominação, história dos movimentos feministas, lutas por emancipação, América Latina, discurso social e conquistas sociais.

➢ **Sexualidades, Subjetivações e Práticas Psi**: Sexualidade, identidade social, processo de identificação, grupos sociais, práticas psi, gênero x sexo, violência de gênero e vulnerabilidade.

➢ **Saúde, Gênero e Direito**: Saúde da mulher, integridade física e sexual, saúde pública, avanços tecnológicos, mudança de sexo, intersexualidade, aborto, gravidez na adolescência, sexualidade e prevenção sexual.

➢ **América Latina, União européia, gênero, feminismo:** violência de gênero, cultura latina, cultura européia, direitos sociais, políticas públicas, lutas sociais, movimento feminista, movimento LGBTTI, patriarcalismo, sexualidade, AIDS, direitos sexuais e reprodutivos.

➢ **Multiculturalismo, religião, gênero:** direitos sexuais e reprodutivos, religião e filosofia, estruturas sociais, choque cultural, etnocentrismo, feminismo, direitos homoafetivos, violência de gênero, relativismo cultural e direitos humanos.

➢ **Aborígene, gênero, inclusão social:** discriminação, cultura aborígene, políticas públicas, feminismo, infanticídio, práticas nômades, patriarcalismo e identidade.

➢ **Imigração, Emigração, gênero:** problemas sociais, zonas migratórias, tráfico de pessoas, exploração sexual, guerras, ditadura, deportação, expulsão, vulnerabilidade social e feminismo.

➢ **Gênero, história, Espanha:** movimento feminista, direitos civis e políticos, história da dominação, micro história, discurso social, reformas políticas

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SUMÁRIO:

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A COMPARATIVE STUDY ON THE POSSIBILITY OF FORMING A SOLE CORPORATION IN THE IRANIAN AND US LAWS

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Abstract: Although the new Bill of commercial law and prevailing Laws in the European and American societies indicate the possibility of the possibility of forming a sole corporation, but it is not possible to form a personal firm under existing regulations, especially the existing commercial law. In the essay, by using from a comparative study on US commercial law and through analytical issues, we point out that, in the analytical view (not legal), formation of such corporations not only does not face any obstacles but also can be beneficial in various ways. So we present benefits of Sole Corporation and finally discuss the management and liquidation of these Corporations. Purpose of the Study: The study tries to study the issue comprehensively and completely in order to clarify its hidden angles and to avoid repetitions in order to present a relevant research to the country's legal community. Due to the lack of research on the sole corporation in the United States, we try to benefit from the original books and articles published in the US.Research Method: The library method and books written by prominent law professors on this subject is used.Necessity of research: There is less subject matters that can be found in the case fir research, and this new issue is one of the subjects due to lack of approved rules, so we decided to present a rational research source

Keywords: Sole Corporation - state-owned company - Legal Entity - Nominal Partner

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Introduction:

Although in many European and American countries, to form the sole corporations have been legalized and its effects have been manifested, necessity of discussing on the sole corporations or any other legal institutions in Iran is subject for society. From the first text in Iranian law on the sole corporation or company until its' entry into the legislative field has been needed for more than seventy years, although some have argued for various reasons that such a requirement is in our current legal-economic system. But opponents or not to pay attention by lawmakers, for obvious reasons, has made some legal texts and theories, except a few texts, express historical evolution of the formation of sole corporation in the world and the existence of this company by considering the state-owned companies in Iran and so justification for establishing such a company is not unavailable for researchers. Therefore, in this article, despite defining a sole corporation, we try to present the ambiguities regarding to the establishment of this type of company (Sole Corporation) in Iranian law and management of the company and its system of responsibility and the advantages and disadvantages of forming a sole company. The following pages are an attempt to summarize the reasons for the formation of a sole corporation in the US. (Abbas Niazi and Iam Kamarkhani and Mohsen Jalilian, Investigation of sole corporation in Iranian Law by a Comparative View, Quarterly Journal of Economic Law, 2016: 2)

Possibility of forming a sole corporation in the legal and analytical views

Businessemen, who act as individually, have the unlimited liabilities versus third parties, and all property, including commercial and private property, is security for their debt to their creditors. These people cannot divide their property in terms of unity of property and only partially guarantee their debt and keep any other part of it free from any interference. In such a situation, a community would easily be willing to commerce with businessemen due to his strong backing. Businessmen offset risk of their activities from their assets while establishing a sole

corporation allows individuals to operate without incurring all risks. By establishing such companies, individuals will be able to trade their assets and to impose their inexperience risks to others. In such case, pessimism and mistrust are prevalent and to evade responsibility is provided. It is clear that the adverse effects of this method firstly affect on the economy and commerce, as it increases risk coefficiect of economic activities for individuals who trade in a sole corporation. (Mahmoudi, paper on the possibility of forming Sole Corporation, 2003: 5)

By according the above-mentioned, it may be argued that various provisions of the Commercial Code, such as Articles 190, 183, 162, 141, 116, 94 of 1311, require the cooperation and participation of at least two persons to form a limited, relative and partnership limited liability Company. Articles 107 and 3 of the amending Bill of Trade Act 1347 also required the existence of at least three and five partners respectively for the formation of a Private and Public Joint Stock Company (Private and public Held Co).

On the other hand, asset's dissolution and to limit liability to the amount of capital of a company is not limited to the sole corporation. Individuals with the establishment of a public corporation, a private equity and a limited liability company also pursue this purpose. Thinkers of today's societies not only disagree with such companies, but also strongly support them because of their undeniable role in the society economy. Therefore, asset's dissolution and to limit liability cannot be a reason to oppose with sole corporation.

In addition, by establishment of such companies, the risk coefficient of economic activities for individuals who trade with a sole corporation will not increase significantly. At first, because the phrase (Sole Corporation) after the name of the company indicates company status and level of responsibility of its sole corporation, and persons knowingly know the status of the company enter into a transaction with it, secondly, credibility of such companies may be more than companies with more partners. (Mahmoudi, Ibid, 7: 1382)

It is clear that the non-prescription of such companies causes individuals to enter the company to meet the requirement of personal partnerships

multiplicity, his contribution constitutes a small percentage of the company's capital (eg, one or two or five percent). This person may not have had a role in raising capital, and a percentage of the firm's capital has been formally allocated to him, in which case both formulation will cause divisions in the future and should be avoided. (Skini, Business Companies, Vol. 2, 2011: 174)

Registering company in US:

Depending on the type of business in US, type of authorities and amount of taxes will vary. Company registration in US can be done in 4 types and concepts, two of which relate to Sole Corporation as follows. (John English, Earnings Opportunities, Translated by Khalil Razavi and Vahideh Etemad, Pendar Publishing, 1997)

1- Limited Liability Company

A Limited Liability Company in the United States is a Complex company with a commercial nature that allows a person or entities to conduct their business without risking their capital. This is possible by limiting liabilities and definitions of the Articles of Association.

Limited Liability Company is the most appropriate option in the field of international trade in terms of taxation and trade options for non-US applicants who want to continue their business in the United States. Many investors, who want to regist a firm in the region, are exempt from taxation; they can achieve this goal by registering a limited liability company (LLC).

The most important benefits of registering a limited liability companies in the United States as follows:

- LCC companies are established easier for non-residents without excessive bureaucracy. In some states, there is no need for initial capital and it isn't income tax.

2. Monopoly Company (exclusive)

A sole corporation is an entity that a person establishes a business as a sole firm without any cooperation with another person or company, any debts and other responsibilities are undertaken by the principal.

Advantages and Disadvantages of Registering a Limited Liability Company in the United States and its accordance with Iranian Law

Registering a limited liability company in the US has advantages

compared to joint stock companies, which helps applicants for having the best option to achieve their goals. One of the most important advantages of registering a limited liability company in the US is that there is no need for company executives, and then shareholders and directors of a limited liability company, or LLC, can to hold their board meetings in other countries as well.

Akhavy, a (No Full Name) (1940), Non partner corpoation, Justice Ministry of collection law, No. 149, pp. 63-65

Another advantage of registering a limited liability company in the United States is that there is no need for board members to be as shareholders, and depending on the circumstances in each state for registration, only one to three persons can to register a limited liability company in the United States.

Not to pay income tax on corporations in some states is another advantage of registering a corporation in the United States.

Charlesworth & Geoffrey Morse, Law Company, 15th Ed, Sweet & Maxwell, 1997

Some US states have provided advantages to applicants for registration of a limited liability company, one of the most important of which is the lack of necessity for the initial capital to register a limited liability company in the United States. In this case, applicants for a US company registration can to enter the state without the required capital and apply for US company registration. Ansari, vali-o-Alah, (2013), Administrative contrasts law, Hoghoughdan publication, second edition (In Persian)

In Iran, civil company's transformation to a trading company has two advantages:

- To creating more capital by raising the capital of each partners.

- Security for Partners due to their capital separation from personal property.

Here, human's creative mind raises a new question: If two or more individuals can to separate their capital brought to the company from the personal property, why should not a single person have this ability? The design of this question is the basis of a new invention that we call it as a sole corporation neglectly.

A sole corporation allows individuals to transfer unilaterally part of their property to the assumed entity of a sole corporation and to separate their property. Therefore, by using this security pattern that exists for business firm partners also creates a single person to accomplish it by resorting to the company. In contrast, the company's registration also has its disadvantages.

The most important of these disadvantages are follows:

- In a sole corporation, one person is solely responsible for all debts and liabilities.
- The person who registers a sole corporation must pay taxes for employees and employer.

History of forming a sole corporation in Iran

Despite of above-mentioned cases, idea to form a sole corporation is not unusual in our law, and even the legislator has approved the establishment and operation of such corporations. Article 4 of the Act of General Accounting approved on 10/6/1366 permits to establish companies with a single member (government). Also the Act on Registration of Branches or Agencies of Foreign Companies approved 21/8/1376 and its Implementing Regulations approved in 1/1/1378 which absolutely permits foreign companies (both single member companies and companies with multiple partners) to operate in Iran. We describe it.

Article 4 of the Iranian General Accounting Act

Article 4 of the Iranian General Accounting Act approved in 10/6/1366 makes it possible to establish a single-member business (government). It provides: "A state-owned corporation is a specific entity that is established by law as a corporation, or has been nationalized or confiscated by law or a competent court and is recognized as a state corporation and more Fifty percent of its capital is owned to the government. Any business firm created by the investment of state-owned companies is considered a state-owned company as long as more than fifty percent of its shares are owned by state-owned companies. ” According to the above article, many state-owned companies have been set up, with 100% of their capital being nationalized or confiscated and owned by the state and

engaged in business as well as trading companies with only one person (government) as a member. State-owned businesses are therefore public-law entities formed with a single member.

2- The Law on Registration of Branches or Agencies of Foreign Companies approved in 21/8/1376 and its Implementing Regulations approved in 11/1/1378.

Single article of the Act provides: "Foreign companies which are recognized as lawful companies in their country, while reciprocal action by the country, and shall to do in such matters as may be determined by the Government of the Islamic Republic of Iran within the framework of laws and regulations. Article 1 of the Implementing Regulations of the Act also provides: Foreign companies which are recognized as lawful companies in their country, while reciprocal action in their respective countries, can to work in Iran in the following areas.

According to the above-mentioned cases, because single member companies may be legally recognized in the countries where are registered, they may operate in Iran under this law and it's implementing regulations.

The formation of a single member company is accepted in most countries such as England, France, Italy and Germany. Let us now consider the rules of American law in this case:

According to the Companies Act 1916, minimum partners which is required for the formation of a private limited company is two partners, but amendments on the commercial law of 1996 also provided formation of a single member limited liability company.

The possibility of forming different companies in single-member companies

Through explaining various kinds of companies in commercial law, we answer the question of what kind of companies can be analytically formed as a single member company.

Limited liability Company

In according to Article 94 commercial law, the formation of a limited liability company with a single member is not legally possible; On the other hand, by considering how to operate the limited liability company, it

is almost like a privately owned joint-stock company in the United Kingdom and a limited liability company in the United States that is possible with one partner. (Mahmoudi, Investigating the Possibility of Forming the Single partner Companies, 2003: 14: 14 and Isa Tafreshi, an Analysis of the commercial Corporate Law, Vol. 1, 2009: 132)

Cooperative Partnership Co. and Proportional Liability Partnership Company

Analytically, the formation of Cooperative Partnership Co. and Proportional Liability Partnership Company with single member does not face with any obstacles. In case of insufficiency of assets of Cooperative Partnership Co. and Proportional Liability Partnership Company to pay all the Company's debts, the single member would be responsible to pay all the Company's debts.

Therefore, these two companies are coming together and find the same effect. Because in Cooperative Partnership Co. a single member will be responsible to pay all debts due to the Cooperative partnership responsibility, and in the Proportional Liability Partnership Company, a single member will be responsible to pay all debts due to have its 100% shareholding. (Isaa Tafreshi, Analytical Discussion of Business Law, Vol. 1, 2009: 138)

Managing a sole corporation

If a single partner manages the corporate unit, he will also be its' owner alongside of all liability, of course, this case is not prohibited according to the new business law bill. There are two ways to manage a sole corporation: 1. the sole proprietor which is known as the company's shareholder, he/she elects a director or directors to manage the company, in this case, the shareholder of the company is the same person and the company's affairs are merely delegated to another. 2. The shareholder himself / herself will be the managing director, who will then act as a legal person. And for this case, the employer-employer relationship is not a debate, and responsibility for all activities will be on the company itself, of course, discussions on the guaranty is an exception. (Abbas Niazi and ayyaam Kamarkhani and Mohsen Jalilian, Investigation of sole corporation in Iranian Law with a Comparative View,

Quarterly Journal of Economic Law, 2016: 9)

End of Company's Life in a sole corporation

The end of a company's life has two distinct aspects or stages that can be interpreted as credit and practical aspects. The end-of-life credit aspect is the nature of the company and due to it; legal personality of the company is lost. This aspect or end of company's life is referred as dissolution. The practical aspect of end-of-life is on the determination of company's assets in which the company's assets are converted into cash, its demands are received and debts and liabilities are fulfilled. After the stage, if the surplus to be exists, it is divided between the partners according to their rights and interests in law and Articles of association. In this case of the company's end of life, they use a legal word as liquidation.

The dissolution of a sole corporation may also be voluntary or forced. The only difference between these companies and the companies with more partners is that its voluntary dissolution is based on the will of only sole member.

Conclusion:

1. The idea to form a sole corporation is not only unusual in our law, but also accepted on the state-owned companies. Therefore, the Iranian legislator can to elaborate this idea and apply it for the private business firms. However, it is noted that permission to run such companies should be considered through securing third parties' rights.

2- In Iran, to form a sole corporation is possible only as the public and private limited liability companies, since only in these companies, the company's assets are separated from the partners' assets and in other companies; the partner guarantees the payment of company's debt after liquidation. So only in such companies a partner can to have the necessary risk.

3. a sole corporation due to its unique nature differs from other companies in its formation, management and dissolution, so that its formation and dissolution (except of bankruptcy) is accomplished with a will and unlike other companies, the necessary decisions

are made by a single member without observing the certain formalities.

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Commercial Act Adopted 1311

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Implementing Regulations on Registration of Branches or Representations of Foreign Companies Approved in 1999.

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HUMANISTIC IDEAS OF THE 20TH CENTURY IN NOBEL LECTURES OF WRITERS OF RUSSIA AND ASIAN-OCEANIAN COUNTRIES

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Abstract: The article discusses the Nobel lectures of I. Bunin, B. Pasternak, M. Sholokhov, A. Solzhenitsyn and I. Brodsky (Russia), and Kawabata Yasunari and Oe Kenzaburo (Japan), Gao Xingjian and Mo Yan (China). The text analysis is based on studying their assessment of the role of literature and the artist in society. It also researches individual works of writers, allowing correlating the publicistic and the artistic on a literary basis. The purpose of the article is to identify the humanistic content of the creative manifesto of the writers, its relevance in the spiritual dialogue between Russia and the Asian-Oceanian countries.

Keywords: Russian literature, literature of the Asian-Oceanian countries, Nobel lecture, artist and society, humanism, comparative analysis, Ivan Bunin, Boris Pasternak, Mikhail Sholokhov, Aleksandr Solzhenitsyn, Iosif Brodsky, Kawabata Yasunari, Oe Kenzaburo, Gao Xingjian, Mo Yan..

1. Introduction

Art strategies of literature studies at the turn of the 20th - 21st

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centuries make actual the expansion of the research space of the spiritual culture of the new Russia in its dialogue with the Asian-Oceanian countries. In respect of this aspect, works of a comparative nature are useful, for example, the reinterpretation of the publicistic material of writers of Russia and the Asian-Oceanian countries. The subject of the analysis was “The Nobel speech” by I.A. Bunin (1933), the poem "The Nobel Prize" by B.L. Pasternak, "The Nobel Lecture" (1959) by M.A. Sholokhov (1965), A.I. Solzhenitsyn (1970) and I.A. Brodsky (1987), the Nobel lectures by Kawabata Yasunari “Born by the beauty of Japan” (1968), by Oe Kenzaburo “I am a writer of ambivalent Japan” (1994), by Gao Xingjian “Humanity has more than history, it is also granted with literature” (2000), the Nobel lecture by Mo Yan (2012).

When choosing a future Nobel laureate, the committee members followed the will of Alfred Nobel: “...who created the most significant literary writing of an idealistic nature. My indispensable requirement is that, when awarding the prize, the nationality of applicants should not matter at all and the most worthy will receive it... ” [2, 4]. Ivan Alekseyevich Bunin was the first Russian writer to be awarded the highest world prize. The committee emphasized the following in the assessment: "For the strict mastery with which he develops traditions of the Russian classical prose." In 1958, the prize was awarded to another Russian writer Boris Leonidovich Pasternak, about whom the following was said in the committee decision: “For considerable achievements in modern lyric poetry, as well as for the continuation of traditions of the great Russian epic novel” [2, 7].

The creation of Mikhail Aleksandrovich Sholokhov and Aleksander Isayevich Solzhenitsyn was highly praised by the Nobel Committee “For the art power and integrity of the epic about the Don Cossacks at the crucial time for Russia”, “For the moral strength drawn from the tradition of the great Russian literature,” respectively. The last laureate of the prize in the 20th century from Russia was Iosif Brodsky, whose art achievements were summarized in the following words: “For the comprehensive creation imbued with a clear thought and poetic intensity” [2, p. 15].

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The second half of the 20th century is distinguished by a deep interest in the literature of the Asian-Oceanian countries and names of their writers. Japanese writers Kawabata Yasunari and Oe Kenzaburo revealed the eastern world to the global reader, its traditions and culture in characters of their works. We should note that one of possible reasons for the award was the moral and ethical motivation to choose writers from the country that survived the atomic bombing at the end of World War II. The summary of the Nobel Committee emphasizes the national mindset: “For the authormanship, which expresses the essence of the Japanese mode of thinking with a great feeling” [2, p. 18]. And Oe Kenzaburo was awarded the prize "For the fact that with a poetic power he has created an imaginary world in which reality and myth, being combined, present a disturbing pattern of today's human adversities" [2, p. 19]. A number of Chinese writers, whose books reflected the past and present of the country, opened a new page of Nobel laureates. The characterization of Gao Xingjian's prose “For an oeuvre of universal validity, and linguistic ingenuity” sounds exhaustively. The extraordinary creation of Mo Yan was adequately reflected in his assessment: “For the delusive realism with which the writer mixes a fairy tale, history and modernity”. It is obvious, that the key positions of the Testament of the prize founder, Alfred Nobel, dominate in the selection of writers and their art creed, namely the idealistic trend (humanism) of the art of writing, regardless of the artist nationality.

2. Methods

The problematics of the article is determined by a review of studies on the selected topic, which revealed the absence of a problem analysis of lectures of Nobel laureates in literature. Available works are of a bibliographic nature [8] or represent a local study of the speech of a particular writer [6; 10]. The correlation of the material of the lectures of the writers, chronologically delivered with a temporary difference, artistically diverse, is substantiated not only by the autobiographical drama of the writers' life, but also by the worldview with a significant understanding of the role of literature and the artist in society. The historical

and comparative method of studying the texts of Nobel lectures, which reflects the creative manifesto of writers, is promising.

3. Results And Discussion

The authors of the article take into account the cultural relevance of expanding the dialogue of literature between Russia and the Asian-Oceanian countries in the decisive situation of the 21st century. The literary correlation of texts of Nobel laureates allows us to identify the commonality of artistical positions in understanding the humanistic mission of literature as the main idea of the 20th century.

The problematic aspect of the article is the study of Nobel texts from the point of view of the Nobelists defining the role of the artist in society, the value of their works in the process of forming intellectual values of a person and moral and ethical principles of a personality. So, for example, A. Solzhenitsyn said straight and downright: “One word of truth will draw over the whole world” [2, p. 36]. Many years on, the Chinese writer, returning to the problem of the significance of the artistic word, determined that: “For the writer, the relationship between truth and literature is an ethical manifestation, literary ethics of the supreme dignity” [2, p. 97]. The “Good” and “Truth” of the Russian writers, the “Truth” of the Chinese artist and the “Humanism” of the Japanese proseman are synonymous for the reader and time. It should be noted that there is a certain uniqueness in the assessment of A. Solzhenitsyn, who, protesting against totalitarianism, clearly defines the place of an artist as a fighter. “Who will create a single framework for mankind - for atrocities and good deeds, for intolerant and tolerant, how are they distinguished today? Who will clarify to mankind what is really hard and unbearable, and what is only rubbing our skin nearby, and will direct anger towards what is more terrible and not towards what is closer? Who would be able to transfer this understanding over the limit of one’s own human experience? Who would be able to inspire a sluggish stubborn human being distant grief and joy, an understanding of the scope and delusions that he/she has never experienced? Propaganda, coercion, and scientific evidence have no power here. But, fortunately, there is such a tool in the world! This is art. This

is literature" [2, p. 28]. GaoXingjian, who emphasizes a specific connection of the author and the reader, takes a different position within the framework of the given topic: "Literature has nothing to do with politics and is solely the work of the writer as a personality. The writer does not stand as an orator of his/her people, he/she does not deserve worship. He/she is neither a criminal nor an enemy of people. ... However, such a human activity as literary creation, puts one inevitable requirement: the writer and the reader should meet of their own free will. Therefore, literature has no obligation to the populace" [2, p. 92-93]. The debatable nature of statements about the role of literature should mainly be seen in the national mentality of each of the laureates. In the position of M. Sholokhov and A. Solzhenitsyn, the high tradition of the Russian literature is alive, specified by L.N. Tolstoy as a "people's thought," uniting the character and the populace together. Oe Kenzaburo and Gao Xingjian choose the artist's path to hermitry.

The writers' opinions on the philosophical basis of creation are also contradictory. Gao Xingjian has an interesting interpretation of Confucianism, which is considered to be the basis of the Chinese culture in the world. The "physicophilosophical school" of Daoism is closer to him as a southerner. The philosophy of the Chinese writer, Gao Xingjian, is largely formed by the influence of European philosophers, including Nietzsche and Freud, as well as French existentialist writers, Sartre and Camus. As a student of the French department of the Beijing Foreign Studies University, Gao Xingjian was well acquainted with European literature. Accordingly, he looked for answers to complex questions about "being" as considered by Goethe in "Faust" and in novels by F.M. Dostoevsky, and he came to his own conclusion:

In his Nobel Prize speech the Chinese writer said:"Cold and objective literature is literature that is in exile in order to survive, that does not allow society to strangle itself and seeks to survive spiritually" [2, p. 93].

The comparison reveals the proximity of Gao Xingjian's thoughts to the philosophical idea of V. Solovyov, as quoted by A. Solzhenitsyn in Stockholm "Being in chains we ourselves must complete the circle that the gods outlined

to us" [2, p. 25]. The desire for free speech unites emigrants Gao Xinjiang and A. Solzhenitsyn with the philosophical definition of V. Soloviev about the role of a true writer.

It should be noted that the path of the Russian writers to world recognition, which began for most of them during their emigration, was not easy. The symbolic recognition of I. A. Bunin established the "tradition" of the Swedish Academy's recognition of exiled Russian authors. It is enough to refer to the biographies of A. Solzhenitsyn, I. Brodsky and Gao Xingjian. According to the Russian emigrant writer I. Bunin who perceives a free creative expression to be an important social act: "There should exist areas of complete independence in the world. Undoubtedly, around this table there are representatives of all kinds of opinions, all kinds of philosophical and religious beliefs. But there is something inviolable that unites all of us: the freedom of thought and conscience, which we owe to civilization. This freedom is especially necessary for the writer — it is a dogma for him/her, an axiom" [2, p. 7]. Because of well-known circumstances of that time, B. Pasternak's failed speech is delivered in his poem "The Nobel Prize", which expresses the poet's faith in the triumph of the good over "meanness and malice" [2, p. 13].

Observations of the figurative system of works, the arrangement of the main and secondary characters, and the relationship between the author and the character lead to the conclusion that the classification of the character as a national image remains a priority in the development of characters for all writers. An analysis of an extract of Ivan Bunin's story "Dark Alleys" about travelers ("A mud-covered tarantas with a half-raised top drove up, three fairly simple horses with tails tied because of slush. On the trestle of the tarantas there sat a strong man in a tightly belted drab peasant's overcoat, serious and dark-faced, with a thin piceous beard, similar to an old robber, and in the tarantas there was a slender old military man in a large peak cap and in a gray greatcoat of the 19th century with a beaver stand-up collar, still black-browed but with white mustache, which was connected with the same whiskers" [2, p. 8]), referring to Pushkin's reminiscences, testifies to the continuity of the tradition of Russian

classics in the works of the first Nobel Prize winner from Russia. Therefore, the prose of the nobleman I. Bunin was perceived as the final link in the literature of the 19th century [6].

The peasant woman from A. Solzhenitsyn's short story "Matrena's yard", righteous, common, kind, conscientious, honest, hardworking and patient as the whole nation, who endured all the hardships of the Russian history, is on a par with folk characters. The author was destined to become a link in the continuous movement of the great Russian literature from the classical "person of little mark" of N. Gogol, the "ordinary" one of A. Tvardovsky to the "common" one of the future Nobel Prize winner. The text of the novel "The Quiet Don" dramatically impleaches the life and fate of cossacks and Kozatstvo against the background of life-changing events of the century. The genre nature of a historical novel is transformed, being filled with epic content. The epic novel by M. Sholokhov, consisting of 4 volumes, concentrating on events in chronology, makes the Melekhov family the main character. The existence of all generations of the Melekhov family and their countrymen is chronologically connected with the cataclysms of the Russian society, such as the First World War, the February and October Revolutions, and the Civil War. The main character of the novel "The Quiet Don" Grigory Melekhov, happened to be between the two historical forces of the time, makes a moral choice, focusing on the values that he obtained in his family. At the end of the novel, the character refuses weapons, war and death in favor of life. "A strange indifference took possession of him! No, he would not lead the Cossacks under machine-gun fire. No reason. Neither cowardice, nor fear of death, nor aimless losses were leading him at that moment. Lately, he spared neither his life nor the life of the Cossacks entrusted to his command. And at the moment, it was as if something had broken ... He had never before felt all the worthlessness of what was happening, with such an utmost clarity.... He vaguely thought that he could not reconcile the Cossacks with the Bolsheviks, and he himself could not reconcile in his soul" [15, p. 442-443]. M. Sholokhov said at the presentation of the Nobel Prize: "Art has a powerful impact on the mind and heart of a man. ... My native people, on their historical

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paths, did not go forward along a beaten track. ... I would like my books to help people become better, become purer in mind, wake love for people, the desire to actively fight for the ideals of humanism and human progress. If I have succeeded in it to some extent, I am happy" [2, p. 19]. The books of the Soviet writer Mikhail Sholokhov "The Quiet Don" and the Chinese proseman Mo Yan "Big Breasts, Wide Hips" show a wide epic panorama of the life of their people at a hinge period in the history of countries. The authors' personal involvement in the tragic events of the 20th century, world outlook principles formed a specific art world of novels, reflecting the creative manner of each of them. Moreover, aesthetic and moral assessments are determined by more than of half a century difference in the publication of works, having made significant allowance for the author's outlook on the past.

The poor childhood and youth of Mo Yan passed in a usual Chinese province, where his spiritual formation was greatly influenced by the verbal legendary of Chinese folk tellers. The little boy emotionally retold his mother legends about ancient heroes and magical transformations of foxes into beauties in his own interpretation. The name of the writer, Mo Yan, means "Don't Speak," and explains the mother's anxiety for the future of the "talkative" son during the totalitarian rule. Over time, she freed him from Sunday's hard physical labor, let him go to the market to listen to storytellers, having believed in his unschooled talent as a narrator. In his Nobel lecture, he confessionally emphasized: "I am a storyteller. By telling stories, I earned a Nobel Prize in literature. Many interesting stories had happened to me before I got this award, and they convinced me that truth and justice triumph. Therefore, I will continue to tell my stories in the future" [2, p. 112].

The thesis of A. Solzhenitsyn on the purpose of literature to preserve the national soul is important: "So it becomes a living memory of the nation. So it smolders in itself and keeps its lost history - in a form that is not amenable to distortion and slander ..." [2, p.29]. The writer is totally against leveling the nation as a modern trend of the world community: "Nations are the wealth of mankind, these are its generalized personalities; the smallest of them

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carries its own special colors, holds a special facet of God's purpose" [2, p. 29]. The statement of the Russian writer "We will not trample the artist's rights to express solely his/her own feelings and self-observations, neglecting everything that is being done in the rest of the world" [2, p. 30]. The idea logically continues in the speech of Gao Xingjian: "If the writer does not become the mouthpiece of people and does not act as an embodiment of justice, then his/her voice, of course, is weak. However, it is the individual's voice that comes closest to the truth. This is exactly what I would like to say here: literature is just the voice of an individual, and it has always been that way" [2, p. 87].

The author's formulations about the "voice of an individual" and "the right to express solely his/her own feelings", in our opinion, are synonymous in terms of expressing the freedom of an individual. One can include the original judgments of Iosif Brodsky in the conventional discussion about the freedom of speech: "If art teaches something (and the artist, first of all), then it teaches a particular human existence. Being the most ancient and matter-of-fact form of a private enterprise, it voluntarily or involuntarily encourages in a person precisely his/her sense of individuality, uniqueness, and singularity transforming him/her from a public animal into a personality" [2, p. 40]. Thoughts of the Nobel laureates about the role of art in spiritual life are logical and consistent. Oe Kenzaburo, who has experienced the humanistic influence of the Western literature and the Japanese scientist Watanabe, sees his duty as a novelist in that those who express themselves through words and their readers would be able to cope with their own anguishes and adversities of their time and heal their souls from serious wounds. Assumptions, that for all the laureates the aspiration to preserve the life-creating energy of literature is unifying, are functional.

In the poetics of the work, semantic definitions of names are ambiguous. Gao Xingjian's story "On the Other Bank of the River", which reveals the type of a hero characteristic of the traditional Chinese literature, when a person being disappointed with reality goes into nature, is noteworthy. The hero is a peculiar symbol of the victory of Daoism over Confucianism. The heroes of the Russian and Chinese

writers, being incomparable with each other at first glance, are on a par with the "righteous" who preach the value of plain living, the power of sincere feelings, and humanistic ideals. The metaphor of the water in the titles of the novels by M. Sholokhov "The Quiet Don" and Oe Kenzaburo "The Flood Invades My Spirit" is significant, dating back to the genesis flood, its tragic role in the history of mankind. While the love for the mother positions the idea of Mo Yan's novel "Big Breasts, Wide Hips", symbolizes the woman's original role embodied in the figurine known as "paleolithic Venus", and the semantic definition of the surname of the main character of the novel "Doctor Zhivago" by B. Pasternak is the key one in the concept of "Life".

In the interdisciplinary content, the environmental theme is especially important, which makes it possible to identify the role of natural images associated with humanistic ideas in the artistic and aesthetic searches of the writers. Kawabata Yasunari's reasoning about the significance of natural symbols for every Japanese is interesting: "The words "snow, moon, flowers" - about the beauty of the successive four seasons - according to the Japanese tradition, personify beauty in general: of mountains, rivers, grass, trees, infinite natural phenomena and the beauty of human feelings" [2, p. 53]. It is a fundamental principle of the Japanese aesthetics "the sad charm of things", which Kawabata reveals in his speech. Later, formed by the metropolitan culture, Oe Kenzaburo finds Beauty, which he understands as "polysemantics." The figurative framework of all the novels is full of complex reflections about preserving the free, perfect original harmony of a man and nature. The psychology of the author's interpretation of the helpless child's world by the Japanese writer reveals the logic of the motivation for actions and feelings, when the external society brutally destroys the unity with nature. All the young characters of the writers' works are united by the aspiration for freedom, the symbol of which is water. Teenage characters built a schooner, studied maritime affairs and English, created the Union of Free Mariners, dreaming of leaving a closed and cruel world. The escape was illusory. It is not unexpected that for Oe Kenzaburo with his insular outlook, as

for all Japanese, the choice of a powerful sea giant – the Whale, suffering from poachers - is logical. “In the dead of night, the sea overflew its coast, covered all the ground, and the whales, which had not been exterminated yet, having decided on the last resort, swam to the shelter and began to beat on its reinforced concrete walls with something soft, wet and heavy – their fins” [11].

The world image of M. Sholokhov is based on the deep knowledge of the Cossack style of life. Nature in the novel “The Quiet Don” is considered as an integral part of the world in which the epoch-making events of the Civil War unfold. For Grigory Melekhov, the sun becomes a symbol of time, which brightly illuminates moments of the joy of a peaceful life, and turns black at a tragic hour. “Towards evening, a storm was brewing. A brown cloud appeared above the farm. The Don, shagged by the wind, was throwing rigid frequent waves to its shores. A dry lightning was burning the sky behind the paddocks, the thunder was pressing the ground with rare rumbles. A vulture, stretching its wings, was criss-crossing under the cloud, crows were chasing him with a cry. The cloud, breathing chill, was moving along the Don, from the west. The sky blackened menacingly behind the flood land, the steppe was expectantly silent” [14, p. 29]. The natural location and detailed description in the poetics of Bunin's story “Dark Alleys” is retrospectively significant (“In mucky autumn weather, on one of the large Tula roads, flooded with rains and cut by many black ruts, to a long hut, in one connection of which there was a state-owned post house, and in the other one there was a private chamber, where one could have a rest...” [2, p. 8]), revealing not only the author's mood, but also his deep attachment to and understanding of the motherland. A total of 25 poems in the context of the novel "Doctor Zhivago" also, according to the article’s authors, reveals Boris Pasternak's admiration of nature, which emerges as an integral part of the world order of a Russian person at the time. The intellectual, doctor and poet Yury Andreyevich Zhivago reinterprets historical facts through well-known and powerful metaphorical images - snowstorms, candles, snow, rain, winds). Moreover, the lyrical hero of the “Stanzas” by Iosif Brodsky echoes him;

for him Vasilyevsky Island in Leningrad is brimming with outlines of its bridges, April drizzle, snow, and the dark blue color of the poet's nostalgia for the "indifferent homeland". Thus, the art of declamation of the classic authors of the literature of Russia and the Asian-Oceanian countries conveys the humanistic idea of life in many ways.

4. Conclusion

Summing up the observations on the publicist-like speeches of the writers, we should note that the Nobel lectures reveal the philosophical basis of the artistic creation, which is marked by the search for a humanistic beginning. The Nobel laureates consider the freedom of the artist to express his/her position as the main argument of literature. This study has shown the difficulty of correlating this material, which goes beyond the scope of an academic lecture into the field of verbal essays, the Japanese "following the brush", Chinese plotless prose, lyric poems, and confessions. Their heritage traces the literary traditions of their home countries, the national mindset, and creative manner. The analysis of some features of the poetics of works of art is based on the identification of the genre and style singularity of the prose and poetry of the Nobel laureates. Applying biographical and historical information made it possible to identify not only the private motives, but also the general conceptual positions of the laureates. The unifying pathos of M. Sholokhov's reasoning is obvious: "We live on the earth, obey earth laws, and, as the Gospel says, our day is dominated by its malice, its cares and demands, its hopes for a better tomorrow" [2, p. 17]. The literary experience within the boundaries of the comparative study is relevant for moral education, forming the tolerance of readers, and intellectual reloading in the trans-border cultural area of the 21st century.

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LEGAL REGULATION OF PREVENTION AND ELEIMINTAION OF OIL SPILL INCIDENTS IN THE ARCTIC REGION

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Abstract: Nowadays, as the significance of the Arctic is increasing, the international community faces new challenges. At the present time, Arctic states (Russia, USA, Canada, Denmark and Norway) continue to prepare to the beginning of the large-scale oil and gas resource development of the Arctic offshore. However, discovering and exploitation of the hydrocarbon deposits endanger the fragile ecosystem of the region. In this type of economic activity, oil spills present the greatest hazard to the environment. The article considers activity of the Arctic Council in this area, as well as the international and national legal regulatory mechanisms to ensure environmental security in the Arctic.

Keywords: Arctic, oil spills, environmental security, Arctic Council

1. Introduction

Modern world is extremely dependent on oil. For this reason, oil companies continue to move into the little-developed areas of the Arctic region looking for the last drops of oil and ignoring hazards that oil and gas reclamation poses to the fragile Arctic nature.

For how long is the Arctic region to remain one of the cleanest places on earth? What will happen when extraction of oil leaves the level of the first timid attempts to develop recently discovered fields and moves to the international industrial level of petroleum products turnover? Will the unique, and, consequently, especially vulnerable ecosystem of the Arctic region outlast for long without an appropriate interference into the support of ecological safety? These issues move to the forefront in parallel with the growth of the Arctic region energy potential evaluation.

Arctic states and big oil companies are engaged, with all their might, in the development of work plans aimed at increasing oil production in the Arctic region and proceed gradually to their immediate realization. In this sphere,

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Norway made more headway than anybody else.

However, along with that, Norwegian representatives claim that it is necessary to find a balance between the economic development of the region and the timely resolution of its ecological problems. Due to the fact that Norwegian Arctic region is densely populated, strategic emphasis is placed, in the first turn, on interests of the Arctic region population while following a stable development. Accordingly, a significant share of the Arctic political activities is aimed at dealing with ecological problems, including prevention and elimination of accidents resulted from oil products spills.

The central place in the Norwegian strategy belongs to proactive and preventive work. Indeed, even well-developed systems of emergency situations elimination will not be able to prevent all destructive consequences.

In spite of the obviousness of such arguments, recognition of catastrophic consequences of a failure to act in the environmental protection sphere comes only after some emergency situations.

The accident with Exxon Valdez oil tanker near Alaska shores on March 23, 1989, showed that one country is not enough to prevent incidents of such kind. Residual oil that hit the environment as a result of the accident remained there for much longer than it had been initially predicted. In 2005, it was discovered that the oil had only slightly inspissated on the shoreland along the oil spill zone.

2. Results and Discussion

Being an industry of high environmental risks, oil production significantly affects the ecological state of the region and poses a big threat to the vulnerable Arctic ecosystem. Elimination of oil spills requires big expenditures and efforts in any circumstances, and Arctic conditions create additional difficulties associated with low temperatures and ice cover. It is noted that at low temperatures oil has a lower propagation speed, but there is a danger of oil freezing into ice with a subsequent return of oil onto the surface during a spring thaw.

Under such conditions, ensuring regulatory management of international cooperation and coordination of states' efforts in the sphere of prevention and elimination of sea oil spills in the Arctic Ocean becomes the primary objective.

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At present, a leading role in ensuring such cooperation is played by the Arctic Council, establishment of which was marked by the declaration, in the first turn, of ensuring the interstate cooperation on issues of stable development and protection of the Arctic environment as the main objective of this organization.

In 2013, within the framework of the given international organization activity, Arctic states undertook a number of joint steps aimed at coordination of actions in the sphere of oil spills prevention and elimination. At the Eighth Meeting of the Arctic Council a target group was created for preparation of the Plan of actions on prevention of oil contamination. It was decided to develop national, bilateral and multilateral plans of actions in emergency situations, train personnel and conduct drills, develop effective response measures. An agreement on cooperation in the sphere of preparedness and response to marine oil pollution in the Arctic Region was signed, which nowadays is actively applied by Arctic states, including when conducting exercises.

But it is noteworthy that these documents touch upon the issues of the states cooperation in cases when an incident causing oil pollution has already happened.

The next stage of the Arctic Council efforts to prevent emergencies was the adoption in 2015 of a framework plan of cooperation in the sphere of prevention of Arctic sea areas oil pollution resulted from oil and gas activity and navigation, the objective of which is to strengthen interstate cooperation including exchange of information with a view to environmental protection in the Arctic.

In compliance with this plan, to prevent incidents on the sea that can lead to the oil pollution, the participants intend to establish a catalogue of existing resources that can play an important role in minimization of a threat of incidents on the sea leading to oil pollution, as well as to estimate sufficiency of such resources.

Adoption of these documents by the Arctic Council laid the foundation for the establishment of an integrated system for regulation of the considered problems.

But, unfortunately, some issues still remain unconsidered on the international level, such as prevention of sea oil contaminations from stationary and floating oil and gas producing platforms,

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subsea pipelines, ground and port infrastructures at all stages of sea oil and gas resource development in the Arctic Region, which must be reflected in adoption of the next documents on the issues.

Before the foundation of the Arctic Council, problematic issues of ensuring ecological safety of the region were (and still are) handled through universal international agreements. The most "reputable" document in this sphere is the International Convention for the Prevention of Pollution from Ships of 1973, modified by the Protocol of 1978 (hereafter — MARPOL), which contains measures on reduction and prevention of environmental pollution with harmful substances transported by ships or formed in the process of their operation. As concerns oil and gas activity, the Convention contains requirements to engine rooms of ships and cargo districts of oil tankers, regulates prevention of pollution as a result of an incident causing contamination by oil, contains requirements to oil receiving facilities, etc. Governance mechanisms of ensuring readiness for response to oil spills are also established by the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC-90), International Convention on Civil Liability for Oil Pollution Damage of 1969 (CLC), International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage dated 1971 (FUND), as well as by a whole row of other international documents. However, special requirements for activity in Arctic conditions are not specified in MARPOL. Also, subarctic states concluded a number of bilateral agreements, for example, the Agreement between the Russian Federation Government and the Government of Canada on Cooperation related to Environmental Issues of 1993; the Agreement between the Government of the USA and the Government of the USSR concerning Cooperation in Combatting Pollution in the Bering and Chukchi Seas in Emergency Situations of 1989; the Agreement between the Government of Russian Federation and the Kingdom Denmark Government about Cooperation in the Field of Environmental Protection of 1993; the Agreement between the Government of Russian Federation and Government of

Kingdom of Norway concerning Cooperation in the Combatment of Oil Pollution in the Barents Sea of 1994.

In its turn, working out of international norms within the framework of the Arctic Council activity entailed adoption of a number of national documents, including those in the Russian Federation. Thus, Federal Law "On the Continental Shelf of the Russian Federation" and Federal Law "On the Internal Sea Waters, the Territorial Sea and the Contiguous Zone of the Russian Federation", Article 22.2 and Article 16.1, respectively, confirm that exploration and production of raw hydrocarbons, as well as transportation and storage of oil and oil products, is only allowed in case of availability of a plan, in compliance with which measures on prevention and elimination of oil and oil products spills in the sea environment are scheduled and realized.

In 2014, the Government decree confirmed Regulations for organization of measures on prevention and elimination of oil and oil products spills on the continental shelf of the Russian Federation, in the internal sea waters, the territorial sea and the contiguous zone of the Russian Federation, which establish the procedure of formalization of the plan on prevention and elimination of oil and oil products spills.

For most Arctic ports, rules are established to ensure the ecological safety and observance of quarantine regulations in the seaport, which specify the sequence of actions in case of detection of an oil or oil product spill.

However, as is the practice now, the complex of changes introduced into the national legislation yet again replaced enacting of a unified federal law on this topic, namely, Federal Law "Concerning Protection of the Sea from Oil Pollution", a draft bill of which was proposed as early as 2009.

3. Conclusion

So, at the present time, Arctic states move on from the stage of discussion to actions, which must be based on the principle of collectiveness for timely prevention of oil and oil products spills.

In this connection, the major task is formation of the international legal basis for realization of any activity, including oil and gas one, in the Arctic. This must provide for a stable development and ecologically safe and effective use of the Arctic Region.

Therefore, subarctic states must continue the work on formation of the legal massif aimed at prevention of sea oil spills in the Arctic. It is also necessary to simultaneously support legal theory researches with technological developments that will help to timely prevent the emergencies.

One should also pay attention to the fact that legal documents on issues of ecological safety in the Arctic are rarely adopted. The Agreement on cooperation on marine oil pollution preparedness and response in the Arctic Region has become the second such document over the past years of the Arctic Council activity. The Agreement imposes responsibility for realization of special control over the state of affairs in the specified region. However, this Agreement holds the sides liable only in the sphere of the states cooperation, and not in the sphere of direct ensuring of ecological safety.

Thus, it is urgent to enact a legally binding document that would prescribe specific requirements to facilities for oil exploration, extraction, production and transportation in Arctic conditions. Such document could ensure a uniform legal regulation of ecological safety provision in the sphere of oil spills prevention for all subarctic states.

The Arctic Region is also especially vulnerable due to the fact that today there is no strict special international legal management in the sphere of its resources use and protection. As opposed to the Antarctic, in respect of which there remains in effect a big number of conventions, all special international documents related to the Arctic have a “soft law” character, which must be completely re-examined.

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PROBLEMS OF USING FOREIGN EXPERIENCE IN THE COUNTERACTION OF CRIME IN THE JUVENILE FIELD

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Analysis of results of numerous research devoted to the foreign experience of counteraction of crime in the juvenile area allows making several important in our view preliminary conclusions.

First of all, the issues of fight against juvenile criminality and criminal offenses against minors were considered in a relative isolation for a long time. The only area of intersection of these parallel research studies was possibly the juvenile victimology within the frameworks of which the mechanisms of transformation of a criminal teenager into the victim teenager were studied.

Secondly, among these numerous researches it is hard to find the papers that would be devoted exclusively or predominantly to the problem of applicability of a foreign experience in Russian reality. Alongside with that specifically this very problem is major and crucial in our view for any research devoted to the study of experience of the foreign legal culture. In our opinion any foreign experience of counteraction of criminality in the juvenile area shall be evaluated in terms of the following criteria:

1) relevance of the studied experience to the same legal system to which refers the legal system of the state looking to acquire the experience;

2) comparability (coordinate) of the extent and intensity of the registered crime (type of crime) of the state providing an experience and the state acquiring such experience. The comparison shall be supplemented by the data concerning real criminality if possible obtained from the commensurable sources (public opinion for instance);

3) “price” of the experience introduction. Availability of the required financial resources with the recipient state for introduction of the respective experience;

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4) availability of similar professional capabilities with the state acquiring the experience for implementation of the latter;

5) availability of the verified empirical data concerning the efficiency of a specific rule-making or law-enforcement experience that we consider for the purpose of repeating thereof under conditions of another state;

6) degree of disintegration, i.e. relative independence of the private rule-making and law-enforcement decisions (legal ideas, specific norms or elements of such norms) that can be acquired separately from the general decision (model).

Thirdly, the study of the foreign experience of counteraction of criminality in the juvenile area irrespective of the possibility and expediency of using it right away seems useful since the possibilities and expediency can appear later.

The history of occurrence and development of the systems of counteraction of criminality in the juvenile area (crimes encroaching on the minors and crimes performed by the minors) in the foreign states practically coincides with the known history of the state and law in terms of duration.

Thus, already the Code of the sixth king of the First Babylonian Dynasty of Hammurabi reigning in the ancient Babylon from 1792 BC to 1750 BC established a considerable number of penal prohibitions both on crimes against minors and juvenile crimes.

In particular, according to §155 of the Code "If a man have betrothed a bride to his son and his son have known her, and if he (the father) afterward lie in her bosom and they take him, they shall bind that man and throw him in the water." According to §194 of the Code "If a man gives his son to a nurse and that son dies in the hands of the nurse, and the nurse substitutes another son without the consent of his father or mother, they shall call her to account, and because she has substituted another son without the consent of his father or mother, they shall cut off her breasts."

Severe punishments were stipulated also for the minors encroaching on the family principles. In particular, according to §192 of the Code "If the adoptive son of a eunuch or the adoptive son of a sacred prostitute (*priestesses engaged in sacred*

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prostitution, i.e. prostitution in favour of the convent – N.V.) say to his father who has reared him or his mother who has reared him: "My father thou art not," "My mother thou art not," they shall cut out his tongue."

§195 of the same Code established a prohibition on blows inflicted by the son (including minor in modern understanding) to his father "If a son strikes his father, they shall cut off his fingers."

Studying the primary monuments of law of the ancient states one cannot but pay attention to the fact that practically each of them established special criminal law standards concerning liability for juvenile crimes that as a general rule established highly severe penalties and often mutilation that were just as harsh as penalties for adults. Thus, according to the Table VIII of the Law of the Twelve Tables of the Ancient Rome (451 - 450 BC) for pasturing on or for cutting secretly by night another's crops acquired by tillage a person under the age of puberty shall either be scourged or make composition by paying double damages for the harm done.

The tendency not only did not decline in course of time but on the contrary reached its climax in certain legal systems in form of strict liability of children for crimes of parents. Thus, the Criminal Code of the imperial dynasty of China - the Tang dynasty adopted in the early Middle Ages (624 - 653) and consisting of 12 sections and 502 articles alongside with the largely detailed fault-based liability of public officers for various crimes also stipulated in many cases strict liability of their children and grand-children based on the principle of a joint family liability. According to the Art. 248 of the Code "Everyone who designed Rebellion against (Mou Fan) or (committed) Great stubbornness (da ni) shall be beheaded. All their fathers and sons at the age of 16 and above shall be suffocated." At the same time, children at the age of 7 and younger in case of commission of a capital offense were not subjected to death penalty, and children at the age of 15 and younger in all the cases of commission of crimes to be punished with exile and less severe punitive measures were entitled to pay off the punishment. Rebels' sons ate the age of 15 and younger, and their grand-children were subjected to punishment in form of "confiscation to treasury". But if the family to be punished on the basis of

the principle of joint family liability had aged or sick people who were not liable, one of the rebel's sons could be released from penalty and left as a breadwinner of such persons.

The Code contained a considerable number of extremely severe prohibitions (from the point of view of modern ideas concerning the severity of punishment) for the minors encroaching on the family principles. Thus, according to the Art. 329 of the Code verbal abuse of a grandfather or grandmother through parental lineage, or of father or mother entailed suffocation.

At the same time the Code being considered also established special norms (privileged mostly i.e. stipulating lower liability for crimes pertaining to the minors). Specifically, if parents, grandfather or grandmother committed murder of children or grandchildren (if the latter did not follow their instructions) "using a hand, a leg or otherwise except for gun", the punishment was 2 years of hard labour in exile. If the murder was committed using a knife, the punishment increased up to 2.5 years of hard labour in exile.

Punishment was mitigated for the murder during a game, through error. Parents, as well as grandfather and grandmother were not subjected to punishment for the murder of their children or grandchildren through error. In all cases the punishment for the murder through error could be paid off, and the public officer was subjected to punishment in form of forfeiture of rank (Art. 338 of the Code).

Study of the numerous monuments of the foreign criminal law referring to the time of the ancient world, Middle Age and Modern Times that touched upon the issues of liability for crimes pertaining to the minors and juvenile crimes to a certain extent allows making the following conclusions:

1) the primary objective pursued by the lawmakers of all the past epochs in selection of criminal sanctions pertaining to the minors practically did not change for millennia and consisted in strengthening of family principles, authority and power of parents over children. Negligence of these principles, disobedience, disrespect, and abuse of parents and senior members of the family verbally or by action were often considered as more dangerous crimes as compared to the property crimes. At the same time, the lawmaker often extended

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mercy to the minors if internal and external circumstances permitted, which was undoubtedly a reflection of the idea about innocence or limited peccancy of young children shared by many religions;

2) defense of rights (including the right to life) and other legitimate interests of the minors was realized in the first place to the extent to which the child was considered as part of the family, propagation of the parents, and in number of cases as a special type of property, "a capital." Partly it probably explained the fact that violence on the part of parents with respect to their children was deemed as the lesser evil as compared to similar violence in terms of nature and intensity on the part of strangers. Apparently, the lawmaker in this case proceeded on the basis that parents (parents of parents) have special rights with respect to their children (grandchildren).

One also cannot but turn attention to the fact that only at the end of the Modern Times the lawmaker started to refuse of necessity from the exclusively oppressive (punitive, based on measures of legal liability) sanctions against criminality, including criminality in the juvenile sphere.

In modern juvenile criminology there is an opinion that the formation of systems for prevention of delinquency among minors qualitatively different from the criminal and administrative sanctions started in foreign countries at the end of the modern times - from 1846 when the first juvenile reformatory was established in Massachusetts (USA).

One can hardly agree with this statement if take into account the fact that the first institutions for "vicious orphaned children" were established in 1547 in Holland and in 1595 - in Germany. In 1656 the corrective labour institution for 600 "criminal and vicious" boys and girls was opened in Genoa, and in 1735 - in Rome. In England in 1557 during the reign of Elizabeth I (Bridwell) the house of correction was opened for the purposes of poverty and vagrancy alleviation (and specifically among children). 30 years after it was closed since the problem of cooperative labour of persons who committed crimes and vagrants and poor who did not commit crimes could not be settled. Later (in 1778) the Law was issued in England concerning the establishment of punitive

institutions where children could be placed upon request of parents for "disobedience and impudent conduct" for moral and religious correctional education, apprenticeship training and compulsory labour. A new step in the development of the British system for prevention of juvenile crimes was made in 1854 by adoption of a Law concerning reformatory schools. In 1897 the Law underwent essential changes aimed at ensuring of prevention of the first-time criminalization of teenagers.

In order to understand the main point of the new (not oppressive i.e. associated with application of criminal sanctions) approach to prevention of juvenile crimes that got widespread in Europe and USA in the latter half of the XIX century it is important to pay attention to the fact that appearance of state institutions for minors with abnormal behaviour designed to prevent crimes shall be deemed less as a considerable achievement on the way of search for more efficient juvenile crime-fighting tools as compared to punishment than as an evidence of decline of a family and probably of church into care of which children that turned out to be under social risk were traditionally given before.

That this approach did not bring the expected results signifies the fact that practically all of these institutions were closed soon thereafter or transformed into ordinary prisons.

One of the reasons for unstable performance of the first supervisory-preventive institutions according to analysis was an imperfect mechanism of differentiated identification of the minors with abnormal behaviour who could be sent to such institutions. In respect thereof the appearance of specialized juvenile courts shall be considered as a natural response of the state to the resulting situation.

As it is known the first such court was established in Australia in 1890. Thereafter juvenile courts were established in Canada (1894), USA (1899), Egypt (1904), England and Wales (1905), Germany (1907), Austria, Hungary and Italy (1908), Russia (1910), Portugal and Switzerland (1911), and Romania (1913). The tendency spread to the contemporary times as well which is traditionally understood to be the period from the Great October Socialist Revolution of 1917 to the present day

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according to historical and historical-legal literature. In our view, the establishment of the system of juvenile courts not only fixed the already existing ideas about the necessity to restrain to the uttermost the application of criminal sanctions (liability) pertaining to teenagers who committed socially dangerous acts, but also radically limited the idea prevailing for a long time that the family for a teenager-delinquent is the best environment as compared to the state or private correctional institution and can determine on its own the most effective correctional measures for the teenager. At the same time the juvenile courts enabled to combine in one procedure settlement of the issues of the minor's liability for criminal behaviour and the issues of elimination of factors (reasons and conditions) that were conductive to commission of a crime, or other delinquency and can be conductive to the abnormal behaviour of a teenager in future (including settlement of the issues of social rehabilitation of a teenager).

This tendency in our view should not be considered as an absolute inevitability and the only true direction for the development of the whole system of counteraction of criminality in the juvenile sphere. The already settled practice of recurring refusal of certain countries from juvenile courts testifies it. Thus, in the XX century the juvenile courts were repeatedly abolished and reestablished not only in Russia (USSR) but also in the USA (specifically in early 1980s juvenile courts were abolished in the majority of states of the USA). Presently the issue concerning the abolishment of juvenile courts is actively discussed again in the USA.

The present-day systems of counteraction of criminality in the juvenile sphere in foreign countries are basically based on the same principles and models as the Russian national system. The distinctive feature of these systems was disunity of legal and organizational mechanisms for prevention, suppression and liability for juvenile crimes and identical mechanisms applied pertaining to persons infringing on the rights and legitimate interests of the minors (including parents or other members of the minor's family, or lawful representatives). Specifically, juvenile courts established practically in all countries of the Europe, in majority

states of the USA and in Japan do not consider the cases concerning infringements pertaining to the minors despite the fact that any such infringement shall be evaluated as a potential factor of criminalization of a teenager's personality. Only the court can comprehensively evaluate the probability of realization of this factor upon determining the fate of one or both parents (which implies a family as a whole) who committed criminal offense pertaining to their child. The more judges realize the fact that tomorrow (in case of a wrong decision) they will have to consider a case with respect to the teenager himself the more justified will be the court decision.

One of the cornerstones of the modern policy of fight against criminality in juvenile sphere is the question of a minimum age of criminal liability, since the answer to it shows the true viewpoint of the state (as well as moral and spiritual condition of society) with regard to acceptable limits of criminal sanctions against the minors and with regard to the priority of measures not associated with sanctions.

Unlike the early times of the history of civilization today the lawmakers of the majority of states established a minimum age of criminal liability and by doing so fulfilled the appeal envisaged in section 3 Art. 40 of the United Nations Convention on the Rights of the Child dated 1989 to participant-states to establish the minimum age below which children shall be recognized as unable to violate the criminal legislation. This is with the exception of the very few countries and the majority of USA states where the issue concerning the age of the minor upon criminal prosecution is settled by the court.

Despite almost a universally recognized as of today idea that the criminal sanction does not rehabilitate juvenile offenders the legislation of many states (irrespective of belonging to one or another legal system) established a 7-year old minimum age of criminal liability (Barbados, Brunei, Gambia, Ghana, Egypt, India, Ireland, Cyprus, Kuwait, Libya, Liechtenstein, Maldives, Namibia, Nigeria, United Arab Emirates, Pakistan, Singapore, Syria, Sudan, Thailand, Tanzania, Republic of South Africa etc.). In dozens of states the age is from 8 (Indonesia, Iran, Scotland etc.) to 13 (Algeria, Monaco, Tunis, France

etc.). And only in comparatively small number of states the age exceeds the minimum age of criminal liability stipulated by the Criminal Code of the Russian Federation (14 y.o.) and makes 15 y.o. (Denmark, Iceland, Laos, Norway, Slovakia, Finland, Czech Republic, Sweden etc.) or 16 y.o. (Belgium, Republic of the Congo, Cuba, Portugal, Chili etc.).

As Dodonov V.N. fairly states in order to understand true nature of this tool of the criminal policy, it should be taken into account whether the minimum age of criminal liability established by the national criminal legislation of one or another country is single for all types of crimes and independent on any circumstances or differentiated depending on the type of crime or other circumstances. Thus, a single minimum age of criminal liability was established for example by the criminal code of Cuba, Salvador (16 y.o.), Denmark, Iceland, Norway, Finland, Czech Republic, Sweden (15 y.o.), Hungary, Latvia, Korea, Serbia (14 y.o.) and some other countries. However in the majority of countries just like in Russia the criminal legislation stipulates differentiated (multiple) minimum age of criminal liability based on the following criteria: 1) type of crime (criminal offense); 2) evaluated by the court ability of the minor to realize danger to the public of the actions committed (principle of understanding).

Mr. Dodonov also specifies the third criterion - availability of a special i.e. different from the one established by the criminal law legal mode of criminal liability of the minors. In our view it is reasonable to deem this criterion not as a criterion of differentiation of the age of criminal liability, but as a legal-technical method of legislative consolidation of this attribute of the crime subject.

This basically refers to a “parallel” criminal legislation for the minors extracted from the general criminal code. Such legal-technical method is specifically used by the lawmaker of Jordan (with respect to persons who committed socially dangerous acts at the age of 7 to 18), Switzerland (with respect to the persons at the age of 10 to 18); and Spain (with respect to the persons at the age of 14 - 18).

Another legal-technical method for settlement of the same objective was used by the lawmakers of Latvia,

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Macedonia, Slovenia and Ethiopia and some other countries which criminal laws establish minimum age of criminal liability but prohibit to apply criminal sanctions if the person who committed socially dangerous act did not reach lawful age (Lebanon) or limit the range of criminal liability measures by corrective and disciplinary measures which are actually not such, though are to be applied pertaining to the minor on the grounds of a socially dangerous act committed. For instance, according to the criminal code of Syria such measures shall be applied with respect to persons at the age of 7 - 15. In Guinea - with respect to persons at the age of 10 - 13, in Macedonia, Slovakia, Croatia - at the age of 14 - 16.

Differentiation of the minimum age of criminal liability depending on the type of the crime committed (the same as in the valid criminal code of the Russian Federation) is applied not only almost in all former USSR countries, but also in Vietnam, People's Republic of China, Mongolia, New Zealand, Peru, Poland, some USA states and some other countries. At the same time in some of these countries the lowered minimum age of criminal liability was established pertaining to 1-2 types of crimes (for instance, in New Zealand criminal liability for 10-13 year old teenagers is stipulated only with regard to the murder). Legal-technical methods of such differentiation can be different: from the direct reference in the text of the Article of the Special part of the criminal law to exclusion from the general rule to application of the entire ladder of lowered ages (for instance in the criminal code of Uzbekistan).

Another criterion for differentiation of the age of criminal liability is a principle of understanding, which is applied by the lawmaker of the majority countries worldwide. As it was already mentioned the main point of the criterion consists in identification of the age starting from which the person can bear criminal liability by the court not the lawmaker. In our view, in this case the question is not that the court substitutes the lawmaker and establishes the general rule for everybody instead of the lawmaker with respect to identification of the minimum age of criminal liability, but that with regard to the age limits specified by the lawmaker the court is entitled to resolve a question concerning full or partial age-specific

capacity for criminal liability. For instance, in Ireland such limits are from 7 to 14 years old, in India from 7 to 12 years old, in Great Britain and Australia from 10 to 14 years old and in France from 13 to 18 years old. In such a manner, it is referred to broader limits for judicial discretion upon resolution of a question concerning capacity of the minor established by the lawmaker itself. In our view such legal-technical method for regulation of the boundaries of application of criminal sanctions for the purposes of fighting against juvenile criminality can be considered as an optimal for the countries with very high level of trust of citizens to the judicial system, developed theory and practice of psychological expertise and detailed regulation of the court evaluation of expert conclusions with respect to the age capacity of the person.

Criminal legislation of some countries (including Russia) applies both principles of differentiation of the age of criminal liability (Art.20 of the Criminal Code of the Russian Federation, Art.20 of the Criminal Code of Azerbaijan, Art. 27 of the Criminal Code of Belarus).

Depending on the solution of the matter of minimum age of criminal liability for the minor, foreign lawmakers resolve differently the issues concerning the system and scope of measures of the state response to the socially-dangerous behaviour of a teenager.

Thus, according to the Law of Great Britain concerning children and teenagers dated 1969 the court was vested with authority to send previously unconvicted delinquents to the visit centre. This measure was generally applied pertaining to persons with no previous convictions.

The Criminal Justice Act adopted in Great Britain in 1982 established a rule according to which the minor is obliged to attend the centre once a week and be present there no longer than 3 hours. At that the teenager presence in such centre shall not coincide with school classes or job time. In case when the minor commits a crime with regard to which the law does not specify any specific type or size of punishment, the court is authorized to oblige the guilty to compensate the damage caused to the person (upon consent of the latter) or to society in kind, or issue an order concerning the plan of actions specifying forms and procedure of supervision over

the conduct of the minor and types of activities that the teenager shall and shall not perform. In accordance with the same Law the court is not entitled to deliver a judgment regarding confinement in prison of a person that reached 21 irrespective of the actions committed. In case of commission of socially dangerous acts such persons could be placed only in special centres for detention of the youth.

According to the Criminal Justice Act dated 1988 persons at the age of 15 to 21 who committed such acts by decision of a court could be sent to institutions for young offenders for up to 12 months with subsequent supervision till they reach 22 upon availability of one or several paired conditions from the specified ones: 1) nonfulfillment of the punishment not associated with deprivation of liberty and necessity to restrict freedom of such person for the purposes of society protection from the threat of serious harm caused by such person; 2) upon commission of grave offense which according to the law shall be punished only by custodial restraint.

Formalized in legislation limitations with respect to application of criminal sanctions pertaining to teenagers who committed socially dangerous acts made a contribution to the fact that predominantly non-punitive model of state response to the juvenile criminal activity settled in Great Britain by the beginning of a new millennium. It is specifically indicated by the fact that custodial sanction was applied only pertaining to 14% of teenagers (male) at the age of 15 - 17 y.o. For comparison in Russia this indicator pertaining to the group of 14-17 y.o. in 2016 was 30%.

The studies of the latest foreign experience in the sphere of counteraction of criminality in the juvenile sphere both by means of criminal and criminal procedure legislation and by criminological prevention measures allows making the following conclusions:

1. Settlement of the issues concerning the necessity or expediency of establishing juvenile courts at a national level shall be considered in the context of the total range of problems of formation and development of national systems of counteraction of criminality in juvenile sphere. The experience of creation, operation and abolition of such courts in foreign countries allows making a conclusion that availability of

such courts can no doubt be considered as desired, but not at all obligatory condition for efficiency of the national system of counteraction of criminality in juvenile sphere.

Proceeding from the position that the primary purpose of the juvenile court consists not in the vindictive punishment for the acts committed by the minor, but to provide as far as possible a comprehensive and reasonable assessment of the dangerous condition in which the minor and his/her family turned out to be, and select the most useful *measures for the child and his/her family* requiring in particular support from the state, the applicant deems it necessary upon formulation of the concept for the competence of such court to take into account *the expediency of obliging such courts to consider the cases of crimes and other delicts committed pertaining to the minors by parents, other members of the family, foster parents, curators or other legal representatives*. At that, the applicant deems that a highly spread in a number of foreign countries experience of criminal and administrative liability of parents or other legal representatives for nonfulfillment of the obligation established by court "to ensure good behaviour of the minor" pertaining to whom the court applied disciplinary measures does not deserve support.

2. Study of consequences of establishing in the criminal legislation of many foreign countries (including those having a highly developed system of early prevention of crimes and other social deviations among minors) the minimum age of criminal liability for certain types of crimes lower than in Russia (specifically from 12 y.o.) allows making a conclusion that such measure can be recognized reasonable with respect to terrorism offenses and especially serious violent crimes committed by minors as part of an organized group (particularly as part of a gang) or criminal organization. This measure in our view will help to protect interests of not only social security but of juvenile offenders as well.

3. An important tool for ensuring the priority of measures of early prevention of crimes and other types of social deviations among minors in many foreign countries is a widespread practice of vesting the law enforcement and regulating agencies (specifically public prosecution office) with quasi-

judicial authorities to apply measures not associated with restriction of rights but of disciplinary, rehabilitation and pecuniary nature pertaining to the minors who committed minor offenses.

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PRESIDENTIAL POWERS IN THE SYSTEM OF STATE SUPERVISION IN THE MANAGEMENT SPHERE OF THE RUSSIAN FEDERATION.

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Abstract:

1. Rationale is determined by increase of convergence processes in constitutional and administrative and legal regulation of public administration sphere in democratic states, which is one of legal indications of trends to "rationalized parliamentarism" practice development. The practice of perception and reorganization of classic "triad" principle of branches of government and "checks and balances" system in state administration is featured with significant country-specific peculiarities and, at times, high dynamism in states with a mixed government, and is observed, firstly, via studies of modifications of arrangement and status of individual responsibility, politico-legal institution of the chief executive.

2. Aim of the article is to reveal, based on the study of development of president status regulation by constitution and administrative and legal mechanisms, modifications of "separation of powers" system under conditions of mixed government, i.e. semi-presidential republic in the Russian Federation, related to confirmation of constitutional and legal fundamentals of presidential power as an independent branch, its identification with executive (partially) and control (mainly) branches.

3. The leading approach to the study of this issue is as follows. Mechanism of interaction, competition (but not confrontation) and "mutual circumscription" of authorities is ensured by corresponding organizational and legal forms of their activities. In order to ensure the effective functioning of the "separation of powers" system, it

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is necessary to consider that each of the branch of government are realized through the same organizational and legal forms, that is, also, by means of rule-making and on the basis of positive law enforcement, and both law enforcement and control activities. At that, functions conforming with lawmaking, law enforcement and administration, or control forms of each branch activities are implemented only within the ranges and framework of the corresponding branch purposive appointment. [3. p. 24].

4. Results.

A). Due to convergence of constitutional and administrative and legal regulation, in the scientific community, there sometimes sound diametrically opposed judgments on future of structure of state based on division of powers: from complete negation of "separation of powers" principle to overuse of powers "division" into branches, significant extension of classic "triad" is proposed. It seems, that overuse of the power division, acceptance of multiple centers of power in state practice may inspire trends towards weakening of state, which is unwelcome for enforcement of rights and freedoms. However, some extension of classic system is feasible. Thus, regarding mixed forms of government, it is worthwhile to agree with necessity for reinterpretation of classic "separation of powers" concept, in particular, of extraction of control branch of government.

B). State control as an organizational and legal form of activity is inherent to each branch of power. Among the variety of constitutional control, there should be distinguished: Presidential control, parliamentary control, judicial control and control in the system of executive branch. However, as the branch of government in a presidential-parliamentary Republic, the constitutional control is identical to presidential status. In control powers, there is the great (exceeding) force of presidential powers concealed in semi-presidential republic as compared to presidential powers in classic presidential republic.

C). In the course of operational (practical) activities, heads of states (chief executives), in most countries, exercise their constitutional powers, relying on apparatuses, not constitutionally established structures which status is rather based on

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administrative regulations, or administrative discretion rights. In Russia, the Executive Office of the President (similar to the corresponding organization in some other countries) relies on constitutional provisions, which is more corresponding to the requirements of constitutional system with regard to remarkable factual significance of the specified institutions for mechanism of individual responsibility powers exercising.

D). Presidential control in the Russian Federation, by its nature, is a form of constitutional control. The peculiarity of presidential branch of power in Russia (as a semi-presidential one) is that it is a synthesis of three foreparts: The status of head of state (highest representative of the Russian state and arbitrator of constitutionally established authorities); status of president as the chief executive; constitutional control powers of the President.

E). In composite (federate) states, the powers of the president in area of constitutional control of federate relations "vertical structure" are highly important to ensure unity and territorial integrity of state, prevent and preclude conflicts in legal system. In Russia, in this framework, the activity of the RF President is rather important, including the one based on interaction with courts and Russian procuratorial bodies. The Constitution of the Russian Federation (1993) envisages a wide range of restrictions of presidential control regarding the subjects of the Russian Federation, which are ensuring effect of constitutional state and federalism principles announced in the Constitution.

F). Maintenance of balance between constitutional and administrative regulation of public administration sphere in a democratic state is the condition of moderate balance of powers in constitutional "separation of powers" system.

5. Materials of the article may be useful when improving legislation and practice of states with a mixed form of government (semi-presidential republic) for development of constitutional control academical doctrine, for improvement of heads of states statuses under conditions of mixed forms of government.

Keywords: "correlation between constitutional and administrative laws"; **"**State administration and administrative law"; "state control"; state supervision

"administrative control and constitutional control"; presidential control in the Russian Federation; entities under presidential control in the Russian Federation; forms and mechanisms of presidential control in the Russian Federation; presidential control and federalism in the Russian Federation; presidential control, government form and "separation of powers" system in the Russian Federation.

1. **Introduction (problem statement, relevance, perspective of demand among readers, etc.).**

Expansion of interdisciplinary research is a trend in modern law that reflects not only the processes of the convergence of two global sectors: public and private law sector, but also the processes of interpenetration of "small branches" within each identified global one. In particular, it is obvious that due to the general for all the modern states trend towards the reinforcement of the executive branch in the constitutional system of "separation of powers", there is an expanding interpenetration of constitutional and administrative laws in the system of public law branches. Thus, there are published the united textbooks concerning constitutional and administrative laws (in the UK, for example) [1]. In Russia, constitutional and administrative branches of law retain their autonomy in the educational process: specialized constitutional and administrative law textbooks are published separately. In the Russian universities the corresponding disciplines are also taught separately. However, the Russian Education and Science recognize that there are constitutional and administrative laws norms interpenetration [2] and this gives rise to a daunting question: what modifications, in this regard, the nature of the most important constitutional, administrative and legal institutions is subject to, in particular, such a key government institution as the head of state.

The relevance of the article is associated with the statement of not only scientific, but also practically important problems; it is determined by the high level of interest in the Presidency Institution of Russia, and in the constitutional definition of the content and limits of presidential power in Russia. The issue gets more and more relevant in view of upcoming 2018

regular elections of the President of the Russian Federation.

The aim of the article consists in the following. Firstly, to accomplish a study of constitutional and legal fundamentals of "state administration" and "state supervision" notions in the Russian federation. Secondly, to demarcate and qualify the "state administration" notion in terms of constitution and administration; to define constitutional control as an organizational and legal form of activity performed by each branch authorities in a democratic state: due to the fact that such traditional kinds of constitutional control are distinguished therein: parliamentary control, executive branch control, judicial review of constitutionality. Thirdly, to define political and legal nature of presidential control in Russia as a variant of constitutional control, that is the control implemented within the "separation of powers" system. The aim is also consists in an attempt to express author's views regarding peculiarities of "separation of powers" systems modifications in states with "mixed" form of government, including those in Russia in terms of modern academical discussion on rethinking of classical "separation of powers" conception, on extraction of control branch of government, in particular. In this regard, the article sets tasks to reveal objects, forms and content of control (supervisory) powers of head of state within the state control (supervising) system, as a branch of government in terms of qualification of constitutional system features in the Russian Federation. Also, there set such tasks to define the content of presidential control in Russia in area of the executive branch functioning; controlling powers of the President of the Russian Federation in area of federal relations associated with enforcement of adjudications on cases of federal judicial constitutional control regulation (judicial review) of legislation of the RF subjects; presidential powers in area of cooperation with the legislative branch on issues of legislative regulation of state control (supervision). The relevant quality for the RF practice is the one of legislation development and practice of constitutional powers of the President in area of national safety, state sovereignty, counterterrorism measures assurance, and actions against terrorism ideology.

The novelty of the article is resulted from the raised issue, since the study of the control powers of the President of the Russian Federation are relatively rare and poorly elaborated in Russian and foreign science. The study of the topic is associated with: new tendency in scientific researches within the constitutional legal studies and political science in the field of the mixed government models in the modern world, such as, in particular, the variant presented by presidential-parliamentary government; and with the issues of presidential government branch division and its identification with the control activities; as well as changes in understanding of the possible models of relationships between presidential power branch with traditional authorities.

2. Methodological Framework (Methods and approaches (the novelty of the research methods).

The methodology is based on the author's comprehension of the necessity for functional (based on combination with functional analysis method) understanding of the "separation of powers" concept created by its founders J. Locke and Ch. L. Montesquieu. In order to ensure the effective functioning of the "separation of powers" system, each branch of government is required to be realized through the same organizational legal forms, that is by means of rule-making as well, and on the basis of administration of positive law, and both law enforcement and control activities" [3. p. 24]. For example, the entities, constituting each of the branches of government, have the right to exercise the rule-making (i.e., to issue generally binding rules of conduct); or there are such kinds of the constitutional control as presidential control, parliamentary control, control in the system of the executive branch, judicial control as a variant of constitutional control. At the same time, the rational structure of "separation of powers" mechanism implies that corresponding organizational and legal forms of activity (i. e. lawmaking, law enforcement and control) are performed by each branch of government (in mutual circumscription order) within the limits and from the perspective of the strategic purpose of the relevant government branch. Only under this approach

"one can understand, how competition interaction (not

confrontation) and "mutual containment of authorities" mechanisms functions, namely: by means of corresponding organizational and legal forms of their implementation. Such constitutional and legal understanding is important not only theoretically, but also it facilitates perfection of the practice of democratic constitutional state organization in the modern world.

3. Results, conclusions.

The features of the constitutional regulation of the scope and quality (legal force) of the powers of government branches authorities, which (powers) are related to corresponding organizational and legal forms of activity [3. p. 24],

consist the of interaction, competition, "checks and balances" national features (the ones of nation-states) in "separation of powers" systems, cross-cultural features of "separation of powers" system model and the forms of government. According to the current Constitution of the Russian Federation (adopted in 1993) state supervision in the area of management, which is carried out by the President of the Russian Federation, is the highest form of control in the system of public authority in Russia, not administrative but constitutional by nature.

4. Discussion.

1. Constitutional and legal fundamentals of "state administration" and "state supervision" concepts definitions in the Russian Federation. Narrow and broad view of state administration and state supervision mechanism.

Before 1990s, state supervision in the Russian scientific theories, laws, educational process in universities and public practice was mainly identified with the function of government. In the context of administrative law, control is characterized in the system of the main state administration functions. In accordance with this approach, control is defined as "the establishment of compliance or noncompliance of the actual condition of state administration system and its structure with the required standard and level, study and evaluation of the overall functioning of state structures, as well as specific actions of the agents of management; the establishment of relations between the planned and the performed in the state administration system" [4, p. 41].

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Otherwise, control is understood as a "supervision over the quality of management, identification of errors in management and the extent to which management actions and administrative acts conform with the principles of legality and feasibility". "The supervision implemented, as a rule, only to ascertain compliance with the legality of the activities (actions, decisions)" is a type of control [ibidem].

In the new period, there has formed another understanding of state supervision. It is characterized as a system of discipline and the rule of law and the system of state control: the last usage better reflects a new understandings of the status of state in economy, which are related to the proposals "to replace the system of direct state administration with a state control system, transforming necessary elements of direct management into it" [5, p. 457]. Thus, according to A.P. Alyokhin, A.A. Karmolitsky and Yu.M. Kozlov, "state supervision is a function closely related not only to the ensuring of discipline and rule of law, but also to state control. The control carried out by its characteristic methods and in its inherent forms ensures the regime of management relations subjects, public and private proprietary organizations". According to the criterion of implementation subject, the authors distinguish such types of departmental control as "control of representative bodies, authorized representatives of the Russian Federation President's executive office, executive authorities of general competence, state supervision carried out by deputies in the authorities of joint stock companies, established on the basis of state ownership or in the presence of its share". State supervision "is arranged and implemented taking into account the peculiarities of the legal status of companies, institutions and organizations of the public and private sectors of the economy and other spheres" [ibidem].

The Russian theories of state and law suggest similar views, justly pointing at the fundamental differences between the official understanding of the concept of state administration before and after the adoption of the Constitution of the Russian Federation in 1993. Experts point out that, "the word group "state administration" used to be understood in the restricted sense – just as the activities of state executive authorities. Only those

executive authorities (governments, ministries, departments, executive committees) which were formed and controlled by state executive authorities (councils of workers' deputies of all the levels) were recognized by state administration bodies. The Constitution of the Russian Federation, abandoning the term "state administration bodies", actually deviated from a narrow understanding of management as an attribute of solely executive authorities.

However, the state administration methods have different shares in the legislative, executive, prosecutorial and banking activities. This is primarily due to the fact that management includes not only management decision making, but also direct managerial influence on a management object, that is, the execution of the decision. Legislative authorities are engaged mainly in management decisions in the form of issuing the laws and other legislative acts; to a certain extent their actions may be considered to be the control over their execution. The activities aimed at the implementation of the decisions taken constitute the insignificant scope of the legislative work. This also refers to judicial authority and public prosecutor's office". [6 p. 527-528]

According to a broad view of state administration mechanism, we should distinguish state supervision carried out in the systems of legislative and executive authorities of different levels, courts, banking system, public prosecutor's office and others. The drafters of "On the basis of state supervision and municipal control in the Russian Federation" (para. 2 of Art. 1 of the draft Federal Law) [8, p. 1-2] also proceed from a broad approach to the definition of state supervision system that gives grounds for concluding that control legislation concept, in its basic version concerning the methodology for determining the range of state and municipal control subjects and content of control as a function of public authorities, was formulated. However, as regards more specific issues (the establishment of optimal methods, limits and monitoring procedures), they are in the process of the ongoing search for an optimal model of legislative regulation.

The improvement of the administrative and legal principles of the Russian state supervision and municipal control authorities' activity in the sphere of relations with legal entities and

individual entrepreneurs, including those associated with the optimization of the Federal Law No. 134-FZ of the Russian Federation, is linked in particular to the need for better integration of the requirements and standards set out in international instruments into the domestic Russian legislation. Thus, the requirements of "Safety of Products, Processes of their Production and Circulation" Federal Law, other legal norms concerning technical regulation in the countries of the Eurasian Economic Union, in the member states of the Commonwealth of Independent States [8, p. 189], the Customs Union, and others are to be taken into account while drafting the administrative legislation of Russia (as well as other sectoral laws). There need to be considered in the Russian domestic practice, first of all in the state and municipal service law, etc.: international requirements concerning the behavior of officials (implementation), provisions of the International Code of Conduct for Public Officials, adopted 12th December, 1996 by the UN General Assembly [8, p. 178]; further development of anti-corruption laws in the Russian Federation on the basis of international anti-corruption conventions, which Russia acceded to – the UN Convention against Corruption of October 31, 2003; Criminal Law Convention on Corruption of Council of Europe of January 27, 1999; implementation of 26 recommendations of GRECO (the Group of States against Corruption) in relation to Russia, and others [8, p. 175-176].

In the context of harmonization with the approaches in international law, recognized by Russia, it is advisable, in particular, among other things, to assess paragraph 4 of Art. 1 of the "On protection of the rights of legal entities and individual entrepreneurs in the implementation of state supervision and municipal control" Federal Law No. 294-FZ as regards the very long "list" of exemptions from the application sphere of the Federal Law No. 294-FZ, which was confirmed and somewhat extended due to changes in the Act of February 22, 2011 (the provisions on inspections carried out by heat supply companies, etc).

The optimal design of state supervision constitutional and legal mechanism is significantly important in the system of public and legal control in any state.

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State supervision is the system of the highest organizational and legal forms of control activity at national level, consisting a constitutional “separation of powers” system focused on the implementation of compliance assessment and enforcement of control associated with the implementation of the norms of constitutional law by constitutionally established authorities and officials. The following types of constitutional and incorporated in the “separation of powers” system of state supervision are represented at the federal level of Russia: control carried out by the President of the Russian Federation; parliamentary control carried out by the Federal Assembly of the Russian Federation; constitutional control carried out by the Government of the Russian Federation and compliance assessment carried out by the Constitutional Court of the Russian Federation. Objects and implementation mechanisms (forms, procedures) of each of these types of constitutional control have their particularities.

The study of the supervisory powers of the President of the Russian Federation attract particular interest.

There are relative few researches dedicated to presidential control in the modern Russian jurisprudence are relatively few in number. In the most of them, it is qualified as a variant of state supervision [9]. It seems to be relevant to study presidential control as a kind of constitutional one: using the characteristic of the constitutional control powers of the President of the Russian Federation, it's possible to identify the specific features of the constitutional concept of "separation of powers" in Russia, i.e. a mixed form of government in Russian Federation. The following paragraphs are devoted to this problem.

2. Constitutional and legal nature of state supervision performed by the President of the Russian Federation. Presidential control as an element of Russian constitutional model of “checks and balances” system.

With regard to the study tasks, set in this article, there are quite few publications in Russian legal sciencce. However, there are an amount of works on the RF President status, based on other methodological approaches: books and scientific articles related to

analytical consideration of the Russian Constitution provisions (1993) and other laws on the status of the RF President in terms of position ascertainment for the President in the "separation of powers" system as the triad of branches of government [10, 11, 12]; related to comparative analysis [13, 14], to history the President institution establishment in Russia [15, 16, 17] and to problematic issues of the RF President activity practice [11, 18, 19, 20], to interrelations between the RF President and other branches authorities [21, 22], etc. Studies of the President, related to the "state supervision" subject, are sporadic, considering monographs. Thus, the corresponding subject is covered in book by A.M. Tarasov [9]. Along with that, this work is based on methodological approach focused rather on administrative and legal context, the author relies on idea that: "the specificity of presidential control of subjects powers performing thereof is determined by the powers of the President as the head of state, who does not belong to any branch of government and takes strategic status in the system of all government authorities. Strategic powers of the President are also extended to control functions performing" [9, p. 77]. As a result, the author of the book is more concentrated on definition of presidential control as administrative control, and comes to the conclusion, that: "Presidential control serves not only as administrative control, but also as financial one. Therefore, it may be defined as universal and multi-plane instrument not only within the system of state supervision, but also within the system of public administration" [9, p. 80]. Such approach is important, but not the only one possible. This article represents the study of presidential control in the terms of modification of ideas on mechanism of "separation powers" system constitutional model in states with mixed form of government, in modern Russia, in particular.

In Russian legal science, various points of view on constitutional concept of the RF President in "separation of powers" system are suggested. The controversy is based on comparison of Article 10 and paragraph 1 of Article 11 of the RF Constitution, 1993, where certain uncertainty of legal understanding is discovered. Thus, in Article 11 of the Constitution, the President of the Russian Federation is

identified among the authorities executing state power along with the Federal Assembly (the Federal Council and the State Duma), the Government of the Russian Federation, courts of the Russian Federation; and Article 10 of the Constitution determines that state government is executed on the basis of division in legislative, executive and judicial branches" [9, p. 14-15]. Following the logical assertions, various conclusions are made.

Thus, many authors presume that the RF President is not involved into any constitutionally established branch of government. This position is the most close to the one formulated by B.N. Yeltsin when he presented project of the Constitution, according to which: the President is arbitrator of authorities. According ti another approach: The RF President belongs to one of three branches of government determined in Article 10 of the Constitution, i.e. The President belongs to the executive branch of government [9, p. 448]. Thus, according to M.V. Baglay: "The analysis of the RF President and the Government powers gives reasons to consider the RF President in particular as the chief executive, not the Chairman of the Government or the RF Government in general. Therefore, when it is said that the RF Government is the highest body of executive power, it is necessary to take into account certain conventionality of such assertion. It may be considered as the highest body of executive power in the sense that it is the only collective entity having competencies in the area of executive branch and right to administer all executive branch bodies" p13, p. 62-63]. O.E. Kutafin expressed similar opinion: "although the RF Constitution do not give a straight and unambiguous answer to a question on what branch of state power does the President pertain to, presidential power by its legal nature is a part of the executive branch, and the President, in the first place, is constitutional authority of the executive powers exercised by the RF President in cooperation with the RF Government and other bodies of state administration" [10, p. 321]. With regard to the analysis of the history of institution of the President in Russia, L.A. Okun'kov displays quite different concern: even before the RF Constitution was adopted in 1993, in the preceding law "On the President of the RSFSR" No. 1098-1 of April 24, 1991 (expired now) [24], 14

powers of the president were enshrined (Article 15), which laid foundations of institution of the President in Russia combining two main components of his status: actual (valid) head of state and the constitutional chief executive" [11, p. 13]. According to data of study by L.A. Okun'kov, at the Constituent Assembly in the summer of 1993, with respect of presentation of presidential project of the Constitution, "one of its authors, S.S. Alekseev characterized the new content of presidential power as follows: "The Head of the State is the Head. His responsibility is integrity of the State. He takes measures to ensure operation of the state apparatus, to prevent various crisis situations, and directly curates the Government. The Federal Assembly is the laws. The Government is the administration. Courts are justice" [11, p. 17]. Generally, according to conclusions of L.A. Okun'kov, in the Constitution of 1993, there was implemented the idea to elaborate the model of strong presidential power "which wast based on the classic doctrine of "separation of powers" with leading and coordinating role of the Head of the State" [11, p. 16]. Along with research of the RF President status within the framework of classic "separation of powers" concept based on distinguishing the "triad" of branches of power, a number of Russian jurisprudence researchers define the Russian President status on the basis of modified concept of "separation of powers" system, i.e. more coarse division (fragmentation, differentiation) of branches of power: on the ground of distinguishing four (not three) or even more branches of power. Thus, the whole range of Russian authors suggest that reference should be made to presence of Presidential power as an independent branch [25, p. 219; 26, p.298-299; 27, p. 378]. As was reported by Ye.I. Kozlova: "One may not to overemphasize the concept of "division of powers" in three branches. There is the presidential one also. The term "presidential power" gained legal confirmation in Russia in decrees of the President on the Standard (flag) of the President and on the Sign of the President, where it defined as a symbol of presidential power" [10, p. 320]. It is of interest to note that although Article 10 of the RF Constitution of 1993 denominates only three branches of power, but one of the authors of the existing RF Constitution S.M. Shakhray defines wider range of

authorities which importance in the system of power gives reasons to associate them with independent branches of government [28]. Among those constitutional state authorities in Russia "not included in the system of executive, legislative and judicial branches of government", S.M. Shakhray identifies such as: "The Prosecutor General - Prosecutor office, the Central Election Commission, the Accounts Chamber, the High Commissioner for Human Rights, the Central Bank" which, according to S.M. Shakhray, do not pertain to any *(of the three – italics by O.J.)* branch of power"[29]. The author suggests that: "At their formation, principle of "two-key" principle is applied, will of the President only is not sufficient , as well as will of the Parliament is not enough too: the President introduces, and the Parliament approves. Correspondingly, independence of these, as they are called, bodies with discretionary powers is guaranteed" [29]. It seems that excessive division of powers, acceptance of multiple branches of power in state administration practice may inspire trends towards weakening of state, therefore, in the statement above, the focus should be rather on the "two-key" principle, than on branches of power multiplicity.

There are other judgments are suggested too. Thus, if follows the studies of well-known Hungarian lawyer and politologist A. Sajo that the question is not only about the number of branches of power. Optimal structure of "separation of powers" depends on various factors, including "party system, election system, gravitas of public administration". Separation of powers has no effect if the parties not strong enough (in terms of multi-party system development). According to Sajo: the risk of abuse of power "consists in determining impact of any party or party group (*simultaneous* - O.J.) on every branch of power" [35, p.104-107]. In opinion of doctor of law Yu. Skuratov, which he formulated in the early 1990s: "The peculiar importance of the presidency institute for Russia laid in the fact that, at separation of powers, the President began to execute key functions for state mechanism coordination. Under conditions of lack of powerful political parties ensuring (via their representatives in different government institutions) pursuance of common

policy line), the President's activity on coordination of legislative, executive and supervision function efforts is highly necessary" [36, p.5].

The corresponding opinions are very important for their consideration, but do not except discussions on classic concept. With regard to the presented stipulation on inadmissibility of excessive centers of power, one should agree with the authors who suppose that search for legal understanding of "separation of powers" constitutional system in Russia is not closed with statement of Article 10 on the triad of branches of power. Subject to the provisions of the Russian Constitution, the conclusion "The doctrine and practice of the separation of powers are being modernized", to which professor V.E. Chirkin came in his comparative study of the state leaders institutions (of Russia, France and other states with a mixed form of government), seems to be fair [30, p. 69-70]. He points out that "It seems that in the context of presidential-parliamentary government a special branch of government – presidential power has been already allocated. The conception of the special branch of presidential power (in legal categories of the Institute), non-executive one, is acquired in the course of its study and its comparison with the general concept of legal institution of the head of state. It can be seen especially clear in the examples of "mixed" forms of government [30, p. 83].

This is a new concept of the head of state institution as a branch of government, different from the classical model, in particular, from the President of the United States Institution combining both status of the head of state and the status of chief executive (as the classic sign of a presidential form of government) [30, p. 83]. V.E. Chirkin remarks that "modern approaches and allocation of new branches change the concept of the relationship between the traditional authorities and the appearance of new connections and relationships. This process is not yet complete; it was not complete centuries ago with the statement of the steadfast triad either. The number and names of new branches are not the same in different basic laws. It means that the way to further researches is not closed, particularly in view of the appearance of new forms of government (for example, a presidential-parliamentary and

parliamentary- presidential republics), which did not use to be" [30, p. 79]. According to his research, "control power is mentioned or was mentioned in some constitutions and in drafts (Chinese Constitution, 1912). Control power (as the fifth along with the electoral power) was mentioned in one of the draft Constitution of 1986 of Nicaragua (not accepted). Control function of government was also mentioned along with the legislative, executive and other functions in the Algerian Constitution 1976 (was in force until 1989). The term "control power" can be found in the Swedish Constitution (Chapter 12 "Forms of government", 1974). However, in Sweden, this power relates to the power of Parliament, and not constitutes a particular branch of government" [30, p. 78].

Accepting the conclusion of V.E. Chirkin about the special concept of the head of state power as a branch of government in states with a mixed government, we allow ourselves to supplement this conclusion with the thesis, once mentioned in the legal literature, that each branch of government, including the presidential one, has the features peculiar to each of the opposing powers, and it is realized in the same organizational-legal forms of activity, as the other branches of government, that is, by means of rule-making, enforcement activity, interpretation and law enforcement forms [3, p. 46]. Obviously, it is necessary such an organizational-legal form of state activity as state supervision ("compliance assessment", "law enforcement control", "activities results control") to be put on this par, as the organizational-legal form undertaken by each of the branches of government (implemented by each of the branches of government), but in the specific variations reflecting the specialization of a branch in the "separation of powers" system.

This article is an effort to analyze the status of the RF President in the "separation of powers" system on the basis of distinguishing the fourth, i.e. controlling (supervising) branch (body) therein along with the classic triad of branches, which is the one of mixed government peculiarities in Russia. In the RF Constitution of 1993, federal constitutional control (considered in the RF as "compliance assessment", i.e. control over concordance of laws and

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other normative acts of the Constitution, control in the area of assurance of higher legal force of the RF Constitution) is credited to authorities and representatives of the every branch of power.

According to the RF Constitution, there are distinguished: judicial review of constitutionality (carried out by The Constitutional Court of the RF); parliamentary constitutional control (carried out by the Federal Assembly - the Parliament of the RF, broadened due to adoption of law on amendment to the Constitution of The Russian Federation "On supervisory powers of the State Duma with regard to the RF Government dated December 30, 2008, No. 7-FKZ") Government constitutional control (first of all, it is oof nature of intradepartmental compliance assessment). A special place in the system of constitutional control in the Russian Federation is taken by presidential control. Constitutional provisions on the RF President status, formulated in Article 80 where it is said that the President of the RF is guarantor of the Constitution, rights and freedoms, state integrity, as well as other articles of Chapter 4, in other chapters of the Constitution of Russia of 1993, enable to assert that constitutional control government in the RF, in the current Constitution, is coordinated, firstly, with the area of the constitutional powers and discretions of the RF President relying in this activity on the corresponding courts and other constitutional state and legal institutions.

3.Features of presidential control as a variant of constitutional control in the Russian Federation.

Constitutional conception of the place of the Russian President in the "separation of powers" system is characterized by three basic ideas. Firstly, the very broad formulation of the concept of the President of the Russian Federation is given in Art. 80 of the Constitution of the Russian Federation, which stipulates that "The President of the Russian Federation is the protector of the Constitution of the Russian Federation, human and civil rights and freedoms. He takes measures to protect the sovereignty of the Russian Federation, its independence and state integrity, ensures coordinated functioning and interaction of state

executive authorities according to the procedure established by the Constitution of the Russian Federation".

Secondly, the constitution of the Russian Federation adopted in 1993 and the legislation developing its provisions guarantee the powers of the President as an "arbiter of authorities": in accordance with Art. 85 of the Constitution: "the President of the Russian Federation may use conciliatory procedures to solve disputes between state executive authorities of the Russian Federation and state executive authorities of the subjects of the Russian Federation, as well as the disputes between the state executive authorities of the federal subjects of the Russian Federation. In case of failure to reach an agreement, he may submit the dispute to the appropriate court".

Thirdly, the President has large powers in the executive branch, in particular, relating to personnel appointments in the course of formation of the Government, with the right to preside at the Government's meetings etc. In addition, on the basis of the constitutional provisions of the Federal constitutional Law "On the government of the Russian Federation", concerning the Executive bodies of the specialized competencies, there is a separation of the of powers between the President and the Government of the Russian Federation; it was stipulated that "The President of the Russian Federation, in accordance with the Constitution of the Russian Federation and federal constitutional laws, direct the activities of federal executive authorities in charge of defense, security, justice, interior and foreign affairs, emergency prevention and disaster control, troops of the national Russian Guard, adopts the proposals of the Chairman of the Government of the Russian Federation on them and appoints the heads and deputies of these departments, and exercises other powers as the Commander-in-Chief of the Armed Forces of the Russian Federation and the Head of the Security Council of the Russian Federation". The President of the Russian Federation supervises directly and via federal ministers the activities of the federal authorities of executive branch, which are under the jurisdiction of the relevant federal ministries (Art. 32 of the Federal Law "On the Government of the Russian Federation").

Entities under presidential control in the Russian Federation.

The scopes of activity both of the executive and legislative branches, as well as federal branch (and the area of the RF Constitutional Court decisions execution [32, art 80-81], as well as decisions of the "corresponding court" on cases on contradictions between the Russian Federation subjects laws and the Federal Constitution [33, art. 7, 27, 29, 29.1]) are the objects of presidential control in the Russian Federation, which is subject to implementation in accordance with "constitutional state" principles.

The forms of presidential control over legislative branch and cooperation between the two branches of government regarding state supervision in Russia include the veto of the head of state (para. 3. of Art. 107 of the Constitution); the right to challenge the laws of the Russian Federation, constitutions (charters) and other laws of the subjects of the Russian Federation in the Constitutional Court; (p. 2 "a", "b" of Art. 125 of the Constitution of the Russian Federation), the implementation of legislative initiatives related to the introduction of state and municipal control regulation bills, and others.

The forms of presidential control over the executive branch in the Russian Federation are:

1. Publication of Decrees of the President, related to state supervision, implementation of legislative initiatives concerning state and municipal control system improvement, definition of the main directions of state supervision improvement in Russia. Thus, the President of the Russian Federation in a number of his addresses to the Federal Assembly of the Russian Federation, including the address for 2017, pay a lot of attention to the improvement of regulatory and supervisory authorities. In the address of December 1, 2016 the Russian President Vladimir Putin once again drew the Government's attention to the fact that "supervisory authorities need to accelerate the introduction of an approach based on risk assessment, which will significantly reduce the number of checks and increase their productivity" [31]. The project "Concept of state executive authorities and local governments control and supervision activities efficiency increase in the years

2014-2018" and the concept of the draft Federal Law "On state supervision and municipal control in the Russian Federation" were developed on the basis of presidential addresses.

2. The forms of presidential control over executive branch are: the right of the President of the Russian Federation to cancel decrees and orders of the Government of the Russian Federation in the event of their contradiction with the Constitution, federal laws and decrees of the President of the Russian Federation (paragraph 3 of Article 115 of the Constitution of the Russian Federation); the right to challenge the normative acts of the Government of the Russian Federation in the Constitutional Court; normative acts of the subjects of the Russian Federation - political-territorial parts of federal structure of Russia (paras. 2, "a", "b" of Art. 125 of the Constitution).

3. The forms of presidential control over executive branch in the Russian Federation are connected with the Presidential powers to hear oral statements (the ones of Chairman of the Government); receive written statements (reports) on his performance and the performance of constitutionally established institutions: the Human Rights Ombudsman (para. 1 of Art. 33 of Federal Constitutional Law "On Constitutional Human Rights Ombudsman in the Russian Federation "(Federal Constitutional Law No. 1-FKZ, February 26, 1997); para. 1 of Art. 3 of the Federal Law "On the Businessmen Ombudsman", 2015; Presidential Decree "On the Children's Rights Ombudsman"); the Prosecutor General of the Russian Federation (p. 7 of Art. 12 of the Federal Law "On the Prosecutor's Office of the Russian Federation" of January 17, 1992); the right of the President of the Russian Federation to invoke to the Audit Chamber for "control, expert and analytical activities" in relation to the relevant organizations (para. 4 of Art. 15 of Federal Law "On the Audit Chamber of the Russian Federation" No. 41-FZ of April 5, 2013), etc.

4. The sphere of security and law order is an important direction of the presidential control and the sphere of high Russian President's activity. According to the Constitution, the President of the Russian Federation has the right to issue decrees on the imposition of martial law and state of

emergency (Art. 88-89 of the Constitution). Presidential function in security sphere, set in the Constitution of the Russian Federation Law "On the Federal Security" and other legislation, consists in the fact that the President "is the protector of the Constitution of the Russian Federation, human and civil rights and freedoms. According to the procedure established by the Constitution of the Russian Federation, he takes measures to protect the sovereignty of the Russian Federation, its independence and state integrity, ensure coordinated functioning and interaction of state executive authorities"; "In accordance with the Constitution of the Russian Federation and federal laws, he defines the main directions of domestic and foreign policy" (Art. 80 of the Constitution.); "he forms and heads the Security Council of the Russian Federation, which status is determined by federal law ... approves the military doctrine of the Russian Federation"; "he appoints and dismisses the Armed Forces High Command" (paras. "g", "h", "k" of Art. 83 of the Constitution); "he is the Commander-in-Chief of the Armed Forces of the Russian Federation... In the case of aggression against the Russian Federation or an immediate threat of aggression the President of the Russian Federation imposes martial law in the territory of the Russian Federation or in the certain areas of it with the immediate notification of the Federation Council and the State Duma" (paras. 1- 2 of Art. 87 of the Constitution 1993), and others.

The President of the Russian Federation issued the relevant policy documents concerning the control of terrorism and extremism, "On Counter-Terrorism Measures" (Presidential Decree as amended of December 26, 2015); "The strategy of counteraction to extremism in the Russian Federation until 2025" (approved by the President of the Russian Federation on November 28, 2014, Pr.-2753); "Comprehensive Plan for counteraction to the ideology of terrorism in the Russian Federation for 2013-2018 years" (approved by the President of the Russian Federation on April 26, 2013, Pr.-1069); "The concept of counter-terrorism in the Russian Federation" (approved by the President of the Russian Federation on October 5, 2009), and others.

5. Significant powers of the President of the Russian Federation are

associated with the organization of state supervision authorities system, as the President of the Russian Federation accepts the Decrees of the President concerning the organization of the executive branch, in particular, the Presidential "On the System and Structure of Federal Executive Authorities" Decree (March 9, 2004), which defines the category of federal executive authorities responsible for the control and supervision, i.e. federal agencies; sets the basic functions of the federal executive authorities, which include function of control and supervision as independent one.

Control powers of the President of the Russian Federation in the sphere of federal relations.

The President of the Russian Federation possesses significant control powers in the sphere of federal relations – based on the Federal Law "About the general principles of the organization of legislative (representative) and executive bodies of the government of subjects of the Russian Federation" of October 6, 1999 (as amended). These powers include compliance assessment, law enforcement activities of the authority of a subject of the Russian Federation and control over the activity results of Russian subject state executive authorities. Thus, in accordance with the Federal Law, "the President of the Russian Federation has the right to invoke to a legislative (representative) state executive authority of a subject of the Russian Federation with the idea of the bringing the law of a subject of http://base.garant.ru/10103000/the Russian Federation or other normative legal act of the legislative (representative) branch of state executive authority of the Russian Federation to conformity with the Constitution of the Russian Federation, federal constitutional laws and the federal laws of the Constitution (Charter)". According to the current legislation, in the case of disagreement with the state executive authorities of subjects of the Russian Federation, implementing this power, the President of the Russian Federation uses conciliatory procedures to resolve them. In case of failure to reach an agreement, the President of Russian Federation may submit the dispute to the appropriate court (paras 3-4 Art. 27 of the Federal Law No. 184-FZ).

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On the same basis, the President of the Russian Federation has the right to "suspend the act of the highest official of a subject of the Russian Federation (the head of the supreme executive branch of state executive authority of the Russian Federation), as well as the force of the act issued by the executive authority of a subject of the Russian Federation" before the resolution of the issue of constitutionality (legality) of the act by the relevant court. At the same time, "the highest official of a subject of the Russian Federation (head of the supreme executive office of state executive authority of the Russian Federation) have the right to appeal to the relevant court for decision about the conformity of the Act of the Constitution of the Russian Federation issued by them or by the executive authorities of a subject of the Russian Federation with Federal Laws and international obligations of the Russian Federation" [paras 1, 3 Article 29 of Federal Law No. 184-FZ].

The President of the Russian Federation, according to the Federal Law in question, has large powers to prosecute officials of the executive authorities of the Russian Federation. This law specifies and substantiates the implementation of the relevant powers. In accordance with the procedure of compliance assessment and control over law enforcement, the President of the Russian Federation cautions the highest official of a subject of the Russian Federation (the head of the supreme executive office of state executive authority of the Russian Federation) and has the power to impeach the highest official of the Russian Federation (the head of the supreme executive authority office of the Russian Federation), or has the right to suspend the official from the performance of duties of the Chief Executive of the Russian Federation subject [paras 2-6, Article 29.1 of Federal Law No. 184-FZ].

The President of the Russian Federation has the right to caution legislative (representative) body of state power of the Russian Federation subject where the last did not take measures within the limits of its powers for execution of court decision, as well as did not cancel normative legal act accepted by the corresponding court as contradicting to the Federal Law; if the government authority of the RF subject created obstacles for exercising of powers of state authorities, local

government bodies; if the rights and freedoms of man and citizen, rights and legally protected interests of legal entities are violated. If during three months from the date of issuance of warning to legislative (representative) body of state power of the Russian Federation subject by the President of the Russian Federation, the specified body do not execute the court decision again, the President of the Russian Federation is entitled to dismiss the legislative (representative) body of state power of the Russian Federation subject (para. 4, Article 9 of Federal Law No. 184-FZ).

Constitutional control activity of the President of the Russian Federation in the area of federal relations largely related to judicial review in the same area, which is performed under constitutional and administrative legal proceedings; as well as to of prosecutor's office activities on supervision over adherence to the Constitution of the Russian Federation и enforcement laws in effect in the territory of the Russian Federation. As was shown above, the RF President, according to Federal Law No. 184, acts as the guarantor of execution of judgments by state power authorities of the Russian Federation subjects; he is entitled to impose sanctions on legislative and executive bodies of the RF subjects for non-compliance with federal court decisions.

As of balance of the presidential control and supervisory powers of prosecutor's office in the area of federal relations, it is built in other way. The Prosecutor's Office of th RF has wide range of independent powers in the area of supervision over observation of laws with regard to federal relations. Thus, according to Federal Law dated January 17, 1992, No. 2202-1 "On the Prosecutor's Office of the Russian Federation": prosecutors take part in meetings of federal bodies of the legislative and executive branches Legislative (Representative) and Executive Authorities of the Russian Federation subjects, local government bodies (para. 1, Article 7). According to federal Law No. 184: the Prosecutor's Office carries out supervision over observation of the Russian Federation Constitution and subjects of the RF by state power authorities and officials of the RF subjects, as well as over correspondence of legal acts to the laws issued by them (para. 1, Article 29.2). According to Federal Law: prosecutor or

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the deputy, in the manner prescribed by law, are entitled to appeal against legal acts of legislative (representative) branch of state executive authority of the Russian Federation subject, the highest official of the Russian Federation if they are in conflict with the Constitution of the Russian Federation, federal laws, constitution (statute) and laws of a subject of the Russian Federation, etc. (para. 1 of Article 27, para. 4 of Article 29.1, Article 29.2). Moreover, the RF Prosecutor's Office acts as guarantor against excessive number of scheduled and unscheduled inspections of activities of bodies of state power of the Russian Federation subject, carried out by bodies of federal state control (supervisions) (paras 4-5, Article 29.2).

Along with that, in recent decades in the RF, significant innovations in constitutional and legal status of the Prosecutor's Office, which are related to reinforcement of external influence of the RF President on formation and activity of the Prosecutor's Office which are important optimization of presidential control in the area of federal relations. Legal foundation of that was formulated due to adoption of Federal constitutional Law "On amendment to the Constitution of the Russian Federation 'On the Supreme Court and the Prosecutor's Office of the Russian Federation" of February 5, 2014, No. 2-FKZ, according to which the title of the Constitution Article 7 "Judicial Power" was broadened, and amended by adding the words: "and the Prosecutor's Office of the Russian Federation". New personnel powers of the President in the area of Procesutor's Office formation: carrying out appointments and dismissals of prosecutors of the RF subjects, etc. (Para. 3, Article 129 of the RF Constitution. The corresponding powers of the RF President, obviously, should be evaluated in relation to broadening of powers of the prosecutor's office in the area of legality assurance in activity of state power authorities of the RF subjects, which is envisaged by Federal Law No. 184-FZ "About the general principles of the organization of legislative (representative) and executive bodies of the government of subjects of the Russian Federation" (of October 6, 1999, as amended and supplemented). According to Federal Law "On the Prosecutor's Office of the Russian Federation": "The Prosecutor General of the Russian Federation yearly presents

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the report on condition of law and order in the Russian Federation and on the works performed for its strengthening to the houses of the Federal Assembly of the Russian Federation" (para. 7, Article 12 of Federal Law).

Executive office of the Head of the State (the Chief Executive) and constitutional control.

With regard to execution of their constitutional powers, top public officials (presidents, heads of governments) rely on the office functioning under them, which is named differently in various countries: The Executive Office of the USA President (established in 1939); standing committees of the Prime Minister of the United Kingdom; Services and Councils of the Elysee Palace, the "President's house" in France; the Chancellor's Office in the Federal Republic of Germany, etc. [34, p. 265-273]**.** During execution of the powers, including supervisory ones, heads of states (governments), to a large extent, rely on their offices. The corresponding practice in legal sphere is a reflection of the convergence processes of in constitutional and administrative and legal principles in government regulation of state administration processes, presence of trend to interpenetration of the specified subject matter approaches.

In Russia, the President executes his constitutional powers directly and through the subdivisions of presidential power: the Executive Office of the President, the Security Council, the Institution of the plenipotentiaries of the President in the federal districts and federal authorities. The implementation of the President's control powers, the enforcement of orders of the President of the Russian Federation are ensured by such specialized departments as Control directorate of the President of the Russian Federation, the Presidential Directorate for correspondence from citizens and organizations, and others.

It is important to note that, as opposed to similar bodies in Western countries, the Executive Office of the President in Russia is a constitutionally established government body, i.e. In the RF Constitution of 1993, there is record about the RF President's Office. In para." j)" of the RF Constitution Article 83, there is asserted that: "The President of the Russian Federation... Forms the

Administration of the President of the Russian Federation". Explanations, on the issue about the manner the relations between the President and the Administration (including those in the area of state control) are to be built, are given in the Ruling of the RF Constitutional Court of May 29, 1997 "About dismissal of the case on inspection of constitutionality of the decree of the RF President of October 2, 1996, No. 142 "On approval of Regulations for the RF President Administration". In its Ruling, the RF Constitutional Court formulated the ratio decidendi, according to which: The Administration of the President is not a body of state power which has the competency independent from the RF President, but the functioning office established for the purpose of assurance of the RF activities and execution of his constitutional powers.

***

In conclusion, it should be pointed out that one of the features of the control powers of the President of the Russian Federation, in addition to the indicated above, consist in their inextricable connectedness with parliamentary and governmental constitutional control in the sphere of public administration. Thus, according to the principles of the constitutional governments mechanisms, the limit of parliamentary control should be in compliance with the constitutional criteria for the government forms – mixed presidential-parliamentary form of government in Russia, involving a broad scope of discretion and the preponderance of the powers of the head of state – the President of the Russian Federation – along with a fairly broad scope of autonomous discretion (powers) of the Government of the Russian Federation in the "separation of powers" system and ponderable enough control powers of the Federal Assembly (the Russian Parliament), not exceeding, but competing in a certain scope (first of all, in the field of budgetary and financial control) with control powers of the president.

The peculiarity of the presidential-parliamentary government in the Russian Federation consists in the priority of the control powers of the President in the "separation of powers" system, in contrast to the parliamentary republics, where prime ministers (chairmen of governments) have more

extensive powers (including control powers). This feature makes it similar to presidential republic. According to the Constitution of the Russian Federation 1993, the preponderance of supervisory powers of the President of the Russian Federation (in the sense of the right to impose sanctions of the constitutional and legal responsibility) is particularly evident in the example of the provision of Art. 117 of the Constitution of the Russian Federation, according to which, if the State Duma of the Federal Assembly (parliament) of the Russian Federation issues a resolution of no confidence or refusal of confidence in the Government, the final decision on the question whether to dismiss the government which does not enjoy the confidence of the parliament, or dissolve the deputy corps, which declared of no confidence in the Government, can make only the President of the Russian Federation (paras. 2, 3 of Art. 117 of the Constitution 1993).

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PROBLEMS OF CRIMINAL RELIGIOUS EXTREMISM IN MODERN SOCIETY REALITIES AND RUSSIAN LEGAL SCIENCE ADVANCEMENT

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Abstract: The objective of this research is analysis of extremism problems. The paper presents theoretical bases analysis of optimizing the system of penal-legal and criminological measures against extremism and development of specific proposals and recommendations on improving legislation and preventive measures against this criminal phenomenon. The questions of phenomenology and tendencies of criminal religious extremism were considered in the study. System-structural analysis of its criminological properties and penal characteristic peculiarities of separate institutionalized and extra-institutionalized forms of religious extremism was conducted. In the study, technical and historical-juridical methods were applied. The study and generalization of theoretical materials of the study field were undertaken. Scientific novelty of the study is expressed, in particular, through such its provisions as definition of the authors' concept "religious extremism", "criminal religious extremism". The authors analyzed foreign legal models peculiarities of counteraction against religious extremism and its separate kinds. The authors' understanding of the criminological characteristic of social consciousness and religious extremism development tendencies in Russia is given. Specific personal character traits of an extremist and a factorial complex of criminal religious extremism were described, and limitations of modern Russian legislation, regulating different aspects of struggle against religious extremism, were revealed. Besides, propositions on improving current

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legislation, regulating liability for crimes, being a subject of this study, were formulated and substantiated, directions of improving penal and special criminological measures against religious extremism were determined; a set of specific revisions and amendments in the Russian Federation legislation was proposed.

Keywords: extremism, religious extremism, counteraction against religious extremism, struggle against religious extremism.

1. Introduction

Effective counteraction against criminal religious extremism – one of the most dangerous kinds of extremism, is connected with prospects of developing the system of obligatory and alternative criteria (features), allowing isolating it among other kinds of social deviations, creating prerequisites for consistent legislative securing norms of legal liability for separate types of crimes, connected with religious extremism, as well as for enhancing effectiveness of planning the measures against criminal extremism at all levels of government administration.

Problems of struggle against criminal religious extremism concern the interests of all countries since an essential doctrine element of the majority of extremist organizations is considered to be a principle of the all-out war for triumph of their ideas, without boundaries and rules. If in the 80s of the XX century, politologists touched upon “war zones” existence, focusing, in particular, on the Middle East, Northern Ireland, now they note that this phenomenon has acquired a global significance.

In view of the fact that criminal religious extremism has acquired a global organized nature, the role of legislative, law-enforcement, and judicial bodies’ cooperation of different countries in the struggle against this evil has been significantly enhanced.

As sociologists point out, in the past decade in Russia, a tendency of the mass consciousness extremization has appeared, which has been reflected in the spreading of nontraditional religiousness, neo-Nazi and nationalistic movements, and, consequently, in the growth of the number of crimes, connected with extremism. The study of etiology and modern regularities of this

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phenomenon transformation creates the necessary scientific prerequisites for forecasting and preventing criminological changes in legal consciousness, as well as for development of legal and psychological instruments of social consciousness tolerance formation [1, p. 32].

Despite the fact that crimes, connected with religious extremism, make up an insignificant share among all registered crimes, their high degree of social danger is conditioned by, first of all, qualitative properties. Similar acts are objectively dangerous for a wide circle of public relations, providing personal immunity, proper activity of state and non-state institutions, environmental safety and other social values. The immediate and long-term consequences of such acts are even more socially dangerous.

Low efficiency of counteraction against criminal religious extremism is largely conditioned by the absence of an adequate organizational-legal mechanism, an integral part of which is an effective method of the criminological monitoring (search, collection, registration, analysis, assessment, and forecast) of the activity of new religious movements, extremist organizations, neo-Nazi bodies.

The nationwide system of struggle against criminal religious extremism, including a control and supervision procedure over observing the legislation, regulating the activity of religious and public associations, political parties, as well as mass media, which would provide timely warning about these organizations “degeneration” into extremist societies or committing crimes by these organizations’ members, connected with religious extremism, needs improvement.

Legislative consolidation of liability norms for different manifestations of criminal religious extremism, as well as the practice of their official interpretation, requires improvement.

The object of the study is social relationships, emerging in the course of providing society security against the threat of criminal religious extremism, as well as state counteraction against criminal religious extremism and its separate types.

A system of notions, the essence of which is a category of criminal

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religious extremism; phenomenology, and a factorial complex of criminal religious extremism; penal and criminological bases of counteraction against this phenomenon has become a subject of the study.

The purpose of this problem analysis is creating theoretical bases of system optimization of the penal and criminological measures against criminal religious extremism, as well as development of corresponding specific propositions and recommendations. During the study, the questions of phenomenology and tendencies of criminal religious extremism development were solved. A systemic-structural analysis of its criminologically significant properties, penal characteristic peculiarities of separate institutionalized and extra-institutionalized forms of criminal religious extremism has been made.

2. Materials and methods

The problems of operationalization of concepts “religious extremism” and “criminal religious extremism” are conditioned by multidimensionality of these phenomena. Religious extremism seems to imply a social phenomenon, existing in the following four interconnected forms: 1) religious consciousness (public and individual), to which the features of totalitarianism and exaggerating the value of a definite set of religious ideas to the detriment of all other religious and secular ideas; nihilism – negation of all other ideas, including religious ones, except for one; religious fanaticism – absolute belief in validity of a single religious idea (a set of ideas) and readiness to follow it under any circumstances, are peculiar; 2) a religious ideology (religious doctrine), characterized by arbitrary declarating the only explanation of the existing world problems as truthful and by proposing unequivocal (truthful) ways of their solution; by unconditional separating all social phenomena into “the good” and “the evil”; by attributing an exclusively dominant position to one of the aspects of being to the detriment of all others; by negating the objectively prevailing hierarchy of common social (panhuman) values; ignoring or belittling the regulative significance of any social, including legal norms, inconsistent with a proclaimed truthful religious doctrine; 3) the activity on realizing a religious

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doctrine, proclaimed as solely truthful; 4) organizational forms of realizing a religious doctrine, in particular, religious extremist organizations (totalitarian sects) [2, p. 27].

Extremist religious consciousness peculiarities are revealed in the fact that the human being, "having rejected everything else, clings to one of the peripheral problems, huddles in a corner or a nook of reality, intending to reduce all his life solely to it" [3, p. 51].

I.A. Sazonov considers ideologies, justifying the possibility of applying force for achieving one's own political purposes, as such [4, p. 115]. In other works, the concepts of a "permanent revolution", a "united continental revolution as a part of the world socialistic revolution", race and national intolerance and animosity, neonazism, which are able to "undermine the state system and foundations of civil society", are analyzed.

In the authors' opinion, the "extremeness", inherent in extremist consciousness, consists namely in this total subjection of life, of the value system and behavior to one religious idea. The majority of researchers of the problem under consideration connect "extreme" to its content, basing on the semantic approach and explanatory dictionaries, implying "commitment to extreme views and measures" by extremism.

In this case, the presence of ideas, justifying violence, acts as a criterion of "extremeness". At the same time, N.V. Stepanov considers rejection of norms and rules, adopted in society, and abidance by radical (unusual and immoderate) for this society views as such [5, p. 6]. The indicated position opens up an opportunity of referring any nontraditional or unknown ideological systems to extremist ones, as a result of which Islam can become "extreme" on the territories of historical spread of Christianity and vice-versa.

Much was said about an obligatory connection of extremism with violence and threat of its application in the literature.

At first sight, such stand seems to be based on a significant amount of empirical material. Let us recollect, for instance, the neuroparalytic gas "sarin" atomization in the Tokyo subway by members of the religious organization "Aum Shinrikyo", terrorist acts,

regularly committed on the Russian territory by the participants of such terrorist organizations as the "Supreme military council (Madzhlisul Shura) of united forces of Caucasia mujahedeen", "Lashkar-I-Taiba", "the Taliban"; murders and massacre of non-Russian nationalities representatives by "skinheads", or ruffian actions of football fans [6, p. 93].

However, paradoxically, violence was not always an obligatory extremism feature. In essence, only one criterion is taken into account when choosing methods – they must provide achievement of goals, formulated by the person in the shared extremist ideology. Thus, members of associations "Jehovah's Witnesses" for the sake of saving their souls, in correspondence with the doctrine, refuse to serve in the army and from blood transfusion.

Therefore, the position of authors (B.B. Bidova [7, p. 145], V.I. Vlasov [8, p. 8], A.G. Zaluzhniy [9, p. 196]), considering that implementation of the statute-prohibited socially dangerous, anti-constitutional or immoral acts is an integral trait of extremism, seems more reasonable.

Along with it, this approach does not cover all possible forms of extremism as well. The same members of associations "Jehovah's Witnesses", following the religious doctrine, refuse to take part in secular holidays, to visit theaters, circuses. Such behavior is neither illegal nor immoral [10, p. 12].

The authors suppose that extremism as a set of actions on realization of the corresponding ideology can be expressed in the use of any accessible means.

Similar activity is frequently connected with numerous abuses of freedom of conscience and creed, which are expressed in the fact that a subject exceeds the limits of permissible behavior and his actions acquire the absolute freedom nature, thereby limiting the rights and freedoms of other participants of legal relationships, or not fulfilling the duties imposed on him [11, p. 23].

Thus, criminal extremism is an independent type of extremism, having its own determination and specific phenomenology. Physical violence and threat of physical violence are not essential and obligatory features of the activity form of criminal religious

extremism, which significantly complicates an effective solution of criminalization of the majority of its types [12, p. 2441]. An essential feature of the activity form of criminal religious extremism is a specific form of psychological violence, revealing itself in suppression of individual spiritual self-consciousness, freedom of his spiritual self-determination and imposing new (ideas, values) on him in spite of and against his will [13, p. 52]. Self-reproduction of criminal religious extremism, as a rule, is possible only by means of its organized forms, representing a qualitatively more dangerous form of this phenomenon. The phenomenology peculiarity of modern criminal religious extremism is abusing both legal organizational forms and legal means of realizing rights and freedoms of the human being and the citizen, in particular, freedom of consciousness and religious. The system of criminal religious extremism prevention can be effective only under condition that it contains enforcement measures, aimed at all its forms (extremist consciousness, ideology, activity, organizational structures) [14, p. 28].

Study of the foreign experience of establishing criminal liability for encroachment on public relationships, providing interdenominational and international equanimity, is evidence of the fact that a legislator, when describing an objective aspect of corresponding corpus delicti, uses constructions that fairly clearly describe a criminal act. Thus, in a number of countries the following was criminalized: threats or claims to violence with respect to representatives of one or another group (art. 8, the Swedish Criminal Code (CC); art. 135a, the Norwegian CC; art. 130, the German CC; art. 137a, the Dutch CC); insulting persons on the basis of their race, creed and other features (art. 135a, the Norwegian CC; art. 257, the Polish CC); national hatred propaganda (art. 249, the Chinese CC) [15, p. 106].

It should be noted that the experience of EU countries in formation of a unified legal basis, allowing struggling with organized criminality, terrorism and other grave crimes, is conceived as extremely important for Russia and CIS states-participants.

Unfortunately, it has to be stated that legislation in this field in the framework of the Commonwealth of

Independent States lacks consistency, systemacy, and is of fragmentary nature.

Documents, regulating legal relationships in this field, allow coming to a conclusion about practically total lack of unifying norms of the substantive right, which negatively affects the national legislations development. Thus, on the territory of the CIS states-participants, the question of the terrorism subject' age was solved differently: in Russia and Ukraine, criminal liability begins at 14, and in Belarus – at 16 [16, p. 465]. Special norms, criminalizing establishment of a terrorist group or organization, are included only into the Ukrainian Criminal Code (part 4, art. 258 "Terrorist act") and the Georgian CC (art. 327 "Establishment of a terrorist organization or its supervision", art. 328 "An association in a foreign terrorist organization or in a similar organization that is under control of a foreign state, or assisting it"). No commonality in approaches when establishing liability for assisting its activity is observed as well [17, p. 106].

The procedural support of the actions against terrorism also lags behind the European level. In particular, extradition is still the only instrument, allowing implementing criminal prosecution of the person, having committed a crime in one of the countries of the Commonwealth and hiding on the territory of other.

As it seems, there are two ways of solving the problem of establishing a unified legal basis for struggle against different manifestations of extremism, including terrorism [18, p. 81].

The first way is an independent integration of each CIS state-participant into international space and, in particular, into the European legal space. Such approach will allow providing solution of the unification problem of the national legislative systems of the CIS states-participants at a higher geopolitical level.

The second (more preferable) way is improvement of the international treaties system in the field of struggle with extremism in the CIS framework, taking into account modern tendencies (refusal from the extradition procedure, the use of the "listing" approach when constructing concepts "terrorism", and "extremism", a wide application of confiscation as a type of a criminal penalty for committing crimes of

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terrorist nature and of extremist orientation, etc.) [19, p. 33].

In the present study, the authors base on the premise, according to which criminal religious extremism prevention is simultaneously an important element of the common system of measures against this phenomenon and a priority direction in the criminal policy of struggle in this sphere.

In the criminological literature, theoretical bases of preventing crimes and its separate types are developed fairly well, which allows the authors to dwell on the analysis of only the most actual and controversial aspects, having specific importance for preventing criminal religious extremism.

In the modern criminological literature, it is accepted to differentiate between general and specific measures of crime prevention. In view of objective reasons, the development of general preventive measures against criminal religious extremism, i.e. measures, which objectively (separately from their goal-setting) provide prevention of this phenomenon, is realized beyond the framework of criminology and criminal policy science [20, p.44]. Along with it, the "weight of responsibility" for comprehending preventive orientation and correcting scientific validity of general preventive measures against the considered kind of criminal activity lies namely on these sciences. Today, to such general measures specialists usually refer: elimination of economic, political and social inequality; redistribution of the world financial resources in favor of the countries with "declining economies"; construction of multi-polar political space; rejection from the policy of double standards in the international relationships sphere; establishment of extra-confessional institutions of spiritual development, etc. Correspondingly, experts usually refer the legal support of other general preventive measures, enumerated above, to general legal preventive measures against criminal religious extremism [21, p. 129].

Along with it, it is obvious that today the criminological analysis methodology of general preventive measures of criminal religious extremism is highly imperfect and deserves more than one fundamental research. In this connection, in this chapter, the candidate considered it valid to dwell on the problems of developing

the complex of special legal, organizational and informational (educative, educational and propagandistic) preventive measures against criminal religious extremism, which, as the system analysis of the criminal religious extremism factors showed, form the basis of the system of special preventive measures against criminal religious extremism [22, p. 105].

Special crime prevention implies a goal-directed activity of state authorities, civil society institutes, separate citizens on revealing, weakening, neutralizing and eliminating factors, generating, facilitating the spread and (or) growth of social danger of criminal religious extremism or its separate kinds [23, p. 68].

The activity, aimed at eliminating personality deformations, forming criminal behavior motivation, should be considered as an essential element of the system, preventing the crime, considered by the authors.

The problem of neutralizing ideological and propagandist influence of extremist organizations on population, namely banning the publicity of terrorism, fanaticism and extremism; glorification of terrorists and extremists, justification of their activity; elimination from materials of the information that describes the ways of committing the crime in detail, still remains unsolved.

The authors consider that it is possible to introduce the following amendments:

1) in art. 4 of the Law “On mass media” – to add words “and propaganda” after the word “implementation”;

2) to amend part 2 of art. 29 of the Federal Bill “On combating terrorism” with paragraph 6, having stated it in such revision: “information, containing detailed description of the ways of committing crimes of terrorist nature”.

Simultaneously, the authors consider it necessary to note that effective prevention of criminal religious extremism is impossible without solution of the whole complex of social (integration of marginal elements, migrants into society), political, economic problems (poverty, migration).

In this scientific paper, the authors touched upon only some problems of preventing criminal religious extremism, revealed conditions of insufficient effectiveness of this

activity, proposed a three-level system of establishing a legal basis of preventing different forms of extremism, as well as formulated the directions of developing organizational, informational, educative bases of extremism prevention.

3. Results

Criminal religious extremism implies, in the authors opinion, an integral set (system) of socially dangerous acts that are recognized as crimes, aimed at formation and dissemination by any means of religious ideas (sets of religious ideas), arbitrarily claimed as truthful to the detriment of all other religious or secular ideas, as well as at realization of these ideas by criminally liable ways.

Its five typical forms were identified in the paper: 1) institutionalized criminal religious extremism, i.e. extremism, possessing organizational forms that are directly forbidden by the criminal law (art. 239, 282[1], 282[2] of the RF CC); 2) separate extra-institutionalized criminal religious extremism, as applied to which the features of relation to religion or of a religious motive are explicitly indicated in the consolidated text (art. 282 of the RF CC); 3) non-separate extra-institutionalized criminal religious extremism as applied to which the features of a religious motive or relation to religion are not directly indicated in the consolidated text (art. 280 of the RF CC); 4) terrorism and other crimes of terrorist nature, committed by religious motives; 5) socially dangerous abuses of freedom of consciousness and creed.

Socially dangerous abuses of freedom of consciousness and creed in correspondence with the Russian criminal legislation imply the encroachment, having religious goals and motives, on human life and health; human physical freedom (freedom of choice of residence and movement); sexual immunity and sexual freedom of the human being; legitimate interests of the family, rights and freedoms of the minors, including those connected with realization of the right to general education; constitutional rights and freedoms of the human being and a citizen; property and economic activity procedure; population health and morality; state safety bases regarding the provision of citizens equality; interests of the public service and the service in local bodies; the interests of service in

other organizations; an administrative procedure, connected with securing realization of civic responsibilities; human peace and security.

The factors of criminal religious extremism can be classified with the use of the authors' concept of a two-dimensional factorial complex, implying dividing all factors of the phenomenon under study into general (in essence being the factors of religious extremism on the whole) and specific, i.e. belonging to the essence of criminal religious extremism [24, p. 2282].

The authors pointed out the following main tendencies in criminal extremism development in Russia: a) formation of stable social groups, supporting extremism ideology; b) formation of social beliefs about permissibility of using violence for any conflict resolution; c) growth of the number of the "national" religious groups, the activity of which is connected with encroachment on personality, human and citizen rights; d) a rise of the organization level of extremist groups , including establishment of a peculiar system of succession and personnel training; e) the merging of extremist associations with organized criminal groups of transnational, conventional criminal and economic nature; f) institutionalization and legalization of extremist organizations, their leaders; penetration of such organizations and their members in the political elite of the country; g) extremism globalization; h) using constitutional rights and freedoms for the purpose of extremism ideas propaganda; i) using traditional religious institutes for disseminating radical ideas.

Optimization of the norm system about responsibility for separate manifestations of criminal religious extremism can be realized based on the authors' theoretical model of a compound object of criminal encroachment and a two-dimensional classification of criminal encroachment objects.

In its present appearance, the legislation is unable to provide a necessary protection level of citizens' rights and freedoms, society and state interests against criminal religious extremism.

Making alterations and amendments in the statutory legal acts, regulating: 1) publishing activity; 2) information safety; 3) control over

religious or non-governmental organizations' activity, must become the main directions of reforming a criminological anti-extremist legislation.

4. Discussions

Different aspects of the problem of criminal liability for implementing extremist activity (mainly for committing crimes of terrorist nature) were analyzed in the works of Yu.I. Avdeed, A.I. Alekseev, D.I. Aminov, Yu.M. Antonin, A.A. Aslakhanov, A.S. Bazarbaev, T.A. Bogolyubova, T.S. Boyar-Sazonovich, V.I. Vasilenko, E.G. Gurieva, Yu.N. Deryugina, S.Yu. Dikaev, A.I. Dolgova, V.N. Dremin, A.L. Edelev, V.P. Yemelyanov, V.I. Zamkoviy, M.Z. Ilchikov, O.V. Zubova, P.A. Kabanov, M.P. Kireev, V.B. Kozlov, V.S. Komissarov, M.V. Korotkova, V.A. Krasnopeeva, N.D. Litvinov, V.V. Luneev, Ye.G. Lyakhov, A.F. Maidykov, L.A. Modzhoryan, M.V. Nazarkin, G.V. Ovchinnikova, V.S. Ovchinskiy, R.E. Oganyan, A.V. Pavlinov, V.Ye. Petrishchev, E.F. Pobegailo, S.V. Pomazan, V.P. Revin, A.A. Robinov, K.N. Salimov, M.A. Sarkisyan, N.V. Stepanov, A.N. Trainin, S.V. Trofimov, V.V. Ustinov, S.N. Fridinskiy, V.S. Shukshin, S.A. Efirov. In particular, personality traits of an extremist (terrorist) were studied; proposals about system formation of the preventive measures against criminal extremism, on international cooperation improvement in this sphere were made.

Separate aspects of the problems, covered within the present paper and relating to the legal content of the consciousness freedom institute in Russia and penal guarantees of its provision, were studied by E.S. Abdulaeva, A.B. Agapov, Yu.A. Babinov, G.R. Golst, Yu.A. Dmitriev, Yu.N. Demidov, P.N. Dozortsev, S.V. Dyakov, L.I. Zalikhanova, A.G. Zaluzhniy, I.A. Kunitsyn, V.V. Klochkov, A.S. Lovinyukov, S.P. Poznyshev, I.N. Ponkin, A.V. Portnov, A.R. Ratinov, F.M. Rudinskiy, M.A. Shapiro, Ye.M. Shevkoplyas.

Monographs of G.L. Luparev and A.A. Mogilevskiy were devoted to peculiarities of religious legal awareness.

Culturological, religious, medical, penal and criminological problems of non-traditional religiousness were studied in the papers of L.D. Bashkatov, R.R. Galiakbarov,

A.L. Dvorkin, I.P. Dobaev, Ye.A. Dimitrova, F.V. Kondratev, G.L. Kastorskiy, Ye.V. Kastorskaya, T.N. Kuznetsova, A. Kuraev, S.A. Lukyanov, V.V. Pilyavets, Yu.I. Polishchuk, O.V. Starkov, E.G. Filimonov, A.I. Khvylya-Olinter.

Political, social, geopolitical aspects of different types of extremism (political, religious, ethno-religious) were considered by V.N. Arestov, Z.S. Arukhov, Yu.A. Brusnitsyn, I.M. Vakula, A.M. Verkhovskiy, A.S. Grachev, L.M. Drobizheva, A.S. Zainalabidov, M.M. Makhkamov, S.G. Moskalenko, Ye.S. Nazarov, D.V. Novikov, E.A. Pain, V.V. Pribylovskiy, P.A. Romanov, T.A. Skvortsova, M.P. Telyakavov, V.A. Tishkov, V.Ts. Khudaverdyan, V.V. Chernousov, A.A. Yarlykapov.

Nevertheless, criminal religious extremism proper, as an integral socially dangerous phenomenon, was not subjected to complex penal and criminological study.

5. Conclusion

The modern condition of social security, of the security level of human and citizen rights and freedoms is evidence of insufficient efficiency of the used measures against both extremism as a whole and criminal religious extremism in particular.

Practice shows that criminal repression in itself is unable to exert significant influence on this phenomenon, to provide protection of society and state interests. In this connection, realization of proposals on toughening criminal law, as a rule, does not give expected results without changing social environment and social policy, without measures on improving spiritual and moral health of the nation.

Religious extremism represents a complex phenomenon, realized in four forms: as a consciousness state, an ideological system, a set of actions on its realization, as well as organizational structures.

Basing on the penal doctrine and the concept of human and citizen rights and freedoms that are dominating in Russia today, only the acts themselves are subject to banning and punishing by means of the criminal law, but the ideology and the state of consciousness can be (to some degree) reflected only as motives and goals of actions (“by the

motives of race, national or religious hatred or animosity") [25, p. 105].

However, namely corresponding motives and goals, understood in a broad sense as a system of human incentives to activity, can "transform" any criminal act into an extremist one.

The indicated circumstance determined the authors' addressing the analysis of the social consciousness state. Basing on different social studies data on the problems of tolerance, performed by other specialists, as well as taking into account the results, obtained by the authors during questioning law school students and law-enforcement agencies workers, the authors have come to the following conclusions.

The Russian society on the whole is intolerant with respect to representatives of a wide variety of nationalities and creeds. However, "Caucasianphobia" and "Islamophobia" reveal themselves clearly against this background. Unfortunately, the same tendency is also typical of law school students, as well as for law-enforcement agencies workers. Receiving professional juridical knowledge and skills in the modern Russian educational environment does not provide acquisition of democratic, humanistic norms about equality of human and citizen rights and freedoms, inadmissibility of citizens discrimination.

The described consciousness state creates a favorable psychological basis for dissemination of different extremist ideologies; consequently, it is possible to forecast the growth of a number of crimes, connected with different extremism kinds (religious, political, ethnopolitical, etc.)

Extremist personality study showed that youth and adolescents in view of age psychology peculiarities, social vulnerability present the most favorable environment for cultivating extremist ideologies: they join religious extremist organizations, being unable to deal with the problems of everyday life, and become members of neo-Nazi groups. In the end, all "might" of criminal repression hurls namely at them, while their inspirers – "professional" fighters for purity of the nation belief, remain practically unpunished.

The modern anti-extremist Russian legislation is extremely complex and contradictory. In the authors'

opinion, in such condition it is objectively unable to provide a sufficient level of struggle effectiveness against religious criminal extremism manifestations. This is typical not only of the Russian Federation, but also for other countries belonging to the Commonwealth of Independent States.

Gaps and contradictions, peculiar to the Russian anti-extremist legislation, are aggravated by the influence of the following factors:

-a law enforcer finds himself in very difficult situation, not having an opportunity to make the right choice between badly differentiated norms;

- insufficient professional preparedness of law enforcement officials for application of the anti-extremist legislation;

- a very low level of analytical support of the anti-extremist lawmaking process;

- deficiency of judicial interpretation of anti-extremism legislation norms (first of all, criminal liability norms for crimes of extremist nature).

Highly effective prevention and suppression of criminal religious extremism manifestations are impossible without involving specialists of very different fields of knowledge (psychologists, sociologists, religious scholars, psycholinguists, etc.). However, there are still unsolved questions of the corresponding staff preparation, of establishing specialized expert institutions

In prevention of criminal religious extremism in adolescent and youth environment, a special place should be assigned to educative measures. The school has to become one of the key entities of early prevention of this phenomenon, realizing the principle “upbringing through education”. This implies introduction of the segments of moral and spiritual upbringing in school curricula. Hence, both the development of new teaching materials, manuals and textbooks with upbringing and educational (but not only educational) content and adoption of new state standards in the field of general secondary education, which would “legalize” the anti-extremist school educative functions, are necessary. Oncoming generation upbringing in the spirit of recognition and respect of the variety of religious, national, ethnic traditions, striving for realization of its

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rights and liabilities without violating other people's rights, will facilitate myths and prejudices destruction, formation of a habit to use lawful means of conflicts resolution.

However, similar activity will not give anticipated results in case of the following unsettled problems:

1. Growing homelessness and neglect of juveniles; new marginalization of large segments of population.

2. Untimely or inadequate response of law-enforcement agencies to law violations, including crimes, connected with religious extremism (as historical experience and criminological studies data, including this one, show, in the situations of national tension any law violation can provoke grave consequences).

3. Shortage of professional personnel capable of implementing theological education at schools, as well as theological education in specialized educational institutions.

4. Absence of the psychological rehabilitation system for persons, participated in the totalitarian sects' activity.

5. Absence of state ideology capable of uniting the Russian society, providing incentives for new (post-soviet) identity formation irrelatively of creed or ethnicity.

The Russian state should recognize officially that in the multi-confessional and multinational Russian society, the attempts of integration, based exclusively on rebirth of one or another religious tradition, are not only unproductive, but also lead to antagonism aggravation in this field.

Arrangement of minors and youth leisure time, assistance in employment, social support of disadvantaged families are inseparable constituents of the activity on early prevention of criminal religious extremism manifestations.

The state policy in the sphere of regulating mass media activity should be brought to not only exclusion of extremism dissemination by means of mass media, but also imply a possibility of their use for tolerant consciousness attitude formation, for tolerance propaganda.

Preventive activity can lead to the desired effect on eliminating or weakening the factorial complex

influence of criminal religious extremism, neutralization of its negative consequences only when observing conditions of its complexity, socio-economic conditionality, systemacy, systematic character, legitimacy, presence of a corresponding legislative basis.

In this connection, in this study the necessity of three-level system formation of legal support of criminal religious extremism prevention was substantiated, and a conceptual model of such system was developed, which includes:

1) the federal law on preventing crimes, creating a legal basis for general, special and individual prevention of any kinds of criminality, including by means of applying not only measures of reasonable limiting rights and freedoms of citizens, having committed administrative infractions, but also social and psychological patronage measures with respect to persons, finding themselves in grave living conditions;

2) the subsystem of normative legal acts, regulating prevention of separate kinds of crimes and other law violations, creating a criminological background of religious extremism (terrorism, organized criminality, laundering (legalizing) money or other property, obtained by criminal means, corruption, illegal circulation of narcotic and psychotropic substances, illegal gun circulation, illegal migration, etc.);

3) the subsystem of normative legal acts, providing complex formation of a legal basis for special preventing criminal religious extremism (criminological anti-extremist legislation), for the purpose of eliminating contradictions and lacuna in this system. At that, elimination or minimization of information, organization and structural factors of criminal religious extremism must become basic directions of such reformation.

Despite the fact that the effectiveness threshold of criminal repression as a means of struggle against criminal religious extremism is low; a legislator, in the candidate's judgment, must not disregard his duty to constantly improve criminal legislative measures against the mentioned crime type. At that, the following ideas must serve as the main orientations of such improvement:

-limitations of opportunities for arbitrary interpretation of constituent element of offence of extremist nature by an executor of law;

-formation of the penal measures system adequate to the essence and social danger of criminal religious extremism (in particular, introduction of coercive measures of psychological nature into this system);

-establishing additional guarantees for infliction of just punishment for committing the crimes of extremist nature;

-maximal limitation of objective negative consequences of applying the criminal liability measures to persons, found guilty of committing crimes of extremist nature (establishment of extremist prison subculture, stigmatization of occasional and situational extremists, facilitating appearance of new social outcasts, etc.);

-bringing the Russian criminal legislation on liability for crimes, covered by the criminal religious extremism concept, in correspondence with international standards of struggle against extremism in its different manifestations.

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THE IMPORTANCE OF FEEDBACK IN TAXATION LIABILITY RELATIONSHIPS

S.P. Bortnikov[1]

Abstract: the pertinence of the theme is due to the disputable nature of taxation liability problems in legal science. Despite more than fifty years of research, there is still no common opinion as to its definition, functions, principles, classification criteria and relationship with related legal categories. The lack of legal research of the feedback of the violating entity to the authirised body is worth noting as well. Solving these problems would reveal the nature of tax liability to finally improve performance of this public obligation, law and order. The article explores direct and backward communications in taxation. The key approach or method used here is to reveal the impact of both – the tax liability itself and the institute of liability – on business entities' and private individuals' economic activity. The article claims, that bringing to account and entering into a relationship where the violator has to explain and substantiate his actions provides a feedback for the public entity. The purpose of tax liability is defined as that of an instrument of bringing the legal relationship back to the regulated state. The article is of practical use for legislators, judicial and administrative bodies, as well as in scientific research of legal responsibility problems in all branches of law. Conclusions and suggestions of the article amend and develop the provisions of responsibility legislation being of methodic importance for further research in this area both theoretically and practically.

Keywords: tax liability, public finance, governmental finance, feedback, backward link, regulatory relationship, protective relationship.

1. Introduction

The development of the tax system and changing attitude of the state to taxation and the relevant taxpayer's public liability have changed social relation to a new proportion of economy, government, law and the public authority

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to people (within the social pact, as well).

Taxation relations develop in different ways and social ties become more complex within the state which affects the development of the tax and financial law. The government involves population into policy to include its financial and economic aspects. Taxation may serve an indicator of people's attitude to this public obligation.

A strong and independent state is respected. Taxpayers find it necessary to comply with their tax obligations. Moreover, where the principle of "everyone's obligation to pay legal taxes and duties" is brought to bear, it ensures the social contract performed in the system of direct and backward links in all spheres of social life.

The public administration system is changing fundamentally as well as the legal mechanism of administration of income of all budgets financed mostly by taxes and duties.

Public finance permeate all the administration and social life, whilst the closest touch between taxes and finance makes tax management one of the most important issues. Taxation influences economic activity of the population and business as well as distribution of the national income, financial policy of the state and finding the best proportion of centralisation and decentralisation in the government, development of managed systems of all levels and functions etc. Taxation decision-making and tax accounting without feedback from the regulated environment cannot provide for an effective tax administration.

Through the financial system, taxation and tax liability monitoring is carried out defining qualitative parameters of all the taxation and financial system. Bringing to account and entering into relations where the violator explains and substantiates his behaviour, provides a feedback to the public authority. [5, c. 7]

In the course of its development, the state and other public entities began to count their income and costs, importantly, not only actual but probable ones. Taxation shall be regarded in its financial, economic and social aspects as a self-regulating system. The flow of information and methods of its registration were becoming more and more complicated.

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O.N. Gorbunova sees one of the aspects of a self-regulating system as follows. As a result, it [the mankind] have experientially devised an instrument of self-regulation as a financial plan, a kind of which the budget obviously is however adopted: as a state financial plan, a budget system law, an institution of two laws (whatever its name be), or an appropriation or financing (taxation) act of the Anglo-Saxon common law. [15, c. 14]

Tax liability relations develop within taxation system spreading out to all the adjacent branches of law to include financial, administrative, criminal and civil ones.

The structure and nature of interaction of the actors of the tax liability relationships is defined by the nature of this legal relation itself as well as by its place in the financial law system.

Given, that, as a rule of thumb, managing with money is most effective and nothing better has been invented so far, it becomes clear why the in-depth studying of legal norms regulating this sphere of social life is one of the most pertinent lines of the public-law and special legal research. [15, c. 15]

Taxation norms establish mutual rights and obligations binding the taxpayers with the state into a legal communication community determining their behaviour aimed to withdraw a part of a taxpayer's property as a tax to finance operation of the state.

It is assumed, that by entering a taxation relationship, the taxpayers finance the state in its management of their common affairs and the state receives means required for that. The parties in these relations behave themselves coherently and with the said purpose. [11, c. 83]. M. Weber emphasised in particular, that a social relationship does not imply being understood in the same way by all parties to it, who must not understand each other's motives as well. [12, c. 60]

The state performs its functions making taxation more convenient by influence on the economy, law and other taxation's participants, whilst the taxpayers pay taxes enjoying their rights.

2. Materials and Methods

2.1. Nature and Structure of Communication in Taxation

The state acts in respect of the tax liability to protect and restore

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regulatory relations so that a violator could account for his unlawful behaviour and correct it. Liability is a feedback or backward link by its very nature.

A legal relationship taken as a system is a complex phenomenal structure consisting of different components and links. [18, c. 200-201] In modern educational literature, the concepts of "legal relationship composition" and "legal relationship structure" are often identified. V.N. Protassov, for example, is of a different opinion [23, c. 43] in which a legal relationship is composed by its subjects or persons being themselves the elements of this relationship. In this event, the rights and liabilities of the participants are not separate elements of the relationship but rather the legal properties of the elements (subjects) conferred on them by legal norms. These properties determine the legal relationship's structure understood as the legal links between the subject. [22, c. 759] The public obligation to pay taxes and duties is reserved exclusively for the public authority (the state, a constituent of the Federation, a municipality etc.). Nobody may interfere with this and it may not be put to a referendum. The public authority acts as a tax creditor through its bodies including the Ministry of Finance, Treasury and Federal Tax Service, whilst the obligation to pay taxes is born by private entities as taxpayers.

Many scientists note, that taxation regulation cannot be analysed without cybernetic methods to include, of course, the works of the founding father of that science, Norbert Wiener, as well as those of the researchers in its various branches such as V.A. Bokarev, M.A. Vassilik, R.L. Krichevsky, A.V. Morozov, A.I. Omarov, A.P. Panfilova, T.N. Persikova, L.A. Petrushenko, M.I. Piskotin, T. Russel, Yu.A. Tikhomirov, G.A. Tumanov and others. The special importance of the feedback link in finance is stressed by O.N. Gorbunova.

Taxpayers meet their liability transferring their funds to treasury while the public authority acts as a tax creditor. All parties to these relations are subordinate to one another their actions being regulated by law. Tax revenues are administrated by the Federal Tax Service of Russia. In this "horizontal" or functional relationship, the tax authority facilitates taxpayers' liability giving advice, supplying payment details etc.

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Along with these "horizontal" relationships, there is the "vertical" tax control where the taxpayer is subordinated to the tax authority acting as a public authority in respect of not only the taxpayers but the municipalities and the treasury.

2.2. Reception of Branch Methods

Relationships in respect of the due discharge of tax liability by a taxpayer may not be regarded as purely vertical or administrative ones (save for the mere obligation to pay a tax). In such relationships, the administrative element is changed being conditioned upon economic factors and taxation law principles. Both the participants are subject to the law without any relations of power between them.

In a tax liability study, the general management methodology is acceptable, i.e. the liability may be researched within the system of direct and backward links of the society as the basis of self-regulation and self-tuning of the state and the society (to include taxpayers) in taxation relationships. [9, c. 146]

The direct and backward links may be classified by their objects as those of a taxpayer:

- with public authority in discharge of the tax liability;
- with FTS of Russia in the system of regulatory and protective relationships;
- in the system of private law, taxation and financial relationships;
- as a responsible subject in the system of prospective responsibility;
- discharging his tax liability as a reaction to a legal arrangement or rule established by the public authority;
- discharging his tax liability in the system of tax control and supporting measures.

To show the importance and role of tax liability in public finance, one has first to determine the significance and role of the system, self-regulation and feedback in regulatory and protective relationships in taxation.

The systemic nature of elements is determined for every social structure dividable into sub-systems with special functions of their own. [3, c. 83] Studying taxation relationships and tax liabilities, one has to keep in mind, that the system tends to self-tuning and self-regulation by its nature. Self-regulation of the tax system proceeds from the principle of the maximum convenience of discharge of the tax liability for the

taxpayer, as well as from the independence of discharge of this liability, economy on tax management and the principle of active repentance.

Tax liability is a part of the whole tax and financial system bound as a whole with a system of ties where roundabout links play an important role. [14, c. 41] The links exchange information, which not management can do without.

Feedback is one of the main principles of any management requiring communication between the controlling boy and controlled entity. Therefore, management by feedback is always an information system capable of receiving, storing, using and transmitting information. "Feedback is the internal basis and indispensable condition of development of cybernetic systems. It helps stabilise the "substantial changes" of a system enabling it to retain or even increase its level of organisation." [21, c. 143-144]

The communication theory describes feedback as reaction of a receiver to the source's message. In the feedback, communication becomes a bilateral process enabling both parties to correct their goals and behaviour in respect of each other. In taxation liability relationships, information goes from the violator to the authorised body and backwards, thus, connecting the system's output and input informing the latter of the result achieved at the output and the need to rebuild the system when it is not." [15, c. 85]

The public authority or its body receive communication that the legal relation returns from the protective to the regulatory state and about the taxpayer's attitude to the need to behave properly and that no repressive or protective measures should be applied, that the established rule is effective or expedient etc. The taxpayer receives information on the state of his liability and reaction of the government to the changes in his behaviour, the results of measures applied etc.

The study revealed, that if the taxpayers do not trust the taxation authority in respect of tax collection and distribution, the number of violators increase. [8, c. 199] If you regard taxpayers as reliable persons and treat them accordingly, they will tend to justify your confidence complying with the tax law. The more respect the tax authority shows towards taxpayers, the

rarer are their attempts to evade. Such attitude would encourage them to play fair and pay taxes. Tax authorities all over the world try to "individualise" their services and facilitate them where possible. The Taxpayers' Charter defines the ways in which tax authorities should treat them. Also, it describes the advantages of cooperation between taxpayers and tax authorities.

Feedback in taxation is a controlling reaction triggered by information – an action aiming to finally improve the level of organisation and performance of the system.

In these relations, feedback is different from the processes in automated systems, since the participants' feedbacks cannot be predicted absolutely accurately here. An unpredictable reaction may be caused by individual circumstances, performance, accidents etc.

To influence the behaviour of a taxpayer and other liable persons effectively, one has to have good effectors that have to be properly controlled by the whole taxation system, i.e. public authorities, whose communications should be duly combined with information from other sources to make a consistent output to the effectors. [14, c. 125]

Controlling actions of the state and tax authorities in respect of a taxpayer may be "hard" only when the public liability is being set and management decisions are being taken without account of the actual state of the controlled object and its environment. [15, c. 18]. As soon as the tax responsibility is established, the taxpayer has the widest discretion in respect of the ways to meet his tax obligations, of which he has to inform the FTS. The same principle is used with the tax liability: the tax authority is not watching over the taxpayer to catch him out but rather exchanges information with him enabling him to stop violating the rule and return to the regulated relationship.

Thanks to a relatively adjusted controlling system and a broad range of methods, the relevant bodies are well aware of the actual state of the controlled objects. However, the legal conditions of control do not allow to supervise the objects permanently since the number, frequency, subjects etc. of inspections are defined explicitly. This approach is reasonable. To pay taxes, one has to create added value and earn profit. A

taxpayer is, first of all, an entrepreneur, owner and investor. It is impossible to read and adjust all external and internal conditions of a system.

O.N. Gorbunova reasonably notes, that management decisions are taken when all their consequences are considered to be known beforehand. [16, c. 19] Setting taxation rules, the state presumes tax liabilities to be duly met by taxpayers while the actual conditions may not comply with the preset model. Deviations from the behavioural norm must be adjustable by public bodies as well as by self-regulation.

The main dimension of the modern macro control is spreading of the rational instrumental models over the world: i.e. general social models prevail in similar local conditions. [6, c. 248] Therefore, tax reforms are more heavily influenced by the world community integrated by international institutions substantially limiting the fiscal sovereignty of states. Contemporary authors also note the persistent trend towards restriction of sovereignty by the states themselves [10, c. 7], which is due to the stronger inter-state integration, where some fiscal powers are handed over to supra-national structures. [4, c. 98]

The very environment and innate laws of the market and competitive economy imply self-regulation of manageable systems capable of self-culturing and adaptation to the changing environment. [20, c. 89]

2.3. Conditions of Communication in Taxation Liability Relationships

These days, tax legislation is developing self-regulation institutions to include the independent choice of partners to define tax consequences of a transaction by the taxpayer, control over “invoicing” of individuals for property taxes by the FTS, definition of transaction prices for taxation purposes, control over tax burden etc.

The main purpose of communication in taxation is to make the taxpayer understand the need to perform his public obligation to transfer a part of his property to the public authority as a tax, as well as to make the state understand the taxpayer behaving within the allowed framework. Informational exchange does not guarantee the efficiency of communication between its counterparties. To achieve this, a

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number of conditions shall be met. Under these conditions, the following four basic elements may be singled out:

1. Sender generating ideas or collecting and transmitting information.
2. Message, i.e. information coded with symbols.
3. Channel, i.e. means of transmission.
4. Recipient for whom the information is intended and who interprets it.

Exchanging the information the sender and the recipient pass several inter-related phases. Their goal is to make a message and transmit it through the channel so that both could understand and share the initial idea. It is difficult to achieve since the meaning may be distorted or completely lost at any of the phases, which are as follows:

In the course of feedback, one has to first determine the significant tax liability idea or message to exchange. As mentioned hereinabove, the subject of the feedback is the attitude of the state and the taxpayer himself to his tax liability and where it complies to the governmental rules. The subject of the liability shall be determined as well as the relevance and pertinence of assessment of the taxpayer's behaviour by himself and the FTS of Russia in view of the situation and taxation purpose.

Awareness of oneself as a part of the society involves understanding of moral rights and obligations. The main point of the ethics is always how to live in respect of others. How to consider other members of the society taking account of their interests? Proper behaviour in respect of the society including that in the matters of taxation and the burden of financing the common costs creates an aspect of feedbacks concerning not only the state but other members of the society. The moral view of life does not require people to behave altruistically but rather to relate their interests and ideals to those of the other people in the society. [2, c. 80]

Conditions and ways of tax liability feedback are defined by tax legislation. The legislator defines the feedback channel and ways of transmission. The channel shall be compatible with those ways. Most often, controlling relationships are used. If the channel is not compatible with the nature of information, the exchange will be less effective and the means of

communication should be reduced to a single channel.

Feedback communication should be considered effective if the taxpayer and tax authority understand the information identically, which is why the information exchange must be bidirectional to ensure that the concept of proper and actual behaviour have been understood.

According to The Telegraph, Her Majesty's Revenue and Customs (UK) prepared a secondary school programme aimed to promote citizenship since 11 years of age by games, videos and quizzes. Revenue officers say, that "it helps to develop financial competences and raises civil responsibility issues making studying more interesting". The module "Good Citizen's Tax Responsibility" suggests to tell the teachers about "the cases of tax non-payments around us" to include tax underpayment by neighbours or relatives. The members of Civitas Foundation for Civil Society compared this initiative to the situation in George Orwell's 1984. "It is reminiscent of the Big Brother since the term "around us" refers most probably to parents and close relatives. It is not at all British to use children as informers". [13, c. 93]

Note, that feedback may oppose to what the system (public authority or taxpayer) does, thus, being a negative one, or be helpful to the system, thus, being a positive one. Negative feedback is also possible to stabilise the situation which is also true of the feedback at arbitrary actions of the taxpayer. [14, c. 123]

Information returning to the controlling centre (public or tax authority) resists deviation of the controlled variable from the controlling one being, however, dependent on this deviation in a wide variety of ways.

A positive assessment of a taxpayer's actions by FTS or the taxpayer himself would be an example of the positive feedback. When a feedback is possible and stable, it would be useful by making the system's behaviour less dependent on load.

Feedback as a reaction of the recipient to a message of the source implies certain action on the part of the controlling entity that are different bodies and the taxpayer himself. The source may consider this feedback should the messages change afterwards.

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Describing feedback in the system of private, tax and financial law we should not in particular the differences between judgemental and non judgemental feedback.

The structure of this relationship may be considered through the example of payment and repayment of the land tax which is local, i.e. payable to local authorities.

Since the state registration of rights (proprietary rights) for a land plot, a taxpayer is liable to the land tax. Rosreyestr (Russian Registration Service) communicates the registration to tax authorities. FTS of Russia notifies the taxpayer of the need to pay the tax and the taxpayer pays it to the local budget while the local authority (municipality) counts this amount as potential tax income for the relevant land plot.

If the taxpayer finds that he has overpaid the tax, he turns to the tax authority to return amounts excessively paid. If the application is granted by FTS, the latter writes the required amount off the municipal accounts with the treasury without consent of the tax creditor.

Moreover, a violation of the tax rules by the taxpayer or FTS may be revealed.

Tax policy is a part of the budget and financial policy. Budget laws including the law on the Federal Budget contain provisions related to the tax sphere and changing tax obligations, setting new tax rates, relieving entities from tax payments etc. The Judge of the Constitutional Court of RF, T.G. Morshakova, writes in her Special Opinion to the Judgement of the Constitutional Court No. 3-P(П) of 18 February 1997 that in certain instances separate provisions are included in budget laws to change them.

Another situation may be considered with tax restructuring. Judgement is a legal act regulating budget legal relations (Budget Code of RF p. 2, Art. 3). In a tax liability relationship, the taxpayer may acknowledge violation, correct the declaration and apply to the budget authority for alteration of the tax payment term.

When a decision to restructure a taxpayer's liability is taken, taxation relationship is replaced with budget ones as tax arrears give way to a budget credit.

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After that, the tax authority has no legal grounds to set off excessively paid taxes against the budget credit extended to the taxpayer, because the two relations are developing in the two different fields of law.

In tax relations, the creditor may not agree or disagree to a tax repayment and a municipal budget "cannot even assume" such a cost as late as two years after the tax is paid. Financial relations would develop here with a view to the tax ones.

Note, that in the system of the taxpayer and public authority, the treasury and other bodies of the FTS of Russia act as links in the direct and backward information or feedback chain.

In the given example of development of tax relations, all participants of the feedback evaluate information they receive and decide accordingly. A judgemental feedback may provide positive and negative estimates approving the subject or bringing it to account. The positive judgemental feedback may be important to support the parties to the relations, while the negative one performs a corrective function aimed to assess the taxpayer's behaviour as undesirable and return him to a controllable condition within the model designed by the state.

2.4. Feedback Effectiveness in Taxation Liability Relationships

Feedback in taxation and taxation liability relationships in particular is a process by which a tax authority transmits its estimates of a taxpayer's behaviour. Here, not only the information received by the taxpayer about results of his activity matters, but also the exchange of opinions and observations of their legal status, attribution of actions and transactions etc. in the course of discharge of the tax liability.

Effective feedback helps to optimise several aspects of the taxpayer's activities enabling him to correct his behaviour and determine it for the future.

Positive effects of feedback in taxation are obvious. Firstly, it promotes cooperation with tax authorities. Thanks to a permanent feedback, any contact with the tax-collecting body is perceived by a taxpayer as a prompt to a fruitful dialog rather than a conflict.

Secondly, the need for feedback urges the FTS's methodologic effort,

preventive measures and invention of new forms of taxpayer monitoring and information.

Thirdly, urgent feedback helps to correct the taxpayer's activities and support his desired line of behaviour avoiding his wrong understanding of the rule.

Information exchange shall be frequent and monitored inherently with every communication determining and legalising the mandatory nature of the previous one. In other words, if a taxpayer submits his accounting and tax policy to the tax authority in a timely manner and the authority does not timely object on it, such policy shall be deemed obligatory for the both parties. If the choice of a partner in the course of VAT refunding has passed a tax audit (usually, in office), this partner should not be regarded as a weak link if a taxpayer's tax relief is refused.

A direct link appears between taxpayers and state authorities when the taxpayers apply to the FTS for information, protection of their rights or a tax-payment order. However, the lack of established feedback would not allow the taxpayers to evaluate and adjust their behaviour.

Feedback shall be as multi-channeled as the direct link relationships are to include, firstly, the feedback channel from public authorities to taxpayers through which taxpayers are informed of results of their applications and, secondly, the feedback channel from taxpayers to the state.

The transparence of procedures initiated by public authorities seems to be the main barrier to violations of the prescribed model of behaviour. [25, c. 25]

As an example, the Decree of the President of RF No. 297 of 13 March 2012 on the National Plan to Fight Corruption for 2012-2013 and Changes to Particular Acts of the President of the Russian Federation on Fighting Corruption authorised the Government to create the effective feedback enabling the state to adjust anti-corruption policies basing upon information on its efficiency received from the people and civil society institutions.

Also, the Government is obliged to implement the unified portal of the RF budget to create additional mechanisms of civil oversight over state and municipal bodies, make their operation and decisions more efficient

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and establish in 2012 governmental grants to support civil associations and mass media to create active intolerance for corruption in the society.

Another reason is the growing involvement of non-state actors in legal communication decentralising and deformalising law-making. Non-public groups acting at the domestic and international level are more often to play the key role in the international legalisation development to include the soft law. [1, c. 23]

The legal discourse even has the term "destatisation" of law. The traditional sources of the international law – contract and custom – are not exhausted as regulatory mechanisms. It is more correct to say that they are no longer able to regulate all the variety of relationships begging for regulation. The search for an effective alternative brings about the "soft law" without complicated adoption, ratification, prolongation, modification etc. Moreover, soft law instruments are easier to adapt to the high speed and complexity of the cross-border interactions between public and private entities. "The unique flexibility of the soft law," – Timothy Meyer writes, – "facilitates the development of legal norms in response to politic realities and changing circumstances". [6, c. 231]

Presently, there is yet another feedback channel of settlement procedures in tax disputes usually related to tax liability. Until 2002, court practice had not implied reconcilement in cases arising out of administrative relationships.

In the absence of legal prohibition for extra-judicial settlement of administrative disputes in the Arbitration Procedure Code adopted in 1995, p. 12 of the Resolution of the Plenary Meeting of the Supreme Arbitration Court No. 13 of 31 October 1996 on Application of the Arbitration Procedure Code of the Russian Federation in Consideration of Cases at First Instance Courts clarified, that settlement of claims arising from administrative relationships (to include tax disputes) was not allowed. Article 190 of the modern Code provides for settlement of public disputes by various procedures *and their results* (B.S.P.) including amicable agreements, where the federal law does not provide otherwise. Settlement of public claims – not only administrative but even criminal

ones – is known to many jurisdictions not being strange to the Russian law as well. In the course of settlement, the parties open all possible feedback channels, reconcile their positions and begin to "hear" each other. The legislator does not provide the exhaustive list of settlement procedures to include mediation, explanation of the right to settle, explanation of ways to fulfil the right for settlement, negotiation, mini-processes and mandatory pre-judicial settlement of claim. Amicable agreement shall not be attributed to the settlement procedure but rather to its result. The title of the section between para 7 and 8 of the Resolution of the Plenary Meeting of the Supreme Arbitration Court of RF of 18 July 2014 No. 50 on Reconciliation of Parties in the Arbitration Process (accessed via Garant on 23 April 2016) points to the same. Proceeding from the APC of RF, save for the amicable agreement, other independent results of a reconciliation may be: the full or partial abandonment of claim (part 2, Art. 49 of the APC), full or partial acceptance of claim (part 3, Art. 49 of the APC), acknowledgement of the circumstances on which the other side bases their requests or arguments, as well as the agreement on merits of the case (Art. 70 of the APC).

2.5. Tax Liability Controlling Mechanisms in Feedback Relations

In the feedback system, tax liability controlling mechanisms having shown their efficiency may be singled out. Information about bringing to account may be used to qualify a repeated offence. FTS of Russia monitors compliance with the tax liability, fines and other consequences of this liability. Funds received by the budget (to include fines) are registered at personal accounts.

Formally, tax monitoring is provided by the Tax Code of RF since 2015. According to p. 2, Art. 105.29 of this Code, if the monitoring reveals a contradiction between submitted documents (information) and the documents available to the tax authority, the latter reverts to the organisation with the request to explain or correct within 10 days.

The parties having exchanged their opinions may proceed to settlement procedures. According to p. 3, Art. 105.31 of the Tax Code, the federal executive body authorised to control and

supervise in taxation shall relate any change in the motivated opinion or the absence of the same to the organisation in question.

Feedback to tax authorities is more efficient through internet portals. It may be built by means of "online receptions", trust lines, sociologic studies and focus-groups (types of businesses, social strata etc.), social councils participated by existing social associations, The Civic Chamber and similar institutions of the constituents of the Russian Federation. It seems expedient to use scientific institutions as well to include the Institute of Sociology of RAS. [17, c. 42]

To consider and assess people's applications as provided by law, relevant administrative rules have to be developed. It is crucially important for these procedures not to be formal but to demonstrate the state's effort to oppose corruption and cooperate with the people and business community. [17, c. 34]

Analysing the feedback, some criteria of its functioning in respect of the tax liability may be determined.

1. Purposefulness of the feedback which has to be balanced and combine positive and negative moments representing values of the protective relation to restore the disrupted regulatory one.

2. The feedback and information exchange shall engender cooperation between the taxpayer and tax authority promoting participation of the private in financing of public affairs.

3. Tax liability is always individual despite its general principles and the common tax legislation. Therefore, the feedback must be specific.

4. It must have specific goals.

5. It must be determined and correspond to the circumstances of a particular legal relation.

6. It must be objective and real.

7. The parties to a tax liability relationship must be active participants of the legal relation and the relevant obligation. The violator and the obliged person must be involved in adjustment of their behaviour to reach specified purposes.

8. The feedback must be efficient and comparable to enable the violator compare the results of his behaviour with the preset model.

9. It must be sufficient.

10. It must be functional and effective.

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All the aforesaid allows to determine some feedback principles in tax liability relationships:

- Reliability implying the absence of information distortions during transmission.
- Descriptive nature of transmission without evaluation. Information has to be assessed by the tax authority or another recipient upon receipt for expedience, economic efficiency and legality. Respondents often describe the reaction of a taxpayer to established rules, while tax authorities may use information as required by situation and law.
- Aims to improve behaviour of obliged persons and not to suppress them.
- Readiness to receive information.
- Information is specific, no generalisations. It has to describe a particular situation.
- Constructiveness, usefulness, operability: what is wrong and what can be done.
- Aims to behaviour that can be changed.
- Timeliness and immediacy.
- Checkability.
- Programmability based on determination of a dew and possible way rather than on evaluation of what is already done.

Thus, regulating financial relations with legal norms the state ensures the following tasks done.

Tax liability allows to ensure the system of efficient direct and backward links in the state. The better its principles are regulated by law, the more efficient is the system.

Each area and line of work of the state must give expected results.

It is worth stressing, that system links and dependencies of financial activity of the state reflecting processes taking place in the society and the state have to be fixed with general and unified norms of financial law and the common principles of that activity shall be established. This will guarantee both: centralised management of economic, social and political processes by financial planning and management through the market mechanism. [16, c. 24]

Thus, feedback decreases the dependence of the tax system on

taxpayers' properties and peculiarities of their activities.

The backward informing link and examples of feedback in taxation provided above represent only some particular applications of a rather complicated theory which has not been developed well enough. All this branch of science is developing very fast and is worth paying much more attention to it. "The father of cybernetics" spoke about that about a century ago and his words remain topical nowadays. [14, c. 142]

The study of feedback in taxation allows to make a number of conclusions.

Bringing to account and entering into relationships where the violator explains and substantiates his bahaviour provides a feedback to the public entity and determines qualitative indicators of the whole taxation and financial system's performance pretty accurately.

Controlling actions of the state and tax authorities in respect of a taxpayer may be "hard" only when the public liability is being set.

When there is a feedback, communication is bilateral enabling both parties to adjust their goals and behaviour in respect of one another. In other words, in taxation liability relationships, information goes from the violator to the authorised body and backwards, thus, connecting the system's output and input informing the latter of the result achieved at the output and the need to rebuild the system when it is not."

Feedback in taxation and taxation liability relationships in particular is a process by which a tax authority transmits its estimates of a taxpayer's behaviour. Here, not only the information received by the taxpayer about results of his activity matters, but also the exchange of opinions and observations of the course of discharge of the tax liability, their legal status, attribution of actions and transactions etc.

The public authority or its body receives information about return of the legal relationship from the protective to regulated state, about the taxpayer's attitude to the necessity to behave properly and the absence of the need for a suppressive or protective measure, effectiveness of the established rule etc. The taxpayer, in turn, is inform about the state of his obligation, reaction of the

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state to changes in his behaviour, results of controlling measures etc.

3. Findings

Thus, in the course of analysis, some functional criteria and principles of feedback in tax liability relationships were revealed.

In taxation, the state acts to protect and restore regulatory relationships so that the violator would give account for his unlawful behaviour and act to behave properly. Liability relationships in management have the nature of a backward link. Self-regulation of the tax system proceeds from the principle of the maximum convenience of discharge of the tax liability for the taxpayer, as well as from the independence of discharge of this liability, economy on tax management and the principle of active repentance. The main purpose of communication in taxation is to make the taxpayer understand the need to perform his public obligation to transfer a part of his property to the public authority as a tax, as well as to make the state understand the taxpayer behaving within the allowed framework. Feedback communication should be considered effective if the taxpayer and tax authority understand the information identically. Positive effects of feedback in taxation are obvious. Firstly, it promotes cooperation with tax authorities. Thanks to a permanent feedback, any contact with the tax-collecting body is perceived by a taxpayer as a prompt to a fruitful dialog rather than a conflict. Secondly, the need for feedback urges the FTS's methodologic effort, preventive measures and invention of new forms of taxpayer monitoring and information.

4. Discussion

The feedback in tax liability relationships is a controlling reverse effect triggered by receipt of information and aimed to finally increase organisation and performance of the system.

Specific features of tax liability and links between the participants of this legal relationship need to be analysed for interaction between them and compared with those of administrative liability.

It should be noted, that Russian financial law science has paid insufficient attention to the problems of legal regulation of liability in taxation. The existing theoretical and scientific

achievements beg for further analysis, organisation and improvement in view of the modern Russian legislation to include the Constitution and Tax Code.

5. Conclusion

In conclusion of this study it should be noted, that responsibility in taxation implies the obligation of social actors to comply with tax norms fulfilled by their lawful behaviour while irresponsible behaviour contradictory to such norms and violating the established order of taxation entails divestiture provided by tax law. It is the importance of feedback that determines the efficiency of the studied protective institution which is suggested to be viewed through responsible behaviour, legal assessment, enforcement, obligation to comply with norms and reaction of the state.

In the analysis of lawful behaviour from the point of view of its normative nature, the behaviour within models and algorithms established by the state is out of question. However, the behaviour which is principally permitted by the legislator but not prescribed beforehand should also be regarded as normative. Its lawfulness shall be assessed in the course of the subject's actions. The permission method where the taxpayer chooses the most convenient way of compliance with his tax liability is used quite widely by tax law.

Permission, obligation and prohibition change their goal and algorithm in liability relationships. The widest permission used in regulatory relations changes for obligation in protective ones.

This approach leads to an intermediate conclusion that tax liability may be qualified as a normative, guaranteed and state-secured legal obligation of a taxpayer, tax agent or another person provided by law to respond for his behaviour in respect of compliance with and performance of the tax law.

6. Recommendations

The conclusions and suggestions contained in this article amend and develop the tax liability provisions of the tax law being of methodological importance for further theoretic and practical research in this field. Its findings concerning adjacent matters may be used in researching law systems, tax law functions and

principles, lawful and unlawful behaviour, legal consciousness and relations.

Practical importance of this study is determined by the possibility to apply its conclusions and recommendations in law-making, judicial and administrative practice as well as in scientific research of legal liability in all fields of law.

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NATIONAL MANAGEMENT SYSTEM OF BAIKAL PROTECTION

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Abstract: the relevance of the article is conditioned by the need to improve management efficiency in the area of environmental management and conservancy in the conditions of a federal state. The purpose of the article is to analyze the current system of relations in the regulation of the protection of Baikal lake as a World Heritage object and identification of the reasons behind the impaired efficiency of state efforts to reduce impact on the lake's ecosystem and ensure sustainable development of the adjacent territory. The analysis is targeted at the allocation of authorities by management levels – from federal to local. The study methodology rests on the analysis of empiric materials and structured-functional approach that makes it possible to single out discrepancies in the exercise of control and executive functions at various levels of environmental protection management. The main discrepancy is the predominance of prohibitive and conservative approaches, which hampers coordination of objectives of the protection of the unique ecosystem and sustainable development of coastal territories. The federal focus of main executive powers results in the ignorance of interests of local communities and passive participation of regional authorities in the implementation of the main tasks related to the recovery of disturbed ecosystems. There are no management bodies in charge of a comprehensive approach to the territory development and there are no established horizontal ties between interested regions. This brings about the expansion of shadow economies related to the use of natural resources. It is proposed to enhance the regional level of decision-making by establishing a system of accommodation of interests of federal subjects concerned and a higher focus on the development of ecologically-

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oriented economic activities. The article materials may be of use when working out approaches and methods of the management of sustainable territory development and when improving the system of the national ecological policy as a whole.

Keywords: Baikal natural territory; sustainable development; unique ecosystem; allocation of authorities; local community.

1. Introduction

In Russia, the year 2017 has been announced the year of ecology, during which the main focus has been on Baikal lake and care for the preservation of the unique ecosystems of the lake and Baikal natural territory. The Baikal situation has mirrored the entire state of the environmental policy of the country, its drawbacks and advantages.

Baikal is the world's deepest lake and largest freshwater tank (some 80%) [1]. In 1996, Baikal was included in the UNESCO World Heritage List and in 1999, the national law on Baikal protection was passed in the Russian Federation. The law was intended to protect the unique ecosystem against destructive factors of human impact and it determined the control and monitoring system. Pursuant to this law, a special zone was designated around the lake – Baikal natural territory (BNT), inside which special requirements to economic management apply.

By virtue of the same law, the Baikal natural territory was divided into three ecological zones of various functional purposes. The central ecological zone (CEZ) comprises the basin of Baikal lake, water protection zone of the coast and adjacent specially protected natural territories. The primary function of the zone is to preserve the unique ecosystem of Baikal lake and prevent adverse impact of economic and other human activities on its condition. The buffer zone covers the Baikal drainage basin outside of the central ecological zone. The zone's functions are determined by its boundaries – preservation of the aquatic habitat and water balance of the lake. The third zone – the zone of atmospheric influence – occupies the remaining part of the Baikal natural territory and deals with the task of decrease in air pollution. Each of the zones has its own set of regulations and rules in line with the listed functions.

However, the main focus of the environmental state policy being implemented is the central ecological zone.

One of the main issues of the protection of a unique natural territory is the system of management of nature protection activities in a certain territory and the role of regional and local levels in its implementation. The task of natural potential preservation shall go together with a need to enhance economic and social well-being of local communities. The role and responsibility of the state in the attainment of these targets is absolute and the way the nature management system is arranged will determine the possibility for the state to perform its obligations in the natural heritage preservation and sustainable development of the territory both before its citizens and global community.

The questions of the management of nature protection activities in the territory of World Heritage objects, centralization and decentralization of decision-making in this area have been raised in scholarly disputes [2-4]. One of important lines of the dispute is the need to get local communities involved in the management of these objects as their inherent right [5, 6], which has been recognized one of five strategic objectives of the movement by the World Heritage Committee [7]. This study intends to contribute to the discussion of this subject by analyzing the arrangement of the environmental protection management and sustainable development in Baikal where this system has been established within a federative state with well-developed legal framework and considerable economic potential. Baikal lake has attracted the attention of the world community as a unique ecosystem and field for the study of its transformation under human impact, while the legal matters and the course of establishment of the institutions regulating these processes have stood on the sidelines of the general debate. The establishment of the Baikal protection system has been discussed in the Russian scientific literature [8-12] and now one may draw the conclusions of the efforts made and identify the main issues of the system operation that affect the implementation performance of the ideas of sustainable development for the benefit of the local community at the Baikal natural territory.

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2. Study methods

The work is based on empiric study methods (observation, comparison and description) using the structured-functional approach. The environmental management and conservancy system at the Baikal natural territory is the study subject. The structure of environmental protection and regional development management bodies and its regulatory framework has been analyzed, individual elements of the management system and their functions have been studied and their variations with time have been traced. Comparatively short history of the operation of the Baikal natural territory as a statutory area of special protection (fewer than 20 years) has, nevertheless, allowed to trace down the evolution of external (man-made) impact on the Baikal ecosystem as part of the tasks set before the management system and reveal state regulation results and the role of individual levels and links of the system in their attainment. Information on the exercise of the functions of control, supervision, regulation of economic relations by regulatory authorities and the challenges that regional and local communities face when performing economic activities at the Baikal natural territory has been used as empirical materials.

3. Results

3.1. Allocation of legislative authorities by levels of power

Russia is a federal state and the overall allocation of authorities by level of management of the Baikal natural territory is defined by the Constitution of the Russian Federation, according to which (article 72), the matters of environmental management, conservancy and specially protected natural territories in their entire broad range are under the joint supervision of the Federation and its constituents. In fact, the laws in this sphere and their enforcement system via the allocation of authorities by various levels of executive power are established by the federal power. The framework federal law that establishes the environmental policy at the Baikal natural territory is the Federal Law dated 1 May 1999 “On Baikal protection” adopted pursuant to the UNESCO regulation on inclusion of the lake in the World Heritage List.

The main tasks of the state regulation of Baikal protection on the federal level are the establishment of the

common ecological monitoring and control system of BNT, mechanism for the resolution of issues in this area, accountability for task performance and meeting expenses on the work performance and control.

Delineation of human impact on the Baikal ecosystem is the main and most important sphere of regulation that attracts most of the attention during rule-making and control as it deals with physically tangible and measurable values. This delineation is spatial and technological, i.e. it includes territorial projection and standardization of impact.

The principles of allocation of the territory and its ecological zones (central, buffer and atmospheric influence) are embedded in the framework law "On Baikal protection". The delineation rationale and general boundaries were presented to regions by the Ministry of Natural Resources based on the developments by Sochava's Institute of Geography (Irkutsk). Regional authorities marked the boundaries afield.

Apart from ecological zone boundaries, water protection zones are very important for the spatial regulation of human activities. The Water Code of the Russian Federation prescribes 50 m as the water protection zone width; however, Baikal is subject to an exception. The Baikal water protection zone boundaries were marked virtually along watersheds to have covered the entire CEZ, which is why the zone is up to 60-80 km wide off the bank line in certain areas.

Apart from the general allocation of the Baikal natural territory and its ecological zones, there are other delimitations of areas with a special legal status and protection system – specially protected natural territories (SPNT) and areas of traditional use of natural resources by indigenous peoples. There are also a few levels of powers in line with the status of a special territory – federal, regional or local. This determines the levels of executive bodies that make decisions on the establishment of special territories, their delineation, setting up of management bodies and identification of sources of financing.

Categories of specially protected natural territories differ in protection conditions. State nature reserves – zapovedniks and national parks are federal SPNT, state nature reserves – zakazniks, natural landmarks,

dendrological parks and botanic gardens are federal and regional and nature parks are regional. Principles and conditions of protection of all types of conservation areas, boundaries of state SPNT and the system of their management and financing are established on the federal level. Decisions as to the allocation of SPNT of a relevant level, delineation and approval of boundaries and establishment of management and financing systems are made on the regional and local levels.

Baikal natural territory exposure limits are also established on the federal level. The main tools for the restriction of activities are the regulation of Baikal water regime, rationing of acceptable exposure limits (discharges and releases of harmful substances), public accounting of the objects that generate a negative impact on the environment, environmental impact audit.

The list of the activities prohibited in the central ecological zone was approved by the Government of the Russian Federation in 2001. It has been amended since then to mitigate certain bans with regard to special economic zones for tourism and recreation (civil engineering, road construction), waste storage and neutralization and to exclude certain consumer activities, local agriculture and wild growing plant processing, Baikal water filling from the list.

In 2010, the Ministry of Natural Resources and Environmental Protection of the Russian Federation approved exposure limits on the Baikal ecosystem including rationing the content of certain substances in effluents discharged into Baikal and Selenga river, air emissions over the southern dish of the lake, permitted man-made burden during the crop season and recreational use and cattle grazing in the central ecological zone.

Water regime of the lake is also regulated by the Government of the Russian Federation. 2001 saw adoption of a general resolution on water level limits during economic activities. However, recently, due to low-water inflows, resolutions adjust the limit downwards to ensure water intake by the cities located in the downstream pool of Irkutsk WPP on Angara river.

Environmental impact audits are also regulated by the federal law. It segregates the authorities of federal and regional bodies in the elaboration of

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audit provisions and its conduct and differentiates the objects subject to state environmental expert review of the federal and regional level. State expert review of design documents of Baikal natural territory objects is on the federal list. Since 2014, all BNT objects under construction or reconstruction have to undergo the review, including an extensive ecological zone of atmospheric influence.

Monitoring, control and supervision powers of Baikal protection are set on the federal level. They rely on the statutory system of environmental exposure limits.

State ecological monitoring procedure is defined by the Russian Government. It is implemented with the involvement of federal and regional executive bodies that set up a common system of observation networks and information resources and a state fund under the Ministry of Natural Resources and Environmental Protection. Ecological inspection is carried out by a federal entity and its local offices.

Regional legislative authorities only supplement law-making on the federal level. They adopt regulations pursuant to federal laws, take part in state ecological monitoring, set up territorial observation systems as part of the all-Russian network, establish environmental quality standards in line with federal limits. Their own law-making only addresses regional objects since, according to the Water Code, Baikal is federal property (Fig. 1).

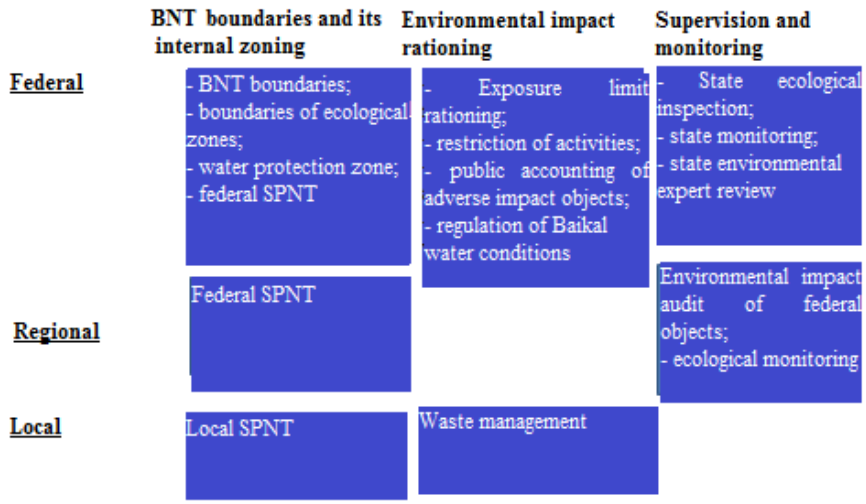

Fig. 1. Levels of regulation of

nature protection activities at the Baikal natural territory

3.2. Allocation of executive environmental protection functions

Overall, the established regulatory framework for the Baikal natural territory operation suffices to settle the environmental protection task. Building the regulation system "upside down" enables the establishment of a common and consistent regulatory framework targeted at the protection of national interests. However, its actual efficiency and performance is revealed during the practical implementation of the environmental policy at BNT. The principal solution of the task is the horizontal and vertical allocation of executive authorities, their agreement and coordination, establishment of the management bodies able to reach the environmental policy objectives set.

The Federal Service for Supervision of Natural Resource Management reporting to the federal Ministry of Natural Resources and Environmental Protection (Rosprirodnadzor) is a specially authorized federal executive body in charge of state regulation of Baikal protection prescribed by the Law on Baikal protection. The Service is engaged in federal state ecological inspection related to Baikal protection.

Other protection functions vested on the federal level are exercised by parallel ministries and agencies. For example, Baikal state ecological monitoring is allocated between a number of services according to environment component observed. The Federal Service for Hydrometeorology and Environmental Monitoring inspects air and water quality at BNT via its units in Baikal region, the Federal Agency for Water Resources monitors water bodies via its local offices, the Federal Agency for Forestry monitors forests of the Baikal natural territory together with forest departments of Baikal region constituents, the Federal Service of State Registration, Land Register and Mapping monitors BNT lands, the Ministry of Agriculture monitors agricultural lands, the Federal Agency for Subsoil Use monitors the subsoil, the Federal Fishery Agency monitors fish stock. All the services engage competent authorities of Baikal region constituents in monitoring. Data on individual

components shall be integrated into the common system of state ecological monitoring. Thus, horizontal interaction of federal agencies for natural protection at BNT is mostly implemented at the level of the agencies subordinate to the Ministry of Natural Resources and Environmental Protection of the Russian Federation and it covers control (supervision) and observation (monitoring) functions. Other functions related to the integrated management of the processes in the catchment area shall be coordinated by the Interdepartmental Committee for Baikal Protection.

The Interdepartmental Committee shall coordinate efforts of both federal and regional authorities in a wide range of matters including normative legal regulation, state ecological monitoring, elaboration and implementation of target programs for the protection of the lake's ecosystem and sustainable development of the territory and implementation of the investment policy within its borders. Its members are representatives of federal and regional ministries and agencies, the Committee holds its meetings as required, as soon as there are points at issue to be considered (at least 2 times a year).

Federal authorities manage the federal target programs related to Baikal. Both programs – "Baikal protection and social and economic development of the Baikal natural territory for 2012-2020" and "Development of the water economic complex of the Russian Federation in 2012-2020" have the same direction – Federal State Budgetary Enterprise "Information Analysis Center for Water Economic Complex Development" ("WEC Development Center"). The same center orders research on the matters related to the protection of the Baikal ecosystem and development of the Baikal natural territory. Specially protected natural territories are also managed by federal state budgetary institutions.

Regional authorities have their own pool of objects of regional importance to environmental protection and impact, with regard to which they conduct regional ecological inspection and ecological monitoring, keep a record of adverse impacts, adopt and implement regional environmental protection programs, establish regional specially protected natural territories and manage

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them. Management is ensured by relevant ministries as part of regional governments. In Irkutsk region, this is the Ministry of Natural Resources and Environmental Protection that comprises the Nature and Baikal Protection Service. The service is engaged in regional ecological inspection and control over environmental impact audit at regional objects. The region has adopted the state program of Irkutsk region "Environmental protection for 2014-2020" that comprises subprograms related to the preservation of biodiversity and SPNT development, production and consumption waste management, mitigation of adverse environmental impact, development of the water economic complex. It is financed by the regional budget and federal funds from federal target programs.

In Buryatia, the regional environmental agency is represented by the Ministry of Natural Resources of the Republic of Buryatia. It is in charge of the Service for Wildlife Conservancy, Control and Supervision of the Use of Natural Resources engaged in regional ecological inspection. Budgetary institution "Environmental Management and Conservancy of the Republic of Buryatia" regulates activities of regional specially protected areas.

In Zabaikalye, the Ministry of Natural Resources deals, among other things, with environmental protection, ecological inspection and specially protected natural territories. The area has adopted the regional state program "Environmental protection" for 2014-2020 that includes subprograms for the development of specially protected natural territories and improvement of environmental component protection.

In all the three constituents of Baikal region, regional services focus on regional public supervision and regional specially protected areas. Regional monitoring systems are not institutionalized; no uniform monitoring system has been set up for BNT. Most of monitoring activities, other than hunting and fishing, are conducted by nature reserves, national parks and scientific organizations.

Local government bodies deal with the matters of local significance that, as far as environmental protection is concerned, include collection, transportation, neutralization and disposal of solid domestic waste in urban and rural areas.

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3.3. Baikal ecosystem behavior

Efficiency of the current Baikal protection system is reflected by its ecosystem behavior after the adoption of the framework law "On Baikal protection". State reports on the Baikal condition and its protection measures published by the Ministry of Natural Resources and Environmental Protection of the Russian Federation [13] were used to trace down changes in the key parameters of economic and other impact on the Baikal territory environment – air emissions, wastewater discharges and waste accumulation. Most pollutants (over 83%) come with Baikal inflow waters with Selenga river being the main source of pollution [14].

Changes in Baikal ecosystem impact intensity reflects differently directed trends at either side of the lake (table 1). The total amount of air emissions at the Baikal natural territory from fixed sources has accrued 28% over 10 years while wastewater discharges have accrued 45%. The maximum level of air exposure was observed in 2012 – the year when the FTP "Baikal protection and social and economic development of the Baikal natural territory for 2012-2020" was launched (maximum wastewater discharges in 10 years were observed in 2007). Air emissions from fixed sources across BNT gradually increased with certain fluctuations. In the Irkutsk side of BNT, emissions went up, while in Buryatia they went down. In the central ecological zone, there was an expressed decrease in emissions, which was mainly due to the shutdown of the Baikal pulp and paper plant (BPPP). Wastewater discharges also increased, but this increase was attributed to the Republic of Buryatia, while in Irkutsk region, they went down. Discharges in the central ecological zone also decreased. Steady rise in waste both at BNT and in the central ecological zone even after BPPP shutdown indicates that the solution to the problem has not been found.

Table 1. Changes in man-made impact on the Baikal natural territory environment [13]

	2005	2007	2009	2011	2013	2015
Emissions from fixed sources, th. t						
BNT overall	333.7	441.2	402.2	380.7	456.4	426.6

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including Irkutsk region	252.9	315.4	309.0	305.4	368.5	349.2
- Republic of Buryatia	66.9	114.5	83.6	67.5	80.7	71.6
- Zabaikalye	13.9	11.3	9.6	7.8	7.2	5.8
BNT CEZ	13.1	11.0	6.6	7.9	10.2	4.6
including Irkutsk region	8.7	8.0	4.0	5.4	7.5	2.7
- Republic of Buryatia	4.4	3.0	2.6	2.5	2.7	1.9
Surface impoundments, mln m^3						
BNT overall	350.7	448.5	335.5	400.5	510.6	507.1
including Irkutsk[1)] region	38.8	46.7	4.7	27.8	21.7	2.8
- Republic of Buryatia	310.2	399.9	329.5	370.6	485.3	503
- Zabaikalye	1.7	1.9	1.3	2.1	3.5	1.3
BNT CEZ	40.4	48.1	6.1	28.9	22.5	4.9
including Irkutsk region	38.8	46.7	4.7	27.8	21.7	2.8
- Republic of Buryatia	2.6	1.4	1.4	1.1	0.8	2.09
Waste generation, th. t						
BNT overall	9,144.0	11,786.6	33,376.9	75,319.4	110,069.0	111,499
including Irkutsk region	294.4	289.1	489.8	476	583.6	3039[2)]
- Republic of Buryatia	8,435.1	11,077.2	11,247.4	15,722.4	51,057.7	47,860
- Zabaikalye	424.5	420.3	21,639.7	59,121.0	58,428	60,600.8
BNT CEZ	294.3	289.1	489.8	476	583.6	535.5
including Irkutsk region	121.6	150.1	15.8	56	39.9	4.4
- Republic of Buryatia	18.7	68.9	17.2	258	297.3	354.3

[1)] Since discharges and production and consumption waste of the enterprises located in the ecological zone of atmospheric influence of BNT produce no impact on the Baikal ecosystem, indicators for Irkutsk region in the lines “BNT overall” are represented by the enterprises situated in the central ecological zone.

[2)] In 2015, data on waste generation in BNT of Irkutsk region are provided with regard to the ecological zone of atmospheric influence.

Observations of the lake’s hydrobiological condition reflected in annual reports evidence the expansion of the zones of presence of Spirogyra sp.

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green filamentous alga indicative of water "bloom", depletion and decrease in the zoobenthos biomass. Hydrochemical characteristics of individual parts of the lake where long-term observations are conducted (source of the Angara, Selenga shallow waters, area of BPPP, South Baikal stations) and the state of bottom sediments evidence preservation of pollution level and its increase in some indicators. Since 2003, decrease in spawning populations of omul – the main commercial species in the Baikal fish fauna – is observed. Both total allowable catches of omul set by the Federal Fishery Agency and statistically recorded catches go down. Thus, despite the reduction in certain impacts (emissions and discharges), especially in the central ecological zone, the condition of the Baikal ecosystem remains tense and requires new approaches to the implementation of the environmental policy at the Baikal natural territory.

4. Analysis

The main issues of the current Baikal protection management system are as follows.

Firstly, considerable predominance of protective and prohibitive functions in the absence of land development mechanisms. The lake ecosystem state monitoring system is quite comprehensive and it is implemented jointly by federal and regional executive bodies. The entire central ecological zone of the Baikal natural territory is under protection, which eventually results in the increased burden on Baikal nature due to independent implementation of local interests or household demands. Despite all the declarations about the importance of sustainable development, the existing management system lacks functions and relevant powers to regulate economic and social matters in terms of the local communities and their demand for appropriate living standards. These demands are considered on a case-by-case basis, when problems occur, rather than systemically.

Thus, there is no comprehensive approach that would combine the tasks of preservation of the unique ecosystem of Baikal and a need to improve the quality of living of local communities. This task was suppose to be addressed by the federal target program "Baikal protection and social and economic development of the Baikal natural

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territory for 2012-2020". However, despite its name, its tasks, objectives and expected results are limited to ecological aspects; social and economical aspects only include the use of the recreational potential of specially protected natural territories due to the development of the eco-tourism infrastructure. The system of prohibitions without regard to the interests of local communities brings about many areas for shadow activities. The most obvious of them are land use in the water protection zone where all the available bays are being developed starting from the bank line and illegal fishing in the lake and its tributaries.

Secondly, there is no management body that would bring these tasks together and elaborate the relevant comprehensive approach to the settlement of the land development issue. Rosprirodnadzor is unable to exercise these functions; it is only in charge of control and supervision and horizontal interaction with other agencies. The Interdepartmental Committee is a coordinator; it settles individual matters brought up for discussion by committee members without continuous management of the processes ongoing at the Baikal natural territory. This system lacks accountability for environmental policy results.

Thirdly, there are no well-developed connections between regions within the existing vertical hierarchy. This results, on the one hand, in the detachment of federal regulation of individual impact parameters from the specific features of the territory, which brings about, for example, the need to revise the size of the water protection zone or exclude BNT social objects from the list of the state environmental expert review. On the other hand, the activities imposed from above are not coordinated with all the interested regions. This can be exemplified by centralized regulation of the Baikal water level that prejudices one or another coast: either level decrease in water supply sources downstream the Irkutsk WPP dam or shallowing of the southern bank of Baikal where the sandy beaches that are most easily accessible to the local communities of both regions in warm bays are located [15, 16].

Fourthly, among various types of man-made impacts, ecosystem pollution with biowaste increases at the fastest rate [17]. The matters of collection and transportation of solid domestic waste

fall within the competence of local authorities (local government bodies) that have the least financial resources in the existing budgeting system. In the BNT nature protection system, waste management falls out of the federal financing system. In the central ecological zone, such activities, including waste disposal, require increased costs due to the restrictions and bans imposed by the above authorities, but these costs are not reimbursed. The same holds true for municipal wastewater discharge into the lake and its inflows in most lakeside settlements.

Detachment of regulation of individual impact parameters at the federal level from specific features of the territory brings about a need for constant legislative changes. For example, the width of the water protection zone is currently being revised downwards as the central ecological zone that coincides with the water protection zone houses 141 settlements, including towns of Slyudyanka, Baikalsk and Severo-Baikalsk where land turnover and new construction have turned out to be unfeasible. The territories of these settlements also have to be withdrawn from the water protection zone. Besides, at the meeting with the participation of the Russian President, local authorities raised a question of a need to exclude social objects from the list of the objects subject to state environmental expert review across BNT.

The study examined the way these tasks have been settled in other countries, in particular, the experience of restoring the ecosystem of the Great Lakes in the North America [18-20].

The existing system of management of protection of the Great Lakes was a response to the imminent ecological disaster in places with high density of population and economic activity at either side of the border, while Baikal undergoes incomparably smaller human pressure. Nevertheless, the experience of this organization helps single out the following moments. Individual priorities (a total of five) of application of the main funds of the federal and regional budgets were identified. Pollution reduction confirmed the correct choice in the ecosystem point of view when impact of regeneration efforts was targeted at key links of degradation processes. Next, areas of special concern were identified to ensure territorial concentration of efforts on

certain areas. This spatially determined approach is perfect when arranging recovery operations on Baikal where the high degree of water body pollution focuses in a few areas exposed to significant human impact – head of Angara, estuary of Selenga, area of the Baikal pulp and paper plant, Smaller Sea, etc. The provision of the special-purpose Committee under the federal agency and its interregional status localizes executive authorities in decision-making and allocation of funds at the level of the states and provinces engaged in problem resolution when coordinating and concentrating their resources and efforts.

Co-operation of federal and regional authorities in the North America is based on the contracts approved by legislative authorities of both levels (Canada-Ontario Agreement, Tahoe Lake Agreement). In this case local communities are able to legally assert their economic rights against the background of national interests. One should also note that there are the ways to involve local communities in the discussion and implementation of actions of various plans and there is a wide system and a good deal of different grants available to activists of any level of organization and competence. Irkutsk region and Buryatia are characterized by a host of public environmental organizations related to Baikal and this approach would encourage them to take an active part in the sustainable development of the Baikal natural territory.

5. Conclusion

Improvement of the management system in the protection of Baikal and sustainable development of the Baikal natural territory continues at the federal and regional levels and this study is intended to contribute to the discussion of required measures. In our opinion, the focus has to be on the settlement of three main tasks and, correspondingly, changes have to take a few directions.

The first task is to implement the ecosystem approach to the protection and restoration of the Baikal lake environment, i.e. a set of measures that takes into account interrelated processes in the nature habitat in the allocated territory, which is required when the system of environmental component monitoring, supervision and conduct of activities prevails. The indicator showing that this approach has been

implemented is the restoration and maintenance of biodiversity in the protected territory with requirements to the quality of individual components preserved. The federal competent authority (Rospotrebnadzor) has to elaborate the structure and content of ecological monitoring of the unique ecosystem of Baikal lake as part of state monitoring, including uniform methodology of collection and processing of the data to be used by the federal services and agencies, regional executive bodies authorized to conduct monitoring as well as scientific and public organizations of Baikal region constituents [21, 22].

The second task is to bring the decision-making level closer to the impact territory, decrease in the centralization degree of authorities with regard to particular matters, which may also promote a faster response to different hindrances to the territorial development [23, 24]. Mechanisms of horizontal interaction with regard to environmental protection at the regional level as well as between administrative districts and municipalities have to be elaborated and improved in the context of this decentralization. This task may be settled by way of setting up the Interregional Committee for Environmental Protection and Development of the Baikal Natural Territory vested with powers of a coordinator to implement national and to elaborate and further on implement regional and municipal programs at BNT. The same body will be able to elaborate the basis for “interregional consensus” with regard to social and economic planning documents provided for in the new federal program titled “Baikal – the great lake of the great country” that has to supplement the earlier program.

The existing Interdepartmental Committee has to be preserved as the body with advisory and arbitration functions. It has to regularly consider certain issues at its meetings that Committee members could not agree upon or if their resolution is beyond regional powers. Supervisory bodies at the regional and interregional level engaged in the implementation of federal and regional programs have to be based on the infrastructure of scientific and public organizations not affiliated with executive authorities. This will ensure the recovery of the local level, which is

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currently most restricted in terms of both powers and financial means [25] and will foster such public resource as volunteer movement and non-governmental organizations.

This will raise involvement of the population, economic entities, local authorities and public organizations in environmental control and recovery activities at the Baikal natural territory, which is in line with the status of a World heritage object.

The third task is to combine environmental protection and social and economic development of the territory, improvement of living standards of the local community. The coastal belt is an attractive place for the settlement and temporary stay and the care of the government about reduced human impact has to be accompanied with promoting conditions for the development of particular settlements. These objectives are not mutually exclusive and they can only be brought together through the gradual change in the structure of economy, “greening” of economic activities in the coastal zone of Baikal and its development following “green” economy principles.

The BNT central ecological zone deserves special attention; its strategy and program of social and economic development should be established individually and as an organic whole from the very beginning. Economies of CEZ local communities have to take three lines of development [26]. The first one includes non-destructive use of high-quality natural resources of ecological importance. The most common ones are tourism and recreational activity. They also include the possibilities to set up the sports and therapeutic infrastructure, fishing, mineral water filling, gathering, hunting, etc. The second direction are the activities related to reproduction of natural resources of the territory, including reserved operations, reforestation, fish breeding, etc. The third direction is waste handling – collection, removal, processing and disposal. Currently, this sphere is considered to be the business of the state, local authorities or volunteers, but it is the most promising one for the development of local entrepreneurship subject to a proper system of service financing and creation of available infrastructure for effluents and waste collection and disposal.

Thus, the task of preserving the nature potential of the Baikal natural territory has to do not only with traditional activities to attract investment from other regions, but, mostly, with the development of local communities that have very few possibilities for economic activities, which results in the growth of shadow economy. Local communities have to become a subject of the economy "greening" process and be aware of the benefits of this process, which shall be fostered by the development of local entrepreneurship and targeted state support of the local business activities related to the natural capital reproduction.

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ON THE ISSUE OF THE STAGE OF INITIATING A CRIMINAL CASE: NOTION, CONTENT AND PROBLEMS OF FUNCTIONING OF THE CRIMINAL-PROCEDURAL INSTITUTION

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Abstract: topicality of the problem is due to the discussion on the issue of excluding the stage of initiating a criminal case from the criminal procedure as a separate criminal-procedural institution. This problem is not new. The article traces the history of discussions over this problem and its topicality: this procedure, "as a separate element of criminal process, is aimed at providing the rights and legal interests of its participants, both on the part of defense and on the part of prosecution". The objective of this stage of criminal procedure is to protect an individual from groundless involvement into a criminal trial.

The article objective is to reveal the notion and content of the stage of initiating a criminal case, in order to define its meaning. The research presents an analysis of literature on the problem. Basing on the literature analysis, the contradictions in the opinions of procedural law specialists are analyzed.

The leading research method is comparative method. The research presents the analysis of various opinions on the problem. The analyzed literature shows an unexplained feature of similarity-difference: on the one hand, the opponents of private interest in the public criminal procedure insist on rejecting the institution of a civil suit within a criminal case; on the other hand, the opponents of the stage of initiating a criminal case wish to return to the private-legal principles of the legal procedure used before the 1864 reform, when criminal prosecution was supposed to start with an allegation from a private individual.

Having studied the history and literature on the issue of the stage of initiating a criminal case, we come to a conclusion that this issue is still topical nowadays.

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The article proposes means of broadening the list of investigative actions which are feasible at the stage of initiating a criminal case.

The materials of the article may be useful both for practical and educational activities in the sphere of criminal-procedural law.

Keywords: criminal-procedural law; initiating a criminal case; information about a crime; reasons for initiating a criminal case; investigative actions; stage of a criminal procedure.

1. Introduction

The discussion over the issue of preserving the stage of initiating a criminal case or eliminating this stage as a separate criminal-procedural institution is not new. Many scholars in the sphere of criminal-procedural law (A.S. Aleksandrov, Yu.P. Borulenkov, S.E. Vitsin, L.M. Volodina, B.Ya. Gavrilov, S.I. Gir'ko, V.V. Gordienko, Yu.V. Derishev, I.S. Dikarev, A.P. Kruglikov, N.S. Manova, V.S. Ovchinskiy, A.V. Pobedkin, V.N. Yashin, I.L. Petrukhin, A.I. Trusov, A.A. Usachev, etc.), according to V.V. Kozhokhar', expressed their opinion about the necessity to exclude it from the Russian Criminal-Procedural Code, substantiating it with various organizational-legal reasons.

This discussion is believed to be reopened due to the Conception of Judicial Reform in the Russian Federation of 1991. In particular, it was also renewed in connection with the adoption of Federal Law of 4 July 2003 No. 92-ФЗ "On changes and additions to the Criminal-Procedural Code of the Russian Federation". The novelties of this Law were the feasibility of performing document checks and inspections by specialists prior to initiating a criminal case, and prolongation of the period of inspections up to 30 days in this case. Some authors actually assumed that it is necessary not only to preserve the stage of initiating a criminal case, but also to significantly broaden the list of investigative actions feasible at the stage of checking the information about a crime (A.M. Bagmet, A.P. Gulyaev, N.I. Gazetdinov, I.V. Golovinskaya, A.A. Popov, S.F. Shumilin, etc.).

2. Materials and Methods

It is common knowledge that the supporters of the model of preliminary investigation without the stage of

initiating a criminal case are relying on the opinion of the authors of Conception of Judicial Reform that "pre-trial checking of the information about crimes is nothing but "investigation substitute" which is sometimes able to predetermine the case outcome". For unclear reasons, this conclusion is linked to the data on crime rate, which decreased in the recent years and has almost equaled to the indicators of 1991. Incidentally, the unreliable data on the crime rate, repeatedly marked by the government, can be, on the contrary, associated to the significant rise of procedural rejections of initiating a criminal case, made by investigative bodies.

3. Results

We believe that this issue should be judged in accordance with the opinion by T.K. Ryabinina and Ya.P. Ryapolova, who noted that such data as "the ratio of the number of procedural rejections of initiating a criminal case and the further decisions on dismissal of already initiated criminal cases should be treated more cautiously"… "the substantial number of rejections of cases having no judicial prospects takes place at the stage of making a decision on initiating a criminal case". Consequently, "the stage of initiating a criminal case must be preserved as an indispensable border between the preliminary checking of the presence of crime signs in the information, and the investigation with a broad application of feasible procedural actions, including the measures of procedural coercion".

4. Discussion

This idea is not new. As early as one and a half centuries ago, the commentary to the Charter of Criminal Proceedings of 1864 stipulated the same opinion: inquiry enables to increase the quality of investigation, "the number of groundless data will substantially decrease,… and an investigator, not participating in the initial search and thus not distracted by the first, often erroneous, conclusions and guesses put forward by the guilty, will be able to impartially, without any prejudice, judge about the probability of the accusations imposed on them".

V.M. Bykov, incidentally, a supporter of preserving the stage of initiating a criminal case, wrote that Yu.V. Derishev substantiated the elimination of this stage by the reason that the checking of facts objectively resembling crime, carried out during this

stage, is actually administrative procedure… performed before the crime appears, thus being a "procedural extravagancy". In our opinion, information about crime, as a juridical fact, cannot generate administrative legal relationship by its very essence. In most cases, a law-enforcement agency has no difficulties in categorizing an incoming allegation (information) as that speaking about an administrative offence or a criminal act, doing so prior to registering the said information in the relevant books. If one takes a different position, then all requirements of the criminal-procedural law, regulating the activity within the initial stage of the procedure, become senseless, and "we will inevitably come to the conclusion that the stage of initiating a criminal case is, essentially, outside the frameworks of a criminal process, as the criminal-procedural activity is, allegedly, not performed within its course".

However, the Statute "On uniform registering of crimes" stipulates that the very fact of registering information about crime is appearance of criminal-procedural legal relationship. Thus, it is at this stage that an official who acquired information must take the checking actions and make one of the following decisions: to initiate a criminal case; to reject initiating a criminal case; or to direct the checking materials to investigative jurisdiction (court jurisdiction – for cases of private prosecution). The applicant has the right to appeal against the decision made, and a prosecutor is obliged to timely consider the complaint, etc. All these actions take place within the frameworks of criminal-procedural legal relationships.

The fact that checking of information about a crime is carried out in this sphere of relationships, is proved by the criminal-procedural aspects stipulated in the norms of the Criminal-Procedural Code of the Russian Federation (CPC RF) and in the Order "On uniform registering of crimes" of 29 December 2005 No. 39/1070/1021/253/780/353/399 of Prosecutor General's Office, Ministry of Internal Affairs, Ministry of Emergencies, Ministry of Justice, Federal Security Service, Ministry of Economic Development and Federal Service on Drugs Control of the Russian Federation. These aspects include: 1) procedural and other documents: information about a crime – written appeal, surrender (protocol of surrender – Art. 476 of CPC RF), report on

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discovering a crime (Art. 476 of CPC RF), other documents (allegation of a victim (representative of a victim) in cases of private prosecution, protocol of oral allegation of a crime (Art. 476 of CPC RF), investigative protocol or a court record with information about a crime; 2) the legally regulated order of actions of an authorized person related to the submitted allegation (information) – its adoption and registration in the relevant book, assigning the register number (clause 16 of the Statute); 3) checking the information, i.e. executing the necessary procedural actions, stipulated in parts 1 and 2 Art. 144 and part 4 Art. 146 of CPC RF, by a qualified and (or) authorized official (inquirer, investigator or prosecutor (clause 26 of the Statute)).

Well known and widely discussed are the proposals of the authors of the so-called "Roadmap of reforming the internal bodies of the Russian Federation". In their opinion, it is appropriate to eliminate the institution of the initiating a criminal case and transform it into the institution of starting the criminal procedure. It is relevant to remind how this issue was treated by M.S. Strogovich; he wrote that "the main procedural significance of the stage of initiating a criminal case is the legal grounds for all further procedural actions during investigation and settlement of a criminal case".

In the opinion of the supporters of preserving the stage of initiating a criminal case, who are a majority (V.A. Azarov, N.S. Alekseev, V.S. Balakshin, A.R. Belkin, V.M. Bykov, A.G. Volevodz, V.G. Daev, L.D. Kokorev, V.S. Shagrin, O.V. Khitrova, etc.), this procedure as a separate element of a criminal process, should ensure the rights and legal interests of its participants, both on the part of defense and on the part of prosecution. They see the objective of this stage of a criminal process in protecting an individual from groundless involvement into a criminal trial, where the mechanism of criminal-procedural coercion is actually perceptible.

For instance, the thousands violations of the rights of victims and suspects by preliminary investigation bodies, precluded by prosecutors, takes place at this very stage of a criminal process. First, as the practice of prosecutor' surveillance shows, concealment of crimes by law-enforcement bodies, particularly during police investigation, periodically

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acquired the scale of a national problem. At the very initial stage of dealing with the citizens' (juridical persons') appeals for protection of life, health and property from criminal trespasses, police officials either do not accept applications at all (direct concealment) or reject the initiation of a criminal case on farfetched grounds. These illegal actions do not only infringe the right of a victim for protection against a crime, but deprive them of the access to justice in general, which is often forgotten by the opponents of the stage of initiating a criminal case.

The situation has a reverse side as well – there are cases when criminal suits are initiated on farfetched grounds, to be more precise – illegally. This results in violation of the human rights by direct influence on their freedom and legal interests. In this connection, it is appropriate to recall that there existed the practice prosecutor's surveillance over consent to initiate a criminal case. Unfortunately, it was admitted excessive. This should not have been done, as the pressure onto an "inconvenient" person through criminal prosecution is not so rare even today. The court-investigating practice is not yet free from illegally prosecuted persons. The main reason for this is that the insufficiency of grounds for preliminary investigation "was not noticed" at the stage of initiating a criminal case. As for the prosecutor's authority, at this stage of investigation they apparently contradict the general principles of independence of investigation and, in particular, an investigator.

Second, concealment of crimes is the state's refusal to fight against crime.

The above facts are directly related to some conclusions of the opponents of the institution of initiating a criminal case. Defending its rejection, many refer to, as has been already stated, both historical and legal aspects, and organizational arguments. For instance, there is an opinion that eliminating the stage of initiating a criminal case has a historical precedent; that this norm was not known to either the Charter of Criminal Proceedings of 1864, or the Criminal-Procedural Codes of the RSFSR of 1922 and 1923, in which the start criminal procedure was an allegation of a crime (Art. 303 of the Charter). Allegedly, the revival of this norm would be of positive reality – will make the state serve the interests of a citizen, the latter being turned from a

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powerless applicant into a person driving the mechanism of criminal prosecution.

We consider these arguments hard to agree with.

First, Russia as a legal state, declaring a human being, their rights and freedoms to be the "supreme value" (Art. 2 of the Constitution of the Russian Federation), considers their provision and protection to be its main task. The whole state apparatus, including its mechanism of criminal prosecution, is formed and exists only because the state has taken up these protective functions.

Second, the Constitution of the Russian Federation has stipulated the protection of rights of crime victims, as well as the obligation of the state to ensure their access to justice and reimbursement of damage, incurred by the crime (Art. 52 of the Constitution of the Russian Federation). This constitutional principle means that the state in the person of its bodies, performing the criminal prosecution of a criminal, at the same time takes up the obligation to ensure the access to justice, reimbursement of damage of the case participants, restoration of proprietary status and business reputation of a physical or juridical person.

Third, basing on these constitutional principles and the norms of criminal legislation, concealment of crime from registration by the police, through refusal to accept the allegation of a crime or through deliberately illegal refusal to initiate a criminal case, is most often regarded in court-investigatory practice as committing a crime stipulated by Article 285 of the Russian Criminal Code – abuse of official authority.

Fourth, as was correctly marked by V.N. Grigoryev, "for over a century, in Russia exists a system of criminal proceedings, in which the stage of initiating a criminal case is traditionally distinguished as one of the most important guarantees of protecting an individual against groundless application of criminal-procedural coercion measures". At that, the status of a victim appeared and developed in the criminal procedure exclusively in accordance with the level of public relations development; inter alia, it used to be a person driving the mechanism of criminal prosecution, as was noted by A.P. Kruglikov. This issue, in our opinion, is rather fully disclosed, in particular, by the evolution of the institution of a civil suit within a criminal case.

Let us recall that the notion of "a victim" in the Russian practice is directly related to the notion of "a suit", which were first defined in the Russkaya Pravda in connection with settling a social-legal conflict. Thus, the history of an Old-Russian criminal process "began with the prevalence of a private principle in it".

Since implementation of this procedure was related to public activity (punishment on behalf of the authorities, approval of voluntary settlement, etc.), the private prosecution started to lose its dominance. A crime started to be viewed as infringement of the state will; the authorities are being involved into the settlement of a private conflict.

The judicial reform of 1864, approving the principles of adversary nature of the trial and broadening the access of private individuals to justice, for the first time recognized an individual as a full-fledged participant of a criminal procedure: "the adversary process appears where a certain individuality of a person is admitted". The new procedural status of a victim in the "combined process" created more effective means of protecting their rights and legal interests. It is sufficient to note that a civil suit within a criminal case is settled on the grounds of admitting a person guilty in committing the crime (Art. 779 of the Charter). The Russian legal tradition was interrupted in 1917. The Decree on Courts No. 2 of 22.02.1918 first excluded this right of a victim, but then it was restored by the Statute on regimental courts (Art. 95). The Bases of Criminal Procedure of 1958 stipulated that the investigation agencies must, alongside with the factual circumstances of the case, prove the character and volume of damage incurred on a victim (Art. 15 of the Bases). For the first time, a prosecutor acquired a right to bring a civil action or to support the civil action brought by the victim. Nevertheless, despite the progressive and positive development of the institution of civil suit within a criminal case, the issues of either preserving the said institution, or its complete rejection are still discussed.

5. Conclusion

In the context of the issue under study, we can see an unexplained feature of similarity-difference: on the one hand, the opponents of private interest in the public criminal procedure insist on rejecting the institution of a civil suit within a criminal case; on the other hand,

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the opponents of the stage of initiating a criminal case wish to return to the private-legal principles of the legal procedure used before the 1864 reform, when criminal prosecution, allegedly, started with an allegation from a private individual.

We will return to this issue once again; however, we consider another problem to be more significant. According to the Russian Criminal-Procedural Code, an inquirer, an investigator, and a judge (the court), within the scope of their authorities, must immediately after initiating a criminal case declare the person to be a victim. However, the law does not stipulate the period within which this declaration should be made; that is why the stipulation of "immediate" declaration is rather incorrect. However, it cannot be doubted that the earlier the victim realizes their status in the criminal process, the more efficiently their right for access to justice will be implemented. We assert that, in the sphere of human rights protection, at this stage of criminal process the following legal means would be genuinely effective: a) authority of a prosecutor to give consent for initiating a criminal case, which had been the practice earlier; b) the investigative body making decision about recognizing a person as a victim simultaneously with issuing a decree on initiating a criminal case. This inconsistency can be solved by complementing Article 146 of the Russian Criminal-Procedural Code with a provision that a person is recognized as a victim simultaneously with issuing a decree on initiating a criminal case. In other words, in the context of constitutional provisions, the stage of initiation of a criminal case should, on the contrary, be developed and enhanced with the legal guarantees of human rights protection.

Another participant of the situation studied, which should also be researched from the standpoint of historical development, is a preliminary investigation body.

The judicial charters of 1864 introduced a lot of novelties into our legal tradition; their norms are still studied with great interest. There were cases when their provisions were misinterpreted or, what is worse, were interpreted from the mercantilistic point of view. That is why we consider it to be not very correct, for example, to "use as the key argument a single phrase drawn out of the context of a norm". This is how the reference to historical experience is

presented, concerning the procedural argumentation of a preliminary investigation without the stage of initiating a criminal case.

The studied stage of a criminal process includes the procedural activity aimed at solving numerous questions in order to make a legal and well-grounded decision about the information of a crime. According to literature on procedural issues, the modern opinion about the stage of initiating a criminal case is that of an independent stage of a criminal process, which has its own objectives, constituting the "content of such criminal-procedural activity: a) discovering the signs of the crime, statement of the crime as it is; b) creating conditions for clearance of the crime; c) ensuring implementation of the legal liability of the person committing the crime; d) providing protection of the rights of the victim; e) rehabilitation of an innocent; f) restoration of the violated regime of law and order; g) initiation of inquiry or preliminary investigation; h) creating the conditions promoting the comprehensiveness, completeness and objectivity of the investigation, disclosing the truth", as well as preclusion of criminal activity, fixation of the signs of the crime".

In the literature, often as the main theory of the origin of crime investigation apparatus, it is asserted that a structurally and functionally detached body of preliminary investigation first appeared in the Russian state structure when the "judicial investigators were established in 1860". However, according to another opinion, it happened 150 years earlier. Then, Peter I first embodied the concept of an independent "investigation agency"; in the 1710s – first half of the 1720s, these agencies functioned in the form of: "major's" investigative offices (prototype of the modern investigative committee); investigative office of the Prosecutor General's (prototype of an investigator of a prosecutor's office); and Inquiry Bureau of Supreme Court" (prototype of a judicial investigator). Incidentally, the 25th of July 1713 – the date of establishing the first "major's" investigative office – is now celebrated as the Day of Investigation Agencies of the Russian Federation.

It should be noted also, that it is at that time that in the conscience of not only legislators, but a relatively wide range of top officials, an opinion was set about the necessity to form the stage of preliminary investigation. However, this

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process lasted for almost a century (till the beginning of 1800s), while integrated legal proceedings dominated in Russia.

In 1808−1860s, a police-centered model of preliminary investigation dominated in Russia. In that period, two significant events took place in Russia: a) legislation was systematized, and a Complete collection of laws of the Russian Empire was formed. This served as a basis for the Code of Laws of the Russian Empire of 1832, which became the source of criminal-procedural law for the courts, investigation agencies and police. The Russian criminal process acquired the previously unknown criminal-procedural institute in the form of a pre-trial stage of criminal proceedings; b) the personal Decree of the Emperor Alexander I of 29 August 1808 established the position of an investigatory police officer – the first specialized investigative apparatus in the period after Peter I.

This was not accidental – it was a requirement of time to separate investigation from the function of police inquiry. Preliminary investigation was comprised of two parts – during the first part, police carried out inquiry, during the second part – investigation was performed. Inquiry was imposed on a private special police officer, who arrived at the scene, carried out preliminary search and compiled a note, specifying the presence or absence of the signs of crime. Supposedly, according to the rules of modern criminal process, it was a kind of a resolution about initiating a criminal case or rejection of such initiation. At the next stage, an investigatory police officer joined the "further investigation".

The Charter of Criminal Proceedings of 1864 did not change this order. Moreover, its Article 253 of section 2 chapter 1 "On preliminary investigation" stipulates that if the signs of crime are questionable the police, before informing about it by the proper jurisdiction, must perform inquiry, search, verbal questioning and secret observation. I.Ya. Foynitskiy, interpreting this provision, explained that the search "implied in general all measures aimed at assuring oneself in the event under investigation". Some of these measures were stipulated by law − "namely, verbal questioning and secret observation"; besides, there could be "inspections of the territory, of the victim, and other kinds of inspections, even with participation of experts, measures aimed at finding and

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preserving such objects, to determine the guilty and their location".

Another commentary to the above statute, published in 1914 to mark the 50th anniversary of the Charter of Criminal Proceedings, said that the Charter does not offer "a clear, formal distinction between the police proceedings (criminal investigation and inquiry) and the court investigation. However, the scholars of procedural law consider that the "police investigation" should be interpreted as nothing else but preliminary checking of the information about a crime.

In addition to everything above, the investigative function was also distinguished from the function of the prosecutor's surveillance.

The judicial reform of 1922 strengthened the court model of investigative agencies structure. The judicial system formed the structure of investigative agencies as well: 1) district people's investigator at the People's Court; 2) senior investigator at the Gubernia Court; 3) investigator for the most important cases at the Supreme Court of the RSFSR, and 4) investigator for the most important cases at the People's Commissar on Justice (Art. 32 and 33 of the Statute). Such organization of investigative apparatus, plus investigators of military and military-transport tribunals, was finally stipulated in clause 5 of Art. 23 of CPC RSFSR of 1923. As it was repeatedly noted in the literature, at the end of 1920s, at this stage of the criminal process the difference "between inquiry and investigation, between search and justice" was actually erased".

However, under toughening of the administrative system, there appeared he need to change the court model of investigative apparatus organization. An active supporter of preserving the court model was the first Chairman of the RSFSR Supreme Court P.I. Stuchka. The idea of subordinating the investigation agencies to the prosecutor's offices, in the function of a prosecutor's assistant on investigatory actions, was first proposed in 1923; it was supported, inter alia, by the future Prosecutor of the USSR A.Ya. Vyshinskiy. Finally, the latter opinion won. In 1936, the prosecutor's offices and the justice bodies were completely separated. The history of the Russian court investigators since 1860 was finished, and the country again got a "prosecutor's" model of investigative agencies structure.

Further, in the process of improving the criminal-procedural legislation, the checking activity, as we have already stated, was normatively fixed, acquired procedural character and started to determine the content of the stage of initiating a criminal case.

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THEORETICAL APPROACHES TO THE DEFINITION OF "LAND TRANSFER" AND "LAND PLOT TRANSFERABILITY" IN THE RUSSIAN LAND AND CIVIL LAW

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Abstract: the relevance of the problem under study is due to the fact that scientific concepts do not offer a shared vision of the essence of transferability and types of agricultural land plot transfer. Analysis of the problems arising in this sphere provided herein is of major importance to land and civil law. The article is aimed at formulating a theoretical definition of land transfer, which may apply to land plots of any categories not withdrawn from transfer, including transfer of agricultural land plots. The leading approach to the study of the problem at hand is the logical method of system analysis, which allows to educe peculiarities of agricultural land transfer conditioned by specific features of a transferable item. The research article yields the following main results: it uses the data of comprehensive study of the law and specialist scholarly literature to identify the peculiarities of both public and private agricultural land plot transfer and offers the author's definition of transfer. The article provides arguments for the recognition of public (administrative) transfer as a variety of land transfer. The article justifies the need to specify general principles of determining transferability of land plots of any category, including land plots from agricultural land, in the Russian Land Code. Article materials may be of use when developing the land law theory, expanding the theory of agricultural land transfer regulation, in the elaboration of some fundamental definitions and scientific classifications and in the theoretical justification of lines of improvement of the land transfer law. The theoretical suggestions provided may be used when teaching land law, individual sections in the civil law course and when preparing textbooks, teaching aids and study guides.

Keywords: land transfer, agricultural land plot transferability, grounds for the

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creation of land plot titles, acts of public authorities and local government bodies, consummation of civil transactions, civil and public turnover.

1. 1. Introduction

At various phases of history, land plots were transferred on different legal grounds.

The term “land transfer” (“land plot transfer”) was widely accepted in the law and legal literature during the period of economic reforms in Russia when the matters of transition to market relations became relevant. Land market development (inclusion of land plots into turnover) after 70 years of predominance of exclusively state land ownership became one of the lines of the agrarian and land reform.

Different authors discuss market and extra-market, public and private, civil and administrative turnover and use different definitions of land transfer.

For example, I.A. Ikonitskaya defined land transfer as change of land owners, including transfer of state and public land plots to individuals and legal entities and mentioned its two varieties – market and extra-market. She mentioned that “prohibition of private (extra-market) land transfer did not imply the absence of land transfer in principle. Extra-market turnover that existed in the context of state land monopoly was conducted by way of land allocation and reallocation among land users based on executive acts of public authorities”. This view was shared by N.I. Krasnov. Later on, this view was expanded: extra-market turnover also included change of land plot owners under uncompensated civil transactions. Nevertheless, extra-market turnover is mostly understood to mean administrative (public) turnover.

In line with this “pattern”, in Soviet times, land was recognized as an item withdrawn from civil turnover. However, there is no denying that land plots still changed owners, i.e. they were transferred, but it was public (administrative), not civil (private) turnover. Civilists also recognized the existence of land plot transfer in Soviet times.

If acts of public authorities and local government bodies are viewed as the grounds for the creation of civil rights and duties (subclause 2 clause 1 article 8 of the Russian Civil Code) in the contemporary context, why is it common to disclaim an administrative-executive

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act of land plot assignment for temporary use as a title-creating ground for land transfer as change of right holders in Soviet times? What is a fundamental difference between a resolution to grant the land plot in state or public ownership, for instance, to a farm (peasant) household free of charge under applicable laws and a regulatory and executive act for the provision of the same state-owned land plot for use to a farm unit, which is the same in its essence? The only difference is that there was no change of a land plot owner in the latter instance. However, it's a lame argument for the negation of turnover since, in the context of present-day lease relations, no land plot owner is changed either, although it is not a hindrance to considering land lease as a form of land transfer.

The fact that land was not recognized as property in Soviet times cannot serve as a ground for the negation of turnover either as today, the items that may not be classified as property (information, exclusive rights, etc.) may still be the items of turnover. The same applies to the free-of-charge basis of provision of land plots for use since, in civil law, devolution of estate under uncompensated transactions belongs to turnover.

Besides, it should be noted that, even in the Soviet land law, there was a heated discussion as to whether land relations could be recognized as property relations. For example, V.K. Grigoriev wrote that "land legal relations in the USSR differ from regular civil law relations because they are not property equivalent relations as, following nationalization of land, the latter lost its pecuniary valuation and was withdrawn from civil turnover". The same opinions were voiced by many other Soviet agrarian lawyers (A.M. Turubiner, N.D. Kazantsev, G.A. Aksenenok, A. Nikitin, A.A. Ruskol) who blankly denied any possibility to recognize the property nature of land use relations even in part under the conditions of state land ownership and gratis land use.

Civilists had a different view. According to S.N. Bratyus, "land removal from contract relations and establishment of the principle of gratis land use may not give rise to the negation of the property nature of land relations and identification of Soviet civil turnover with private turnover". He mentioned that "land relations are double

relations: relations that result from administration management activities of executive-administrative bodies and property relations". Later on, the property nature of land relations, even in the context of exclusive state land property, came to be recognized by land law scholars, which are right to say that in Soviet land law, property relations were deeply intertwined with management relations and that "even if the state acts as a title holder, these are property relations". We share this approach and we believe that it affords ground to conclude that land transfer also existed in Soviet times.

Methodological framework of the study. The article was prepared using the general scientific dialectical cognition method; logical methods of system analysis, synthesis, comparison, analogy and special legal research methods (historical, system interpretation, prediction).

Some authors define land plot transfer as "implemented possibility to dispose of a land plot in private or public ownership (by way of a transaction or in another legal manner), which changes the scope of rights and obligations of subjects of particular legal relations, but does not alter the land plot legal status". It follows from this definition that scientists do not negate extra-market (administrative) turnover (it is evidenced by a reference to the public owner's possibility to dispose of the land plot not only by way of a transaction, but also in another legal manner, for example, by way of adoption of an administrative act). However, it says further that "land transfer is a special case of a wider civil law construction – civil turnover, in which it holds a unique position since land plots belong to natural sites, a part of the environment". As we see, public (administrative) turnover is no longer mentioned here. However, in our opinion, there is no controversy here as, on the one hand, land transfer may be private (civil) and public (administrative), in which case land transfer is a wider notion. However, if one considers only civil turnover as such (as a whole), land transfer is its variety since there is civil turnover of other objects of civil rights (securities, precious metals, weapon, information, etc.).

S.I. Gerasin, on the contrary, underlines the civil component of land transfer in every possible way and

describes it as "transfer of title, other rights to land plots and share of ownership rights to land plots by way of civil transactions and using other civil methods provided for in land laws that occurs according to civil law and in line with the peculiarities set out in land laws and registered by competent public bodies".

It cannot but be mentioned that while I.A. Ikonitskaya discussed transfer of land plots from some persons to others, S.I. Gerasin writes about "transfer of rights". Of course, in certain instances, rights to land plots are the subject of civil transactions (for example, when tenancy is sold by tender); however, in most cases, it is more proper to talk about land plot transfer. The reason for this is that a particular land plot is the subject matter of a purchase and sale, gift, annuity and other agreements under land transactions rather than corresponding rights, even though transfer of rights obviously occurs.

S.I. Gerasin also believes that land plot transfer as part of an administrative procedure is not turnover. His arguments are as follows. Firstly, today, land plots are withdrawn from civil turnover, but they can change owners administratively. But what does it prove? In our opinion, it only proves that land plot transfer, as was mentioned above, is a wider notion compared to civil turnover. Secondly, S.I. Gerasin underlines that the so-called "extra-market turnover" also existed in Soviet times; however, different terms were used back then ("land grant and withdrawal", etc.). Again, this does not prove anything, since in Soviet times it was not customary to talk about turnover for "ideological" reasons. Speaking modern language, land plot transfer also occurs in these cases (to be more exact, rights to land are transferred, which fits well the definition given by S.I. Gerasin, if one ignores his references to civil law). This is indirectly evidenced by present-day land laws, including the Law of Agricultural Land Transfer that regulates the matters of land grant and withdrawal.

It is evident that, in the modern period, researchers focus on civil plot land transfer, which is easy to explain as it is a new legal phenomenon, while the problems of land grant and withdrawal under Soviet laws are discussed in literature in detail.

Yu.N. Andreev defines land plot

(land allotment) transfer as "property turnover with a possibility to dispose of corresponding land right objects (land plots, land allotments) through various civil transactions (purchase and sale, exchange, donation, pledge, etc.) subject to land laws and transfer of land plots, land allotments, proprietary and liability rights by way of inheritance, legal succession, acquisitive prescription, privatization, contribution of objects and rights to the charter (reserve) capital, unit fund of an company, etc.". As we see, the author doesn't call this turnover "civil", although he actually means it and ignores the existence of administrative (extra-market) turnover.

In our opinion, another drawback of this definition is inconsistency of terms – on the one hand, it only mentions a possibility to dispose of land plots by way of transactions; on the other hand, it mentions land plot transfer by way of inheritance, etc. Besides, some actions that mediate land transfer that the author actually sets against transactions, in fact, are transactions (land plot contribution to the charter capital, privatization, etc.). Some other authors also reduce land plot transfer to transactions and state explicitly that they mean the conveyance transactions that result in the grant of rights of ownership and use to acquirers (i.e. not only the transactions with title transfer).

By contrast, other researchers try to define civil turnover of land plots (agricultural), but they actually run far beyond it and define a general notion of land transfer. In particular, T.A. Pasikova defines civil turnover of agricultural land plots as statutory transfer of property rights to these land plots from one subject to another as a result of transactions, by way of universal succession and regulatory and executive powers of public authorities and local government bodies. In our opinion, the fact that acts of public authorities and local government bodies are classified in article 8 of the Russian Civil Code as grounds for the creation of civil rights is not the reason to consider the very grant of land plots under these acts as civil turnover since it must be based on equality and autonomy of will of parties to civil legal relations, which is not the case when the state exercises public administration functions. With a different approach, it turns out that the administrative turnover that appeared in the Soviet law and that many deny can

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also be treated as civil turnover, which is, of course, wrong.

It should be noted that land transfer as related to grant of land plots (especially by tender) and its withdrawal has "mixed" nature, in a manner of speaking: it combines the elements of public (administrative) and private (market, civil) turnover since these relations are based on a complex set of facts: act of a public authority on tender holding or land plot withdrawal and corresponding purchase and sale (lease) agreement with the preferred bidder or land plot repurchase agreement.

One must admit that land transfer goes beyond title transfer relations and includes transfer of other rights that may arise both from transactions and other legal facts. In addition to transactions, some authors recognize as turnover relations the relations of enforced seizure (including withdrawal) of a land plot on the grounds and according to the procedure provided for in the civil law and land plot recovery when a land plot "moves" along the civil terrain from a title-free holder to a title holder. This point of view looks interesting, but it was not evolved in literature.

1. 2. Results

Based on the analysis of the views on the notion under study, one can offer the following classifications of land transfer:

The following categories may be singled out by a legal regulation method:

- public turnover based on acts of public authorities and local government bodies, including reissue of qualified proprietary rights by individuals;

- private turnover on a contractual basis as well as based on other legal facts that give rise to civil relations between equal subjects (for example, in case of legal succession);

- "mixed" turnover that combines the elements of both public and private turnover.

Land transfer may have the following categories based on

onerousness of acquisition of titles to land plots:

- market – if turnover is based on onerous civil transactions. This may also include land plot repurchase from owners, since although a land plot is withdrawn forcedly, it is repurchased at market prices;

- extra-market – based on the acts of public authorities and local

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government bodies on the gratuitous grant of land plots under uncompensated transactions, by way of universal succession, privatization of agricultural land into the common property of individuals;

- "mixed". For example, repurchase of the land plots earlier granted subject to limited proprietary rights at statutory reduced prices may not be classified as either market or extra-market turnover. This category also includes withdrawal of the land plots from the persons who own them subject to the right of permanent (indefinite) use or lifetime inheritable possession, as these persons are compensated for the losses caused by the termination of their rights to the land plots withdrawn.

Presence of the so-called "mixed" turnover in each group is the evidence of diversity and complexity of the land relations under study that do not always fit into "classical" schemes. Besides, land transfer may be divided into "typical", i.e. the one that uses the same legal measures as turnover of other objects of civil rights (transactions, universal succession, enforcement, etc.) and "non-typical" that does not apply to other objects of civil rights (reissue of the proprietary rights that have arisen earlier).

Based on the above, one can formulate the following notion of land transfer, common to all land categories, which means that it can apply to agricultural land plot transfer:

Land transfer is the transfer of land plots (shares of the land ownership right) and devolution (including reissue) of rights to land according to applicable laws as a result of civil transactions, universal succession, other legal facts that give rise to the occurrence of civil rights, including acts of public authorities and local government bodies targeted at regulatory and executive (administrative) reallocation (grant or withdrawal) of land plots.

1. 3. Discussion

In the course of market land transformation, the notion of "land transfer" has come to be often used as a synonym for "land market". N.A. Syrodoev states that identification of these notions is erroneous. One has to agree with the scientists who believe that the notion of "land market" is broader than the notion of "land transfer" since, apart from the system of land

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transactions, the land market also comprises the mechanism and structure to support these transactions.

E.N. Krylatykh claimed the opposite when considering the correlation between the land transfer and land market notions. In her opinion, land market is a part of land transfer and the very notion of transfer comprises the establishment, alteration and termination of rights to a land plot legally stipulated in a contract and mediated by money and in kind payment. E.N. Krylatykh only includes onerous civil transactions such as purchase and sale, lease, land mortgage loan and compensation for the land withdrawn for state and public needs in the land market notion.

N.A. Syrodoev criticizes these assertions as the "confusion of economic and legal notions" and mentions that the land market may only exist if there is permitted land transfer. In this regard, there is a connection between the market and transfer, which is not direct, but mediated by economic components. N.A. Syrodoev is right to say that, apart from transactions, transfer also includes other devolution of estate to another person. Besides, he says that recognizing compensations for the land withdrawn for state needs as a transaction is an apparent legal error and he explains that compensation is in fact an obligation that originates from the causing of harm by lawful actions.

Land plot transfer only occurs to the extent permitted by laws on land and other natural resources (clause 3 article 129 of the Russian Civil Code). It is correctly stated in the literature that there is an opinion affected by this norm of the Russian Civil Code, according to which civil transactions may only apply to land transfer when this possibility is expressly provided for in land laws. However, no such conclusion may be drawn from law analysis.

In our opinion, it follows from clause 3 article 129 of the Russian Civil Code that land laws have to define the "degree" of land plot transferability as the Civil Code does not classify land plots as objects in free turnover, limited or withdrawn from turnover.

Thus, the difference between the notions of land plot transfer and transferability lies in the fact that, "in the first instance, the focus is on an action (making transactions, adopting administrative acts, etc.), whereas in the second instance, the focus is on a

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possibility to make such actions. Land plot transferability as a legal category implies a statutory possibility for the land plot owner to legally dispose of the land estate by making a transaction or otherwise as prescribed by the law (for example, a local government body may grant a land plot into individual's private ownership and administratively).

While the notion of land plot transfer is common to all land plot categories, as was mentioned above, the degree of land plot transferability is different for different land plot categories. Many scientists criticize article 27 of the Russian Land Code that sets out land plot lists; they say that these lists are apparently incomplete, not specific enough and are not in agreement with other normative legal acts that address these matters in a number of aspects. Besides, legislators use different categories to classify land plots as limited or withdrawn from turnover (entity composition, land functional purpose, category, size, etc.).

Analysis of common principles of defining land plot transferability is beyond the scope of our study; however, it should be noted that we can hardly subscribe to an opinion that land plots do not belong to a group of the objects of civil rights withdrawn from turnover or to a group of the objects of civil rights limited in turnover. Considering peculiarities of land as a natural resource and peculiarities of a land plot as property, some authors conclude that they belong to a different category of objects of civil rights, which is proposed to be conventionally titled "special objects of civil rights that are only allowed to be in civil turnover in the cases and to the extent provided for in special (natural resources) laws". This is not true as land plots may be in free turnover, limited and withdrawn from turnover.

1. 4. Recommendations

Let us now consider land plots comprised in agricultural land. It is known that article 27 does not expressly define their degree of transferability and it refers to the special Law of Agricultural Land Transfer. There is a special provision saying that this law does not apply to the land plots allocated from agricultural land for individual residential, garage building, part-time farming, gardening, cattle breeding and market gardening and to the land plots

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occupied with buildings and structures.

It follows from this provision that the listed plots are in free turnover, so the procedure of dealing with these plots is not further on discussed in detail herein. As to other land plots from agricultural land (farm land in its essence), neither the Russian Land Code nor the specified Law expressly refer to them as land plots of limited turnover; nevertheless, they should be perhaps qualified as such – according to the criterion set out in article 129 of the Russian Civil Code – their belonging to certain persons (given that these land plots may not belong to foreign persons on the basis of the right of ownership).

At the same time, one cannot ignore the conventional nature of this approach that does not fully fit in civil or land laws. For example, according to clause 5 article 27 of the Russian Land Code, land plots of limited turnover are only the ones in state or municipal ownership and no land plots owned by individuals and legal entities on the basis of the right of private ownership may be sold to foreign persons. Besides, according to article 129, turnover limitation lies in the fact that certain objects may only belong to individual parties to turnover, but no underlying right is specified. From this perspective, it does not fully apply to foreign persons either as they cannot own land plots on the basis of the right of ownership only and rental rights of foreign persons are not limited.

As to the second criterion set out in the Civil Code (object turnover under a special permit), it does not apply to land plots in Russia, although authorization-based procedure of land transactions is used in some foreign countries. This is another proof of the fact that the general principles of defining land plot transferability in the Land Code need to be specified. We believe that, among other things, the Code itself needs to define the position of agricultural land (including farm land) plots in the general system of classifying land plots with one or another group of objects in terms of their transferability.

The Land Code of the Russian Federation specifies the land plots not subject to any limitations as to their participation in turnover (summer gardening, horticultural, etc.), subject to limitations to a certain extent (farm land) and completely withdrawn from turnover (outstanding productive farm land). Still,

it is not clear, on the one hand, what is implied when it is said that limitations as to participation in turnover apply to farm land "to a certain extent"? Secondly, what does the assertion of withdrawal of valuable farm land is based on? Clause 4 article 79 of the Russian Land Code says that this land may be included in the list of the land plots not allowed to be used for any other purposes according to the laws of constituents of the Russian Federation. However, this does not mean that an agricultural organization or a farmer are not allowed to lease out these land plots or sell them to another agricultural goods producer. So, there is no reason to classify valuable farm land as the objects withdrawn from turnover.

1. 5. Conclusion

Thus, we note finally that there are different approaches not only to the definition of the subject of turnover, but also its consent, which is directly related to the correlation between civil and land regulation of property relations with regard to land plots.

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POLITICAL-LEGAL ISSUES OF FULFILLMENT OF RUSSIA'S INTERNATIONAL OBLIGATIONS ON DEATH PENALTY ABOLITION IN THE COUNTRY

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Abstract: the research topicality is due to the necessity to anchor the humanistic values in the Russian public conscience, especially among the youth. One of these values is the human right to life. The previous sociological polls, referring to the Russian citizens' attitude to legitimate coercion of the state as its right to deprivation of life, showed the high but gradually decreasing level of support of death penalty. The processes of integration with the global culture, the reforms of the social-political and legal systems of the recent decades caused the increase of the level of humanism in Russia. Thus, the present research is aimed at applying empirical methods to reveal the political reasons of inconsistency between the Russian international obligations to abolish the death penalty and the national law-making practice, the above inconsistency being in place for over two decades. The leading research method was the content analysis of the legal and public information, which allowed the comprehensive examination of the processes of humanization of the political-legal conscience in Russia. The article presents the sources of

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international law, the result of polling the Russian citizens, and the revealed interconnections between the law-making processes and the internal policy of the authorities taking into account the public agenda. The authors assert the relation between the public policy pursued by the authorities for preserving the death penalty in the country, and the number of its proponents, which is decreasing, though slowly. The authors conducted a sociological poll on the attitude of young people, university students, to applying the death penalty in the country. The poll results substantiate the conclusions on the increasing trend of humanization of the young Russians' public consciences, which is related to their education level: the majority of those supporting the death penalty for grave crimes are the first-year students; those inclined to recognize the right to life by rejecting the death penalty in the country are mostly senior students. The materials of the article are of practical value for specialists in the sphere of international relations, education, national and foreign affairs of national states.

Keywords: international law, death penalty, national law in Russia

1. Introduction

Coercion applied by the state is not the only mechanism of controlling the society, but it is the monopoly for legitimate violence that is its specific characteristic. The toughest manifestation of the state's right to apply coercion regarding the lives of its citizens is the death penalty for grave crimes. In 1996, Russia declared a moratorium for the death penalty execution [1]. The issue of the death penalty execution is one of the hardest not only in legal terms, but also in terms of accounting the public opinion concerning its application. The research is aimed at studying the process of introducing the European value of the right to life into the political-legal culture of the Russian citizens. The right to life and the legitimate state coercion have been the subject of research of many scholars: Th. Hobbes, L. Gumplowicz, R. Jhering, V. N. Kudryavtsev, M. Foucault [2, 3, 4, 5, 6], and others.

In his works, Th. Hobbes clearly formulated the notion of social order as expression of organized life. The most powerful and well-organized social formation is the state. This logically implied the theory of coercion. Social

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order is the product of power, which has its means of coercion to assure coordinated social actions of the people.

M. Weber proposed a well-known thesis of the state monopoly for coercion. The scholar viewed state as "…a union of authority, organized like an establishment, which achieved success in a certain sphere in monopolizing the legitimate physical coercion as a means of authority, and with a view of this united the material means of the establishment in the hands of its heads, and expropriated all class functionaries with their authorities, who had ruled them arbitrary, and took the supreme positions instead of them" [7, p. 651]. Although the essence of state cannot be reduced to the relations of authority and submission, and coercion is not the only means of the governing function implementation, nevertheless, both legitimate violence and coercion are the state's specific means.

The research of applying death penalty by a state as deprivation a human being of their life was carried out by C. Beccaria, A. F. Kistyakovskiy, G. B. Romanovskiy [8, 9, 10] and others. Thus, in the end of the 19th century a Russian scholar, a well-known criminologist, professor in ordinary of Kiev University A. F. Kistyakovskiy paid great attention to the problem of death penalty, by comparing the approaches of different scholars to the problem of state coercion and expressing his own opinion. First of all, he highlighted the views by C. Beccaria, who thought that death penalty is not based on any legal rule, since a person, when joining a society, does not yield the right to their life [9, p. 7]. C. Beccaria adduced other arguments against death penalty as well, which remain relevant till now. This issue caused and is causing a lot of disputes up to now. For example, C. Beccaria opposed G. Mably who wrote: "In the natural state I have the right to death against the one who attacks my life; joining a society, I just transfer this right to a judge" [9, p. 8].

The authors, in terms of the objective and methods of their research, agree with the words by A. F. Kistyakovskiy in a preface to his book "Research on death penalty": "To the question frequently heard by any specialist: what is your opinion on death penalty? do you consider it a just punishment or not? I answer: do not ask me, whose opinion, as any single opinion, cannot have any power and significance, but listen to the more

weighty opinion, which has more rights for attention, - the opinion of nations" [9, p. 6].

Comparative research of applying death penalty in different countries and different nations in the historical retrospective was carried out by G. A. Levitskiy, A. A. Piontkovskiy, Liu Tianlai [11, 12, 13] and others.

2. Materials and methods

When researching the set problem, we used the following methods: historical-legal method, content analysis of normative acts, content analysis of mass media, and sociological method of studying the public opinion.

Historical-legal method, content analysis of normative acts.

In 1996, the Parliamentary Assembly of the Council of Europe (PACE) recommended the government of the Council of Europe (CE) to invite Russia to become a member of PACE. A condition of membership in PACE was Russia's joining the Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms [14], concerning the abolition of death penalty in the country. Russia joined the Convention and signed the Protocol No. 6, taking an obligation to ratify it in three years. The Protocol was submitted to the State Duma for ratification in 1999, but it is still not ratified. The Russian legislators have not made a decision on death penalty abolition, though since 1997 six draft laws have been submitted to the Parliament suggesting both its abolition and application, but none of them has been considered even at the first reading. However, the Protocol is considered in force until Russia revokes it.

Article 59 of the Criminal Code of the Russian Federation (CC RF) stipulates implementation of death penalty [15], but, due to the moratorium, death penalty is either not imposed or substituted for life imprisonment or twenty-five years of imprisonment.

After introduction of the moratorium, Article 20 (part 2) of the Constitution of the Russian Federation [16] appeared to be unrealizable, as it stipulated the right of the person, accused in a crime for which death penalty was applied, to have their case examined by a court with participation of a panel, since the institution of jurymen was not functioning at that time. In 1999, the Constitutional Court of the Russian Federation issued Decision No. 3-P [17],

which states that the non-execution of the said obligation impugns the legitimacy of the norm on death penalty in the Russian Criminal Code and brings uncertainty into the law-enforcement practice.

By 2009, the trial court was introduced in all subjects of the Russian Federation, and the Constitutional Court of the Russian Federation clarified the issue of the possibility to apply death penalty, viewing its abolition both as a temporary measure and an irreversible process of its complete elimination. The Constitutional Court emphasized that the Russian Federation, having signed Protocol No. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, imposed international obligations on itself. And although Protocol No. 6 is not ratified, Russia has not expressed intention "not to become its participant, which, in compliance with the Vienna Convention on the Law of Treaties, implies the obligation of Russia to abstain from actions contradicting to this document" [18].

Content analysis of mass media

In the Russian society, discussions periodically break out on the necessity to revoke the moratorium on death penalty; as a rule, this happens after much-publicized and grave crimes. For example, after cruel slaughters of children in Irkutsk oblast and in Tatarstan in 2013, the Head of the Ministry of Internal Affairs of the Russian Federation V. Kolokoltsev declared for death penalty application in the interview to NTV channel: "I am afraid I will cause the anger of death penalty opponents, however, not as minister but as an ordinary citizen, I would not see anything reprehensible in death penalty for such kind of criminals" [19].

The Head of the Russian Investigating Committee A. Bastrykin also spoke for preserving death penalty in the Russian Criminal Code [20]. Addressing the State Duma deputies – participants of the All-Russia People's Front in 2014, the Head of the Russian Investigating Committee said: "I do not call upon to return the death penalty implementation, but, in my opinion, it should be present in our legislation as a hypothetical possibility of its application". Some public declarations were made about the necessity to apply death penalty to terrorists: by the Head of Northern Ossetia T. Mansurov in 2013 and the Head of Chechen Republic R.

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Kadyrov in 2015. “Death penalty must be introduced. The faster they leave this world, the faster we achieve order”, said the Head of Chechen Republic in the interview to “Russia 24” TV channel [21, 22]

In April 2014, for annexing the Crimea to Russia, the Parliamentary Assembly of the Council of Europe (PACE) deprived Russia of the right to vote at its sessions and participate in the works of its authorized bodies. In response, the Russian delegation left the Assembly meeting. PACE sanctions against Russia caused the death penalty proponents to put forward the proposals to abolish the moratorium on death penalty. However, the Ministry of Justice of the Russian Federation declared that “in compliance with the Statute of the Council of Europe, PACE is one of the bodies of the Council of Europe. Suspension of the membership in PACE or even disaffiliation with it does not exclude the necessity to observe the international obligation taken by the Russian Federation” [23].

Sociological method of studying the public opinion

The public polls’ results testify to the continuing discussion on the death penalty issue in the Russian society. Thus, the “Public Opinion” Foundation (POF) has been polling the Russians on the issue of death penalty application during several years. Beginning from 2001, the respondents were asked: “In your opinion, is it acceptable or unacceptable to sentence criminals to death penalty?”. The data were published in POF web-site. The latest poll was performed in September 2014, and the comparative analysis of the 2001, 2006, 2012 and 2014 data was made. (Data source: “POF-omnibus” – poll of the RF citizens aged 18 and older. 14 September 2014. 43 RF subjects, 100 settlements, 1500 respondents. Interviews at the place of residence. Statistical error not exceeding 3.6%) [24]. Responses are given in percent to the number of respondents. The poll results were compiled by the authors and presented in Table 1.

Table 1: Responses of the Russians to the question: “In your opinion, is it acceptable or unacceptable to sentence criminals to death penalty?”, 2001–2014, %

Proposed answers	**2001**	**2006**	**2012**	**2014**
acceptable	80	74	66	63
unacceptable	16	15	15	16
cannot say	4	1	19	21

In 2006, POF complemented the poll with a direct question: “In your opinion, should Russia return to death penalty application, or death penalty should be completely abolished, or the moratorium on death penalty should remain in place?” [24]. The responses are distributed by year in the following way (see Table 2):

Table 2: Distribution of the responses of the Russians to the question about applying death penalty in the country, 2006–2014, %

Proposed answers	**2006**	**2012**	**2014**
We should return to death penalty application.	63	62	55
Death penalty should be completely abolished.	23	21	24
Moratorium on death penalty should remain in place – we should not abolish death penalty but not apply it.	4	5	6
Cannot say	10	12	15

In 2008 [25, p. 131], 2016 and 2017, the authors performs sociological research on the issue of attitude of university students to death penalty as a

manifestation of legitimate coercion of the state. The number of answers is given in percent to the total number of respondents. Polling was anonymous. The age of the respondents was 18–22 y.o.

The offered questionnaire regarding the death penalty application in Russia consisted of two blocks: in the first block, a direct question was asked: "Should death penalty be introduced in Russia?", followed by a clarifying question for those who voted for death penalty, regarding the public demonstration of violence: "Should public death penalty be introduced in Russia?". The second bock of questions was of clarifying character, proposing to view in more detail the arguments of those who unambiguously reject the criminals' right to life, i.e., the supporters of death penalty, and the arguments of those who is against death penalty, i.e., for the right to life, which even the state cannot deprive the people of.

In 2008, 553 respondents were divided into three age groups: first year students, second and third year students and fifth year students of universities majoring in Administration, Management, Global Economy, and Jurisprudence. In 2016–2017, 221 second and fourth year students of Rostov-on-Don universities were polled – would-be lawyers, political scientists, state and municipal servants.

To compare the results of the two polls, they are shown in Table 3.

Table 3

Distribution of the answers of young people to the question "Should death penalty be introduced in Russia?", Rostov-on-Don, 2008 and 2016–2017, %

Proposed answers	**2008**	**2016–2017**
Yes	64.1	36.4
No	22.6	57.2
Cannot say	13.3	6.4

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The second question of the first block referred to demonstration of violence: “Should public death penalty be introduced in Russia?”. The responses were distributed by year in the following way (Table 4):

Table 4

Distribution of the answers of young people to the question “Should public death penalty be introduced in Russia?”, Rostov-on-Don, 2008 and 2016–2017, %

Proposed answers	**2008**	**2016–2017**
Yes	21.1	15.6
No	76.6	80.5
Cannot say	2.3	3.9

The questions of the second block were addressed to all respondents. They consisted of two parts: a) arguments put forward by the supporters of applying death penalty, and b) arguments put forward by the opponents of applying death penalty. The respondents were offered to estimate the arguments from 0 to 10 points: 0 – completely disagree with the argument, 10 – completely agree with the argument; the intermediate variants were estimated in points.

Arguments for applying death penalty:

a) Death penalty is retribution, in compliance with the principle “Death for death”.

b) Death penalty is a punishment which facilitates order in the country.

c) Death penalty is a vengeance, a moral compensation to the injured party.

d) Death penalty is destruction of a criminal as an evil, a threat to the society.

e) Death penalty is a prophylactic measure aimed at crime prevention.

f) Death penalty is an ultimate measure.

g) Death penalty should be implemented by the state to prevent lynching.

h) Death penalty is a less severe punishment than life imprisonment.

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The number of responses is given in percent to the total number of responses and presented in Table 5.

Table 5

Distribution of the young people's estimations of the arguments for applying death penalty in Russia, Rostov-on-Don, 2008, 2016–2017, %

Arguments	**Points**										
	Years										
	0	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**
	2008										
	2016–2017										
a)	13.3	4.7	5.5	6.3	4.7	21.1	2.3	5.5	4.7	4.7	28.9
	14.7	1.5	4.4	11.3	0	22.1	4.4	11.8	4.4	2.9	23.5
b)	8.6	7.0	4.7	11.7	6.3	11.7	4.7	10.2	10.2	3.9	22.7
	4.3	5.8	8.7	7.2	5.8	10.1	8.7	13.0	15.9	5.8	14.5
c)	14.8	10.2	9.4	10.2	3.9	18.8	4.7	6.3	7.8	4.7	12.5
	19.2	8.2	13.7	15.1	8.2	13.7	2.7	4.1	10.6	1.4	2.7
d)	1.6	0.8	3.1	10.2	3.9	18.8	4.7	6.3	7.8	4.7	32.5
	2.8	1.4	5.6	5.6	9.6	19.7	4.2	9.9	8.4	4.2	28.2
e)	23.4	7.0	4.7	11.7	6.3	13.3	4.7	9.4	7.0	2.3	13.3
	5.5	11.0	12.3	5.5	5.5	17.8	6.8	13.7	8.2	4.1	9.9
f)	10.9	4.7	5.5	3.1	5.5	8.6	6.3	4.7	5.5	15.6	32.8
	7.0	2.8	5.6	4.2	1.4	7.0	9.6	5.6	8.4	15.5	32.4
g)	18.0	3.9	7.0	7.0	6.3	11.7	6.3	6.3	8.6	6.3	19.5
	12.3	9.6	8.2	6.8	10.6	15.1	11.0	8.2	5.5	4.1	8.2
h)	15.6	6.3	7.0	2.3	5.5	21.1	1.6	4.7	6.3	5.5	25.0
	26.9	8.9	7.5	7.5	6.0	14.9	1.5	7.5	7.5	3.0	8.9

Arguments against applying death penalty:

a) Death penalty is a too light punishment for a criminal.

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b) Instead of death penalty, criminals can be used for hard and hazardous work.

c) In civilized societies, people do not kill people.

d) From the religious viewpoint, manslaughter is a sin.

e) Even legitimate manslaughter is inhuman.

f) Each person should be given a chance to reform.

g) Death penalty promotes violence.

h) There is probability of judicial error.

i) It is the conditions of life that is to blame, which incited a person to crime.

The number of responses is given in percent to the total number of responses and presented in Table 6.

Table 6

Distribution of the young people's estimations of the arguments against applying death penalty in Russia, Rostov-on-Don, 2008, 2016–2017, %

Arguments	**Points**										
	Years										
	0	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**
	2008 **2016–2017**										
a)	24.2 32.6	6.3 2.9	8.6 8.6	10.9 14.3	3.9 4.3	14.1 8.6	0.8 2.9	2.3 1.3	5.5 1.3	7.8 4.9	15.6 14.3
b)	13.3 14.3	3.1 7.1	6.3 2.9	5.5 2.9	9.4 5.7	13.3 12.9	3.9 7.1	9.4 7.1	10.9 7.1	3.9 8.6	20.3 24.3
c)	25.0 24.6	9.4 9.2	7.8 16.9	7.8 6.1	3.1 6.1	16.4 10.8	4.7 4.6	3.1 6.1	7.0 4.6	3.9 1.5	10.9 9.2
d)	14.1 12.6	3.9 2.6	2.3 4.3	3.9 11.4	5.5 1.4	10.2 11.4	4.7 2.9	5.5 7.1	7.0 7.1	2.3 5.7	39.1 32.6
e)	14.1 22.5	6.3 5.6	7.8 14.1	6.3 8.4	3.9 4.2	19.5 11.3	3.9 7.0	6.3 4.2	10.9 2.8	6.3 5.6	15.6 14.1
f)	19.5	3.9	10.2	11.7	4.7	18.0	3.1	6.3	6.3	3.9	18.0

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	15.9	7.2	8.7	7.2	7.2	20.3	5.8	10.1	4.3	1.4	11.6
g)	22.7 33.8	4.7 11.8	6.3 10.3	9.4 7.3	10.9 10.3	10.9 13.2	6.3 2.9	10.2 2.9	7.0 0.0	0.0 2.9	10.2 7.3
h)	4.7 8.8	3.9 0.0	7.8 2.9	1.6 4.4	3.9 1.5	10.9 17.6	3.1 2.9	4.7 4.4	5.5 11.8	7.0 10.3	45.3 35.3
i)	25.0 28.4	7.8 13.4	5.5 4.5	8.6 6.0	3.9 7.5	10.9 14.9	8.6 3.0	7.0 3.0	4.7 6.0	4.7 4.5	13.3 8.9

3. Results

As it appears, the officials, representatives of power, express the opinion of a rather large number of the Russian citizens – supporters of death penalty, though their share is diminishing with time.

As can be seen from the given results of the public polls, the number of the Russian citizens – supporters of death penalty decreased in the recent 10 years (in 2014 there were by 8% less of them than in 2006 – see Table 2). However, we cannot say that the number of those for whom death penalty is unambiguously unacceptable increased; their percent remains actually the same, with insignificant fluctuations. The supporters of death penalty shifted to the group of the hesitating, who either have not defined their position or would like to leave the situation as it is: not to abolish death penalty but not to apply it.

According to the authors' research, in 2008 the opinion of young people (aged from 18 to 22 y.o.) on the issue of the use of death penalty in Russia actually coincided with the opinion of the population polled by POF in 2006 (aged 18 and up). In 2006, 63% of the Russian citizens voted for introduction of the death penalty, while in 2008, 64.1% of the young people were for it. According to POF poll, in 2014 the number of supporters of death penalty reduced by 8% – to 55%; among the youth, this indicator decreased much more in 2016–2017 – to 36.4%. Still larger was the growth of the young opponents of public demonstration of violence – from 76.6 to 80.5%; also, it should be noted that few supporters of

death penalty wish to see its public demonstration.

The number of young people wishing the ultimate abolition of death penalty grew significantly: while in 2008 they were a minority (22.6%), in 2016–17 there were as much as 57.2% of them; the number of those who could not give a definite answer reduced (from 13.3 to 6.4%) – see Tables 2, 3, 4.

4. Discussion

The research of the use of death penalty in Russia showed that the position of a legislator on this disputable issue remains uncertain, largely reflecting the public opinion of the Russian citizens.

Judging by the existing situation, one may suppose that the issue of abolition or introduction of death penalty in Russia will be finally solved in indefinite future; hence, it will have to be solved by new generations of politicians, legislators, and lawyers. The most categorical about introduction of death penalty were the first year students (79.7%), while the more adult student, with higher educational level, treated this issue more cautiously (on average 55.6%).

Public demonstration of violence causes rejection in actually all young respondents, both supporters and opponents of death penalty. Those who voted for death penalty give such explanations to their unwillingness of public deaths: “This will just increase violence”, “This will promote violence”. In further oral discussion of the issue, to the researcher’s comment: “But you do watch films with cruel scenes, violence”, the young people objected that “it is not in real life”, “we understand that these are actors”, “one wants some adrenaline” and the like.

Analysis of data in Table 5 (arguments of the death penalty supporters) allows making some intermediate conclusions. As it appears, the direct question asked in the first block: “Should death penalty be introduced in Russia?” influenced directly the emotional sphere. The negative reminiscences, especially of the older generations, of the maniac criminals like A. Chikatilo who killed 55 people in Rostov oblast from 1975 to 1990, the much-publicized crimes of pedophiles in the recent years, influenced the unambiguous and categorical answers in favor of death

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penalty for such criminals, which may explain the high percentage of the death penalty supporters.

However, after through consideration of the arguments of the death penalty supporters and opponents, the respondents began to hesitate. Not a single argument reached the level of 64.1% "for death penalty" in 2008 and 36.4% in 2016–2017, which were demonstrated when answering the direct question in the first block, about the necessity to apply death penalty in Russia. Below we consider in more detail the reaction of the young people to each argument.

The arguments of the death penalty supporters.

a) The first argument – "Death for death" reflects the sense of just retribution for evil, which dominates in the Russians' conscience. In 2008, 28.9% gave 10 points to this argument, 21.1% gave 5 points, which shows difficulty in unambiguous consent with this argument ("fifty-fifty" opinion). In 2016–2017, the number of young people who completely agreed that the above slogan is just, decreased to 23.5%, but the number of those, who disagreed or hesitated, increased.

b) In favor of the opinion that death penalty promotes order in the country, were 22.7% of respondents in 2008. The rest gave various answers along the scale, which testifies to the uncertainty about the possibility to establish order by such radical means. In 2016–2017, the confidence in the ability of the state to successfully combat crime reduced by one third, the dispersion of estimations increased.

c) Almost all respondent are not sure that death penalty may serve as a sort of compensation to the injured party. The largest number (18.8%) in 2008 was given to the intermediate estimation – "5". In 2016–17, 19.2% completely disagreed with this argument – the largest number of the respondents. Apparently, this can be explained by the fact that the institution of revenge is not among the determining characteristics of the Russian national culture. The overwhelming majority of the respondents were socialized within the fold of the Russian Orthodox culture.

d) The majority of the respondents (32.5%) in 2008 completely agreed that death penalty is a good means of combating crime as a social evil. In 2016–2017, estimations

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remained close to that opinion. Death penalty is still (28.2%) viewed as a "surgical tool" disinfecting the social organism.

e) In 2008, 23.4% disagreed that death penalty may prevent spreading of crime. Still less people believed in preventive role of death penalty (13.3% gave 5 and 10 points). In 2016–2017, the number of young people, who gave "0" to the statement that death penalty can prevent crime, decreased sharply (to 5.5%). This is probably due to the moratorium on death penalty, which did not stop the crime growth in the country. The highest percent (17.8%) gave point "5" out of ten.

f) As before, the largest number of respondents (32.8% in 2008 and 32.4% in 2016–2017) believe that death penalty should be applied only in extreme cases.

g) Among the youth, even the would-be jurists, there is no definite understanding that justice can be executed by the state only. In 2008, the opinions were distributed almost evenly along the scale – from 18% (complete lack of confidence in the justice of the state) to 19.5% (acceptance of the legitimate coercion of the state, non-acceptance of lynching). This can be explained not only by the low efficiency of the law-enforcement system, but also by the rather low juridical culture of the Russian society. However, in 2016–2017 the situation aggravated: 2 times fewer young people gave 10 points (8.2%), and the number of those who completely denies the right of the state and welcomes lynching reduced from 18% to 12.3%. The number of the hesitating increased to 15.1% compared to 11.7% in 2008. During the oral discussion, the students admitted that they do not find fault in the case of lynching by a Russian citizen V. Kaloyev in 2004, who, as they believe, restored justice by killing a Swiss traffic controller for his mistake which led to an airplane crushing over Boden lake, Germany, in 2002, and death of Kaloyev's wife and children. The students justify their position by the fact that the traffic controller had not been punished.

h) In 2008, 25% of the respondents agreed that life imprisonment is a harder punishment than death; almost the same number hesitated (21.1%). During the next poll, the youth's opinion significantly changed: now only 8.9% completely

agreed that death penalty is less grave than life imprisonment, and 26.9% completely disagreed, considering death penalty to be harder than life imprisonment. Those who hesitated changed their opinion in favor of life imprisonment as a light punishment from 21.1% to 14.9%.

The analysis of the youth's reactions to the second group of arguments – those of the death penalty opponents – gave interesting and significant results, which reveal the existing problems in the value orientations of the Russian university students. These results may also be one of the indicators of the processes going on in the political-legal conscience of the Russian society.

a) In 2008, 24.2% of the polled young people disagreed that death penalty is a too light punishment for a criminal, 14.1% were not sure (5 points) and 15.6% thought that deprivation of life is a too light punishment when life-long sufferings are needed. In 2016–2017, the young people' opinions became more definite and shifted towards disagreement with this argument: "0" ("disagree") was given by 32.4%, the number of the hesitating reduced to 8.6%, and 14.3% believe that life imprisonment is preferable compared to death penalty.

b) Using the criminals for hard and hazardous works instead of death penalty (manifestation of rationalism) was unambiguously welcomed by 20.3% in 2008; there were equal numbers of those who gave 0 (13.3% disagreed) and 5 points (13.3% hesitating). In the second poll, the number of those who welcomed using the criminals for hard and hazardous works increased to 24.3%, the number of opponents of this method insignificantly grew to 14.3%, and the number of the hesitating reduced to 12.9%.

c) The argument of the death penalty opponents "In civilized societies, people do not kill other people" was not considered as significant by 25% of young people in 2008; in 9 years their number actually did not change (24.6%). The rest estimations remained within the same value system, with slight fluctuations: 5 points in 2008 and 2016–2017 were given by 16.4% and 10.8% respondents respectively, 10 points – by 10.9 and 9.2%.

d) The argument "From the religious viewpoint, manslaughter is a

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sin" in 2008 was supported by 39.1%, 5 points ("yes and no") were given by 10.2%, 0 points – by 14.1%. In 2016–2017, the priorities of the youth in this issue were distributed in a similar way: 10 points – 32.6%, 5 points – 11.4%, 0 points – 12.6%.

e) The thesis "Even legitimate manslaughter is inhuman" obtained ambiguous response among young people. In 2008, the largest percent was taken by 5 points – 19.5%, which denotes a "fifty-fifty" position; 0 points were given by 14.1% and 10 points – 15.6%. After 9 years, in 2016–2017, the young people's attitude to this statement changed. The majority of students (22.5%) nowadays do not consider death penalty inhuman, if it is executed by state law-enforcement bodies according to the law; the number of hesitating reduced to 11.3%, and 14.1% agree with the thesis of the death penalty opponents.

f) The proposal to give each person a chance to reform obtained the following estimations in 2008: 0 points – 19.5%, 5 points – 18%, 10 points – 18%. The corresponding estimations in 2016–2017 were given by the following percent: 15.9; 20.3; 11.6. The reduction of the number of those who supported the extreme estimations took place in favor of intermediate points, which testifies to the ambiguity of the argument.

g) The argument "Death penalty promotes violence" is an exposition of the principle of non-violence – "cruelty generates cruelty, reciprocal violence spins up the spiral of violence". This statement was not supported by young people in 2008, which is demonstrated by 22.7% of those who gave it 0 points – this is the highest percentage. 10.2% agreed with the above statement, and 5 points were given by 10.9%. As the research of 2016–2017 showed, the culture of non-violence is still poorly represented in the Russian society: the number of those who disagree (or unfamiliar) with it increased to 33.8%, its supporters number to 7.3%, and hesitating – 13.2%.

h) "The probability of judicial error" was admitted by 45.3% of the respondents in 2008, considering it to be the weightiest argument against death penalty and its irreversible result; only 4.7% believed in justice and objectivity of the court; 10.9% were hesitating. The poll of 2016–2017 showed some moderation of the youth's attitude

towards the activity of judicial bodies: those who admit the probability of judicial error reduced to 35.3%, 8.8% reject the probability of judicial error, the number of hesitating grew to 17.6%.

i) In 2008, every fourth respondent (25%) disagreed with the proponents of the social theory of violence, which explains the crime by negative social conditions pushing people towards crime in their struggle for existence. 10.9% hesitated about this thesis, 13.3% completely agreed with it. In the next poll in 2016–2017, the number of the opponents of the social theory, who thought that no conditions can incite a man to murder, increased to 28.4%, the number of hesitating grew to 14.9%, and the number of the supporters, who saw the causes of crime in social conditions, reduced to 8.9%.

Russia does not apply death penalty to those who committed grave crimes, but does not abolish the article on death penalty in the national criminal law. Apparently, the policy of following the public opinion of the Russian citizens is the reason for incomplete observance of international obligations taken by the Russian state in the sphere of death penalty abolition in the country (in compliance with the Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms [14] signed by the Russian state in 1996, which it was obliged to ratify in three years). The majority, especially under the growing threat of global terrorism, belongs to the supporters of death penalty.

The research of the youth's attitude towards death penalty showed that such factors as acquiring knowledge at university, further molding of humanistic principles, including the comprehension of the human right to life, may influence the attitude to legitimate coercion of the state; actually, the younger, more educated generation has a lower threshold of pain sensitivity in manifesting mercy.

The analysis of the degree of consent of the Russian young people, acquiring higher education at higher educational establishments (universities, academies, institutes), with the arguments of the supporters and the opponents of death penalty allowed making certain conclusions about the growth of humanization of political-legal conscience of the youth. At the same time, the features of this process

were revealed, which testify to its complexity and inconsistency. The positive result is the reduction of the number of young people supporting the introduction of death penalty for the criminals, but the revealed problems should be highlighted, too.

Thus, even the supporters of death penalty largely disagree with the argument a) “death for death”, probably considering it to be an anachronism of the disappearing tradition of feud. At the same time, they do not condemn the lynching by V. Kaloyev, who killed a Swiss traffic controller and revenged for the death of his family. V. Kaloyev is a native of the Northern Ossetia, one of the North Caucasus republics. Back home after his release from a Swiss prison, he was welcomed as a hero. This implies that the customs of the traditional Caucasian society, such as revenge, are still alive in the modern conscience of the Russian citizens, and it may be years before the unconditional priority of the institution of punishment is transferred to the state in the pubic conscience.

Both the supporters and the opponents of death penalty were offered identical arguments h) and a), the essence of which is that “death penalty is a too mild punishment for a criminal, compared to life imprisonment”. Notably, both the supporters and the opponents of death penalty tend to reject this statement, preferring life imprisonment to death penalty, but for different reasons. The supporters of death penalty really think that this is a light punishment, and vote for prolonged suffering of the criminals, but do not wish abolition of death penalty in criminal law. The death penalty opponents insist on the right of every person, even a murderer, to life.

In terms of further research, an interesting trend is the revealed correlation between the estimation of the arguments of the death penalty opponents: c) “In civilized societies, people do not kill other people” and d) “From the religious viewpoint, manslaughter is a sin”. In the next 9 years the attitude towards these statements actually did not change. The young people largely disagree with the argument c) (25% in 2008 and 24.6% in 2016–2017), but agreed with the argument d) (39.1% and 32.6% respectively). Thus, even in the university students the religious (moral, spiritual) values are not associated with

the notion of "civilization". This is a vivid example of representation of civilization as a technologically developed society. Our analysis has not revealed the association between the notion of civilized development and the spiritual, moral improvement and faith in God. Also, it should be noted that almost all respondents were against public death penalty – for the reason that watching another person's agony, violence over a human body makes the person a participator of a cruel action, privy to sin. As if they say: "We are for death penalty, but let this sin be on the state as a sort of a faceless executor; we do not want to watch it, as it is a grave sight".

Thus, the research results give grounds for certain generalizations. The issue of open legitimate violence of the authorities is the "touchstone", on which certain fundamental attitudes are revealed, rooted in culture and forming the total picture of the spiritual-ethical state of the society. The young people are especially sensitive to the idea of justice as the most fundamental in the public conscience. Undoubtedly, another important value is religious faith. The specific feature of the national conscience referring to the perception of the death penalty issue is reflected in the tolerance to violence, the desire to establish order in the country by tough punitive measures. Changing of the high threshold of "pain sensitivity" of the young Russians was reflected in the negative dynamics of those voting "for death penalty". It should be noted that the emotional component played a significant role when voting about introduction or complete abolition of death penalty in the country. There were examples of much publicized serial murders. After thorough consideration of the arguments of both the supporters and the opponents of death penalty, the emotional strain loosened and the estimations became more moderate. Notable is the distrust to state authorities in the issue of crime elimination. We registered a rather definite gap between the religious sphere in the youth's conscience as a sphere of irrational values existing outside the real life, and the notion of civilization as a synonym of material goods, not associated with moral norms.

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ON THE QUESTION OF STUDYING THE PROFESSIONAL SELF-IDENTITY OF YOUNG EMPLOYEES IN THE PROCESS OF SERVING IN THE PENAL SYSTEM

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Abstract: the paper addresses the problem of professional identity development and the need to work on a significant number of mechanisms for the professionalism development, as applied to the professional activities of the penal system staff. The study is relevant due to the ever increasing importance of work and career in life, their internal determinants. Modern socio-economic conditions impose high demands on people's inner activity and self-determination at different stages of their professional careers. So it is impossible to do without special knowledge of professional self-identity. The paper presents the results of an empirical study of the employees' professional identification with their future profession at the stage of training upon higher education programs. It reveals the personality psychodynamics of the cadets at the Academy of Law and Management of the Federal Penal Service of Russia, depending on the year of training. This work substantiates the role of professional constructs when forming the professional identification of a cadet.

Keywords*:* professional identity, professional competence, personality development, professional training, professional constructiveness.

1. Introduction

In current situation, there is recognition of the high importance of not just a human resource, but an effectively acting person [27]. So the individual's recognition that he belongs to a particular social and personal position

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within professional and social roles is an epicenter of each person's life cycle or, in other words, the identification process [9].

The formation of professional self-identity, as the leading characteristic of the subject of labor, is a key stage in building the necessary foundation for the personality of the officer, as well as gaining the high level of skill and professionalism as a reliable support [7], [15].

Professional identity is becoming a criterion for the individual's professional development. According to Yu. Povarenkov, it testifies the acceptance of the chosen job as a means of self-realization and self-development, and also the degree of recognition of oneself as a professional. [15].

At present, the works of Russian scientists Ye. Klimov [9], N. Pryazhnikov [17], A. Markova [12], V. Shadrikov [25], and others, cover the problems of professionalism and professional self-determination. They proved that a developed identity in the professional sphere helps the specialist to easily navigate in new working conditions and tasks, overcome difficulties and successfully fulfill his or her professional functions [6].

Russian psychologists pay more and more attention to professional identity as a phenomenon that emerges and develops when the employee successfully goes through a number of crisis moments related to his work [8], [15], [16].

At the same time, we often observe another concept - the identity crisis. It reflects the state of internal crisis and the lack of psychological readiness to work in changing conditions. In most cases, the inability to develop professional identity is initially caused by impeded adaptation to new specific conditions, as well as by overestimated expectations and the lack of integrity and order in routine work [1]. This usually leads to lacking tolerance to fluctuations caused by the changing demands of the service [4]. An individual becomes maladjusted, begins to work in the asthenic mood. It means rapid fatigue, exhaustion of mental power. On the other hand, the profession requires successful formation of multiple adaptive responses when performing service duties. But it is also not always a

positive factor in constructing a sustainable professional identity.

Identity and development in the course of professionalization intertwine closely and intricately. On the one hand, professional identity forms in the process of professional development. On the other hand, it is one of the important indicators for the professional's personality formation. In practical terms, this means that in order to survive in new professional conditions, the employee must be capable of constant self-development and self-analysis.

If the cadets' training in educational organizations is one of the formation periods for the professional identity of the penal system staff, then it can contain the following stages. The first stage is the introduction to the profession (I-II years). The second stage is the primary identification with the profession (III year). The third stage is the beginning of the professional identity formation (IV-V years) [10]. The idea about the formation of readiness to serve, responsibility and independence (self-education, self-organization and self-regulation) is important at all stages. These concepts include the ability and readiness of students to plan their academic and free time independently, judiciously and reasonably, as well as the capacity for self-persuasion and self-empowerment (endurance, alertness, the experience of successfully overcoming complex obstacles).

Within the framework of the approach to personal formation study, professional identity acts as a criterion of development and indicates the qualitative and quantitative features of the person's acceptance of a) himself or herself as a professional; b) specific professional activity as a way of self-realization and satisfaction of needs; c) the system of values and norms characteristic for the given professional community.

Thus, there are three main lines of professional identity development: real or predicted professional self-esteem; person's attitude to the content, conditions of professional activity and professionalization in general; person's attitude to the system of values and norms, traditions and rituals specific for each professional community.

The main characteristics are: interest and involvement in activities; professional value and meaning orientations that coincide with the nature

of service in the penal system; the structure of professional and role identities; the temporal consistency of the professional self-image, corresponding to the requirements of the professiogram for the future employee of the penal system.

The external and internal conditions that determine the central contradiction ("drama" and some "disagreement with this or that condition") of each period, associated with the need to reconcile professional and professional roles, are significant for the professional identity formation. As a basis for the formation of own identity, an employee is to determine his or her attitude to "insiders" and "outsiders". In reality, the surrounding world presents itself to every person in the form of conflicting opportunities to establish one's identity (mainly professional), which makes the individual determine himself or herself in relation to them. Therefore, the concepts of E. Erikson and L. Vygotskiy, according to which a person experiences a number of psychosocial crises during life [5], are significant. For example, E. Erikson identifies eight stages of identity development. At each of them, a person makes a choice between two alternative phases of solving the age and situational problems of development. The choice of identity will be the result of internal self-determination. The nature of choice affects the entire subsequent life in terms of its success and failure [27].

There is a stage of individual's identity development (25-55/60 years). It occupies the lion's share of human life. It has contradiction between the person's ability to develop, based on experience acquired at previous stages, and the desire for stability and comfort, which sometimes looks like personal "stagnation" and slow regress in the process of everyday life.

The idea of crisis periods in life that interfere with person's self-determination and development, as well as the consequences of these crises, was justified by Erich Fromm. He described a person who became a conforming "machine". Such person is like everyone else and behaves the way that is generally accepted. Most often, he or she is not autonomous in behavior, is dependent and controlled, and has high level of fear to be different [24]. "The individual ceases to be himself; he adopts entirely the kind of personality

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offered to him by cultural patterns; and he therefore becomes exactly as all others are and as they expect him to be." [24]

Self-determination can be adequate to the professionally important problem. Then personality develops. If self-determination is inadequate, it generates internal conflict and activates protective mechanisms instead of development. At the same time, desire for self-development, as an end to inself, does not always contribute to successful professional self-determination and professional adaptation.

Necessary qualities are perseverance and the ability to stay physically and mentally stressed for a long time. In other words, it is the ability to focus and concentrate on the desired object or task, patiently overcoming some internal discomfort.

Thus, there is a number of mechanisms for identity development in the penal system employees' profession: awareness of their identity with professional culture, positive psychological significance of the membership in it, peculiar mentality, sense of belonging to the common cause, experiencing their professional integrity and certainty. In this regard, there are contradictions between the demands of practice, to develop professional identity to increase the productivity of the penal system employees, and the lack of theoretical knowledge on the presented problems, including the lack of operationalization of new concepts and the need to adjust the existing ones.

2. Materials and Methods

The leading approach to this problem is the cultural and historical concept of L. Vygotsky [5]. It allows to consider student's personality change under the influence of social environment. The personality concepts of A. Leontyev [11], V. Stolin [23], B. Ananyev [2] and A. Derkach [6], as well as Yu. Gippenreiter's [18] provisions that self-identity is inseparable from the man's properties, were also significant for reviewing the content, structure, dynamics and characteristics of professional self-identity.

The methodological tasks of the research were solved via theoretical analysis and generalization of conceptual and empirical works on the problems related to the socio-psychological aspects of future young

penal system employees (cadets).

Based on the study purpose, methods of examining individual's self-identity belong to one of two categories. The first one includes research methods for psychological and typological features of cadets' personality, which determine their professional identification: the Cattell test for the overall structure of personality; the method for strong-willed self-control to assess individual development of volitional regulation; J. Kellerman's and R. Plutchik's "Life Style Index" test for the intensity of psychological defenses, normal behavioral responses and possible deviations, accentuations, and the group role type. The second category includes methods of diagnosing cadets' subjective perception of their social situation and identification with a professional group: a socio-biographical questionnaire and an expert survey; Thomas-Kilmann method for behavior in a conflict situation; the technique of C. Rogers and R. Diamond for the socio-psychological adaptation.

3. Results

Features of emotional maturity are dominant among undergraduate cadets, which may suggest an increased responsibility. They became ready to cooperate and adopt group norms stipulated by professional activity. In interpersonal interaction, they began to show more openness, sincerity and ease. They began to perceive and process information better. They started to share responsibility for occurring events with their social neighborhood. Desire to control the situation completely disappeared. Anxiety and aggressiveness when the situation is out of their control decreased.

The junior cadets, familiarizing themselves with the profession, demonstrate the lack of desire for self-affirmation, self-sufficiency and independence. Anxiety becomes stronger and their spirits become lower.

The psycho-correctional work gave positive changes in the volitional, communicative and emotional aspects of personality. Open manifestation of unmotivated aggression by cadets almost disappeared. The self-esteem became more adequate. The emotional maturity increased. They also reassessed their view of life. Models of interaction with their social

environment and strategies of behavior in critical situations changed.

4. Discussion

For this study, there were important provisions: on the emergence, functioning and development of self-awareness in relationships and for personality development (A. Leontyev [11], S. Rubinshtein [20], V. Stolin [23], and others); on development of professional self-awareness on the basis of individual's general self-awareness (B. Ananyev [2]); on generation of certain forms of consciousness by professional activity (Ye. Artemyeva [4], Ye. Klimov [9], V. Petrenko [14], and others); on relationship between self-identity and person's career (L. Mitin [13], N. Stambulova [22], and others); on professional self-identity as a product of professional self-awareness (A. Rikel' [18]).

This research studied volitional, communicative and emotional aspects of cadets' personality. These aspects influence development of professional constructiveness. It is the basis for professional identity of the penal system employee. The analysis indicates the beginning of development of professional constructiveness of the penal system employee, necessary for further professional activity.

5. Conclusion

Comparatively easy orientation of a young employee in new service conditions and his or her successful overcoming of difficulties depend on his or her professional self-determination, as well as the settlement of the central contradiction between external and internal conditions (“drama”) of each period of personality development, while coordinating educational, service and professional roles.

Thus, the basis for successful development of young penal system employees' self-identity is the ability to reflect changes in professional environment and to construct their professional identity. This will be the key for successful development of the penal system specialist.

Professional self-determination and development of young employees’ self-identity is not simply the choice of profession or alternative scenarios of professional life. It is a peculiar creative process of personality development. Therefore, the task of resolving the

individual's central contradiction between external and internal conditions (“drama”) of each period, and reconciliation of service and professional roles, will lead to more and more developed and stable internal autonomy. It means that an individual is able to create independently or choose ways of responding and behaving.

6. Recommendations

The materials of the paper may be useful for monitoring the practical orientation of educational programs in educational institutions.

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DETERMINATION OF CRIMINOGENIC CONTAMINATION OF THE PERSONALITY OF CONVICT FROM THE PERSPECTIVE OF GUNTER AMMON'S HUMANSTUCTUROLOGY CONCEPTION

Nikolai D. Gomonov[1]
Vladimir M. Trush[2]

Abstract. The topic of the research is the insufficient level of development of methods that allow determining the level of criminogenic contamination of a personality. The purpose of the work presented is to identify the markers of the phenomenon of criminogenic contamination of the criminal's personality. A comparative analysis of the personal characteristics structure of people who committed crimes and law-abiding citizens was conducted from the perspective of G. Ammon's humanistic personality structure conception. The novelty of the work is due to the consideration of this phenomenon from the perspective of the theory of personality. As a result, the personality traits of those serving criminal penalties in the form of deprivation of liberty, and the differences between their humanstructurology and the main group, have been revealed. Also, the level of severity of criminogenic contamination of a person in quantitative and qualitative aspects is determined. The degree of criminalization is indicated at both individual and group levels. A comparative statistical analysis of persons of the above categories on the declared markers was carried out. The dynamics of the change in the criminogenic contamination of the criminal personality is analyzed at the level of differences in humanstructurology, as well as in the aspect of the most characteristic and sustainable mechanisms of psychological defense formed by the convicts, based on the length of the

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sentence and depending on the severity of the crime committed. The conclusion is made that the convict can be considered as a personality, whose level of criminogenic contamination in quantitative and qualitative aspects can be determined. The severity of the crime committed and the term of punishment directly depend on the level of its crime-causing contamination. The materials of the article are of practical value for subjects carrying out individual crime prevention.

Keywords: criminal identity, convict, crime, term of punishment, criminogenic contamination, humanstructurology, psychological defense.

1. Introduction

The urgency of the task of organizing correction of increasing deviance and delinquency within the population behavior dictates the need to find the most effective ways to promote adequate social adaptation, and the possibilities for an intensive change in the crisis status of large groups of the population in a socially positive direction. Of particular importance is the task that concerns the evaluation of personal psychological characteristics of the people, who already committed crimes, and currently serving a term of imprisonment [49, p. 147-153].

It should also be noted that the "psychologization" of modern provisions of the law has reached a level where the use of professional psychological knowledge is necessary to ensure their proper application and the formation of legitimate investigative, judicial, prosecutorial and expert practices [48, p. 581-611].

The fact that the identity of the criminal is the bearer of certain negative moral and psychological traits is widely studied by domestic criminology (Antonyan, Eminov, 2013, Chufarovsky, 2005, et.al.); and abroad [35, p. 121-138; 38, p. 57-58; 51, p. 78-91, etc.]. The question about the object and process of correctional influence, its content and evaluation has not yet found a sufficiently clear explanation in the sciences of the penitentiary profile [2, p. 17-22; 15; 32, p. 92-98]. But in the process of committing a criminal act, the **identity of the criminal** acts as the main element that requires the most detailed criminological study. At the same time, the personality of the convict acts as a point of application of correctional influence in the process of execution of a criminal sentence.

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In domestic criminology, the study of criminal personality begins on the basis of the **motives** of the committed crimes. The motive, as a conscious need, is an internal impulse for action. But why this impulse is implemented on such way? It is not enough to state that the person is the bearer of criminal behavior causes; it is necessary to know why these personality traits have led precisely to criminal – but not to the lawful behavior.

Consideration of the criminological phenomenon of the criminal's personality from the perspective of the evaluation of the mechanism of the act committed involves studying its orientation, system of values, characteristic and habitual behavioral reactions [37, p. 165-170; 39, p. 211-219; 41]. The criterion of asociality of the offender is the degree of person's social danger, which manifests itself, in particular, through deformations and defects in psychic self-regulation. Situations of personal valence that are significant for a criminal in life are those elements of a situation that ensures the implementation of a criminal code of conduct. However, no situation in itself pushes a person to a criminal way. The choice of a criminal variant of behavior occurs under the influence of certain formed sustainable personality characteristics.

The very psychological characteristics of a person without behavioral expression cannot be regarded as negative or positive in the moral and legal terms. They are initially socially neutral, and what concrete expression they may become depends on the dominant psychological tendencies that form the structure of consciousness at all levels of psych activity. At the same time, it must be remembered that the motive and motivation are far from the same. Meanwhile, in practice, it is motivation that is a rational explanation of the causes of action - given by the judicial scrutiny, the court or the perpetrator itself is perceived precisely as a motive. A person being convicted, as a rule, seeks to alibi his criminal act and endures guilt against other people or circumstances [36, p. 182-195]. There is a state of fencing appears - from the subjective causes of own actions, and, consequently, also the inability to properly manage own selves [3, p. 79-86; 4, p. 66-71].

2. Materials and Methods

The specifics of the recommendations for individual work

with convicts are considered on the example of people convicted for murder, causing serious harm to health and disorderly conduct. The material was developed by the staff of the Research Institute of the Ministry of Internal Affairs of the Russian Federation [9] and for a long time was one of the main documents recommended for practical application. The influence on those convicted for these types of crimes are particularly complex; and it is precisely with such convicts that the greatest number of violations of the regime requirements are connected. This led to the need to develop a behavior related **typology,** based on the personal characteristics of the convicts [9, p. 315-325]. The main types of behavioral types of convicts were distinguished based on the leading personal habitudes and characteristics. For the convenience of comparing and analyzing the features of the typology of the convicts' personalities the proposed methods of influence are summarized in the following table (see Table 1).

№	Type of personality	Basic characteristics	Leading behavioral reactions	Framework of interpersonal relationships	Presupposed interaction principles
1	Excitable type	Activity, domination, spontaneity, proneness to conflict, high emotional excitability, tendency to accumulate affection.	Irascibility, rancor, alogism. Possible accumulation of brutally-rabid formations, followed by "short-circuit" response. In the presence of life experience - the realization of leadership trends, in the absence of - open opposition to the regime requirements; suppression of others. In the top social position - greed. In the lower social position - servility and assentation.	Strict policy control required.	Since the past negative experience is minimally taken into account, the method of controllable accumulation of a positive, repetitive, stimulated act is optimal.

2	Ungovernable type	Similar to the excitable type with the predominance of the impulsive component. Generation of dangerous social "thunderstorm atmosphere". Response to a conflict situation with avalanche-like angry tendencies.	Striving for domination. Low control of own actions and actions of others. Systemic nature of deviant behavior.	Severe suppression of any deviations from regime requirements.	Creation of a situation of inevitability and concreteness of consequences for the committed actions.
3	Persistent type	Ambition and dedication. Striving for domination and leadership. Logical and consistent, but also categoricalness in stuck on negative states.	Striving and holding for leading positions. Strict adherence to principles. Manipulability, rancor, susceptibility.	Controlled trust within the limits of official relations.	Special individual behavioral adjustment programs are necessary.

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4	Defiant type	The need to be in the focus of attention. Propensity to fantasy, overestimated self-esteem.	Peacockery, non-evaluative falsehood, aspiration for superiority.	Calm, straight style of communication. Controlled ability to implement demonstrative trends.	The method of organizing behavior, aimed at developing positive habits.
5	Active type	Increased general activity background with reduced reflection and self-control. Overestimated self-esteem. Permanent monitoring required.	Desire for pleasure, regardless of actual circumstances. Priority of situations on the verge of failure while reassessing own capabilities.	Systematic control, but without petty tutelage.	The threat of inevitability of punishment in combination with the method of organizing the acquisition of positive behavior experience.
6	Passive type	Reduced volitional qualities, lack of intellectual development, laziness and suggestibility.	Unthinking desire to have fun, frivolity, irresponsibility, cowardice.	Control with elements of domineering and harsh treatment.	The method of organizing behavioral development, based on positive stereotypes.

Table 1. Typological peculiarities of people committed crimes against the person; and recommendations on interaction [9].

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The analysis of proposed algorithms of influence leads to the statement of the simplification of the approach to solving the problem of correctional effectiveness. At the forefront is the principle of the necessity of execution - the subject becomes the object of manipulation, that is, deprives the internal freedom of choice. Of course, at the same time, a high probability of compliance of individual's actions with the regime requirements is achieved, but the necessary process of internal transformation is unlikely. This proposition follows from the fact that the main efforts of the individual are directed either to counteract the requirements imposed, or to adjust to them, but not to the understanding of the actual deep motives that gave rise to illegal actions. In later papers devoted to social and psychological work with various categories of convicts [8], the differentiation of convicts according to various criteria, including issues of psychological work, is already given. However, the genesis of the formation of the personality, its structure, analysis of the differences in personalities of people convicted of various crimes was not analyzed.

Thus, the proposed measures and the principles of influence on the individual are prioritized on the organizational measures, but not on the task of correcting convicts in prison; and are unlikely to contribute to transforming the personal behavior in a law-abiding direction. Moreover, being inherently violent and not taking into account the actual motivations of the individual, they can contribute to the growth of internal individual clash. This confirms G. F. Khokhryakov's opinion that **recidivism has a penitentiary nature** [29].

Further, the question arises: what is the basic psychological ground for the formation of a personality who has embarked on the asocial-criminal path of self-fulfillment? To determine the nature of the direction of the research, it is essential to recall the principle expressed by L. S. Vygotsky: "Every mental function, before becoming *intrapsychic*, initially in its development is an *interpsychic* function" (Vygotsky, 1960). In other words, we are talking about the characteristics of the criminal's personality, about those subjective qualities that served as the immediate cause of the crime. The external environment and the current situation can create favorable conditions for

committing a crime, even provoke it - but cannot act as a reason. If a person uniquely falls into a rigid psychological dependence on a particular situation, then, consequently, such are the characteristics of his personality.

Many people recognizing the existence of significant problems in their child-parent relationships have increased anxiety, but the risk of behavioral disruption is very low. On the other hand, there are frequent cases of committing crimes that cannot be explained from the standpoint of logic even by people committed them [19].

Legal professionals believe that, mainly, crimes are committed out of self-interest, revenge, jealousy and disorderly conduct motives - without realizing what is behind them, what underlying psychological realities call them to life, what is their real subjective meaning [5, p. 38-44]. So far, legal professionals and criminologists very rarely turn to the sphere of the unconscious for setting the real motives for illegal actions [42]. "The explanation of the subjective causes of a significant part of the crimes, especially violent and sexual, is superficial and does not contribute to solving actual problems of combating crime" [11]. Usually, the motive is not "extracted" from the personality, but attributed to it on the assumption of an internal evaluation of criminal actions based on established norms and traditions.

In other words, it is possible to state the inconsistency of the forms and methods of influence on the convict's personality for the realization of the main goal of the execution of punishment – the correction. So far, in the "Personality - Society - State" triad the main attention is still being paid to the interests of the state, and the development of the personality is still a by-product of natural functioning. Indeed, "it is only the renewed personified system of development management that can "hold" the person at the center of transformation" (Sharanov, 2000).

There is no doubt that the concept of "**mental health**" - reflecting not only the absence of mental disorders, but also the level of the constructive and adaptive abilities of the individual, including neuropsychic stability and authenticity - simultaneously means one of the leading personality traits that characterize an individual with a law-abiding mental structure [28, p. 265-266]. Diagnostics and forecasting of these qualities is an important task of the departmental system of psychological support for the

penal and correctional system professional activities.

The existing difficulties in the successful solution of this problem are related to the unmet need of departmental psychologists in “thin” and adequate psych diagnostic instrumentarium [50, p. 251-271].

In modern psychology and philosophy there is still no unified conception of a psychic reality, uniquely correlated with the concept of personality. Of special interest in the new methodological approach to the problem under consideration, in our opinion, may be a view of the individual from the perspective of the concept of dynamic psychiatry by G. Ammon [34].

This methodic has been adapted and re-standardized by the specialists of St. Petersburg V. M. Bekhterev Psychoneurological Research Institute within the framework of Russian version of ISTA - Ego-Structure Test developed by Günter Ammon (Tupitsin, Bocharov et al., 1998). The advantage of the methodic is its psychodynamic orientation, conceptually based on the main concepts of dynamic psychiatry by G. Ammon - such as humanistic-structural model of personality, Ego-identity, central unconscious Ego-functions and their constructive, destructive and deficient components, the spectral nature of mental disorders, leapfrog Ego-development and others; as well as the ability to evaluate the structure of the personality holistically in the aggregate of its healthy and pathologically altered aspects. The level of mental health at the same time is defined as the ratio of constructive (adaptive) and destructive-deficit (psychopathologically changed and underdeveloped) components of the psyche of the individual.

The methodic is based on the measurement of the **central unconscious Ego-functions** of the personality with the assistance of a conscious self-report in the form of self-assessments of one's own experiences and behavioral manifestations in the test situations of relationships containing experience of psychoanalytically oriented observation. Its origin is closely related to psychoanalysis, but unlike the latter, it strives in a holistic approach to maximally integrate various aspects of understanding the essence of a person. In the process of methodology developing, dynamic psychiatry has developed independent ideas about the personality, the laws of its development, its structure

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and dynamics, mental health, the causes and mechanisms of its disorders, the forms of mental pathology and the methods of their therapy and correction.

From the perspective of dynamic psychiatry, the personality is a complex multilevel structural formation that includes:

1) Primary organic structures, covering the neurophysiological and biological functions of man;

2) Central unconscious Ego-functions, such as aggression, fear, self-delimitation, narcissism, sexuality, etc.;

3) Secondary conscious Ego-functions (experiences, abilities and skills) that represent the behavioral implementation of central Ego-functions and determine the specific content of mental activity and peculiarity of the individual's life style.

The fundamental concept of the personality according to G. Ammon is the **Ego-identity**, which represents a "nuclear factor" in psychological formation, that ensures the integrity of the personality.

Identity is closely connected with other central mental functions, whose activities are mediated by identity and, in turn, ensures its preservation and development.

The process of human development, the emergence of mental disorders and their overcoming are comprehended by the dynamic psychiatry as a process of transformation of the Ego-identity.

Unlike most psychological conceptions that put into the concept of personal "structure" a static representation, the humanistic structural model of personality cannot be comprehended out of the process of interaction between the individual and the environment. At the same time, the integrated set of relations between the individual and the primary group, comprehended not as a network of intersecting interactions or transactions (according to Eric Berne), but as a group dynamic field into which an individual fits in the exchange of the so-called "social energy" in the process of own formation and socialization.

The concept of "social energy" according to G. Ammon is based on the phenomenon (also described by K. Levin) of empowered interpersonal interaction of psychic fields, which obeys the group dynamic regularities.

Of particular importance in this concept of personality is the comprehension of the relationship between "the conscious

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and the unconscious". Since the unconscious is not directly observable and manifests itself in every actual interaction, as a condensate of relationships through secondary conscious psychological functions, theoretically it can include a potentially infinite number of hypothetical constructs. In this regard, to solve psychotherapeutic problems, six central Ego-functions were selected. Those functions representatively reflect the integral structure of the unconscious and meaningfully comprehended as originally endowed with a constructive resource:

- aggression - dynamic activity;
- fear - coping with anxiety;
- external "Ego-delimitation" - autonomy with a flexible boundaries of the Ego;
- internal "Ego-delimitation" - flexible regulation of the boundaries of the conscious self and unconscious motives;
- narcissism - positive self-acceptance;
- sexuality - mutual enrichment unity.

Exchange energy processes between the group and the individual in their nature both can be positive - contributing to the development of Ego-identity; and negative - preventing the formation of a healthy personality.

Central Ego-functions, as the most important intrapsychic formations, serve as a kind of "organs" that ensure the character of such interaction and individual psychological adaptation. Like any other body, these functions can be formed "normally", "pathologically" or "detained" in their development. The decisive here is the nature of the interaction, both in the primary symbiosis, and in the whole in the group-dynamic life field.

In turn, the level of formation of Ego-functions determines the features of interaction in subsequent interpersonal relations (or in the exchange of social energy). Such an exchange can positively expand the capabilities of personality; promote its integration and the development of Ego-identity, ensuring its optimal adaptation to the environment. So, to have a constructive character of this process means, on the one hand, to deform the personality structure, disintegrate the process of formation of the Ego-identity, "disadapt" - i.e. act destructively, on the other; or to prevent the formation of a personality, the necessary differentiation of mental functions, to reduce the intensity of dynamic interpersonal interactions, thereby creating a functional intrapsychic deficit.

In this regard, dynamic psychiatry identifies three qualities of

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social energy and the corresponding three components of the functional organization of the Ego: **constructiveness**, **destructiveness** and **deficiency** (see Table 2).

Constructiveness	Destructiveness	Deficiency
Aggression		
Purposeful and facilitating the establishment of contacts activity regarding oneself, surrounding objects and spiritual aspects. Ability to maintain relationships and solve problems, form independent point of view. Active construction of one's own life.	Incorrectly directed, interrupting communication, destructive activity towards oneself, other people, objects and spiritual tasks. Disrupted regulation of aggression, destructive outbreaks, devaluation of other people, cynicism, and revenge.	General lack of activity, lack of contact with oneself, other people, things or spiritual aspects. Passivity, withdrawal, indifference, spiritual emptiness. Avoidance of competition and constructive argumentation.
Anxiety / Fear		
Ability to feel and overcome anxiety, to demonstrate adequate action upon the situation. General activation of personality, realistic assessment of danger.	Fear of death overflowing the psyche and/or fear of being abandoned, paralyzing behavior and communication. Avoidance of new life experiences, delayed development.	Inability to perceive fear in oneself and others, lack of protective function and lack of behavioral regulation in case of danger.
External Ego-delimitation		
Versatile ability to access the feelings and interests of	A rigid closure with respect to the feelings and	Failure to deny and differentiate oneself from

others, ability to distinguish between "I am" and "Not Me". Distinct regulation of relations between oneself and the outside world; between distance and proximity.	interests of others. Lack of emotional participation and readiness for compromise. Emotional coldness, self-isolation.	others. Social hyper-adaptivity, chameleon-like adjustment to the feelings and perspectives of other people.
Internal Ego-delimitation		
Versatile, situationally adequate access to one's own unconscious realm, feelings and needs. Ability to see dreams; and distinguish between the present and the past. Fantasies do not completely leave the soil of reality.	Lack of access to the sphere of one's own unconscious, a rigid barrier to one's feelings and needs. Inability to see dreams, poverty of fantasies and emotions, lack of connection with the story of one's life.	The absence of a boundary between the conscious and unconscious spheres, the influx of unrealized experiences. State of the power of feelings, dreams and fantasies. Loss of concentration and sleep disorder.
Narcissism		
A positive and adequate self-attitude, a positive assessment of one's own meaning, abilities, interests, appearance; recognition of the desirability of satisfying one's significant needs, acceptance of one's own weaknesses.	Unrealistic self-esteem, withdrawal, negativism, frequent insults and a sense of incomprehensibility by others. Inability to accept criticism and emotional support from others.	Lack of contact and positive attitude towards one's self, lack of recognition of own worth. Refusal of own interests and needs. Often goes unnoticed and forgotten.

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Sexuality		
The opportunity to enjoy sexual intercourse with a simultaneous ability to give pleasure to a sexual partner, freedom from the sexual roles limitation, the absence of rigid sexual stereotypes; the ability to adapt flexibly, based on the sensible partners comprehension.	Inability to deep, intimate relationships. Intimacy is perceived as a burdensome duty or threat of loss of autistic autonomy; therefore it is avoided or terminated by substitution. Sexual relations are retrospectively perceived as traumatic, harmful or degrading.	Expressed by the absence of sexual desires, poverty of erotic fantasies, and perception of sexual relations as unworthy and deserving of disgust. Characterized by a low assessment of own body image and sexual attractiveness, as well as a tendency to depreciate the sexual attractiveness of others.

Table 2. Description of the main humanstructurological characteristics of the individual (by G. Ammon), based on the components of the functional Ego-organization [10, p.106].

The methodological and theoretical positions of this approach are presented in more detail in the works conducted by St. Petersburg V. M. Bekhterev Psychoneurological Research Institute [10; 31].

Based on the Russian version of ISTA - Ego-Structure Test developed by Günter Ammon (Tupitsin, Bocharov et al., 1998) and guidelines by St. Petersburg V. M. Bekhterev Psychoneurological Research Institute "Research and evaluation of the mental health of the population" (Tupitsin, Bocharov, Iovlev, Zhuk, 1999), a collection of articles by the St. Petersburg University of the Ministry of the Internal Affairs of the Russian Federation "Psychodynamic paradigm of medical and psychological support for the practices of the state law enforcement service of Russia" [30] a psycho-diagnostic assessment system was proposed. The system includes the analysis of the blocks of the 5-level scales (Trush, 2010-2013):

The first level presents:

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18 main scales, combined into 6 separate blocks for qualitative and quantitative diagnosis of the main humane-functions of the personality of the tested:

- Aggression (**A**);
- Anxiety (fear) (**C**);
- External Ego-delimitation (control of external boundaries of Ego-individual/environmental) (**Q**);
- Internal Ego-delimitation (control of internal boundaries of Ego-conscious/unconscious) (**Q***);
- Narcissism (degree of self-acceptance integrity) (**N**);
- Sexuality (**Se**).

Each of the humane-functions represented includes scales of constructive (1), destructive (2), and deficit (3) components.

The second level of the psycho-diagnostic system presents:

Three diagnostic indicators, which are the total derivatives of constructive, destructive and deficit scales of all six of the above humane-functions:

- Overall constructiveness (**Co**),
- Overall destructiveness (**De**),
- Overall dysfunctionality (**Df**) of the Ego-structure of the personality of the tested.

Co = ∑**К1**; **De** = ∑**К2**; **Df** = ∑**К3**;

Where:

К – the average values of constructive, destructive and deficit scales of all six of the above humane-functions.

The third level of the system presents:

Two derivatives of the difference of the second-level indicators, which allows estimating:

- Adaptive potential (**AdP**),
- Psychic activity capacity (**PAc**) of the personality of the tested;
- Possible level of psycho-pathologization (**N**↑).

As expected, the ISTA scales with a constructive orientation are negatively correlated with the MMPI scales, while the destructive and deficit parameters reflecting the pathological signs are positively correlated [10, p. 112]. On this basis, we introduced the indicator of psycho-pathologization level (**N**↑), reflecting the average value of the number of destructive and deficit scales exceeding the norm characterizing law-abiding citizens.

The calculation of the third level indicators is carried out according to the following formulas:

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AdP = Co – De; **PAc = Co – Df**.

The fourth level unifies:

Six indicators that allowing to identify the nature of trends orientation (**Td gfk**) [25, p. 149; 20, p. 222] corresponding to humane-functional spaces. These indicators are derived from the ratio of constructive and destructive-deficit components of indicators of the first level:

Td gfk G= К1/К2 + К3; where:

К1 – constructive component of the corresponding humane-function;

К2 – destructive component of the corresponding humane-function;

К3 – deficit component of the corresponding humane-function.

G – A, C, Q, Q*, N, Se.

If the numerical value of the trend of humane-functions is greater than 1, then in the structure of mental reality the constructive component prevails; if less than 1 – prevalence of the destructive and deficit components established.

The fifth level of the system presents:

Two integral diagnostic indicators of the “Ego-identity”:

- reflecting the resource of mental health (**Re**) of the tested;

- determine the coefficient of legal stability (**Cls**), which is derived from the scales of the second level.

Re = Co - (De + Df); **Cls = Co\(De + Df)**.

Restrictions for the use of the methodic are the age of the tested - under the age of 16 and over 65, the low degree of understanding of the meaning of the list's statements by the examinees, and the presence of pronounced interested motives.

3. Results

Subsequent research into determining **the degree of criminal contamination** of persons serving a criminal sentence (depending on the crime committed) [16] has revealed additional indicators characterizing the humane-functional characteristics of criminals belonging to different categories (depending on the type of crime committed). The method of carrying out the humanstructurological analysis, both of individual and group nature, with this approach of considering the criminal identity has the following form [24, p. 303; 17, p. 118]:

1. Comparison of the main generalized evaluation characteristics:

- Mental health resource (**Re**);

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- Legal stability coefficient (**Cls**);

- Psycho-pathologization level (**N↑**).

2. Comparison of the average statistical levels of adaptive potential (**AdP**) and psychic activity capacity (**PAc**);

3. Calculation of the priority level (**Cpl_N**) of trends in humane-functions, as well as its total level **Cpl_Σ**;

Calculation of the priority level (**Cpl_N**) coefficient of humane-functions trends is carried out according to the following formula:

$$Cpl_N = |TdgfkN - 1|;$$

where: N = A, C, Q, Q*, N, Se.

4. The calculation of the manifestation coefficients of the destructive-deficit component, both generalized (**$K_{PR}\Sigma$**), and for each humane-function separately (**$K_{PR}N$**);

The calculation of the manifestation coefficient of the destructive-deficit component [23, p. 415], considered by the second level indicators ($K_{PR}^{ds/df}\Sigma$) and separate humane-functions ($K_{PR}^{ds/df}N$) is carried out by the formula:

$$K_{PR}^{ds/df}\Sigma = De/Df;$$

$$K_{PR}^{ds/df}N = N_2 / N_3.$$

where: N = A, C, Q, Q*, N, Se;

N_2 = A2, C2, Q2, Q*2, N2, Se2;

N_3 = A3, C3, Q3, Q*3, N3, Se3.

5. Identification of the most stable level of humanstructurological manifestation (**$[\sigma_{co,de,df}]$**) of a group or an individual; definition of the indicator of the stability of the humane-functions manifestation (**σ**);

The probability indicator of manifestation of the humane-function N, **$[\sigma_{(co,de,df)}]$**, is determined by the following formula:

$$[\sigma_{(co,de,df)}] = \sum \sigma_{(co,de,df)} N/6;$$

where:

$\sigma_{co}N$ - standard least square deviation of the constructive component of the humane-function N;

$\sigma_{de}N$ - standard least square deviation of the destructive component of the humane-function N;

$\sigma_{df}N$ - standard least square deviation of the deficit component of the humane-function N;

N – humane-functions of A, C, Q, Q, N, Se.

6. Calculation of the various grounds **divergence coefficient** (**K^{RS}**) is determined by the formula:

$$K^{RS}[O](N,\sum) = \left| K_{PR}[O]N_{law\text{-}ab.} - K_{PR}[O]N_{con} \right|;$$

Where:

[O] – ground considered by groups:

N=A, C, Q, Q*, N, Se;

K PR [O]N – the numerical value of the considered ground for the magnitude of the expression for the group under consideration;

K PR [O]∑ - the total value of the considered ground of the magnitude of the expression for the group under consideration.

It is advisable to give a criminological description of the most significant evaluation characteristics and coefficients presented, which will allow moving from a descriptive approach in assessing the criminal identity to possible probabilistic prognostic differentiation.

1. **Re –** the resource of mental health (Shapoval, 2004) allows to quantitatively determine the ratio of constructive and destructive/deficit components of the dynamic structure of the personality in the process of the vital activity. If Re>0, then the presence of constructive forms of experience for this individual is most probable; with Re<0 the predominance of destructive / deficit reactions is clear;

2. **Cls –** the coefficient of legal stability (Trush, 2009). As a system integral indicator it allows to determine the possible direction of personality movement in the individual/social environment. Taking into account the categories of people under consideration, with Cls>1 the socially approved behavior is more acceptable; in case of Cls<1, different forms of social deviations are more likely;

3. **AdP –** the indicator that determines the value of the available adaptation resource (Shapoval, 2004) as the possibility of changing behavioral strategies for implementing personally significant needs and values. The level of expression of this indicator is determined from the average value for a sample of law-abiding citizens [10, 287], the calculated value, respectively [20, p. 221], AdP = 30.08. A decrease in this value gives grounds to speak of a shift in the behavioral balance between rigid stereotypy and creative adaptation towards the first;

4. **PAc –** a marker that determines the magnitude of the available potential of psych activity (Shapoval, 2004), as an indicator of the ability for the analysis of incoming significant information and finding an adequate behavioral response to it. The level of expression of this indicator is determined from the average value for a sample of law-abiding citizens [10, 287],

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the calculated value, respectively [20, p. 221], PAc = 32.15;

The dialectics of the ratio of the indicator of the adaptation resource (AdP) and the potential for psych activity (PAc) makes it possible to determine the probabilistic possibility of the individual's implementation of the development/security relationship;

5. **CPL_N**– an indicator of the level of mismatch priority of the trends in humane-functions (Trush, 2012) in reference to the balance of constructiveness/destructiveness,
scarcity. This value makes it possible to determine [26, p. 285] the most significant, in the semantic sense, humane-functions, which are leading in the individual's life activity. The greater the discrepancy between **Td gfk** n (where n - A, C, Q, Q*, N, Se) and 1, the more pronounced the influence of the corresponding humane-structure on the formation of identity;

6. $\mathbf{K_{PR}^{ds}/^{df}N(\Sigma)}$ – the coefficient of manifestation of the destructive-deficit component (Trush, 2012), allows probabilistic forecasting [22, p. 293] the behavior of an individual in a situation of high personal significance with situational uncertainty and with possible external stress/frustrating incentives;

7. ($\mathbf{[\sigma_{co,de,df}]}$), ($\mathbf{\sigma}$) – a comparative analysis of the least square deviation for individual humane-functions and levels of humane-functional development (Trush, 2013) makes it possible to determine [22, p. 292] the most stable humane-functional constellations within the system and the character (constructive, destructive, deficit) of their implementation.

The least square deviation is a named value; it has the dimension of the averaged attribute, and is economically well interpreted. It is used to estimate the reliability of the average value of the presented quantity: the smaller the standard deviation σ, the more reliable the average value of the characteristic N (A, C, Q, Q*, N, Se), and the better is the average representation of the studied population.

Attention should be paid to the significance of the perception of the environment component; or rather to the detection in it of a pronounced affective partial - a significant existential-semantic component or trigger inclusion, which forms a behavioral dynamic stereotype with a reduced degree of awareness. The processes of interaction

of the reliability index of the average value of humane-functions (**σ)** and trends in humane-functions (**Td gfk**) are described as the ratio of "**figure**" and "**background**" in terms of Gestalt psychology.

This indicator probabilistically allows determining the most stable level of manifestation of personal humanstructurology in the study groups - constructive, destructive or deficit. Also, utilizing same approach, it seems possible to identify the constellations of the most stable manifestations of humane-functions in the structures under consideration.

- $\mathbf{K^{RS}[O](N,\sum)}$ - coefficient of discrepancy [24, p. 302] on various grounds, as an indicator of the values divergence of the elected grounds of the category of convicts under study and the analogous indicator in the group of law-abiding citizens.

A comparative analysis of average "brief" estimates was made for all 24 data scales during the re-standardization of the questionnaire [10, p. 287], conducted on a group of 1000 subjects aged 18 to 53 years, mainly with secondary or secondary professional education (Tupitsin, Bocharov, et. al., 1998); and on a group of convicts of high-security penal colony, which included 300 persons committed violent, lucratively inclined crimes, as well as other illegal actions in the field of sexual integrity and drug trafficking (see Table 3).

Hum.-Fctn.	Av. value/ conv.	σ	Av. value/ law-ab.	σ	Td. gfk/ convicts	Td. gfk/ law-abiding citizens
A1	**8.19**	2.69	**9.56**	2.22	0.88	1.17
A2	4.6	2.52	4.29	3.0		
A3	4.66	2.22	3.89	2.06		
C1	7.18	2.59	8.28	2.21	0.92	1.51
C2	**3.25**	2.31	**1.62**	1.98		
C3	4.5	2.06	3.87	2.20		
Q1	**7.45**	2.24	**8.59**	2.23	0.76	1.11
Q2	5.0	2.14	4.16	1.65		
Q3	**4.8**	2.56	**3.54**	2.23		
Q*1	8.29	2.66	9.83	2.06	0.89	1.15
Q*2	3.85	2.30	3.72	1.65		
Q*3	5.39	2.52	4.77	2.49		
N1	7.8	2.73	8.86	2.08	1.04	1.48
N2	3.7	2.20	3.47	1.98		
N3	**3.78**	2.49	**2.48**	2.03		
Se1	**6.84**	3.37	**8.53**	2.86	1.13	1.16
Se2	3.73	2.49	4.33	2.58		
Se3	2.33	1.9	2.97	2.14		
Co	43.12		53.67		CLS =0.87	CLS =1.24
De	24.13		21.59			
Df	25.46		21.52			
AdP	**18.99**		**32.08**		N↑=2.75	
PAc	**17.66**		**32.15**			
Re	−6.47		+10.50			

Table 3. Numerical values of average “brief” estimates, trends of humane- functions and indicators of levels 3 and 5 of the ISTA scales of law-abiding citizens and persons convicted for committing crimes.

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Table 3 presents the numerical values of the average "brief" estimates for all 24 scales for law-abiding citizens (Av. value/law-ab.) and persons who committed crimes (Av. value/conv.). It seems possible to state significant differences (see bold highlights in Table 3) of the levels of expression on the scales of the humane-function. Such differences are clear in the area of destructive fear (C2), which confirms the previously stated theorize about the influence of the anxiety formed at an early age on the legal direction of the individual's primary socialization; and also in the areas of constructive aggression (A1), external constructive restriction (Q1), narcissism scarcity (N3) and constructive sexuality (Se1).

The significant differences in adaptive potential (**AdP**), psych activity (**PAc**) and mental health (Re) can be markers in assessing the degree of criminalization of both individuals and groups of different criminal backgrounds.

To prove the non-randomness of the differences between two independent samples (Td gfk/law-abiding citizens, Td gfk/convicts), the U-Mann-Whitney criterion was used (which is intended to estimate the differences between two samples according to the level of a certain feature) [14, p. 49-55]. With the help of this method, the empirical *Uemp* value was calculated = 1; later the comparison of this value with the critical *Ucr* value was made [14, p. 316]. In our case, with the Uemp = 1, Ucr. = 6 with a level of statistical significance $\rho \leq 0.01$.

Since Uemp<Ucr, the hypothesis is confirmed that the **differences** between the values of humane-function tendencies in groups of law-abiding citizens and those convicted for crimes are **statistically reliable** with a certainty of $\geq 99\%$, that is, they are not accidental.

Most visible discrepancy between the presented samples of law-abiding citizens and persons convicted for committing crimes can be represented through an analysis of humane-function trends (**Tdgfk**) [25, p. 149; 20, p. 222]. In the variant presented, the difference between a group of law-abiding citizens (Td gfk law-abiding citizens) and persons serving a sentence for crimes (Td gfk convicts) is that Tdgfk/law.ab. A, C, Q, Q*, N, Se and the integral Cls value is greater than 1; the resultant is a way of life with a constructive basis. In the group of persons sentenced to deprivation of liberty for crimes Td gfk / conv. is more

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than 1 for only Se and N, all others are less than 1, i.e. in this cases within the activities of life the destructive and deficit basis prevails.

However, it must be emphasized that the greatest deviation from the balance of constructiveness/destructiveness-deficiency is the tendency of the factor of external delimitation (Q) - as the ability to contain and differentiate by the individual of internal and external, desired and possible, of one's own and somebody else's, accepted and rejected, manifested and restrained.

Sexuality (Se) is a biologically inherent function of the organism i.e. ontogenetically and phylogenetically appears the most ancient and stable psychophysiological structure. Regarding the humane-function of narcissism (N), in places of deprivation of liberty there are only people with a positive psychiatric status. "A mentally healthy person possessing the mechanisms of psychological defense always has an affirmative beginning - a positive valence" [6, p. 75]. Therefore, in spite of the undeniable severity of the crimes committed, the individual will always find an excuse providing a positive image of oneself.

The further presentation requires an examination of the theoretical approach with reference to the psychic reality of the individual, which, in our opinion, is most suitable for predictive and practical assessment of the degree of criminalization of the individual expressed in the personal level of criminal contamination.

By the definition of the professor V. V. Kozlov, Psy.D., a person is comprehended as a living open, complex, multi-level self-organizing system that has the ability to maintain itself in a state of dynamic equilibrium and generate new structures and forms of organization [6, p. 18-23]. The very designation of the psyche as a complex multi-level open living system has a genetic character, both immanently inherent in man, and also social communities at micro and macro levels.

The most adequate and instrumentally useful description of the manifestation of the genetic process in the development of the personality exists in the theory of dissipative structures (Nicholas, Prigogine, 1990). Non-equilibrium (dissipative) structures exhibit the following properties:

- selective instability;
- probabilistic selection of states;

- autonomy;
- independence of the system's own evolution from the initial conditions of its origin.

The essence of these properties is as follows. A complex multicomponent system - which is the human psyche, has potentially many vectors of its development. These paths are defined at critical **bifurcation points**, when the system hesitates before choosing and then takes the direction of its further development. On a segment of dynamic stability, even significant external environmental influences have minimal effect on the general direction of the system's motion. At the point of bifurcation, even a small additional effect on the system can start the evolution in a completely different direction, which will also change the entire behavior of the macroscopic system. Until the next possible critical point, the system will operate on a deterministic basis in accordance with its nature.

In the situation of the emergence of a state of crisis (change in individual or group social status, loss of work, divorce, inability to implement personally significant goals, etc.), as the passage of the point of bifurcation (even while striving for a socially-law-abiding position), among people with a tendency for humane-functions of <1 the likelihood of committing illegal actions increases significantly compared to those whose tendency for humane-functions is >1.

Taking into account that the Cls index (see Table 3) for the law-abiding group is norm-setting [10, p. 287], in the comparative evaluation of both individual and group options, with:

Cls ≥ 1,24 - law-abiding behavior is more likely;

Cls< 1,24 - unlawful behavior is more likely.

It seems reasonable to single out the level of divergence of humane-function tendencies in the groups under consideration relative to 1, as the balance of constructiveness - destructiveness/deficiency. The identification of this indicator allows determining the basic personal dynamic formations that contribute to the formation of a leading behavioral stereotype. The definition of this indicator is carried out by introducing a coefficient of the priority level of trends in humane- functions.

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The calculation of the priority level coefficient (Cpl_N) of humane-function trends is summarized in the table (see Table 4): (where ↑ ↓ - excess/decrease from level 1)

Hum.-Fnct.	A	C	Q	Q*	N	Se
$CPL_{convicts}$	↓0.12	↓0.08	↓0.26	↓0.11	↑0.04	↑0.13
$CPL_{law\text{-}ab.}$	↑0.17	↑0.51	↑0.11	↑0.15	↑0.48	↑0.16

Table 4. Numerical values of the priority level coefficient of law-abiding citizens and people convicted for committing crimes.

The analysis of the values obtained, first of all, draws attention to the essential priority of the constructive dipole formation of **C ─ N** in the law-abiding citizens group. The significance of this psychodynamic construct in the genesis of personality formation with a criminal method of self-realization requires an additional similar study of groups of individuals convicted for various types of crimes. For those convicted the priority is given to the destructive/deficit component of external delimitation (Q) against the background of similar indicators of the priority level of aggression (A), fear (C), internal delimitation (Q*). Based on the foregoing comparative assessments, a hypothesis was proposed, according to which convicted citizens differ from law-abiding ones by the presence of a more pronounced **dipole defect C** (fear) - **N** (narcissism). People serving a sentence for the crimes committed are characterized by the destructive/deficit defect of humane-functions of external delimitation (Q) - **the act of crime is taking place on the boundaries of the host/environment contact** - against the general background of a similar destructive/deficit priority of humane-functions A, C, Q*.

Determination of the stability indicator of humane-functions manifestation ([**σ**]) [22, p. 292] is carried out by comparing the total values of the least square deviation from the constructive, destructive and deficit components of the corresponding humane-factors.

The values of the stability indicators of humane-functions manifestation [$\sigma_{(co,de,df)}$], based on the

initial data (see Table 3) for the study groups are presented in Table 5.

H.-F./[σ_{mn}]	[σ_{co}]	[σ_{de}]	[σ_{df}]
"law-ab."	2.27	2.14	2.19
"convict."	2.71	2.32	2.29

Table 5. Numerical values of the indicators of stability of the manifestation level of humane-functions of law-abiding citizens and convicts.

Based on the results obtained (see Table 5), it can be stated that a group of law-abiding citizens is characterized by a more sustainable form of humane-structure manifestation.

According to the humane-functional comparison of the least square deviation (**σ**) of the study groups humane-structure parameters (see Table 3, underlined), it is possible to determine the following most probabilistically sustainable constellations of humane-functions, in particular:

- "convict." group - C3, Se3;

- "law-ab." group - C2, Q2, Q*2, N2.

It is noteworthy that for the group of law-abiding citizens (both inter- and intragroup variants), the most sustainable are the destructive personal humane-structures - C2, Q2, Q*2, N2. This allows speaking of a stable self-restriction of manifestation of destructiveness - as a distinctive feature of this group. The presence of data of sustainable humane-functional formations of destructive manifestation allows admitting the presence of possible **threshold values** of destructiveness for law-abiding citizens, in particular:

C2 = 3.6; **Q2 = 5.81**; **Q*2 = 5.17**; **N2 = 5.56** – accordingly, the figures exceeding these numerical values for the specified humane-functions are the markers for the commission of illegal actions by their carriers.

Based on the reliable significance of the court verdict, it can be assumed that for the "convict." group, the commission of illegal actions is determined by compensating for the

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deficiency of humane-functional structures of fear (C3) and sexuality (Se3).

The coefficient of manifestation of the destructive-deficit component [23, p. 415] of the humane-functions under consideration (**$K_{PR}^{ds/df}$N**) makes it possible to determine the direction of the response with no regard to the presence of constructive experience.

If $K_{PR}^{ds/df}(\Sigma,N)>1$, then the manifestation of a possible response in a situation of high personal significance and a pronounced degree of uncertainty with no regard to the presence of constructive experience is, as a rule, destructive. If $K_{PR}^{ds/df}(\Sigma,N)<1$, then the foregoing refers to the deficit component. The degree of expression is characterized by the numerical value of this coefficient and is presented in Table 6.

$K_{PR}^{ds/df}$N	∑	A	C	Q	Q*	N	Se
"convict."	0.94	0.98	0.72	1.04	0.71	0.97	1.6
"law-ab."	1	1.1	0.41	1.17	0.77	1.39	1.45

Table 6. Numerical values of the manifestation coefficient of the destructive-deficit component of the humane-structure of law-abiding citizens and convicts.

Based on the results obtained (see Table 4), the total value of the indicator ($K_{PR}^{ds/df}\Sigma$) for the groups under consideration ("convict.", "law-ab.") gives grounds to state the priority of the deficit component in persons convicted. Law-abiding citizens are carriers of the balanced destructive-deficit components of the humane-structure of the personality. The most significant divergence is manifested in the humane-functional space of narcissism (N). Consequently, the following assumption is possible - that in a situation of pronounced personal significance and uncertainty, low awareness and a shortage of constructive resources [10, p. 106]:

- law-abiding citizens are characterized by unrealistic self-esteem, withdrawal, negativism, frequent insults and a sense of incomprehensibility by others; and also by decreased ability to

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accept criticism and emotional support from others;

- persons convicted for committing crimes are characterized by a lack of contact with themselves, a lack of a positive attitude and recognition of their own values; and by rejection of their own interests and needs.

Researching possible causes of the above discrepancies, it is expedient to determine the interfactor-priority of the imbalance of constructive and destructive-deficit components of humane-factors. For this purpose **the divergence coefficient** (**K^{RS}**) is used, which determines the spread of the second level values of the psycho-diagnostic system under consideration - overall constructiveness (Co), overall destructiveness (De), overall deficiency (Df). This figure is defined as the absolute value of the difference between the figures of the values of the second level by following formula:

$K^{RS}(N)$ = $\left|$ K law – K con $\right|$;

Where:

K law – Co law-ab., De law-ab., Df law-ab.;

K con – Co (convict.), De (convict.), Df (convict.);

N = 1, 2, 3…, m – numeration in dependence of the correlated values. Thus, based on the values presented in Table 1:

K^{RS}convict.$_{\cdot}$ 1 = $\left|$ Co law-ab. – Co convict. $\right|$ = $\left|$53.67 – 43.12$\right|$ = 10.55;

K^{RS}convict.$_{\cdot}$ 2 = $\left|$ De law-ab. – De convict. $\right|$ = $\left|$21.59 – 24.13$\right|$ = 2.54;

K^{RS}convict.$_{\cdot}$ 3 = $\left|$ Df law-ab. – Df convict. $\right|$ = $\left|$21.52 – 25.46$\right|$ = 3.94.

Within the numerical series obtained: K^{RS}N → K^{RS}convict.1 - (**10.55**); K^{RS}convict.2- (2.54); K^{RS}convict.3 - (3.94) the most pronounced magnitude of discrepancy is manifested between indicators of overall constructiveness of law-abiding citizens and convicts. Therefore, the formation of a personal predisposition to a criminal way of life in the groups under consideration is a consequence of the psycho-traumatic interpersonal relations of the child and adolescent periods with significantly expressed persons that determine the being's state of the individual.

Taking into account that the peculiarities of these psycho-trauma relations are phenomenologically diverse and structurally complex, it is

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quite possible to assume that the dynamics of the ratio of constructive, destructive and deficit components in the general humanstructurologycal area of convicted individuals has a sustainable humane-functional relationship - the dependence of the type of the illegal action committed and the level of severity of criminogenic contamination.

In the newest criminological research, a methodologically important judgment is clearly discernible - which determines the direction of the research conducted [17; 18; 21; 27]. In particular, Professor K. M. Lobzov, DMilSci, argues that "before a person begins to show socially anomalous (or anti-social) activities, there is something "wrongfully-oriented" already in his mind, something that is ready to control a person's life" [7, p. 218-219]. And further: "Manifestations of this "something" can act not only intrapersonal (within the thoughts and emotions), but also externally, verbally, and most importantly - in person's actions" [7, p. 219]. And, finally: "In criminology, in this case they speak of the **individual's criminogenic contamination**, which person possesses before the commission of a crime" [7, p. 219]; "....there is a correlation between the criminogenic categorization of all criminals and the level of severity of their criminogenic contamination" [7, p. 221], which correlates with the severity of the crime committed, ritual criminal purity, criminal experience as the general term of serving the court sentence in the system of Federal Penal Enforcement Service (FSIN).

Proceeding from the proposed methodology, a comparative analysis of the personal characteristics of convicts (sentenced for various types of crimes) was carried out, based on the sentence imposed by the court and depending on **the severity of the crime committed**. A comparative analysis of average "brief" estimates for all 24 data scales was conducted during the re-standardization of the questionnaire [10; 17; 21; 31] with participation of two groups of persons convicted for various crimes and serving sentences of 3 to 5 years ("convict. 3-5");

and sentenced for more than 8 years ("convict.>8") in the correctional institution. These groups were homogeneous in terms of socio-demographic, criminal-status characteristics; both were in equal

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environmental conditions - high-security penal colony. The average length of punishment for the commission of the last crime for the "convict. 3-5" group was 3.74 years; with a general average of "criminal history" of being convicted in the correctional facilities - 11.4 years.

H. – Fctn.	Av. value "convict. 3-5"	σ	Av. value "convict. >8"	σ	Av. value" law-ab."	σ	Td. gfk "convict. 3-5"	Td. gfk "convict. >8"	Tdgfk "law-ab."
A1	7.54	2.82	7	3.22	9.56	2.22	0.97	0.69	1.17
A2	4.26	2.88	5.14	2.57	4.29	3.0			
A3	3.48	2.03	4.9	2.51	3.89	2.06			
C1	5.94	2.82	5.88	3.37	8.28	2.21	1.1	0.83	1.51
C2	1.98	2.39	2.78	2.19	1.62	1.98			
C3	3.44	2.13	4.3	2.77	3.87	2.20			
Q1	6.96	2.79	6.52	2.41	8.59	2.23	0.9	0.68	1.11
Q2	4.22	1.9	5.18	2.22	4.16	1.65			
Q3	3.5	2.49	4.34	2.47	3.54	2.23			
Q*1	7.62	2.81	7.64	3.12	9.83	2.06	1.02	0.84	1.15
Q*2	3.36	2.14	4.34	2.55	3.72	1.65			
Q*3	4.08	2.23	4.78	2.62	4.77	2.49			
N1	7.38	2.84	6.48	2.92	8.86	2.08	1.02	0.73	1.48
N2	3.7	2.61	4.34	2.58	3.47	1.98			
N3	3.53	2.39	4.46	3.54	2.48	2.03			
Se1	6.76	3.45	6.68	3.32	8.53	2.86	1.16	0.94	1.16
Se2	3.88	2.94	4.5	3.20	4.33	2.58			
Se3	1.19	2.1	2.58	2.5	2.97	2.14			
Co	43.9		39.96		53.67		Cls = 1.06	Cls = 0.77	Cls =1.24
De	21.38		26.1		21.59				
Df	19.98		25.36		21.52				
AdP	22.52		13.86		32.08		N↑=1.96	N↑=3.44	
PAc	23.98		14.6		32.15				
Re	2.54		-11.5		10.50				

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Table 7. Numerical values of average "brief" estimates, trends in humane- functions, indicators of levels 3 and 5 of the ISTA scales of law-abiding persons and convicts of "convict. 3-5" and "convict.>8" groups.

Similar indicators were for the "convict.>8" group - average length of 10.48 years, "criminal history" in correctional facilities - 13.52 years. Comparison of the average statistical "criminal histories" in places of deprivation of liberty for both groups gives grounds for allowing the same immersion in the criminal subculture for the participants of the study groups. Based on the initial data presented (see Table 7) on the severity of the constructive, destructive and deficient components of the leading humane-functional personality structures, an analysis of the humanstructurology (**gfk**) of the study groups was carried out, according to our proposed scheme [21, p. 33-38].

The processing of the initial data was carried out with the assistance of PsychometricExpert®version 8, personalpsy-office (implementation: Adapted for Department of Corrections in conjunction with the Interregional psychological laboratory (MPL) of the FSIN of Russia in the Yaroslavl region). Obtained brief scores and group data (average values for "law-ab.", "convict. 3-5" and "convict.>8" groups) are presented with regard to their reliability (see Table 7).

Considering that the reliability of significant differences in the humanstructurology of convicts and law-abiding citizens has already been determined in this study, the reliability in assessing the differences between two independent samples of those convicted and serving sentences of 3 to 5 years ("3-5") and of more than 8 years (">8") in a high-security penal colony, is determined by the Mann-Whitney U criterion [14, p. 49]. According to the methodic above, the following calculated values were obtained - *Uemp* = 1, *Ucr* ($\rho \leq 0.01$) = 3, *Ucr* ($\rho \leq 0.05$) = 7.

Since *Uemp*<*Ucr* ($\rho \leq 0.01$), then the differences between the values of tendencies of humane-factors (Td. gfk) in groups of "convict. 3-5" and "convict.>8" are statistically reliable with a certainty of ≥ 99%, that is, they are non-random. Consequently,

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depending on the length of the sentence in the form of deprivation of liberty for the crimes committed, the degree of severity of the criminogenic contamination of the person is also **credibly distinguished**. Comparative humanstructurologycal analysis of the characteristics of persons in "convict. 3-5" and "convict. >8" groups under consideration carried out according to the selected scheme in the abbreviated version on the basis of numerical values of indicators of the first, second, and third levels:

1. Comparing the main generalized evaluation characteristics, it is necessary to analyze the nature of the change in the numerical values of the considered indicators by groups - the coefficient of legal stability (**Cls**) and the resource of mental health (**Re**). Depending on the level of severity of criminogenic contamination, determined by the value of **Cls** [80; 83], we obtain the following series of calculated values:

- **Cls** – "law-ab." gr. (1.24), "convict. 3-5" gr. (1.06), "convict. >8" gr. (0,77);

- **Re** – "law-ab." gr. (10.5), "convict. 3-5" gr. (2.54), "convict. >8" gr. (– 11.5).

Correspondingly, the degree of severity of criminogenic contamination, determined through the numerical value of **Cls** is linearly correlated with the **Re** indicators for the study groups, which to a greater extent manifested in the "convict. >8" group and, as derivatives of the first level indicators of humane-factors, are credibly distinguished between each other.

2. A partial confirmation of this provision may be a similar degree of expression of the third level indicators, which are derivatives of the second-level scales (according to Tupitsin, Bocharov, Iovlev, Zhuk, 1999) - (AdP) adaptability, (PAc) psychic activity, (Shapoval, 2009) [97, p. 238]; and the severity of psycho-pathologization (N↑) (Trush, 2011) [83, p. 378], respectively, for the groups under consideration:

- **AdP** – "law-ab." gr. (32.08), "convict. 3-5" gr. (22.52), "convict. >8" gr. (13.86);

- **PAc** – "law-ab." gr. (32.15), "convict. 3-5" gr. (23.98), "convict. >8" gr. (14.6);

- **N↑** – "convict. 3-5" gr. (1.96), "convict. >8" gr. (3.44).

Proceeding from the presented numerical values of the first, second, and third levels' indicators, it can be argued

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that the level of distinct manifestation of personal criminogenic contamination is inversely proportional to the degree of adaptability and psych activity; and is directly proportional to the level of severity of psycho-pathologization of the personality, which is more pronounced in individuals of the "convict. >8" group. Comparison of the values of the characteristics obtained with the ISTA methodology, reflecting the level of severity of personal criminogenic contamination of the participants of "convict. 3-5" and "convict. >8" study groups, and a comparative analysis of the most pronounced mechanisms of psychological defense (MPD) were carried out using the LSI questionnaire methodology.

The method for the MPD diagnostics is based on G. Kellerman and R. Plutchik theoretical studies. It was repeatedly returned to in articles with refinements and additions; it was also used as a theoretical and methodological basis for developing the **«Life Style Index»** test-questionnaire on the mechanisms of psychological protection [43, 44, 45, 46, 47]. The generalized data obtained in brief scores and values of least square deviation for all the groups claimed are presented in Tables 9, 10.

MPD/group	"convict3-5"	"convict >8"	FSIN Research (convict.)	Standard, "Law-ab."
Denial (A)	**7.82**	**7.14**	**7.2**	**6.8**
Displacement (B)	5.7	5.5	5.15	5.17
Regression (**C**)	5.72	5.82	5.28	**6.06**
Compensation (Д)	4.14	4.56	4.21	5.19
Projection (E)	**7.18**	**7.66**	**8.62**	**7.04**

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Substitution (F)	5	5.18	4.83	2.84
Intellectualization (G)	**7.62**	**7.16**	**7.55**	2.17
Rkt-formation (H)	4.16	4.66	3.53	2.19

Table 9. Numerical values of average indicators of the severity of the mechanisms of psychological defense (by LSI) of convicts of the “convict. 3-5” and “convict. >8” groups.

σ_{vMPD}/group	“convict 3-5”	“convict >8”	FSIN Research (convict.)	Standard, “Law-ab.”
Denial (A)	2.58	2.22	2.6	2.44
Displacement (B)	2.64	2.17	2.44	2.33
Regression (C)	3.2	2.97	3.17	2.89
Compensation (Д)	**2.07**	**2.07**	2.42	**2.13**
Projection (E)	3.1	2.66	2.46	2.64
Substitution (F)	3.49	2.6	2.87	2.84
Intellectualization (G)	2.57	2.69	**1.83**	**2.17**
Rkt-formation (H)	2.66	**2.05**	2.12	2.19

Table 10. Numerical values of the standard deviation of the averaged indicators of the severity of the mechanisms of psychological defense (by LSI) of convicts of the “convict. 3-5” and “convict. >8” groups.

Comparative analysis of the calculated values obtained for all 8 MPDs of the questionnaire (see Table 9) made it possible to state that in all the compared groups of convicts (“convict. 3-5”, “convict. >8”, FSIN research (convict) (highlighted)) - **denial**, **projection** and **intellectualization** are dominating. When compared with a group of law-abiding citizens, the manifestation of **denial** and **projection** draws attention – both common with

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MPDs of convict groups. However, if the groups of convicts are characterized by the manifestation of intellectualization MPD, then for the groups of law-abiding citizens a manifestation of regression MPD appears more common (see Table 9).

For law-abiding citizens, "protection by **regression** enables such a person to permanently discharge impulses, returning from time to time to predisposition to the formation of an **obsessive-compulsive type** of response. In other words, "the personality suppresses the experiences caused by an unpleasant or subjectively unacceptable situation by means of logical attitudes and manipulations, even if there is convincing evidence in favor of the opposite" [12, p. 25]. Thus, the individual carries out "a departure from the world of impulses and affects to the world of words and abstractions" [12, p. 25], creating "quasi-reasonable but plausible grounds for justification, actions or experiences caused by reasons that a person cannot recognize because of the threat of loss of self-esteem" [12, p. 25]. It is essential to define the most consistently formed MPDs. It is assumed that the processes of interaction of the reliability indicator of the average values more or less mature models of meeting needs. The personality of this type is stimulated by something superfluous from the external environment to neutralize the inner emotional "paralysis" and the feeling of numbness that returns it to the form of child insecurity" [12, p. 19].

For groups of convicts, the most persistently expressed is the MPD of **intellectualization**, which indicates a

of the general complex of MPD and (σ_{MPD}) are described as the ratio of the figure and the background in terms of Gestalt psychology.

The data obtained (a sample group of 100 convicts) differ from the results of studies by the Research Institute of the FSIN of the Russian Federation of a group of convicts who committed mostly serious and grave crimes (a sample group of 47 convicts) [1, p. 19]. When comparing the results of the indicators (σ_{MPD}) of the study groups, the most pronounced stability in the "convict. 3-5" group is inherent to the MPD **compensation**; similarly for the "convict. >8" group - **compensation** and **reactive formations**; and for the law-abiding citizens - **compensation** and **intellectualization**. Based on the above, it can be concluded that for all MPDs of

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the groups of convicts in question are inherent:

- **Denial** - the earliest ontogenetically and most primitive defense mechanism, develops in order to contain the emotions of acceptance of others if they demonstrate emotional indifference or rejection;

- **Projection** - as a rational basis assumes the attribution of various negative qualities to the environment - for their rejection and self-acceptance on this background;

- **Intellectualization** - the ability to contain the emotions of anticipation out of fear of experiencing disappointment. The formation of this MPD is usually correlated with frustrations associated with failures in competition with peers. It assumes an arbitrary schematization and interpretation of events for the development of a sense of subjective control over any situation.

Accordingly, for the convicts of the groups under consideration, the use of the ability to contain their emotional manifestations is quite common, as well as demonstrating an indifferent attitude to various environmental interactions. Further, the suppressed and displaced psycho-material is attributed to the environment and compensatory attempts are being made "... to find a suitable substitute for a real or imagined defect, an intolerable feeling by another quality, most often by fantasizing or appropriating the qualities, values, behavioral characteristics of another person. ... At the same time, borrowed values, attitudes or thoughts are accepted without analysis and restructuring; and therefore, do not become part of the personality itself. A number of authors reasonably believe that "compensation" can be considered as one of the forms of protection from an inferiority complex" [12, p. 23-24]. However, for the "convict. >8" group, MPD compensation, as the most sustainable psychological structure, manifests itself in the form of **reactive formations** as "the expression of unpleasant or unacceptable thoughts, feelings or deeds in the form of an exaggerated development of opposing aspirations. In other words, there is some kind of transformation of internal impulses into a subjectively comprehended opposition" [12, p. 26]. For example, callousness, cruelty or emotional indifference can be considered as

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reactive formations in relation to unconscious pity or caring.

Turning to the well-known epigenetic scheme of the individual development by Erik Erikson, it can be noted that the realization or frustration of basic needs in certain sensitive periods of ontogenesis induces opposing socially-sensitive experiences and, in the case of their traumatic nature, ensures the appearance of appropriate mechanisms of protection. Accordingly, the formation of MPD **compensation** and **reactive formations** refers to the period of 12-13 years [13], which confirms the thesis of the formation of an elective predisposition to various forms of antisocial behavior and may be the marker characterizing the features and level of severity of the individual's **criminogenic contamination**.

Based on the results of presented comparative analysis, which, in turn, is grounded on the data obtained by ISTA and LSI testing in persons belonging to the “convict. >8” group, the level of **criminogenic contamination of the personality** is manifested to a greater extent.

4. Discussion

The manifesting and the most sustainable variations of the structural combinations of humane-functions in the general human-structure of the individuals of the groups under consideration are defined - which in their qualitative and quantitative expression determine the choice between criminal and law-abiding forms of self-fulfillment.

The presence of statistically significant differences in the trends of humane- functions of law-abiding citizens and persons convicted for committing crimes is pronounced. Along with the influence of fear/anxiety component (**C**) in the structure of the criminal personality, the tendency of humane-functions of external delimitation (**Q**) is noted as the ability of the individual to contain own states and differentiate oneself from the world around.

The dynamic integral **Cls** indicator (coefficient of legal stability) is presented, which allows forecasting the probabilistic possibility of deviant behavior in addition to the quantitative state of the system determined by the coefficient of the mental health resource (**Re**).

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One of the main differences in the structure of the personality of law-abiding citizens is revealed - the priority of the **C–N** dipole (fear/narcissism). This difference is partially supported by the qualitative divergence of destructiveness and deficiency in the groups studied, determined by the coefficient of manifestation of the destructive-deficit component (**$K_P^{ds/df}N$**). For a law-abiding citizens group $K_P^{ds/df}N>1$, i.e. characterized by a possible destructive manifestation; and for a group of convicts $K_P^{ds/df}N<1$, which is, respectively, a deficit manifestation.

Considering the least square deviations of the humane-functions as an indicator of the sustainable manifestation (σ) with respect to the constructive, destructive and deficit components ($\sigma_{(co,de,df)}$), a stable, average-related manifestation in all three components of the humane-structure of persons of law-abiding group was revealed. The human-functional comparative analysis made it possible to determine the most stable constellations of humane-functions, which, in their successive and simultaneous manifestation determine the leading stable behavioral pattern - in particular, for the "convicts" groups it is **C3, Se3**, and for the "law-abiding" group - **C2, Q2, Q*2, N2**. The possible **threshold values** of destructiveness for law-abiding citizens, which are the markers of the commission of illegal actions by their bearers, are determined. In particular – **C2 = 3.6**; **Q2= 5.81**; **Q*2 =5.17**; **N2 = 5.56.**

Proceeding from the obtained values of the coefficient of discrepancy (**K^{RS}**) for the basis of the second level indicators considered, it can be argued that the formation of a personality predisposed to a criminal way of life in the "convicts" group is a consequence of the psycho-traumatic interpersonal relations of the early childhood period.

The substantiation of the probabilistic forecasting possibility of committing a crime based on the characteristics of a personal humane-structure on the grounds of the theory of non-equilibrium dissipative structures (Nicholas, Prigogine, 1990) is presented.

Consideration of the humanstructurologycal characteristics of groups of convicts, depending on the court established terms of punishment ("convict. 3-5" and "convict.>8") in

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terms of markers of the level of severity of the **criminological contamination** of the identity of individuals, serving sentences in a high security penal colony, gives grounds for assumption that the individuals of the “convict. >8” group statistically authentically are the carriers of the following personal humanstructurologycal characteristics:

- qualitatively significant difference in the coefficient of legal stability (Cls “convict. 3-5”/“convict. >8” - 1.06/0.77); and a significant quantitative discrepancy between the mental health resource (Re “convict. 3-5”/“convict. >8” +2.54/-11.5);

- in groups of “convict. 3-5”/“convict. >8” the value of the indicators of adaptability (AdP – 22.52/13.86), psych activity (PAc – 23.98/14.8), the levels of the severity of psycho-pathologization (N↑ - 1.94/3.44) are significantly different.

5. Conclusions

Thus, proceeding from the foregoing, one can speak about the legitimacy and expediency of examining personal differences between criminals and law-abiding citizens in terms of the severity of the **criminogenic contamination of the personality**. Between the averaged indicators of humanstructurology of representatives of the groups under consideration, significantly credible differences were revealed, which are presented both in the form of quantitative and qualitative indicators.

The dynamics of the change in the criminogenic contamination of the criminal's personality confirms the thesis about the relationship between the level of criminogenic contamination of particular person and the severity of the crime committed, which, in turn, correlates with ritual criminal purity and criminal history as the general term of serving a sentence of imprisonment.

A verifying comparison of the values of manifestation degree of the dominant and the most sustainably formed MPDs by LSI testing confirms the assumption, that the **severity of the crime committed** and the severity of the court sentence expressed in the established term of punishment correlate with the level of **criminogenic contamination of the personality of the criminal**.

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ADMINISTRATIVE RESPONSIBILITY OF OFFICIALS FOR VIOLATION OF LEGISLATION IN THE IMPLEMENTATION OF AUTHORITY TO DISPOSE OF STATE AND MUNICIPAL PROPERTY

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Abstract: the existing means of rights protection in civil-legal relations of implementing the officials' authorities of the state and municipal property disposal do not represent an effective legal mechanism, comprehensively securing the rights and interests of the population. In the absence of apparent attributes of criminal actions in the sphere of public property relations, the sanctions of other branches of law are almost never used for legal regulation. The comprehensive (inter-branch) research of the judicial-arbitration practice of officials' liability when implementing the authorities of the state and municipal property disposal, stipulated by the existing legal norms, will reveal the existing legal problems and enable to make propose for their solution. The leading dialectic method of cognition provided the objective and comprehensive study of the phenomena, while the general scientific methods (systemic, structural-functional, specific-historical, and comparative-legal), general logical methods of theoretical analysis (analysis, synthesis, summarization, comparison, abstracting, analogy, modeling, etc.) and specific scientific methods (methods of comparative legal studies, technical-juridical analysis, specification, interpretation, etc.) allowed proposing the draft of the new Article 7.24.1 of the Russian Code on Administrative Offense "Violation of the legally stipulated order

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of disposal of real estate and land plots within the public (state or municipal) domain". The Article stipulates administrative punishment for officials: warning or disqualification for the period of one to three years. The research develops and expands the theory of the institution of officials' liability when implementing the authorities of the state and municipal property disposal. The proposal for improving the legal mechanism of the officials' liability and introducing its new type is aimed at bringing the existing administrative legislation into line with the challenges of time and the current reality. This will reduce the level of corruption of the municipal authorities.

1. Introduction

The research hypothesis is that the existing gaps in the Russian legislation and the imperfect legal regulation of the officials' liability when implementing the authorities of the state and municipal property disposal do not secure the rights and interests of the municipal entities' residents and promote corruption.

The research objective is, using the judicial-arbitration practice, to perform the comprehensive (inter-branch) analysis of the officials' liability for violating the current legislation when implementing the authorities of the state and municipal property disposal, to reveal the existing legal problems and to make proposals for solving them.

The research tasks are: to explore the practice of implementing the officials' liability for violating the legislation when implementing the authorities of the state and municipal property disposal; to make proposals for improving (developing and expanding) the normative-legal regulation of the institution of officials' liability when implementing the authorities of the state and municipal property disposal.

2. Materials and methods

The research was performed by the materials of arbitration courts, 418 cases from 2014 to 2017, the solutions on which came into effect (cities of Krasnodar, Rostov-on-Don). The objective and tasks of the research predetermined the systemic approach to examining the state-legal categories, including the public liability of the officials, which allowed viewing the Russian legal system as a

comprehensive, integral legal phenomenon.

When analyzing the theoretical basis of the officials' liability in the sphere of state and municipal property protection, we used the method of comparative legal studies. We analyzed the norms of criminal, civil-legal and administrative liability according to the Criminal Code of the Russian Federation, the Civil Code of the Russian Federation and the Code of the Russian Federation on Administrative Offense.

The normative-interpretational method of research was used for the analysis of the legal norms of the Civil Code of the Russian Federation regulating the means of civil rights protection (Art. 12).

Using the technical-legal method of research, we formulated the legal norms of the draft new Article 7.24.1 of the Russian Code on Administrative Offense "Violation of the legally stipulated order of disposal of real estate and land plots within the public (state or municipal) domain".

During the research, we used the specific scientific methods of cognition to trace the progress of civil cases in the courts of different instances (method of observation), to hold interviews with the participants of judicial proceedings (method of interview), and the method of content analysis to study the normative-legal arguments of the courts for the judgments rendered.

The present research did not include any experiment. The above methods were complemented with giving facts, as necessary argumentation, having evidential significance, for making conclusions and proposals on improving legislation.

3. Results and discussions

The selected theme is researched for the first time. It is not possible to compare the present research results with any other research on the adjacent topic.

According to the current civil legislation, municipal property is the property belonging to urban and rural settlements, as well as other municipal entities (Art. 215) [1]. On behalf of them, the local self-government bodies implement the owner's rights of possessing, using and disposal of municipal property. This, to a large extent, determines its vulnerability (insufficient legal protection) and increases the criminal factor, the latter

understood as an event or state causing determination of a person to commit a crime.

In practice often the will of an official determines whether an object of property would be a municipal property or not. The list of municipal property of settlements, municipal regions and city districts may include not only movable and immovable assets, but also land plots, pools, and even mines. All this constitutes the economic basis of the local self-government, comprising, besides the objects of municipal property, the financial means of the local budgets and the property rights of municipal entities (part 1 Art. 49) [2]. The particular list of the objects of municipal property is determined by the features of their legal status (type of entity), development plans, size of the territory, and other factors.

The municipal property is assigned to municipal enterprises and establishments for possessing, using and disposal in compliance with the Civil Code, while the means of the local budgets and other unassigned municipal property constitute the municipal exchequer of the corresponding urban or rural settlement or another municipal entity. The feature of the legal status of municipal property is its target character. The objects of municipal property are designated for solving the local problems, satisfying the dwelling-communal, social-cultural, everyday and other needs of the residents of the specific territory.

If a municipal entity acquires a right to property not designated for solving the local problems, such property is subject to re-designation (changing the target) or alienation in the order and terms stipulated by the current federal legislation. The local self-government bodies are entitled to transfer the municipal property for temporal or permanent use of physical persons, state authorities, and other local self-government bodies, make other deals in compliance with the civil legislation. Privatization stands apart in the list of types of alienation of municipal property. Its order and terms are stipulated by municipal legal acts which are to comply with the federal legislation [3].

However, as shown by the research of law-enforcement practice of the local self-government bodies and the judicial-arbitrary reviews of the civil

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cases in courts of different instances [4, 5, 6], in many cases (as a system) the observance of legislation in the sphere of municipal property protection and preservation does not comply with the interests of the municipal entities' residents. There are numerous facts of violating the legislation on land. In some cases there are the signs of only corruptive malfeasance, without juridical corpus delicti. To prove this conclusion, we can consider just a few most vivid examples, given the limited volume of this publication.

Thus, in compliance with the Decision of the Krasnodar City Duma of 22 March 2012 No. 28 clause 17, which adopted the "Program of privatization of the municipal property objects of Krasnodar municipal entity for 2012", the municipal unitary enterprise (further – MUE) "Krasnodar city pharmacy office" was privatized by reorganization into a Limited Liability Company (further – LLC) "Pharmacies of Kuban". The authorized capital of the new economic entity was established in the amount of 84 million 795 thousand rubles, which significantly exceeds the value stipulated by the federal legislation for small businesses (100 thousand rubles). This criterion alone is sufficient for the municipal unitary enterprise not subject to transforming into a limited liability company. Moreover, during its privatization the city administration did not take into account two other indicators either: the average number of employees and the annual sales proceeds. At the moment of privatization, 596 people worked at the enterprise, and its annual sales proceeds was 769 million 431 thousand rubles. By these two indicators, the municipal unitary enterprise could not be transformed into a limited liability company either.

Despite this, the juridical departments of the local self-government bodies (City Duma, city administration) ignored the requirements of the federal legislation on privatization, substantiating their position in courts with municipal non-normative acts and directions of the heads of the city administration. According to the Charter, "Krasnodar city pharmacy office" MUE was founded for providing the population with medications and was a pharmaceutical organization. Its structure comprised 24 pharmacies and 10 pharmacy branches.

The legal position of representatives (officials) of the local self-government bodies at court was that pharmaceutical activity is not within the local self-government bodies' authority, while non-core property is subject to alienation in compliance with the duty stipulated by part 5 of Article 50 of the Federal Law No. 131-FZ. Moreover, it was argued that the previous municipal legal acts (1997) did not include the MUE into the structure of municipal healthcare system. Thus, the conclusion was made: provision of Article 30 of the Federal Law on privatization, which stipulates prohibition for privatization of healthcare objects, cannot be applied to the adopted decision on privatization. After adjudication in the Arbitration Court of Krasnodar krai (15 May 2014), then in the 15th Arbitration Appellate Court in Rostov-on-Don (17 October 2014), the Arbitration Court of North Caucasus region in cassation instance made a final and lawful decision on 12 May 2017 (Case No. A32-38741/2013): the decision to privatize "Krasnodar city pharmacy office" MUE by reorganizing it into a "Pharmacies of Kuban" LLC is a deal executed under non-normative acts. As a result of their execution, a commercial company was unlawfully formed. The right of the city administration for municipal property (public right) was terminated, as property right of the LLC arose. Actually, the new commercial structure (a network of municipal pharmacies) was prepared to be sold to a private person, at a price significantly lower than its market value.

Thus, the municipal non-normative acts violated the rights of a municipal entity (residents) of Krasnodar city, as the local self-government bodies disposed of the municipal property with violation of the established order stipulated by the federal legislation. The decision of the Arbitration Court of cassation instance adduces that, according to subclause 2 clause 4 Article 29 of the Federal Law of 21 November 2011 No. 323-FZ "On the bases of health protection of citizens of the Russian Federation", the municipal healthcare system is comprised of medical and pharmaceutical organization subject to the municipal self-government bodies [7].

However, a lawful question arises: why not any official was punished, at least administratively? The

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answer is simple. In Russia, there is no administrative liability in the sphere of municipal property protection. If there was such liability according to the Code of the Russian Federation on Administrative Offense [8], the law-enforcement bodies could have effectively and promptly carry out administrative investigation, hold liable the local self-government bodies' officials and prevent the years-long legal proceedings.

The research of the judicial-arbitration practice showed that there are grave problems not only with municipal property but also with preservation and use of lands in the municipal entities. It is necessary to elaborate and adopt more efficient measures for municipal property and public lands protection. As law-enforcement practice shows, the currently existing civil-legal liability is not sufficient.

In our opinion, changes in the federal legislation are long overdue. It is expedient (in the absence of features of criminal cases) to apply more severe measures – to introduce administrative liability of officials. The specific sanctions should include such kind of administrative punishment as disqualification. The threat of disqualification would make the officials make more responsible decisions on disposal of municipal property and public lands. Disqualification implies depriving a physical person of the right to take civil and municipal service, to run a juridical person, etc., in compliance with the Russian legislation (Art. 3.11) [8].

This would also have a positive impact on the functioning of arbitration courts. As practice shows, the unlawful decisions of the local self-government bodies' officials are investigated for years, without due publicity, without involving mass media and the public. As a rule, they go through all judicial instances (first, appellate and cassation).

Often, in the arbitration courts the representatives of the local self-government bodies prove the juridical appropriateness of the adopted decisions on disposal of municipal property or privatization, ignoring the obvious violations of the federal legislation. This cannot be explained by unawareness of normative acts or poor juridical knowledge of the local self-government bodies' officials. In our opinion, this is the evidence of hidden (latent)

corruption. Today, the open misappropriation of municipal objects, entailing criminal liability, is a thing of the past. The modern means of municipal property abstraction with the use of civil legislation is by illegal deals.

The specific problems with municipal objects preservation also refer to state property. An example is the civil case No. A32-11732/2017; 15АП-15145/2017, examined by the 15th Arbitration Appellate Court in Rostov-on-Don on 4 October 2017 [5]. As the case papers show, the Head of administration of Novokubanskiy region of Krasnodar krai, abusing the legislation requirements, leased eight agricultural land plots, belonging to a subject of the Russian Federation – Krasnodar krai, to a commercial company for ten years under a contract. In its resolution, the court stated that the reasons listed by a party in the appellation are based on the wrong interpretation of the substantive law norms. Therefore, the court of the second instance left the decision of the the Arbitration Court of Krasnodar krai unaltered, and the appellation – unsatisfied. In compliance with the court decision, all land plots were returned to the Department of property relations as the property of Krasnodar krai. The question which remained unsolved in this case is why the Head of administration of the region signed the contract on leasing several hundred hectares of agricultural land with grave violation of legislation. The commercial company ("ARGUS Kapital" LLC), having taken the lease, had no intentions for cultivating the land but immediately transferred the rights and obligations of a leaseholder to another commercial company ("Novator" LLC), hoping for the permanent profit from the rent of land. These facts left the law-enforcement bodies uninterested.

4. Conclusion

The research results show that there is a long due necessity to introduce amendments into the Code of the Russian Federation on Administrative Offense in order to improve the efficiency of the legal mechanisms of protecting the public property, the rights of the residents of municipal entities, and holding the officials accountable. The Administrative Code does not stipulate the regime of public lands use as an object of protection. We propose to introduce amendments into the above

Code, including the following legal norm into it:

Article 7.24.1.

Violation of the legally stipulated order of disposal of real estate and land plots within the public (state or municipal) domain

1. Disposal of a real estate object within the state or municipal domain by an official of a state authority or a local self-government body without observing the competition procedures or with violation of the order stipulated by law entails warning or disqualification for a period of one to three years.

2. Disposal of land plots within the state or municipal domain, located on public territories or plots withdrawn from or limited in civil circulation, by an official of a state authority or a local self-government body entails warning or disqualification for a period of one to three years.

Implementation of our proposal would not only enable to protect the property and other rights of the residents of municipal entities, but promote the efficiency of struggle against corruption in the state and local self-government bodies. Introducing administrative liability of the officials would allow preventive measures against this category of offenders.

As the carried out research showed, the problem of preservation of state and municipal property is still topical. The research hypothesis has been confirmed.

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INTERNATIONAL LEGAL STANDARDS OF CORRUPTION COUNTERACTION IN THE SOCIAL SPHERE

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Abstract: The study aims to show the scope and limits of administrative anti-corruption regulations, to detect the causes and factors leading to corruption in the social sphere and to identify the possibility of reinforcing administrative anti-corruption means, including in accordance with international standards. A dialectic approach to the examination of social phenomena made it possible to analyze the above issue in historical perspective and the comparative analysis was used to compare Russian anti-corruption legislature with international legal instruments and the anti-corruption laws in force in selected countries. The study defined administrative enforcement as a means of counteracting corruption in the social sphere, determined various administrative procedures adopted in anti-corruption mechanisms and highlighted a discrepancy between Russian anti-corruption legislature and international laws. For the first time in research on administrative law, the study focused on the adoption of administrative anti-corruption regulations in the social sphere in accordance with international legal standards.

Keywords: counteraction, corruption; social policies; health services.

Significance of Research

Traditionally, the public administration system uses methods such as persuasion and enforcement. Without starting a discussion on the functional and institutional aspects of these methods, let us focus on the potential of using administrative enforcement in anti-corruption strategies in the social sphere [1]. To reveal the gist of administrative anti-corruption actions, objective attention should be paid to the law enforcement institution in general, which is the basic category in relation to administrative enforcement [2].

In this regard, a number of ideas should be put forward as a basis for a research on administrative enforcement

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in the anti-corruption mechanism in general and in the social sphere, in particular.

First, administrative enforcement is part of public enforcement implemented by anti-corruption actions.

Second, administrative enforcement measures are part of administrative anti-corruption legislations and, therefore, their effective implementation in the sphere under investigation depends largely on the quality of other administrative legislations.

Third, the classical approach to defining the content of administrative enforcement has not proved very efficient in combating corruption [3].

Fourth, the potential of administrative enforcement measures remains scarcely implemented, despite specific aspects of the fight against corruption [3].

Research Methodology

The present study adopted the system approach that addressed administrative anti-corruption law in the social sphere in terms of the identification of trends and interactions inherent in its structural elements and, on the other hand, of the focus of administrative anti-corruption measures on achieving the expected results.

The research also used the comparative law method (when analyzing the establishment of the administrative anti-corruption legal system in the social sphere in a number of countries), the formal study of documents and research studies on the topic under investigation. The method of formal logical analysis was needed to examine legislative and subsidiary acts regulating anti-corruption issues.

The research also draws on the structural and functional method and certain elements of the sociological, historical and axiological methods of research. The rationale for adopting the above-mentioned methods is the authors' effort to integrate the largest possible methodological framework offered by various sciences (philosophy, political and legal sciences as well as sociology) for the study of administrative anti-corruption issues in the social sphere.

The combined research methods used in the present study, first, identified the areas and scope of research and, second, provided an opportunity to fully assess the content of the issue concerned and to canvass a comprehensive

understanding of administrative anti-corruption law in the social sphere.

A review of research studies indicates that our research topic is sufficiently well explored in terms of criminal law and criminology. In particular, S. V. Plokhov [4] and T. A. Balebanova [5] did their doctoral theses on this issue. Over many years in recent history, a number of administrative law researchers have investigated the administrative aspects of the fight against corruption. As an example, A. S. Dylkov [6], A. V. Kurakin [7], M. M. Polyakova [88], D. A. Povny [9] and A. A. Shevelevich [10], among others, conducted special research in this area.

Results

Issues relating to the progressive development of our society are particularly due to major deficiencies in institutional measures to combat corruption, especially in the social sphere. The quality of human life and people's financial and moral well-being eventually depend on whether the problem with street-level corruption is resolved or not. Today, it is still common practice that the government channels its major effort into fighting corruption in public and municipal services, whereas other spheres of public administration – especially those of decentralized nature in terms of legal regulation and administration – remain without proper protection against corruption. Due largely to this circumstance, corruption keeps growing in different areas of the social sphere.

As the Minister of Internal Affairs of the Russian Federation mentioned at the Meeting of the Anti-Corruption Council Presidium held on 15 March 2016, "…criminal intrusions mostly concern the sphere of procurement of goods, works and services for provisioning governmental and municipal needs, construction, motor road maintenance, public health services, education, science and culture" [11]. Corruption in the public and regional administration is heterogeneous and volatile. As an example, according to the data provided by Russian Procurator-General's Office, the total sum of bribes received was 2.3 billion rubles in 2016, one billion rubles more than in 2015.

33,000 corruption crimes were registered in 2016, down 1.4% from 2015. The average amount of the bribe was 425,000 rubles in 2016, up 1.4% from 2015. In 2016, a total of 12,000 corruption cases were brought to court

and 13,000 people were convicted. Moreover, 2.5 billion rubles were voluntarily returned to the State in 2016 and measures were taken to recover the corruption-related property damage totaling 33 billion rubles [12].

Unfortunately, socially oriented priority national projects and programs have been undermined. As an example, increased funding for the Health Program has not improved the quality of medical services provided and health care shows the highest percentage of corruption. The diversion and misallocation of public funds remains the central problem with the implementation of the nation-wide Education Project almost in all the constituent entities of the Russian Federation. The program entitled *Accessible and Comfortable Accommodation for Russian Citizens* is not fully effective, due, among other things, to corruption. The situation regarding the implementation of another program, Reforms in the Housing and Communal Services Sector, is no better.

This situation suggests the need to identify new priorities regarding the implementation of public anti-corruption policies and the improvement of administrative anti-corruption law, taking into consideration current public relations in the social sphere.

Unlike other areas of public administration, the social sphere is specific in that it involves most citizens and both publicly funded and extra-budgetary social institutions and organizations provide social services, which – for objective reasons - often operate as economic competitors, i.e. health care centers, educational institutions and so on. The lion's part of public funding goes to the social sphere. As an example, in 2017, the following publicly-funded state programs were funded as follows: Development of Health Care (3 971 027.7 rubles); Development of Education for 2013-2020 (37 403.9 rubles); Social Support for Citizens (1 079.7 rubles). All public funding should be spent only to the targeted recipients.

The problem is that the main effort of the State is to combat corruption in government agencies and administrative bodies, which understandably do not provide social services. As a result, the social sphere remains without proper protection against corruption, which leads to the unlawful charging for otherwise free services in high social demand (health

care, education, physical training and sports). In this regard, corruption pushes out, in a coherent and systematic manner, citizens from the system of free social services resulting in the growth of social tension and in the diminishing trust in the central sphere of life, i.e. the country's social policy, on the part of citizens.

An issue of particular concern is the fact that there still is no official definition of the term "social sphere". Instead, there is a list of healthcare, educational and social activities involving legal personalities and individual entrepreneurs.

The No. 296 Order of the Government of the Russian Federation of 15 April 2015, entitled On Approval of the Social Support for Citizens State Program of the Russian Federation, mentions the following subprograms:

1) Social protection of certain categories of citizens;
2) Upgrading and promotion of social services for the population;
3) Enhancement of effective public support for socially oriented non-profit organizations;
4) Older generation;
5) Provision of conditions for the implementation of the Social Support for Citizens Stage Program of the Russian Federation.

Based on the above, the main beneficiaries of public social programs are not only legal and natural persons providing social services and support, but also the so-called unprotected citizens who suffer most from corruption in the social sphere. This is why corruption, along with other causes, leads to negative consequences such as increased and unsubstantiated spending by citizens and misallocated state funds, which should have been used to deal with socially important issues but, instead, have ended up in the pockets of officials. In our view, the recently established decentralized nature of social administration does not make it possible to build an effective administrative anti-corruption legal system. Accordingly, it is suggested that administrative anti-corruption law in the social sphere should be promoted in a fundamentally different way, considering its features and needs of law enforcement practices. Now, a number of primary tasks should be tackles to overcome corruption in the social sphere.

First, forms and methods of administrative anti-corruption regulations should be unified to the

maximum in the social sphere at its various levels.

Second, specific features of public relations should be taken into consideration, which are established in this or that segment of the administration and functioning of the social sphere.

The research shows that departmental anti-corruption plans do not sufficiently highlight measures taken to record the activities of various public and administrative anti-corruption bodies in performing these or those public functions. This reduces the law-enforcement capacity of these documents in anti-corruption actions and the effectiveness of administrative anti-corruption regulations. Meanwhile, a differentiated approach to dealing with corruption might help identify its distinctive features and find proper administrative legal ways to influence it.

It should be recognized that reducing corruption in the social sphere is impossible without imposing public and private law regulations in other sectors.

As of now, there is an acute need to carry out strict anti-corruption policies both in the public and private economic sectors. It is axiomatic that economic problems are at the basis of corruption, specifically in the social sphere. In this regard, addressing a wide range of economic issues may help reduce corruption both in the private and public social services sector.

The specific nature of the social sphere's functioning is related to its areas of activity and to the fact that administrative law regulates its basic relations. Accordingly, proper administrative anti-corruption measures introduced to the social sphere may make a positive contribution to resolving the issue under investigation. In terms of its institutional framework, administrative anti-corruption law should comprise components of various functional nature. As an example, the development of legal, organizational, informational and technological components is necessary to effectively combat corruption in the social sphere. Each of the above-mentioned aspects can be used, in their own way, to ensure the functioning of the anti-corruption mechanism in the social sphere.

Administrative anti-corruption law should combine both regulatory and protective anti-corruption means. Such an approach will reduce to a maximum corruption risks in the social sphere and the corresponding law enforcement

activities. Of special importance in enhancing the effectiveness of administrative anti-corruption law is the removal of contradictions between the regulatory and law enforcement practices in anti-corruption measures implemented in the social sphere.

The development of a comprehensive theoretical model of using administrative and legal arrangements to combat corruption in the social sphere will decrease social tension in Russia. Furthermore, more focus should be placed on national and international legal standards and related rules of international law. The removal of contradictions in the system of administrative anti-corruption law in the social sphere will help to determine the main elements of offences in this sphere, to differentiate them from contiguous acts and to counter offences in this sphere by filling gaps in administrative law and improving its practical applications. From this perspective, a comprehensive research on administrative anti-corruption law in the social sphere seems necessary and urgent.

Administrative anti-corruption regulations are mostly based on the related international legal standards. As an example, the Federal Law on Counteraction of Corruption of 25 December 2008 highlights that the State's cooperation with international organizations is one of the principles underlying anti-corruption measures (Art. 3, Para. 7).

Today, a system for the international legal cooperation between states has been established to combat corruption, which is a comprehensive mechanism for states to interact at universal, regional, sub-regional and bilateral levels. Corruption impairs the social activities of all members of the world community. The social sphere cannot flourish in a corrupted system, which leads to population reduction in this or that country and to the decrease of funds that the government has to allocate to working people and to the purchase of supplies (books, medicine, computers and so on). Corruption also leads to the misallocation of public funds provided for social services (schools, hospitals, roads, police and so on), hence the decreased quality of services. Favorable conditions are created for people with money and connections to amend laws and decisions taken by public authorities. Finally, corruption undermines the credibility of the government. The

difficulty is that there are no international acts on corruption in the social sphere (at least, universally), which creates a need to introduce and pass them.

Having ratified the United Nations Convention against Corruption, Russia did not subscribe to the provision concerning corruption crimes such as illicit enrichment and the responsibility of legal persons, which is a gap, in our view. The following documents deserve attention in terms of systematic administrative anti-corruption enforcement strategies in the social sphere:

- the Inter-American Convention against Corruption, signed by the Organization of American States on 29 March 1996 (given that all anti-corruption measures suggested by this convention are substantiated and preventive; and

- the Convention on Combating Bribery of Foreign Public Servants in International Business Transactions of the Organization for Economic Cooperation and Development (hereinafter OECD), adopted on 21 November 1997 and aiming at the criminalization of legal persons' corruption activities.

Attention should also be given to the project carried out by the OECD, The Integrity of Educational Systems (Intégrité des systèmes d'enseignement) [13], which seeks to provide assistance to States in their fight against corruption in the educational sector by analyzing the corruptogenic factors in the educational system.

The Program of Action against Corruption, adopted by the Committee of Ministers of the Council of Europe in 1996 [14], also requires thorough examination, as its Administrative Law Section (Unit 3) contains a number of terms related to the codes of conduct of officials. The Model Code of Conduct for Public Officials, which is an appendix to the Recommendations of the Committee of Ministers of the Council of Europe of 11 May 2000 No. R (2000), also addresses the issue relating to ethical rules and codes of behavior for public officials [15].

It would be desirable that Russia should join international movements, such as the World Health Organization's network for fighting corruption in the drug purchase sphere. It is also advisable that Russia analyze data obtained and take appropriate measures, based, for instance, on the data provided by the

Report on the extent of Corruption in Education in 60 countries (including Russia), prepared by the UNESCO International Institute for Educational Planning.

Although Russia is a member of the World Health Organization, it did not join the following serious international organizations combatting corruption in the healthcare sector, not even as an associated member: European Healthcare Fraud and Corruption Network (EHFCN), Center for Counter Fraud Services (CCFS) affiliated with the Portsmouth University (Great Britain), European Observatory on Health Systems and Policies and others.

For instance, the European Healthcare Fraud and Corruption Network adopted in 2005 the European Declaration on Healthcare Fraud and Corruption in Europe.

Unfortunately, there are no acts directly aimed at combatting corruption in the social sphere within the framework of the Eurasian Economic Community and the European Union.

To sum up, Russian legislation does not quite correspond (or does not correspond at all) to international anti-corruption regulations, which calls for thorough revision, given the gravity of this issue in Russia.

Specificities of countering corruption in the social sphere abroad.

Until recently, the absence of special compositions of corruption delicts committed in the social sphere has been a common feature of corruption offences both in Russian and in many other countries. Countries such as Austria, Great Britain, Denmark, India, China, the USA, Switzerland and Finland have no legal definition of the notion of corruption, which is why the punishment for corruption is administered for specific lucrative acts on the basis of legally defined terms such as bribe, bribery, abuse of authority and so on.

Among corruption infringements are both corruption crimes *stricto sensu* and other infringements of law committed for lucrative purposes.

Foreign law highlights a number of corruption infringements committed, particularly, in the healthcare sector. These wrongful acts run counter to the notion of corruption, as defined by Russian legislation. As an example, distinctions are made between bribery in medical service delivery, procurement

corruption, improper drug-marketing practices, undue reimbursement claims, etc. [16]. In our view, such definitions facilitate the classification of corruption infringements.

The United Kingdom of Great Britain and Northern Ireland, in its Bribery Act of 8 April 2010, defines bribery as one person's agreement to receive "a financial or other advantage", which constitutes "an improper performance of a relevant function or activity" (Art. 1). Evidently, such a broad definition makes it impossible to determine the *corpus delicti* [17].

Among the main punishments in all countries are imprisonment and imposition of fine on the offender, which is logical in case of lucrative crimes, usually involving monetary rewards.

Almost in all States, corruption crimes are considered as serious wrongful acts.

The most difference between foreign law and Russian anti-corruption legislation is the criminal responsibility of legal persons for corruption crimes. The significance of legal persons' responsibility for corruption infringements committed in the social sphere could not be overemphasized, given that public administration does not have exclusive jurisdiction over the social sphere (healthcare and education), in contrast to the traditional areas administered by public authorities (law enforcement, administration of justice and provision of security).

Privately owned entities (educational organizations, hospitals and pharmaceutical companies) are active participants in the social sphere that provide social services similar to public organizations. As a result, legal persons (economic entities and non-commercial organizations) provide a wide variety of social services and, thus, can be considered as potentially inclined towards criminal activities in the sphere under investigation. Relevant circumstances point to the significance of strengthening their administrative responsibility for corruption infringements. In a number of foreign countries, a combination of criminal and administrative measures are taken to combat corruption. Besides, legal remedies against corruption are largely homogeneous, hence a high demand for them in both public and private areas of social service delivery [18].

Issues relating to the implementation of corruption-related international legal

standards into Russian legislation.

International legal anti-corruption standards in the social sphere are of great significance for the improvement of Russian legislation. However, not all relevant provisions of international legal acts are introduced to Russian legislation on countering corruption, which has a certain negative impact on the quality of anti-corruption state policies. In recent years, Russian government authorities have taken significant steps in the fight against corruption: a relevant legal framework has been established, institutional changes have been made and measures have been taken to involve citizens in the prevention and suppression of corruption. At the same time, anti-corruption measures in a number of areas of social relations, require additional regulations, means and techniques [19].

By tradition, the social sphere remains one of the most corruptogenic ones, which is due to the insufficiency and incoherence of anti-corruption legislations, closed activities of social and other institutions, somewhat ineffective public and social oversight that is not always highly effective, inefficient preventive measures, greedy interest of the parties in maintaining corruption-related connections and more.

Among factors contributing to the growth of corruption in the social sphere are the subjects' confidence in marginal patterns of behavior (legal infantilization and nihilism), and this despite the fact that the State allocates significant funds to the social sphere.

The Federal Law No. 97-FZ of 4 May 2011 ("On the amendments to the Criminal Code of the Russian Federation and the Code of Administrative Offences of the Russian Federation on improved anti-corruption governance") has implemented international standards to Russian legislation by expanding the range of persons who could be prosecuted for receiving bribes. This law, however, has a significant omission, in our view: it lacks the definition and, most importantly, the legal applications of terms such as active bribery and passive briber, introduced in 1999 by the Criminal Law Convention on Corruption of the Council of Europe.

Another major gap is the absence of provisions for corruption in both the Code of Administrative Offences of the Russian Federation (CoAO RF) and the Criminal Code of the Russian Federation

(CC RF). In our viewpoint, there is a real need to define and legislate on terms such as "corruption infringement" and "corruption crime", given that both the CoAO F and the CC RF contain only special provisions.

The international community considers confiscation of property as the most serious means of combating corruption. The Criminal Law Convention on Corruption suggested that States should adopt legislative and other measures that may confer them the right to confiscate or exempt in other ways instruments of crimes and earnings from crime activities, recognized as such in accordance with the present Convention, or property of a value equivalent to that of such proceeds (Art. 19). In this regard, and considering Russian law enforcement practices, we deem it necessary to restore confiscation as a type of punishment.

In promoting anti-corruption regulations in the social sphere, it should be kept in mind that Article 1 of the Civil Law Convention on Corruption of the Council of Europe, adopted 4 November 1999, requires each party to provide in its domestic law for effective remedies for persons who have suffered damage as a result of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage. At the same time, the author points out, according to Article 5, the possible responsibility of the State as an entity that authorized the official (or other) person to act on its behalf. In Russia, however, there have been almost no cases where a citizen was granted reparation for material or moral harm incurred as a result of corruption acts. The real implementation of reparation mechanisms would make the authorities more attentive when appointing persons to managerial positions and would result in the legal competitive selection of officials [20].

The Convention of the Council of Europe suggests that members States criminalize deliberate acts related to corruption abuses or inaction aimed at concealing or misrepresenting information when preparing or using invoices or any other accounting document or report, which contains false or incomplete information, or when illegally omitting to make entries on accounting reports concerning payment transactions. The CC of RF features only a general rule on forgery (Article 292), and the examined practice reports lead to the conclusion that forgery concerned

mainly sick lists and various official documents, whereas invoices, other accounting documents, reports and accounting records are not such. This situation seems to be a notable omission, given that the above-mentioned documents can be used to commit other, socially dangerous infringements. We consider it necessary to add "accounting documents" and "accounting records" to the Article 292 of the CC of RF, which would increase responsibility for real forgeries in public office. As a reminder, a Consolidated Report on Russia was published 15 March 2013 as a supplement to the report on the implementation of recommendations by the Russian Federation. Unfortunately, this Report has not had any significant impact, which is clearly an omission [21].

Conclusion

If Russia ratifies the Civil Law Convention on Corruption of the Council of Europe, it will be possible to cooperate on civil actions against corruptions, in particular, in obtaining evidence abroad, in establishing jurisdiction, recognizing and respecting foreign judicial decisions and court fees. The provisions of the United Nation Convention against Corruption (Article 13), adopted by the United Nations General Assembly on 31 October 2003 by Resolution 58/4, stipulates that each member State will take measures to actively involve the civil society in the prevention of and fight against corruption. The following measures are aimed to increase such participation:

- improving transparency and involvement of the population into decision-making processes;
- providing the population with effective access to information;
- holding public-awareness events, which would foster public intolerance against corruption, and promoting educational programs, including school and university curricula;
- respecting, encouraging and protecting the freedom to seek, receive, publish and disseminate information concerning corruption.

Clearly, these measures to be taken by public authorities are rather general and need further specification in national legislation. In this regard, we consider it an urgent need to regulate in more detail the forms and methods of interaction between public authorities and civil society.

Discussion

Unlike previous research, this article developed a major conceptual framework for the promotion of administrative corruption regulations in the social sphere, based on international anti-corruption standards, as well as conditions and requirements necessary for the effectiveness of new legal techniques, forms and methods in undertaking preventive measures to reduce corruption in the social sphere.

Another new provision concerns the definition of theoretical and law enforcement practices aimed at countering corruption in the social sphere. In structural terms, it should include the organizational, informational and law enforcement components. The present study proved that effective anti-corruption measures in the social sphere are possible only if all of the above components are combined, in which case they will provide an effective mechanism for the implementation of administrative anti-corruption actions in the social sphere.

The present study proved the need to extend administrative anti-corruption strategies to the entire social sphere and substantiated the fact that these strategies should not be limited to use only by public authorities in the social sphere. It was shown that, due to the regulatory and protective impact of administrative anti-corruption strategies, they should institutionally affect the entire social sphere, while taking into account, in functional terms, the performance of each of its segments. Equally revealing is the finding that an integral part of State social policy should be the fight against corruption in the social sphere and, consequently, in public programs for the promotion of these or those components of the social sphere. The consolidation of anti-corruption measures should follow their implementation.

The research novelty of the study consists in the proof that the content of the administrative anti-corruption regulations in the social sphere is based on legal remedies, the implementation of which should take into consideration their essence in terms of target, subject, industry, institution and function. The study provided a theoretical framework for the provision that general anti-corruption measures defined in legislative and relative acts do not take into account the specificity of corruption’s manifestations in the social sphere, which decreases their regulatory

and protective potential. This said, the study proved the need to develop and adopt special regulations aimed at countering corruption in the social sphere using administrative and legal arrangements.

Recommendations on the Use of Research Findings

The obtained research findings make it possible to develop specific areas of public anti-corruption policy, as their primary objective is to improve administrative anti-corruption regulations in the social area, in general, and also in its most significant segments. The research provides an opportunity to expand the boundaries of anti-corruption legislation and to remove individual contradictions related to the implementation of this legislation in the social sphere. The obtained research findings reveal the theoretical and law enforcement regulations relative to anti-corruption measures taken in the social sphere, so they have a direct practical significance in terms of the following:

- development of suggestions on improving the legislative and departmental anti-corruption regulatory activity in the social sphere. As part of the study, amendments have been developed to the Federal Law of 25 December 2008 No. 273-FZ (On Countering Corruption), the Federal Law of 17 July 2009 No 172-FZ (On Anti-Corruption Regulation of Legal Acts and Draft Regulations) as well as the letter from Russia's Ministry of Labor of 13 November 2015 No 18-2/10/P-7073 (On the Criteria of Prosecution for Corruption Infringements);

- implementation of anti-corruption arrangements in the social sphere and identification of corruption-prone activities in the federal executive bodies exercising its functions in the social sphere;

- anti-corruption policies in terms of methodology and didactics. Specifically, the results of the study can form the basis of teaching various courses on anti-corruption strategies. Furthermore, the research findings can be used to elaborate the content of the Master Plan to Counter Corruption in Federal Executive Bodies Exercising Its Functions in the Social Sphere.

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THE RIGHT TO DEFENSE OF THE MINOR SUSPECTS AND ACCUSED IN THE CRIMINAL PROCEDURAL LEGISLATION OF THE RUSSIAN FEDERATION

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Abstract: the relevance of the study is due to the problem of the alienation of criminal procedural regulation from the social and legal realities that determine the specifics of the realization of the right to defense of a minor who is being prosecuted. The right to defense, as the norm and principle and legal priority for the defense, permeates all criminal proceedings. In this regard, this article is aimed at determining the content of the right to defense of a minor suspect or accused, identifying some significant shortcomings of criminal procedural regulation from the standpoint of their elimination and proposing corrective measures of normative nature. The leading approach to the study of this problem is the analysis of scientific, legal and empirical materials that make it possible to comprehensively consider the normative and law enforcement potential of criminal procedural legislation in terms of comprehensive, full regulation of the right to defense of minors in criminal proceedings. The article contains the author's definitions of the right to defense, describes the procedural model for the protection of minor suspects and accused, reveals the main procedural differences in the provision and implementation of the right to the defense of minors; defines the procedure for clarifying the rights of minors granted by law, justifies the purpose of the criminal proceedings against minors. The materials of the article are of practical value for the establishment and application of the norms of the criminal procedural legislation in the protection of the rights and legitimate interests of criminally prosecuted persons of a minor age, regardless of their status. The present paper is part of the dissertation research devoted to the substantiation of new,

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socially-oriented provisions and the corresponding practical recommendations for improving the effectiveness of the Russian criminal procedure law for persons aged 14 to 18 as the most vulnerable category of suspects and accused in criminal cases to ensure their right to defense. The obtained results represent new theoretical and practical provisions describing the main distinctive features of the right to defend a minor suspect or accused in the criminal procedure of the Russian Federation.

Keywords: minor, criminal proceedings, criminal case, crime, criminal procedure law, law, defense, right, suspect, accused, subject, model.

1. Introduction

According to the Decree of the President of the Russian Federation No. 240 of May 29, 2017, the Decade of Childhood was announced in Russia from 2018 to 2027, the main directions of which were developed on the basis of the results of the implementation of the National Strategy for Children 2012-2017. Within the framework of these acts, for the first time in the Russian Federation at the normative level, there was declared a need for a transition to a child-friendly justice. The basis for this planned trend should be a clear procedural approach that would make the investigative, judicial and human rights bodies take procedural decisions and actions containing not only the conclusions concerning the involvement or non-involvement of the adolescent in the commission of the incriminated act, but also containing an "educational component," applied in case of an individual correction of the minor's further behavior with the active participation of the defense side. Despite such intensive activity in the field of protection of the rights of minors, a person of minor age is not always perceived as a special participant in criminal proceedings; much that is dictated by the law, takes into account, first of all, the interests of persons carrying out criminal proceedings. It should also be admitted that some wording of the legislation, due to lack of certainty, as well as a hard-to-implement nature, cannot actually be used and effectively protect the rights and interests of minors involved in criminal proceedings.

Despite the fact that the clarification of the rights by officials

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conducting proceedings in a criminal case belongs to a number of criminal procedural guarantees of the right to defense, the procedure for its enforcement with respect to the rights specifically granted to minors has not been regulated. There are no guiding standards that take into account the specifics of age, the links of criminal procedural activity in the field of protection of rights and freedoms, the legitimate interests of minors subjected to criminal prosecution. With such regulations, certain conditions arise that contribute to the violation of rights, freedoms and the legitimate interests of minors in practical activity. Moreover, one cannot ignore the circumstance that the provision and realization of the right to defense of a minor has its own special subject, consisting of legal and social distinctive features established by international standards, the Constitution of the Russian Federation, criminal, criminal procedural and other laws. As the most important component of ensuring and exercising the right to defense is the maximum protection of the rights, freedoms and legitimate interests of minors, with the minimization for them of any negative consequences.

Using the concept of "minor" (juvenile) in the legislation and designating the status of this person as a subject of differentiated regulation, the legislators of many states established a clear legal boundary between adulthood and minority, thus forming a special group of people - carriers of specific rights and obligations [12; 30]. In the opinion of researchers, this approach is primarily due to the fact that age-related unadaptedness to changing living conditions requires its compensation with the help of special and increased legal protection for persons who have not reached adulthood [32, p.12; 71, p.3; 26, p. 144]. The Russian criminal procedure law contains Chapter 50 of the Code of Criminal Procedure of the Russian Federation "Proceedings in Criminal Cases against Minors", in the norms of which a special procedure is imposed in respect of these subjects of criminal proceedings.

As follows from the content of the norms of this chapter, they focus mainly on the procedural actions of the court and officials acting on the side of the prosecution. Thus, they are addressed, first of all, to the participants in the criminal proceedings responsible for the implementation of the

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proceedings in the criminal case. Regarding the regulation of their special procedural position (status), the minors and their legal representatives are clearly paid insufficient attention in the Criminal Procedure Code of the Russian Federation. This fact is noted by many proceduralists [64; 51; 1]. For example, their studies show that the criminal procedural legislation does not comply with the international juvenile standards (including the introduction of specialization in criminal justice and restorative justice with elements of mediation, the grounds for applying procedural coercive measures, the confidentiality of criminal prosecution, etc. .) [45, p. 29].

2. Materials and methods

In the course of the study, the following general scientific and special methods were used: the statistical method, including the collection and analysis of statistical data, including the data from the materials of criminal cases and procedural decisions taken concerning them; historical-legal and logical-legal methods, which made it possible to analyze the mechanism of activity of participants in pre-trial proceedings to ensure the right to defense; concrete sociological method that was widely used in the questioning and interviewing of investigators, lawyers; methods of system research and modeling allowed to study the category "the right to defense" more deeply, to formulate author's definitions and proposals on the basis of various theoretical concepts; the comparative-legal method allowed to formulate proposals for clarifying the content of certain norms of the Code of Criminal Procedure of the Russian Federation. The application of these methods was based on their combination with logical methods (induction, deduction, analysis, synthesis, hypothesis, analogy) and methods of argument widely used in scientific research.

3. Results

As a result of the research, the following new results have been obtained:

- definitions of the basic concepts supplementing the system of general and particular representations about the right to defense of a minor suspect or accused in criminal proceedings have been formulated;

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- proposals have been developed to change the norms of the criminal procedure legislation;
- a procedural model for the protection of minor suspects and accused has been described;
- the main procedural differences have been revealed in the provision and implementation of the minors' right to defense;
- the purpose of the criminal proceedings in relation to minors has been justified.

4. Discussion

Based on the content of Article 51 of the Code of Criminal Procedure "Compulsory participation of a legal defender", depending on the individual characteristics of the persons indicated therein (age, mental or physical disabilities, the degree of proficiency in the language of proceedings, the category of the crime committed, the peculiarities of the court trial), the exercise of this right may have certain procedural, organizational and tactical characteristics. The most vulnerable among the persons listed in the above article, due to age, psycho-physiological and other characteristics, is the suspect or the accused, who has not reached the age of majority. In the Code of Criminal Procedure of the Russian Federation, minors, as stipulated in part 1 of Article 420, are persons who have not attained the age of eighteen by the time the crime was committed. At the same time, clause 2 of part 1 of Article 51 of the Code of Criminal Procedure of the Russian Federation indicates the mandatory participation of a legal defender with emphasis on the status of a minor participant who is a suspect or accused at the time of criminal proceedings. Thus, if a person, who committed a crime before the age of eighteen, has reached adulthood at the time of suspicion or accusation, the participation of a legal defender is no longer needed in the literal interpretation of the law. At the same time, there may be other grounds for ensuring the obligatory participation of the defender provided for in Article 51 of the Code of Criminal Procedure.

Particular importance in the list of rights of minors involved in criminal proceedings as suspects or accused is assigned to the right to defense, the realization of which, due to age, psycho-physiological and some other legal

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exceptions, acquires certain special characteristics. An analysis of the norms of the criminal procedural legislation has made it possible to identify the following distinctive features:

- special requirements to the subjects of realization of the minors' right to defense;
- special conditions (special rules) for the procedure for minors;
- an extended range of procedural rights of the minor suspect or accused;
- additional procedural guarantees of the right to defense.

Let us dwell in more detail on their characteristics.

In criminal proceedings, assistance in the implementation of the minor's right to protection is provided by the legal defender and the legal representative. In accordance with Part 2 of Article 49 of the Code of Criminal Procedure on the initiative (petition) of a minor, as well as on the ruling or decision of the court, another additional defender (non-professional) can be given to the accused minor, for example, one of the close relatives.

On the basis of the activity of the participants, contributing to the exercise of the right to defense of the suspect and the accused, it is possible to determine models of professional, non-professional and mixed defense. In the professional model, the main source of assistance in the exercise of the right to defense is a lawyer, including the cases listed in Article 51 of the Code of Criminal Procedure, when the lawyer's participation is recognized as mandatory. An unprofessional defense model presupposes the realization of the right to defense without the participation of a professional defender (a lawyer), personally by the suspect or the accused, including those who refused the services of a lawyer. It is not excluded that as a defender one of the close relatives of the accused or some other person may be admitted as a defense counsel, whose admission is requested by the accused whose participation in accordance with Part 2 of Article 49 of the Code of Criminal Procedure is allowed instead of a lawyer in the proceedings of a judge of the peace. A mixed defense model is characterized by the active participation of two sources of assistance in defense, both professional and non-professional, including a legal representative. It is

equally important for the bodies ensuring the right to defense to ensure the participation of the two representatives - a legal defender and a legal representative whose joint activities should be coordinated and mutually beneficial for the protection of the minor suspect and accused.

It should be noted that the key international legal acts, which stipulate standards for the protection of the rights and legitimate interests of persons under the age of majority, do not provide for a "triple standard" for the protection of minor suspects and accused. The Beijing Rules, for example, do not require the mandatory participation of both the legal representative and the legal defender in the criminal proceedings of minors, leaving this issue at the discretion of the national legislator [29]. In countries where alternative courts function in the resolution of criminal cases involving minors (for example, family conferences), the participation of a lawyer in the procedure is not provided at all, or is limited to a strict procedural framework (Scotland, Wales, New Zealand, etc.). In other countries, where juvenile justice is represented by a combination of specialized pre-trial and judicial bodies, either the right to use the services of a lawyer (USA, Germany, Canada, Sweden, etc.) or the lawyer's compulsory participation (France, England, Belarus, Kazakhstan, etc.) is provided [32, p. 65-99; 5, p. 74-99; 33, p. 8-30; 28, p. 125-197]. Participation of the legal representatives is provided in all cases in the legislation of almost all of the abovementioned states. Differences can be observed only in the rules of admission. Consequently, in the legislation of the states mentioned, the procedural activity of a legal representative is more important in criminal proceedings in cases of minors than the participation of a lawyer.

Meanwhile, in Russian criminal proceedings, the legal representative of a minor suspect or accused, does not have sufficient rights to allow him/her to more effectively confront the prosecution. For example, such rights as: to use for the defense of a minor any means and methods not prohibited by law; involve specialists; ask the minor questions during the investigation; participate in the appointment of forensic examination and get acquainted with its results, etc.

In pre-trial criminal proceedings, a legal representative is allowed to participate only from the moment of commencement of the first interrogation

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of a minor as a suspect or accused (Part 1 of Article 426 of the Code of Criminal Procedure), whereas the criminal prosecution actually begins from the stage of initiating a criminal case, i.e. long before the first interrogation. But, despite such discrepancies, the codification in the Code of Criminal Procedure of the Russian Federation of the requirement for the compulsory participation of both the defender and the legal representative in criminal proceedings against minors (article 48 and paragraph 2 of part 1 of Article 51 of the Code of Criminal Procedure) is considered by proceduralists to be one of its undoubted merits [6, p.4, 18, p.95].

According to the authors of the present paper, the importance of double defense of minor suspects and accused is overly exaggerated, because the procedural relationship between the rights and duties of a professional defender with those of a legal representative, their impact on the course and outcome of the criminal proceedings is, in fact, unequal. Obviously, the advantage in this regard remains with a professional defender. At the same time, the legislative wording (Articles 16, 48, 51 of the Code of Criminal Procedure) of the obligation of participation of a defense lawyer and a legal representative presupposes their joint procedural activity in the interests of protecting the rights of a minor suspect or accused. Thus, the extended circle of participants in the protection of a minor is a combination of persons of different procedural status, whose interests and intentions must nevertheless always coincide.

The next distinctive element of the realization of the right to defense of a minor suspect and accused is the special rules envisaged in the Criminal Procedure Code of the Russian Federation for the conducting of procedural actions with his/her participation. In the pre-trial stages of criminal proceedings with respect to such rules, the most detailed regulation in the Code of Criminal Procedure of the Russian Federation concerns: procedural coercion measures (measures of restraint, arrest on suspicion of committing a crime), the production of certain investigative actions (Articles 191, 425 of the Code of Criminal Procedure) and the fact in issue(Article 421 of the Code of Criminal Procedure). In the judicial stages, special procedural rules are associated with the participation of the accused minor and

his legal representative in the court session (articles 428-430 of the Code of Criminal Procedure of the Russian Federation). Most of these rules are concentrated in Chapter 50 of the Code of Criminal Procedure of the Russian Federation.

In the title of Section XVI of the Code of Criminal Procedure, which includes Chapter 50, the legislator, using the word "characteristics", recognizes the presence of specifics in the criminal proceedings on crimes committed by minors. At the same time, according to some researchers, this "step" did not form a new vision of the juvenile process [52, p.28; 34, p. 528-530]. In particular, they state that "... despite the presence of some types of juvenile technologies in the Russian criminal proceedings, there is still no possibility of full implementation of the type of procedural model for criminal cases involving offenses by minors that is recommended by ratified international standards on restorative justice" [45, p. 12; 24, p. 5]. This leads to the fact that "... as a result, a minor offender is still considered as an object of criminal repression, and not a rehabilitation subject in its broad sense" [70, p. 44].

The attention of the legislator to the minor as a special participant in the proceedings, the impact on which should be exercised not only in the interests of justice, but also in the interests of application of corrective measures in the matters of education (based on the orientation toward preventing criminal behavior), is treated differently in the publications of the proceduralists. They propose, in particular, to establish in the Code of Criminal Procedure a separate principle on increased legal protection of minors in criminal proceedings [44, p. 11; 35, p. 101-125; 15, p. 24-26]; differentiate the status of a minor depending on the stages of the proceedings [53; 7; 19]; finally introduce elements of restorative justice into the criminal justice system on the basis of their own experience and experience of foreign states [8, p.394-398].

The solution to the problem can be presented from the following standpoint. According to the requirements of international standards of criminal proceedings involving a minor, in particular, paragraph 5.1. of the Beijing rules, "... the juvenile justice system should be aimed primarily at ensuring the well-being of the minor and ensuring that any measures of influence

on juvenile offenders are always commensurate with both the personality of the offender and the circumstances of the offense" [29]. Thus, the essence of the legal approach to minor offenders recognized by the international community, in general, can be formulated in the following way: in order to follow the ideals of humanism, justice and economy of measures of criminal repression, compulsory measures of educational influence should become priority forms of influence on such persons. To concretize this attitude, the plenum of the Supreme Court of the Russian Federation formulated a special goal in one of its operative acts according to which: "...justice for minor offenders should ensure that the measures of influence applied to them provide the maximum individual approach to the investigation of the circumstances of the committed act and are commensurate with both the characteristics of their personality and the circumstances of the committed act and contribute to achieving the maximum educational impact of the trial against minors, prevention of extremist unlawful actions and crimes among minors, and provided maximum educational impact for their re-socialization, as well as protection of the legitimate interests of the victims " [36]. Consequently, the idea of the dominance of the educational component in Russian criminal proceedings in cases of minors is still taken into account.

At the same time, if in the judicial proceedings this guideline is put in the focus of the courts' work by the efforts of the highest court, then it has only indirect influence on the pre-trial proceedings. This is explained by the fact that the decisions of the Plenum of the Supreme Court of the Russian Federation in accordance with Paragraph 7, Part 7, Article 2 of the Federal Constitutional Law "On the Supreme Court of the Russian Federation" are addressed primarily to the courts and have the status of legal acts of explanatory nature adopted as a result of studying and summarizing of judicial practice. Moreover, they are not named in Article 1 of the Code of Criminal Procedure as a source determining the conduct of criminal proceedings requiring compulsory compliance and implementation. At the same time, it is one of the examples when enforcement practices are ahead of regulatory controls.

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Nevertheless, since the start of the criminal prosecution the bodies and officials responsible for the pre-trial process should clearly understand the content of the procedural mission, which still implies differences in the educational and punitive impact on minors because it is impossible to avoid solving these issues in the course of procedural activity of the investigator in the case of criminal proceedings involving minors (for example, in the case of the application of the provisions of articles 158, 421 and 425 of the Code of Criminal Procedure).

Paragraph 10.3 of the Beijing Rules states that "... contacts between the law enforcement bodies and a juvenile offender are implemented in such a way as to respect the legal status of the minor, to promote the well-being of the minor and to avoid causing harm to him/her taking due account of the circumstances of the case" [29]. Thus, according to the requirement above, the educational influence on juvenile offenders should be provided from the initial stages of criminal prosecution. However, our questionnaire-based survey of investigators showed that in practice this almost never happens. The absolute majority of respondents (74.5%) believe that the purpose of criminal proceedings in cases involving minors is established by Article 6 of the Code of Criminal Procedure, thus being general, without any special exceptions. From the above, it follows that law-enforcers are poorly aware of the legal and social boundaries between adulthood and minority.

It seems that if the Code of Criminal Procedure of the Russian Federation devotes a certain isolated place for the juvenile cases with the need to observe a number of special rules, then the purpose for their application should be specified. Against such a backdrop, there is a certain understatement leading to the spontaneity of the criminal procedure policy [10, p. 59], the ignorance of the need for a socially-oriented component in the conduct of such criminal cases; there is no ideological "link" that would unify special rules and centralize criminal proceedings in cases involving minors, explain the difference in the process of criminal cases of juvenile offenses from the general purpose established in Article 6 of the Code of Criminal Procedure. According to Article 6 of the Code of Criminal Procedure, criminal proceedings are designed to protect the individual from

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unlawful and unreasonable accusation, conviction, restriction of his/her rights and freedoms.

The main discrepancy is seen in the special material and procedural subject to criminal prosecution and conviction, which contains a privileged basis for the application of alternative measures to influence the minor without prosecution, conviction and related restrictions. It is fair to assume that the criminal code (since they are directly related to combating crime) should not be separated from social norms, and juvenile delinquency can be one of the indicators characterizing the level of state and social development [49; 9; 66, p. 367; 46, p.174].

Another distinctive feature of the legal defense of minors is its socio-psychological burden, implying, from the ethical point of view, the personal responsibility of the participants for the use of the right to defense, the possibility of using, along with legal knowledge, a wider range of means and methods of defense that are conditioned by the fact in issue and application of special grounds for stocktaking of the proceedings [36]. Juvenile-friendly justice, as a trend of renewal of procedural activity announced in the Russian Federation, is impossible without using special (in addition to legal) knowledge (psychological, pedagogical, ethical, medical and other) necessary to adequately influence juvenile offenders [47, p. 63; 17; 48, p. 210-256; 11; 53; 23; 25, p.19; 38, p. 65]. For example, the issues of education of a minor, assessment of the degree of his deviancy are measured by pedagogical methods, and the conditions of his physiological and intellectual development - by medical, psychological and psychiatric [20, p. 42-48; 4, p. 11-17; 21, p.58-62]. The procedural value of the above circumstances for the defense lies in establishment of trusting relationship with the minor, in proof of mitigating circumstances, in use of milder measures of restraint (guardianship), in initiation of investigative actions, in determination of age-related ability to understand charges (the ability of the minor to adequately and consciously perceive the circumstances of the case and give his testimony, to understand the nature and significance of actions committed by or against him/her). Moreover, in criminal proceedings involving the crimes of minors, within the framework of the right of the defense to use other means

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and methods not prohibited by law, as well as establishing living and upbringing conditions for minors, it is possible to involve representatives of the public (public organizations, human rights organizations, for example, the Commissioner for Children, socially oriented non-profit organizations with juvenile specialization, media, etc.). According to the forecast of some researchers, the opinion of the public will have a greater and official significance if the institution of mediation is introduced into the criminal process, including cases involving minors with elements of restorative justice [18, p. 5; 3, p. 103-126; 16, p. 161-165; 27; 42].

The presence in the process of realization of the right to defense of social aspects can also be illustrated by practical examples when lawyers along with the defense of a minor, on their own initiative, conduct educational work with him/her. In this respect, it is worth mentioning the criminal case that has been studied in the context of the present research, according to which the lawyer, Y., was able to achieve (instead of the detention) a personal guarantee for a minor defendant (Article 103 of the Code of Criminal Procedure) under his own responsibility. Further, the minor, M., staying in Y's home for the time of the investigation, Y. conducted preventive work with him: conducted confidential conversations, organized pedagogical testing (according to the method of Lichko), etc. Later, the results he obtained, confirming the presence of individual qualities in a minor that could be corrected by educational measures, were included by the investigator in the indictment [54]. The authors of present paper also found examples when a lawyersubmitted an application to the investigator for the need to make a recommendation on the elimination of circumstances that provoked the commission of a crime in accordance with Part 2 of Article 158 of the Code of Criminal Procedure of the Russian Federation [55] or requested the court to make a private resolution [56]. Given the importance of the presence of an educational element in pre-trial proceedings for minors, this experience of the lawyer must certainly be recognized as positive and worthy of attention.

Unlike the Russian criminal procedure law, where the importance of preventive actions in respect of minors is not particularly emphasized, in

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legislation of other states (for example, Germany), along with human rights activities, one of the tasks of the advocate involved in juvenile cases is the promotion of educational nature of juvenile criminal proceedings; that is, the choice of the most appropriate measure of influence on the offender [35, p. 105]. It should be noted that fragmentary attention to the educational influence on the minor by the lawyer is still paid in the domestic legal literature (but not in the Russian legislation) [66, pp. 24-25; 4, p. 15; 49; 67, p. 107].

In the context of the ongoing fight against juvenile delinquency, advocacy could indeed contain elements of a preventive nature. Ultimately, all criminal procedure involving a minor offender should be aimed at ensuring the decent life of the adolescent in society, fostering the development of his/her personality, free from the commission of crimes to the maximum extent. [29] The need for a lawyer to implement activity aimed at individual preventive work with minors is recognized by lawyers themselves - 52.4%. At the same time some of them (31.7%) believe that such an approach depends on the individual human and professional qualities of the lawyer. Investigators, on the contrary, recognize this need only in 29.1%. At the same time, the lawyer is not among the subjects of criminal proceedings that have the right to demand that measures be taken to eliminate the circumstances and other violations of the law that have become the causes of the crimes.

In jurisprudence, there are often discussions about the need for juvenile specialization of lawyers involved in juvenile proceedings. Some researchers, without insisting on their specialization, consider that it is enough for a lawyer to independently study literature on the relevant topics and to attend classes in pedagogy, psychology and some other disciplines [46, p. 63]. A number of researchers associate the improvement of the professional defense of minors precisely with the juvenile specialization of lawyers, who, they believe, should function separately. I.V. Predeina, for example, believes that "... the issues of the specialization of lawyers in cases of minors must be resolved in the legislative order. Specialization of the legal profession is one of the elements of juvenile justice" [35, p. 113].

It should be noted that on the territory of the Russian Federation, in some of its subjects there already exist specialized law offices (for example,

"Children's Advocacy" (Yekaterinburg) and "Juvenal" (Rostov-on-Don)), but so far there are very few of them. Meanwhile, in many foreign countries a separate system of juvenile justice has been functioning for quite a long time, one of its principles being the specialization of lawyers (Great Britain, USA, France, etc.) [44].

Provided the stable financial support from the state, law offices with juvenile specialization can and should be gradually formed in all constituent entities of the Russian Federation, and, first of all, in those where the greatest number of crimes involving minors takes place. In addition, it seems appropriate to simultaneously implement a system of lawyers' attestation, stimulating additional payments for specialization, tax incentives, etc. Advocacy is an element of the general legal system, but its main difference is that it is primarily a social institution, an institution of civil society (Article 3 of the Federal Law "On the Bar and Advocacy"). In this regard, it is the legal profession that should strive to be closer to the society, first of all, to its problems and shortcomings. It is inadmissible, in the opinion of the authors, to ignore the existence of obvious specifics in cases of minors; the possibility of obtaining qualified legal assistance of a specialized type should be freely available. A minor has the right to choose more effective, improved and substantial special defense.

The next important element of the right to defense of a minor suspect or accused, is the specificity in his/her procedural rights. Unlike the general rights specified in Articles 46 and 47 of the Code of Criminal Procedure, minor suspects or accused have the right to benefit from the assistance of a wider range of persons (legal representative, teacher, psychologist), have special procedural guarantees and their provision (during participation in investigative actions, in court proceedings, when applying procedural coercive measures), additional grounds for termination of a criminal case, etc.

In order to know their rights (the number of which is greater than that of adults), the procedural guarantees associated with them, and use them for the purposes of defense, the minor suspects or accused should be thoroughly acquainted with them. In this regard, according to part 1 of Article 11 and part 2 of Article 16 of the Code of Criminal Procedure, the clarification of the rights to the minor is the duty of the

investigator, prosecutor, and the court. According to V.S.Shadrin, "... if a person is not informed about his/her rights, and they are not clarified, then it is hardly possible to talk about their provision. Without the knowledge of the content of one's rights, the subject is not in a position to use them" [68, p. 43-44]. It is unacceptable for a minor to be unaware of the peculiarities of his/her legal position for a long time.

As the present research has shown, this requirement is not always observed properly. Based on the results of the study of criminal cases, some examples of the lawyers' comments have been found, which were documented after clarifying the rights to minors. For example, a lawyer's comment that the procedure of clarifying the rights to the minor results in "monotonous reading out of the content of the relevant article of the Code of Criminal Procedure with subsequent formulation of the question of whether the subject is aware of his rights" [58] or a comment that "the rights are not clarified in full" 57; 59; 60].

The authors of the present paper believe that the duty of the investigator to explain the rights implies not simply "reading" them from the text of the Code of Criminal Procedure. The main task of clarification is to help understand their meaning, to disclose the content and the legal consequences that may occur if implemented, and, finally, to ensure that the minor can use his/her rights. The knowledge of one's rights and the effectiveness of their implementation depend not only on professional legal assistance or the minor's own intellectual abilities, but also on the assistance of the investigator in charge of conducting the proceedings of the criminal case.

According to some researchers, such passivity on the part of investigators is caused by a formal approach to the fulfillment of their responsibility for explaining the rights [61, p. 46; 40, p.15]. In academic literature, there are also suggestions that it is especially important to single out and describe in detail the responsibility of for securing the rights and interests of the participants in the process; this supplement can contribute to strengthening the investigators' responsibility for observing procedural guarantees [41, p. 246; 62]. At the same time, Part 1 of Article 11 and Part 2 of Article 16 of the Code of Criminal Procedure of the Russian Federation include the duty of specific officials to

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explain to participants in criminal proceedings their rights, although without describing the corresponding mechanism.

It is also important that, due to age and other peculiarities, it is difficult for a minor to understand and comprehend the essence of his/her rights immediately (due to the fact that they are expressed in legal terms difficult for understanding) as well as the possible options for their use in the course of defense. This case can be illustrated by an example from the judgment of the European Court of Human Rights (Case S.C. v. The United Kingdom of 15 June 2004) in the case of States observing Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (provides for the right to fair justice), which noted that "one cannot demand that a minor understands absolutely everything that happens in legal situations, since even an adult (without a special legal education) often cannot fully understand what is happening. At the same time, the accused minor should be able to understand what is happening in a general sense: including the nature of the process itself and its possible consequences, as well as what is said by the court, the prosecutor and witnesses "[2, p. 54].

The Resolution of the Plenum of the Supreme Court of the Russian Federation contains a guiding explanation that "the rights provided for by the Code of Criminal Procedure of the Russian Federation should be clarified in the amount determined by the procedural status of the person against whom the proceedings are conducted, taking into account the stages and characteristics of the various forms of judicial proceedings" [37]. Articles 46 and 47 of the Code of Criminal Procedure of the Russian Federation, containing the rights of the suspect and the accused, do not include the rights of minors in the status of the suspect or the accused. For more detailed analysis, one can address to Chapter 50 of the Code of Criminal Procedure, which regulates the features of judicial proceedings in criminal cases of this category. However, it does not contain all the norms concerning the rights of minors. They are scattered unsystematically throughout the Code (for example, in articles 27, 48, 51, 96, 98, 105, 108, 113, 132, 154, 188, 191, 280, 397, etc.).

In general, the rights of a minor suspect or accused in the Code of

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Criminal Procedure can be classified into two groups: general, stipulated in Articles 46 and 47 of the Code of Criminal Procedure of the Russian Federation and special, arising from the characteristics of pre-trial and judicial proceedings in criminal cases on crimes committed by minors. Accordingly, in the cases established by law, all the rights of the minor suspect or accused, that is, both general and special, must be explained. In other words, in addition to the general rights specified in Articles 46 and 47 of the Code of Criminal Procedure, clarification should be provided of their special rights related to:

the obligatory participation of a professional legal defender - a lawyer (clause 2 of part 1 of Article 51 of the Code of Criminal Procedure);

the mandatory participation and admission of the legal representative (Articles 16, 48, 426, 428 of the Code of Criminal Procedure);

the application of measures of procedural coercion under special rules (Article 423 of the Code of Criminal Procedure);

the fixation of procedural costs (part 8 of Article 132 of the Code of Criminal Procedure);

summoning to the investigator, to the court (Article 424 of the Code of Criminal Procedure);

the participation of a teacher and a psychologist (Article 425 of the Code of Criminal Procedure);

the hearing of the criminal case as a separate proceeding (Article 422 of the Code of Criminal Procedure);

conducting of investigative actions under special rules (Article 425 of the Code of Criminal Procedure);

a set of circumstances that are subject to proof (parts 1 and 2 of Article 421 of the Code of Criminal Procedure);

medical examination (part 4 of Article 421 of the Code of Criminal Procedure);

the analysis of the state of health (part 3 of Article 421 of the Code of Criminal Procedure);

the termination of the criminal case on grounds alternative to conviction and punishment (articles 427, 431 of the Code of Criminal Procedure, articles 90 - 92 of the Criminal Code);

the mitigation of guilt and punishment (articles 60-61 of the Criminal Code of the Russian Federation);

the refusal to acquaint the minor with those materials of the criminal case

that may have a negative impact on him/her (part 3 of Article 426 of the Code of Criminal Procedure);

with other procedural circumstances (for example, related to the restriction of the use of certain differentiated types of criminal proceedings provided for in Chapters 32.1, 40, 42 of the Code of Criminal Procedure of the Russian Federation).

According to the results of the questionnaire survey conducted within the present study, more than half of the investigators (56.5%) noted that in their practical activity they explain to minors only their general rights provided for in articles 46 or 47 of the Code of Criminal Procedure. Some of the respondents noted that the additional rights of minors are not clarified, since the law does not require this. The authors of the present paper believe that these circumstances can have a negative impact on the effectiveness of law enforcement activity, since "...ignoring the specifics of the judicial proceedings of juvenile cases, obviously leads to the incomplete character of proceedings" [13, p. 5]. In other words, there is a significant drawback in clarifying the rights granted to minors by federal law, which clearly does not contribute to the comprehensiveness and completeness of securing the right to defense. It should be taken into account that the "right to defense" means not only the direct participation of a lawyer or other person in a criminal proceeding in accordance with the requirements of Articles 50-51 of the Code of Criminal Procedure, but also the specific rights of the suspect, accused, or defendant to realize his/her right to defense. And the nature, character and content of these rights of a minor are much broader and more specific than that of adult participants in a case with a similar status. In order to eliminate this shortcoming, the Code of Criminal Procedure of the Russian Federation should provide for normative prescriptions obliging the relevant participants in criminal proceedings in the event of occurrence of cases involving the participation of a suspect or accused, explain not only the general but also the special rights.

The procedural documents used in the criminal proceedings against minors also need to take this specificity into account. The analysis of the materials of criminal cases has shown that in the forms on which certain procedural documents were drafted (including the protocol of detention, the

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decision to bring to trial a person as an accused, the protocol of the clarification to the suspect or accused the right to defense, the protocol of admission of guilt, etc.), there was no mention of special rights, which the law granted to minor suspects and accused. Due to a considerable number of these rights, not all investigators are capable of reproducing them from memory. Consequently, the special rights of minor suspects or accused, as an integral part of ensuring and exercising the right to defense, are not clarified in the course of investigative and other procedural actions. The situation is also complicated by the fact that the very process of explaining the rights to the suspect and the accused is virtually uncontrolled.

Another distinguishing feature of the right to defense of a minor is its imperative (i.e. mandatory) provision and maintenance. According to N.A. Kolokolov, this is "a bright symbol of democracy, humanism and justice of the modern Russian criminal process in the interests of the full protection and defense of subjective procedural rights and freedoms of man and citizen" [22, p. 10].

According to clause 2 of part 1 of Article 51 of the Code of Criminal Procedure of the Russian Federation, if the suspect or the accused has not reached the age of majority, the participation of a legal defender for the realization of the minor's right to defense is mandatory.

In the theory of law, the assessment of the regulatory requirements subject to mandatory implementation is based on the concepts of dispositive and mandatory right. Mandatory norms, unlike dispositive ones, are characterized as rigid, not allowing deviations from the rules, mandatory for all the participants [39, p. 42]. These norms are expressed in categorical prescriptions, excluding any alternative actions on the part of the participants in the legal relationship and entailing negative legal consequences in case of their violation [11, p. 29].

The mandatory nature of the realization of the right to defense of minors excludes the operation of the norms of Article 52 of the Code of Criminal Procedure regulating the procedure for refusal of the defense counsel (for example, by analogy with parts 3 and 4 of Article 50 of the Code of Criminal Procedure). The compulsory participation of a legal defender in criminal cases on juvenile crimes is

related to Part 3 of Article 55 of the Constitution of the Russian Federation, according to which "the rights and freedoms of a person and citizen can be limited by federal law only to the extent necessary to protect the foundations of the constitutional order, morality, health, rights and legitimate interests of others, ensuring the country's defense and the security of the state." These circumstances also explain the so-called coercion of a minor suspect or accused of exercising the right to defense, in which some researchers see a violation of the rights of the individual [64], which cannot be accepted by the authors of the present paper.

5. Conclusion

The analysis of the theoretical basis has made it possible to define the right to defense as a legal instrument guaranteed and provided by the authorized bodies by virtue of a special normative provision, which is used by criminally prosecuted persons, either personally or with the assistance of a lawyer and/or a legal representative, for the purpose of defense from unlawful and unreasonable suspicion or accusations, convictions, restrictions of rights and freedoms or legitimate interests.

In the proceedings on the crimes of minors, the right to defense is a legal instrument provided by mandatory authorities for the purpose of defense from criminal prosecution and conviction used by a minor suspect or accused, as well as by a person against whom a crime report check is being conducted with the participation of counsel and a legal representative, taking into account the special procedure established by the Code of Criminal Procedure of the Russian Federation.

The specificity of the right to defense realized by minor suspects and accused allows considering it as a legal instrument with such distinctive features as: special participants of the criminal case, general and special set of rights of the minor, the social aspect of the defense process as a whole, additional obligations and procedural guarantees associated with it.

As the comparative analysis of the procedural position of the participants of the defense has shown, the procedural model for the defense of minor suspects and accused in the Russian criminal trial can be classified as a mixed one, since it involves a

combination of two types: professional (represented by a lawyer) and non-professional (represented by a legal representative) defense. The procedural ratio of these types indicates that the criminal procedure law gives priority to the defense counsel for the defense of a minor. Consequently, it can be argued that the national model for the defense of minor suspects and accused is mixed but features a prevailing professional character.

The inalienability of the right to defense from the guarantees of its implementation implies the duty of clarification by the investigator, the court and the prosecutor to the minor suspects or accused of their rights and at the same time serves as the basis for their observance. In order to achieve this goal, it is proposed to introduce a new part in Article 420 of the Code of Criminal Procedure of the Russian Federation providing for the clarification by the court and investigator to the minor suspect or accused of the rights provided for not only in Articles 46, 47, but also 48, 50, clause 2 of part 1 of Article 51 of the Code of Criminal Procedure of the Russian Federation taking into account the specifics of the criminal proceedings provided for by Chapter 50 of the Code of Criminal Procedure.

A comprehensive juvenile criminal procedure is possible only if its purpose is clarified, explaining the reason for its classification as a special procedure and embodying the main directions of the criminal procedural policy in this sphere. Accordingly, it is proposed to complement article 420 of the Code of Criminal Procedure with a new section stating that the criminal proceedings against minors presuppose the need to establish all the circumstances related to the living and upbringing conditions of the minor, his/her state of health, other factual data, as well as the causes and conditions of the commission of criminally punishable acts, with the purpose of resolution of a lawful and just sentence and taking other measures provided by law, as well as exercising educational influence on minors.

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THE SYSTEM OF THE STRUCTURE OF LAW COGNITION IN THE MOGERN RUSSIAN THEORY OF LAW AND ITS ROLE IN SOCIETY

Elena V. Ponomarenko[1]

Abstract: the urgency of the issue consists in studying the concept of law cognition and its structuring. The purpose of this article is to develop the concept and structure of legal knowledge. The leading approaches used in the study are: deduction, which assumes that law cognition is the result of mental processing of legal information, as well as induction, which creates the structure of legal knowledge, its constituent elements being legal intelligence, intellectual and legal will, and law-cognition interest. The result of the study is the development of the terms and the basic properties of legal knowledge, legal intelligence, intellectual and legal will, and law-cognition interest. The materials of the article can be useful for professional lawyers, scholars and academics, for their law-cognition activity and the formation of legal awareness.

Keywords: legal knowledge, law-cognition structure, legal empiricism, legal intelligence, intellectual and legal will, law-cognition interest.

Goal. To develop the concept of law cognition as mental processing of legal information. To develop the structure of the elements of law cognition for the formation of legal consciousness - legal intelligence, intellectual and legal will, and law-cognition interest.

Methods. The author used the general philosophical methods, namely, the materialist dialectic, the method of ascent from the abstract to the concrete. To develop the concept of legal knowledge, the author uses the method of materialistic dialectics, the method of ascent from the abstract to the concrete. The method of materialistic dialectics made it possible to draw the necessary

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conclusion, to arrive at logical generalizations and the creation of the concept of legal cognition as mental thought operations of processing legal information. The method of ascent from the abstract to the concrete helped the author to reveal the structural elements of law cognition - legal intelligence, intellectual and legal will, law-cognition interest.

General scientific research methods - analysis and synthesis, deduction and induction, the system-structural, historical, and sociological methods influenced the necessary constructions, generalizations and conclusions in the article. Analysis makes it possible to prove that law cognition is necessary for the formation of a person's legal consciousness. Synthesis substantiates the concept of law cognition as mental operations for the processing of legal information. Deduction helps to structure legal knowledge, to reveal such elements as legal intelligence, intellectual and legal will, and law-cognition interest. Induction contributes to the study of legal intelligence directly, the intellectual and legal will and law-cognition interest.

Results and discussion. The boundaries of the process of cognition of social reality are outlined by the law-cognition interests of the person. They define, firstly, the person's active participation in the legal system, the structures of legal life; secondly, the person's attitude towards assimilation and cognition of legal norms; thirdly, the estimates of legal reality (Danilyan, 2005; Radburkh, 2004, p.p. 4-46; Ikonnikova & Lyashenko, 2010, p.p. 285-297; Mikhalkin, N.V. & Mikhalkin, A.N., 2011, p.p. 4-393; Baburin, et al., 2011, p.p. 3-163).

The existence of an exact *concept of law cognition* is difficult to assert, since it is formed by the legal community. It is necessary to identify the most pronounced features: 1) law cognition is associated with the *interests and needs of an individual*; 2) law cognition involves the active *participation of a person in the legal system*; 3) in the process of legal knowledge, the *knowledge and assimilation of legal norms and assessment of legal reality take place*.

The object of law cognition – the measure of what is permitted and an incentive motive – are the *needs* and

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aspirations to satisfy the needs; *assimilation* of legal norms; *assessments* of legal reality.

By level, law cognition corresponds to legal empiricism and legal emotions. Legal empiricism includes experiential, pre-scientific perception, contemplation. The existence of legal empiricism (ordinary, pre-scientific) is explained as follows. It makes it possible to answer the question that lies at the basis of legal research and conclusions. It defines the ways of learning legal concepts, categories, phenomena and processes.

Legal empiricism is focused on legal reality. In the process of legal cognition, legal empiricism displays fragments of social reality in an individual's legal consciousness. Legal empiricism provides legal consciousness with "empirical" data on fragments of social reality.

Law cognition has been studied by many researchers (Kung, 1979, p. 219; Popper, 1972). The history of the development of this concept consists of two traditions.

First, there is the analytical tradition, which develops in the framework of the English linguistic philosophy, focused on the logical and semantic analysis of the natural language.

Secondly, there is the hermeneutic tradition, focused on the procedures of interpretation of texts and cultural phenomena, on the identification of general cultural contexts of understanding human reality and the specifics of human knowledge of man.

The specificity of human understanding of legal reality is that the semantic structure, developed by the subject of law, has a legal meaning (sense), mediating the subject's attitude to legal reality. Legal values act as a system of connections and functions of the elements of legal culture in the context of law-cognition. In other words, since the law-cognition activity is a part of social activity, it should be considered in more detail. If it is impossible to abandon the question of the practical significance of legal research by the analogy of fundamental mathematics, then this question should be transferred to another plane, the plane of law cognition of the theoretical and practical significance of the theory of law.

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In the process of legal activity, the individual assimilates, comprehends legal information and displays it in legal consciousness. The main things in this regard are the ideas of a person about the spiritual and moral benefits and universal human values, reflecting the most important aspect of the law-cognition activity as a purposeful, rational, socially-centered activity (ibid). Pursuing certain goals, a person, on the basis of his abilities for legal knowledge, creates ideas about law, legal ideas, thought forms, mental images, with the help of which he/she achieves his goals. At the same time, both the goals themselves and the means of their achievement act as universal human values. The subject of law cognition (an individual) considers legal reality as a complex system of universal human values. The value can be not only legal information, legal knowledge, legal ideas, but also the person him(her)self, the subject of law, his/her actions, deeds, transactions, legal relations (Bewley, 2011).

A person reveals common human values in the process of legal activity; they are assimilated and comprehended. Since the inner world of a person in the understanding of the author is always the world of spiritual and moral benefits and universal human values, it is full of meaning for him/her, i.e. comprehended and understandable. It can be concluded that comprehension and awareness take place in the context of law-cognition activity and are conditioned by goals and human values. The more complex the goals are, the greater the number of interrelations that have to be taken into account, the deeper it is required to penetrate the essence of legal phenomena and the greater the degree of understanding of legal reality that is achieved (Kung, 1979, p. 219; Popper, 1972; Duhem, 1976, p.p.8-9; Yash Ghai, 1996, p.p.128-133; Blachowicz, 2009).

Thus, every phenomenon, every element of reality, understood, comprehended, transformed and mastered by the subject in the law-cognition activity, becomes an element of legal culture, acquires significance and meaning for a person. The legal meaning and its understanding acquire the status of a legal category. These elements, on the one hand, serve the achievement of the objectives of the legal culture while, on the other hand, they accumulate legal experience, serve

as a means of its storage and transmission.

Universal values are the indissoluble unity of the subject and its meaning. In the process of purposeful law-cognition activity, a person assigns meaning to the various objects and phenomena of legal reality (laws, decrees, decrees, individual legal acts, legal transactions and actions), which due to this become values - means for achieving certain goals. In this sense, the ability to comprehend law cognition and legal meanings implies the ability of a person to purposeful legal awareness, the ability to "anticipate" the reflection of legal reality in his/her sense of justice, the ability to set certain goals and tasks on this basis and strive to fulfil them. It concerns not only the so-called "pragmatic" meanings associated with practically useful universal human values, but also the values pertaining to the theory of law, since they are necessary to achieve the relevant objectives of the law-cognition activity (Vanhala, 2011; Hinkle, et al., 2012).

Law cognition is the study and understanding of legal objects (law, the essence of law, legal norms, etc.). It should consider legal objects from the point of view of spiritual and moral principles and human values. Legal cognition cannot confirm or disprove legal knowledge, but is necessary to obtain, process and systematize legal information. Law understanding is necessary for a person to form his/her legal intellect, intellectual and legal will, law-cognition interest.

In the context of the present article, the author considers law cognition as mental operations for processing legal information. In this sense, law cognition as an operation for processing legal information should "determine the paradigm, principle, model (semantic model) of legal knowledge" (Nersesyants, 2000, p. 27; Perevalov, 2018, p.p. 27- 56; Ponomarenko, et al., 2007), "reflect the process and result of human purposeful cognitive activity, including the knowledge of law, its perception (assessment) and attitude to it as a holistic social phenomenon" (Perevalov, 2005, p.104).

The levels of law cognition are associated with a number of factors and can be classified into temporary, spatial, socio-economic, political, axiological. The quality and results obtained in the

processing of legal information can be influenced by empirical (pre-scientific, ordinary) and theoretical (scientific) law cognition.

The law cognition of an individual is limited by space-time characteristics and is expressed in legal traditions, legal teachings, legal legacy, etc., which are inherited by the descendants and followers.

The political and economic basis of human existence in society (Who am I? What am I? And how? - according to what thoughts the person enters into human interaction) is characterized by two types of law cognition – legalistic and libertarian (Nersesyants V.S.). The legalistic type is based on positivism, where law embodies the legal norms, and the legal norms are the product of state power. The libertarian type proceeds from the rational law cognition, the distinction between law and legal norms, the normative expression of the principle of formal equality and its reflection in a person's legal consciousness as a measure of freedom, justice, morality, good faith, and dignity.

To the axiological human existence in society correspond legal anthropology and legal humanism. Modern legal humanism stems from the idea of a person as a value and the universal human values (Alekseev, 1993, p. 17; Nado, 2008; Kelman, 2013). It should be understood as the legal ideas of the development of humanism by man and society. These ideas can be defined by the mental, rational-critical, intellectual-legal activity of the person who cognizes law in the form of mental images, thought forms, legal ideas, who embodies himself in the center of the legal system, and who has an intellectually strong-willed character.

Law cognition involves not only identifying the meaning of knowable legal objects. It creates and displays a known legal object in legal intelligence.

The result of law cognition is the transformation of legal information (Lageson, 2017), obtaining legal knowledge of legal objects, the classification of legal objects in accordance with legal rationalism, legal empiricism, legal intuition. The results of law cognition form the legal intelligence, intellectual and legal will, and law-cognition interest.

Law cognition, as mental operations on legal information processing, is necessary for the

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formation of legal consciousness and finds expression in the concepts of law as people's ideas about law. Namely, in positivism, sociology, natural law.

Law cognition contributes to the formation of justice as a set of ideas about knowledge, ideas, and feelings that characterize the attitude of a person to legal phenomena and legal objects. The author regards law cognition as a substance where legal intelligence, law-cognition interest, intellectual and legal will are reproduced.

Thus, the author of this paper proposes to structure law cognition for the formation of law awareness. The author offers the following elements of the structure of legal knowledge: legal intelligence, law-cognition interest, intellectual and legal will.

The legal intelligence of a person should be understood as his/her capacity for law cognition, which consists in the formation of thoughts (thought forms, thought-images) about law in legal consciousness, exists in the form of legal ideas, legal hypotheses and induces intellectual-legal will and law-cognition interest. Under *the intellectual and legal will*, one should understand the abilities and efforts of a person to think in advance, realize, comprehend, develop and reproduce with the help of legal intelligence his/her actions in law, legal knowledge, sources of law, legal status and legal acts. *Law-cognition interest* is the aspirations created by the legal intelligence of a person, which consist in how to use the spiritual and moral benefits and human values for him(her)self and society in the legal system as intended, and in how to obtain intellectual benefits.

The problem of legal intelligence as a phenomenon of the theory of law has not been studied yet. The interest to this issue was caused by the development of law cognition, the identification of its structure for the process of formation of the legal consciousness of a specific individual.

For the development of law cognition and the formation of legal consciousness in the modern Russian legal tradition, it is necessary to pay attention to the fact that the phenomena and processes occurring in law are difficult to understand and explain in existing terms, definitions and properties in order to think the unthinkable and say the unsaid. For improvements and transformations of law, the legal system,

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which legal consciousness is part of, such categories are needed that could characterize the changing law cognition processes in more detail and more comprehensively.

The legal intelligence of man is still an understudied concept for the theory of law and the legal system. However, with the designation of a person as a conscious, intellectually-willed cause of everything that is happening, an appeal to the study of his legal intelligence is fully justified, as it allows to reveal the components of the formation of human legal knowledge.

The legal intelligence of a person should be understood as the person's capacity for law cognition, which consists in the formation of thoughts (thought forms, thought-images) about law in legal consciousness, exists in the form of legal ideas, legal hypotheses and induces intellectual-legal will and law-cognition interest.

For the development of legal intelligence, as a concept in the theory of law, we propose to consider law cognition not only as feelings, judgments, and beliefs, but also as a substance where legal intelligence is formed, intellectually – as legal will and law-cognition interest.

Psychologists began to study various types of intelligence in the mid-twentieth century. They paid attention to the biological, psychometric, and social intellects. The emergence of these seemingly strange collocations was caused by the discussion of the problems of social intelligence by experts, who revealed in the indicators of human cognitive activity a high prognostic value. At the end of the twentieth century, these scientists began to connect the cognitive activity of a person with his/her ability of effective interpersonal interaction, the ability to navigate in social situations, and to form communication skills.

J. Guilford defined social intelligence as the intellect of an individual person, which is formed during his/her socialization, under the influence of conditions of a certain social environment and proposed to structure it into variables characterizing the process of information processing (Guilford, 1965, p.p. 433-456).

Legal intelligence as an element of law cognition has not yet been formulated, studied and developed. However, the

study of a number of problems that exist for the theory of law – overcoming the alienation of man from the forms of vital activity in law (Alekseev, 1993, p.17); justification of such legal phenomena as the intellectual and legal will; law-cognition interest – makes the focus on defining the place of legal intelligence fully justified. Thus, the study will make it possible to transform and improve ideas about law cognition and legal consciousness, to reveal elements of law cognition for the formation of a person's legal consciousness.

The legal intelligence of a person is the ability of a person to law cognition, which consists in the formation of thoughts (thought forms, mental images) about the law in legal consciousness, exists in the form of legal ideas, legal hypotheses and induces intellectual and legal will and law-cognition interest.

The structure of legal intelligence contains a number of operations divided into stages and should include: a) the content of legal information; b) legal information processing operations; c) the results of the processing of legal information.

The first stage of legal intelligence includes the content of legal information. The content of legal information is an intangible form of movement, a form of energy, an impulse, created by legal intelligence in the form of information reflecting scientific and legal facts, transactions, actions and containing a specific legal meaning. The exchange of legal information takes place at the socio-psychological level. The purpose of the exchange of legal information is the transfer of legal meanings contained in it for the management of legal processes. Manifestations of legal ideas and legal meanings, the carrier of which is legal information, are reflected in a person’s legal consciousness. The content of legal information displayed by a person’s legal awareness includes: legal meanings, thought forms, mental images, legal ideas, legal versions, legal hypotheses.

Legal sense is the essence of a legal phenomenon, a concept, a process, which is reflected in a person’s legal consciousness in the form of thought forms, mental images, legal ideas, and finds a place and significance in law, legal system, and legal reality. A person builds legal senses in legal awareness into unified sequences of legal meanings.

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Moving the focus of attention from one legal sense of phenomena or events to another, a person forms semantic sequences in legal consciousness in the form of mental images, legal ideas, and cognitive activity.

Thought forms and mental images can be displayed by a person's legal consciousness, induced by his legal intelligence and embodied in legal ideas, versions, and hypotheses, and accumulated information and legal experience.

Legal ideas can concentrate the qualitative definiteness and significance of a particular legal substance in legal consciousness and act as its initial point.

The second stage of legal intelligence involves *the processing of legal information*. Legal information processing operations are the awareness, understanding of legal information, legal comprehension.

Legal comprehension as an operation for processing legal information should "determine the paradigm, principle, model (semantic model) of law cognition" (Nersesyants, 2000, p. 27), "reflect the process and result of human purposeful cognitive activity, including the knowledge of law, its perception (assessment) and attitude to it as to a holistic social phenomenon (Perevalov, 2005, p.104). "

The levels of law understanding are associated with a number of factors and can be classified into temporary, spatial, socio-economic, political, and axiological. The quality and results obtained in the processing of legal information can be influenced by empirical (pre-scientific, ordinary), and theoretical (scientific) legal thinking.

The temporal and spatial levels of legal thinking should be considered on the basis of what A.Enstein said - the human brain is part of the universe limited by time and space. Legal knowledge of a person is limited by space-time characteristics and is expressed in legal traditions, legal teachings, legal legacy, etc., which are inherited by the descendants and followers.

So, for example, "the human dimension is defined and normatively defined in international regulatory documents and the Constitution of Russia. The Constitution states: "A person, his rights and freedoms are the

highest value" (Article 2); "The rights and freedoms of a person and a citizen are directly applicable"; "They determine the meaning, content and application of laws, the activities of the legislative and executive authorities, local self-government and are ensured by justice" (Article 18); "The exercise of the rights and freedoms of a person and a citizen must not violate the rights and freedoms of others" (Article 17). In the above articles, the generalizing criterion "human dimension" was specified and presented in the form of general rules of behavior (action) addressed to all legal subjects. The human dimension changes the approach to the content of law. For a person, it is not the norms themselves that matter, but the values that are fixed, realized, and reflected by them. These vital values are rights, freedoms and obligations. Consequently, it is not formal legal norms, but the rights, freedoms and obligations defined by them that are elements of the content of the law. (Shafirov, 2017)"

The above statement by prof. V.M. Shafirov, as well as his article, is the result of a heated debate among scholars on the topical topic of modern legal thinking (integrative legal thinking or hard positivism) and represents a discussion that has been formed in the legal conscience of scientists for the development of legal thinking, in the direction of transformations and improvements in the theory of law for the law, the legal system, etc. It is the proof of the presence of both original, new legal ideas and legal versions, and the embodiment of these legal ideas in legal consciousness, legal thinking, and legal doctrines (Shafirov, 2004, p.6.).

Thus, the thoughts about law formulated by legal intellect were embodied in legal ideas, transformed and recreated in the legal theory of natural-positive law. The debate about the scientific and legal knowledge is always an intellectual confrontation (the struggle of legal intelligences) of the supporters of the new, progressive legal knowledge with its opponents. This is the essence of the transformations and improvements in the theory of law. Intellectual scientific disputes are associated with the formation of thoughts about law, legal ideas and hypotheses and lead to the development of new legal theories, doctrines, and paradigms.

Legal intelligence forms the ability of a person to think about law, to create legal ideas (thought forms and mental images) and legal hypotheses.

Thoughts on law (thought forms, thought-images) can be reflected in a person's legal consciousness, reproduced by his legal intellect and embodied in legal ideas and hypotheses, in the accumulated legal experience.

Legal intelligence forms legal thinking, critical legal thinking, and legal intuition to find the right solution to legal problems.

Legal intelligence is aimed at the formation of legal thinking. Legal thinking in the modern theory of law is represented by the works of V.M. Baranov (1999, p.89), V.N. Sinyukov (1994, p.p. 34-36), I.A. Ovchinnikova, N.N. Tarasov (2001, p.97.). In the works of the above-named authors, the historical genesis and modern development of theoretical and professional legal thinking are considered. In order to substantiate and solve the methodological problems of the theory of law, the formation of professional legal thinking is necessary, namely, as N.N. Tarasov says, "the formation of professional legal thinking ... in the general context of the development of science. If we assume that lawyers are able to conceive law differently than non-lawyers, then those terms in which lawyers think can be considered as the essence of the legal thinking (Tarasov, 2001, p.97)." Consequently, professional legal thinking and scientific legal consciousness must have "terms" for thinking about law, for presenting, designing and operating with legal thoughts. Legal thinking and scientific sense of justice has passed a difficult path of formation. Over a thousand-year history, it was filled, refined and integrated by the European philosophical tradition, the pre-revolutionary Russian legal tradition, and the Soviet legal tradition. Legal thinking forms mental, thinking skills - an element of the human mind; besides a human, no other subject can think; the subject's thinking about law, legal norms, etc. happens individually in the legal consciousness of each person. Mental, thinking skills exist as the beginnings of current legislation, and Clause 2, Article 6 of the Civil Code requires in the exercise of civil rights to show such a human quality as rationality.

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Legal thinking is a process of understanding social and legal reality. Everyday legal thinking or “thinking in law” is an integral element of the mechanism of social action of law and lies at the basis of professional and scientific theoretical legal thinking, or “thinking about law”, being a hidden prerequisite of explanatory models in jurisprudence.

The modern Russian legal tradition can be complemented by critical legal thinking. It is able to bring humanity closer to a completely new value-based legal worldview and legal knowledge, contributing to the spiritual and moral revival of man and society, their meaningful value existence in legal reality. Critical legal thinking should be formed as an improvement of scientific legal knowledge, the development of modern legal knowledge. This improvement should take place with the skills to use the standards of correct assessment of the thinking process in law cognition.

Critical legal thinking is the ability to think critically and improve thoughts about the law, an ability aimed at identifying and correcting the individual’s mistakes in law cognition, a certain operation for processing legal information. Criticism in order to eliminate errors and lies should be directed to the processing of legal information, the promotion of legal versions to solve the problems of law cognition.

Critical thinking is the ability to rationally and critically put forward legal versions for searching for, finding and correcting a problem.

A general approach to the sociocultural rationale for critical thinking should be found in Karl Popper’s famous “Open Society and Its Enemies”. “In the Open Society, I argued that the rational-critical method can be generalized to the level when ... one of the best meanings of "reason" or "rationality" is openness to criticism, that is, being willing to be criticized ... this critical understanding of rationality should spread as widely as possible..." argued Popper (Popper, 1982, p.p. 115-116).

Modern Russian law is based on dogmatic, uncritical legal thinking. It makes assumptions about the concepts, doctrines, and paradigms existing in law, and is a justified and necessary component of legal knowledge. Legal

dogma has two features. On the one hand, legal dogma is a legitimate element of scientific knowledge at the stage of development of concepts, doctrines, and paradigms. This is a justified dogma, a prerequisite for criticism. On the other hand, legal dogma is associated with the relationship between faith and trust in authority. It should be designated as unacceptable pseudoscientific dogma.

Legal intelligence influences the formation of legal empiricism - experienced, pre-scientific perception or contemplation. The existence of legal empiricism (ordinary, pre-scientific) is explained as follows. Empiricism determines the basis of future legal research and conclusions, determines the ways, directions of understanding legal concepts, legal phenomena and categories.

Theoretical (rational) manifestations of legal intelligence are associated with the sequence of the process of knowledge of legal phenomena, with the definition of the logic of obtaining knowledge of legal phenomena. It should be recognized that in the surrounding world there is an order, logic and laws of human existence. Law cognition is based on certain criteria of rationality as logic, as the stability of the rules and values of spiritual activity.

In law cognition, as the main criteria of rationality, there are laws of emergence and development, a system of logical rules and methods for obtaining legal information. At first glance, the study of rationality is beyond doubt necessary, since legal knowledge must be rational. It should be a system of mental operations, with the help of which systematic legal information is accumulated.

The relationship of faith and mind in the knowledge of law should be disclosed in several aspects. The first aspect is related to the understanding of faith as trust in legal authority. Faith or trust in the legal authority of an educated person and its manifestation - dogmatic thinking - precedes the independent law cognition as a means of accumulating a stock of legal information and shaping legal thinking. Such dogmatic legal thinking as the nomination of legal versions and their refutation should be considered acceptable or justified.

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The second aspect of dogmatic legal thinking exists, as pseudo-scientific dogma according to the principle "I understand in order to believe". Putting it differently, if the same words can be used by the authors in different meanings, then the belief-trust postulate loses meaning, otherwise the polysemy of the meaningful load of words loses faith-confidence. The postulate of "faith-trust" for a person who learns the law is universal, both from the point of view of scientific criticism and religious dogma (Tyaglo & Voropai, 1999, p.3).

The third stage is the results of the processing of legal information. These should include classifications, systematization, synthesis, evaluation, analytics, and conclusions. The empirical results of the processing of legal information include experiential, pre-scientific perception and contemplation. The existence of an empirical (ordinary, prescientific) result of processing legal information is explained as follows. It allows you to answer the question that formed the basis of legal research and conclusions. The answer lies in determining the path of knowledge of legal concepts, categories, phenomena and processes. The study of the empirical results of the processing of legal information is connected not only with the logical means of law cognition - judgments, conclusions, legal syllogisms, but also with the understanding and determination of values when choosing the directions of law cognition.

The empirical results of legal information processing can be focused on the legal reality. In operations on the processing of legal information in the process of law cognition, there is an objective mapping of fragments of social reality in the legal consciousness of a person - a particular individual. The result of the processing of legal information is the transformation of the displayed fragments of legal consciousness and the embodiment of their legal reality.

Empirical processing results provide legal consciousness with "experienced" data on legal information. It makes it possible to predict the results of the study and transform the universal basis of knowledge of the phenomena of nature, society, and thinking into concrete results of law cognition, law comprehension, legal thinking, and critical legal thinking.

Empirical results help to create logical forms of the legal process, reveal the essence of legal phenomena and processes, and build a system of legal concepts and categories. The perception and display of empirical results are influenced by the views and beliefs of a person (a particular individual). So, for example, the natural inalienable human rights and freedoms in accordance with empirical material should be considered as abstract human rights and freedoms, since the list of these rights and freedoms is fixed in international legal documents and is the result of the development of civilization and culture. In the process of law cognition, they are reflected in the legal consciousness of a person, are specified in the form of an individual's ideas about spiritual and moral benefits and universal values. They can be embodied in the legal interest of the person and his intellectual and legal will.

Empirical results are refracted in the specifics of the subject of law cognition, are manifested in the content of specific concepts, categories and phenomena, constitute a rationale and provide an explanation for the formation of separate scientific trends and views.

The theoretical (rational) results of legal information processing are associated with the sequence of the process of cognition of legal phenomena, with the definition of the logic of obtaining knowledge about legal phenomena. It should be taken into account that in the surrounding world there must be order, logic and laws of human existence.

Law cognition is based on certain criteria of rationality as a relatively stable set of rules, norms, standards of spiritual activity, as well as values generally accepted and unambiguously understood by all individuals. Rational results of processing legal information are a form of certifying the truth, a set of demonstrations, causing some kind of evidence of truth. In this sense, given that the truth of the obtained and processed legal information is verified in different ways, it is appropriate to speak about its type. For the type of legal information, there must be all the objective signs conditioned by the characteristics of a person (a particular individual) and his adaptation to the world around him.

The rationality of the results of legal information processing plays the role of a logical tool in the study of legal phenomena and provides a comprehensive, in-depth understanding of legal phenomena.

The rational, theoretical results of processing legal information can be theories, categories, concepts, doctrines, and paradigms.

Theories, as rational results, provide for systems of basic ideas in a particular branch of legal knowledge; they are forms of scientific legal knowledge, giving a holistic view of the laws and essential relationships in reality (Perevalov, 2005, p.375). Theories should be considered the logically sound results of the knowledge of concepts, categories, constructions of the theory of law, as well as ideas, propositions and concepts. They can be represented by legal thought in the form of a systematized, classified, unified structure. They can exist in a complete form and be proved by legal practice and mastered by science.

Theories as rational results of processing legal information perform the tasks of disclosing the content, understanding, explaining concepts, categories, structures and raise them to a higher level of theoretical generalization and combine them with legal reality. In addition, in the process of building a theory, principles of legal science are formed and formulated. Thus, the theory of popular representation suggests the principle of election on which the theory of electoral law is based (Bogdanova, 2001, p.167).

Concepts of legal science exist in the system of legal knowledge, have their own separate value. They represent one of the directions of a particular theory and are in the process of creation and development. A concept is a theoretical construction that connects various structural elements and qualitative characteristics of a subject to be learned by legal science, contributing to its holistic perception, understanding, and explanation. The relevance and significance of concepts as rational results of processing legal information is necessary for building legal dogmas, legal technologies (lawmaking), and legal practice.

Concepts influence the development of legal science and interact with it, summarize legal knowledge and make up a system of a

particular theory (Mishin, 1984; Avtonomov, 1999, p.p. 5-8; Trainin, 1939; Kutafin, 2002, p.p. 11-20). Concepts are the basis of legal regulation of legal relations (Bogdanova, 2001, p.189). They determine the knowledge of legal phenomena and serve as a guide to clarify and explain the rules of law. They express various aspects of legal activity, facilitate the perception and study of the whole diversity of legal phenomena. Some of the types of concepts can be positive (normative), sociological, natural-legal concepts of law, legal anthropology, legal axiology, the concept of the legal status of a person, etc.

For example, legal anthropology is understood as the humanitarian essence, the purpose of man and mankind, the scientific analysis of the legal existence of man in reality, including the legal one (Kutafin, 2000. p.99; Rulan, 1999; Vengerov, 1983; Puchkov, 2002, p. 15.). Legal anthropology exists as a scientific area, the subject of study of which is the legal being of a person, the person's legal activity, specific connections and relations with the law-governed state, social and personal freedom.

A doctrine is a systematic theory, a holistic concept, a set of principles used as the basis of program action, a system of official provisions on any issue of state life (Sociological encyclopedic dictionary. Moscow, 1998. P.142.).

A legal doctrine should be understood as a systematized set of fundamental views and theoretical concepts that establish the strategic perspectives of the legal development of Russia, in which the tasks of philosophical understanding, comprehension, mastering the place and role of law and its sources in the state, social and legal systems are solved. A legal doctrine determines the legal standards of relations between a person, society and the state, investigates the legal features of the norms of the basic law. Legal doctrines have a historical and national character.

A legal doctrine is of great importance for the development of legal practice (Babayev, 1993, p.255), the improvement of current legislation and the correct interpretation of laws. Unfortunately, judicial and administrative acts have never referred to the works of legal scholars. This is due to the harmful effects of a totalitarian

state system, when only acts of state bodies had force. World experience shows that the importance of legal doctrine and its role as an element of law cognition is growing.

The role of legal doctrine is manifested in the fact that it creates concepts and constructions used by legal science, legal practice, legislative bodies, etc. (Mityukov, 1998, p.49; Ebzeev, 1995, p.35; Syukiyainen, 1985, p.65-83). It is the legal doctrine that develops the methods and technologies for establishing, interpreting and implementing the norms of current legislation. Moreover, the "creators" of the law themselves cannot be free from the influence of legal doctrine; they have to take the side of one or another legal concept and share its proposals and recommendations.

The existence of legal doctrine is conditioned by the dynamics of the development of legal existence. The legal doctrine itself is directly related to the legal constitution and current legislation. The subjects of law-making are related by the concepts, theories, views, judgments, and convictions that are at their disposal, which substantiate the direction of influence on the real relationships that develop between the subjects.

The legal doctrine develops formal provisions, creates a categorical apparatus, fills concepts and categories with content. It also creates typical solutions.

For example, the legal ontology of politics is one of the directions of development of legal science in the framework of its doctrine (Avtonomov, 1999, p.p. 5-8.). The legal ontology of politics is connected with the analysis of the system of categories of legal science at the level of legal existence.

Categories are the most common, extremely broad legal concepts. They represent the result of the generalization of the existing legal reality, the result of the generalization of legal concepts. For example, by summarizing the concept of civil, administrative, criminal, and other sectoral types of liability, one can get an extremely broad concept of legal liability (Babayev, 1993, p.255). The study of categories has philosophical and theoretical, methodological, practical and applied significance.

Legal categories reveal the general methodology of knowledge (essence, content and form, general, particular and

individual, historical and logical, abstract and concrete, etc.) in legal science. For the latter, categories have the value of legal tools that provide a comprehensive and deep, concise and clear, competent and professional study of the subject of science. For example, the disclosure of the essence of law in many respects predetermines its legal characteristics, and the identification of the specific features of law makes it possible to give its general definition applicable to the analysis of phenomena and processes in law.

Legal categories in legal science perform two functions: methodological and general theoretical. The methodological function of categories is to designate the path of learning, and the general theoretical function exists for the deployment of all the diversity of legal knowledge.

For example, the complete and systematized knowledge of legal categories among a wide range of participants in lawmaking process can create a favorable situation for the predictive development of objective law already at the stage of the formation of legal norms. Categories represent a rational result of legal information processing and determine the outcome of this process. Categories include a description of the content of the object, identify and solve problems for the study of the laws of existence, both the legal reality and the specific reality or a vast area thereof (Avtonomov, 1999, p.p. 5-23; Martynenko, 1987, p.p. 14-16; Anners, 1996, p. 264.).

For example, the category of "natural rights and freedoms of a person" can be studied not only from the point of view of positivism, objective law and subjective rights, but also from the point of view of natural law as a phenomenon of civilization and culture (Alekseev, 1991, p.9; Lazarev, 1992, p.p.112-116).

The value of a person is determined by the characteristics of his/her existence and universal human values. An individual exists in society as its component, reproduces its traditions, customs and norms; the individual becomes a value when his/her activity is governed by the natural laws of existence. The role of legal laws is to regulate the natural human existence, to implement such human qualities by legal means.

Constructions are a means of legal engineering and legal technologies that

play a significant role in the legal regulation of social relations (Babayev, 1993, p.102), participate in the knowledge of the law, the understanding of the fragments of social reality. Legal constructions model, reconstruct, transform social relations with specific legal tools and thereby significantly simplify and stabilize legal processes in diverse social life.

So, for example, the legal constructions of the composition of a legal relationship, the composition of an offense, the composition of legal development for determining the program, the behavior algorithm of the subjects of legal knowledge, law-making, and law enforcement are essential. Applying legal constructions to various social relations, the subjects of legal knowledge, law-making, law enforcement streamline social life, satisfy diverse interests, and stabilize public order.

Paradigms are a set of ideological knowledge about the surrounding social reality, a set of objective content that a person possesses. It is necessary to single out the sensual-spatial, spiritual-cultural, moral, and legal paradigms (Philosophical encyclopedic dictionary, 1997, p. 201).

Legal paradigms should be considered as representations of the subject of legal knowledge, lawmaking, law enforcement, a reasoned position, a verified approach of a particular scientist to a particular issue of conceptual knowledge of legal reality.

However, in some cases, rationality may encounter contradictions of the reality in which legal phenomena manifest themselves. Here, rationality turns out to be powerless, incapable of explaining, from the standpoint of logic, this or that lawful action or offense.

Legal intelligence in law cognition generates not only thought forms and mental images, but also induces and reproduces legal interest and intellectual-legal will. Law-cognition interest (Bewley, 2011) and the intellectual and legal will for a long time remained outside the study of legal knowledge in the modern Russian legal tradition. However, recently, references to the characteristics of the rationality of law as an objective phenomenon have been growing. This fact confirms the need to study the individual in the qualities and properties of an individual,

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separate, concrete, intellectual, and rational being, his/her legal intelligence, intellectual and legal will in law cognition.

The intellectual-legal will was studied in detail, reliably and profoundly in the classical German legal philosophy. Immanuel Kant substantiated the empirical, intellectual, and rational nature of a person's free will, including in law. He considered the content of the will in two aspects: 1. The will of each person has an empirical character, namely, "what excites and directly affects the senses," that is, experiential, pre-scientific perception and contemplation (Kant, p.470); 2. Free will has a rational character in the ideas and thoughts of man. "We are capable of thinking about what is harmful and what is useful ... to overcome impressions, ... sensual inclinations by considerations of what is desirable, what is good or useful, is based on reason (ibid)."

The empirical character of the will is considered by Immanuel Kant to be the sensual and contemplative perception subjected to the laws of nature. Man himself, in this sense, exists as a phenomenon in all events and sees only nature and gives only a physical explanation of these events. For Kant, the empirical nature of the will is the following: "Will has a purely *animal* nature ... and can only be determined by sensual impulses, that is, *pathologically* (ibid)." Thus, the empirical perception, contemplation and expression of this will in law exists beyond the limits of rational manifestation, that is, beyond legal intelligence. Legal will outside the intellect, formed on the basis of legal interest as the desire of a person to satisfy a need, is a legal instinct. Legal will exists on an emotional level. Human emotions can be different - instinctive, impulsive, meaningful. If by emotional perceptions and contemplations we mean instinctive right feelings, then for a person they are the right of instincts, the right of needs. That is, the formation and reproduction of legal interest at the level of emotions, in addition to legal intelligence, beyond logic and common sense, can activate only pseudo-will — instinctive right feeling.

Therefore, Immanuel Kant considered the empirical origin of the will and its reflection in the legal consciousness to be sensory-contemplative perception, pathology or the right of instincts, right feeling.

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Kant believed that free will has a rational character in the ideas and thoughts of man. The reasonable rational origin of free will was called by Kant practical freedom. He studied practical freedom as “considerations of what is desirable for our state, i.e. what brings good, benefit, is based on reason (ibid)." Man himself, in this sense, exists as a noumena, that is, he sees causality in all phenomena and "contains some conditions that should be considered as ... intelligible ... only by thinking in pure reason (ibid, p.334)."

Thus, free will can be developed by legal intelligence on the basis of the fact that any thought forms mental images and can be reflected in legal consciousness in the form of intelligible desires, establishments and obligations.

The intellectual purpose of the legal will was determined by G.W.F. Hegel in his work "The Philosophy of Law." He associated the origin of the will with instincts and intellect. Instincts do not possess a will, that is, "The animal, obeying instinct ... does not have a will, because it does not represent what it wishes (Hegel, p.p. 68-69)." There must be thought in determining and shaping of the will. The animal cannot think, therefore, it does not express desire with thoughts; That is, there is no thought without will.

Thus, if a person in his legal consciousness cannot express thoughts, thought forms, mental images and formulate desires, then his existence in law, legal being, is direct and unmediated right of instincts, instinctive sense of right. Hegel argued that development is “moving forward - from feelings through ideas to thinking, ... intelligence .... Will is a special way of thinking; thinking ... as an inclination to acquire a being (ibid)." That is, "Those who consider thinking as a special ability, separated from the will ... put thinking below the will, especially goodwill (ibid, p.p.70-71)."

It should be concluded that there is no thinking without will. Thinking, unconditioned, not bound by will for Hegel, is negative freedom, freedom of emptiness, fanaticism of Hindu contemplation, and the exercise of thinking, the embodiment of thoughts in abstraction without will, is a "fury of destruction."

Thoughts on law should be expressed in ideas and desires, that is, developed by legal intelligence. In this

sense, the intellectual and legal will exists as a goal for law cognition and the formation of legal consciousness, while legal intelligence can be a means of law cognition, a substance where ideas about conscious, meaningful, intelligible desires and attitudes are formed.

The modern Russian legal tradition considers the legal will abstractly, in isolation from human individuality, its law-cognitive and intellectual activity. In our opinion, the legal will in abstraction, apart from the intellectual activity of a person learning the law, should be considered the legal will existing outside legal intelligence, which can be either in error, or in suppression, or in submission, or in alienation and exists for satisfying pseudo wishes in legal instincts.

Conclusion

Thus, modern law cognition as a mental operations for processing legal information has a structure. The elements of the structure of legal knowledge include: legal intelligence, intellectual and legal will, and law-cognition interest. *The legal intelligence of a person* should be understood as his/her capacity for legal knowledge, which consists in the formation of thoughts (thought forms, thought-images) about law in legal consciousness, exists in the form of legal ideas, legal hypotheses and induces intellectual and legal will and law-cognition interest.

The intellectual and legal will should be understood as the abilities and efforts of a person to think in advance, to realize, comprehend, develop and reproduce with the help of legal intelligence one's actions in law, legal knowledge, sources of law, legal status and legal acts. *Law-cognition interest* is the aspirations created by the legal intellect of a person, which consist in how to use the spiritual and moral benefits and human values for themselves and society in the legal system as intended, to extract intellectual benefits.

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BUSINESS CLIMATE IN THE RUSSIAN FEDERATION CONSIDERING THE RELATIONS BETWEEN ENTRENEURS AND TAX AUTHORITIES

Irina V. Vyakina[1]

Abstract: taxation builds financial relations between the state and legal entities or individuals. Acting as part of the economic policy of the state, an adequate tax system ensures the effectiveness of the main components of the economy, the development of entrepreneurial initiatives and meeting the basic needs of the country.

The article examines the impact of the tax system on business climate, identifies the main reasons for tax evasion by businessmen in the Russian Federation and proposes ways of creating adequate tax relations between the state and enterprises, thus increasing business activity.

According to the results of the survey that involved 300 managers of small, medium and large enterprises, almost half of entrepreneurs (47%) consider tax burden as the main problem hindering economic activity in Russia. The entrepreneurs believe tax authorities represent a considerable obstacle to business.

Keywords: tax administration, tax relations, economic activity, business climate.

1. Introduction

The tax system enables redistribution of the income of society and the state. It financially supports social programs of the state, balances budgets of different levels, and regulates various economic and social processes, including innovation and investment, which are aimed at updating the technological base of the economic system.

One of the tasks of the tax policy is to create a mechanism regulating tax relations, which would provide methods for collecting tax into the budget revenues that would be adequate to economic conditions. In theory, tax

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relations are aimed at regulating tax revenues to budgets of all levels and stimulating business activity of economic entities.

Economic activity is determined by external economic conditions, including the conditions for launching and conducting it, barriers and restrictions for doing business. It is obvious that talking about the conditions for carrying out economic activity and business climate, the role of the state is not limited to setting the procedures for obtaining licenses, registering enterprises, but also includes developing the policy of taxation and the current tax burden.

However, according to most business representatives, the current tax system in Russia does not encourage entrepreneurs to increase business activity and initiative.

It should be noted that the tax system is based on the principle of dependence of the state on all the taxpayers, and taxation inevitably leads to a conflict of private and public interests.

At present, the Russian Federation is characterized by a large share of shadow and informal economic relations, while the imperfection of the tax system prevents taxes from performing their main functions, including the fiscal function, which would provide the financial support for the activities of the state.

The share of tax revenues in the revenues of the Russian Federation federal budget is significantly lower than this figure in the budgets of developed countries. In the federal budget of the Russian Federation, tax revenues estimate from 40% to 50%, while this indicator is much higher in the revenues of the budgets of developed countries. The budget of the Russian Federation is mostly supplied by non-tax revenues.

In addition, there is a huge total debt of taxpayers into the budget of the Russian Federation, estimating about 5–6% of the total federal budget revenues.

2. Methods

Working on the research, the author conducted a sociological survey that included 300 respondents, directors of Russian small, medium and large businesses operating in various fields and representing different legal forms. The respondents' opinions were collected in an anonymous survey with the note that all data will be generalized.

Summarizing the results of the study, the author applied the methods of

systemic, logical and comparative analysis of scientific publications. The descriptive statistics was analyzed, and the hierarchical and correlation dependencies between the empirical data were determined. The study also included some traditional methods of economic and mathematical statistics, as well as building graphic and economic-mathematical models.

3. Results

3.1. Literature Review

The influence of behavioral and psychological factors on the behavior of entrepreneurs, their relationship with tax authorities and compliance with tax laws have been actively studied since the 1950s. Günter Schmölders (1959) examined the problems of fiscal psychology as a separate branch of public finance research. Later, Michael G. Allingham and Agnar Sandmo (1972) evaluated the actual level of compliance with tax legislation, examining the specifics of interaction between various parties involved in taxation (taxpayers, legislators, tax authorities, etc.).

Over the following decades, researchers developed new approaches based on experiments and mathematical modeling that allowed evaluating the influence of behavioral dynamics on stimulating or preventing tax evasion. In his studies on various aspects of the theory describing the planned behavior of parties in economic relations and their intentions, Icek Ajzen (1991) proved that the subjective norms of entrepreneurial behavior and their perception of the state control bodies are associated with certain sets of basic behavioral, regulatory and control attitudes. In the study, he obtained empirical data confirming the role of psychological factors in tax relations.

Erich Kirchler, Stephan Muehlbacher, Erik Hoelzl, Paul Webley (2009) claim that the experience entrepreneurs have in dealing with tax authorities and the consequences of tax audits are an important factor in their compliance with tax obligations.

Research on the tax behavior of entrepreneurs in different countries conducted by various scientists, including Chris W. Chan, Coleen S. Troutman, David O'Bryan (2000), James Alma, Jorge Martinez-Vazquez, Friedrich Schneiderb, (2004), Klarita Gërxhani, Arthur Schram (2006), Benno Torglerand, Friedrich Schneider (2007) and others, highlights the importance of social and ethical norms. The

publications confirm national differences in tax relations and prove that moral values have a strong influence on the behavior of taxpayers and their compliance with tax laws.

Stimulation of entrepreneurial activity is seen as a key factor in ensuring sustainable growth of the economy, reducing unemployment and increasing prosperity. At the same time, according to María Soledad Castaño, María Teresa Méndez, Miguel Ángel Galindoc (2016), the state economic policy, including taxation, determines economic activity and its growth. Sharing the views of many politicians and researchers, Doaa Mohamed Salman (2016) claims that the state should develop a system of special measures to support business development that would imply creating an attractive tax and stable monetary policy, promoting business education, and stimulating research and development.

Malcolm J. Beynon, Paul Jones, David Pickernell (2018) claim that the established business climate or institutional environment influence the self-perception of business and its social status, opportunities to open new businesses, current risk levels and intentions of entrepreneurs. Pekka Stenholm, Zoltan J. Acs, Robert Wuebker (2013) carried out a study of the business environment which shows that differences in institutional mechanisms affect both the level and type of business activity. The authors assess the level of country's development according to its ability to support highly efficient entrepreneurship. In their opinion, the differences in institutional mechanisms are connected with the rate of companies' economic growth and differences in business types that different countries have.

Apart from the level of the development of the country and its welfare, business behavior is greatly influenced by its national mentality, culture, entrepreneurial attitudes and attitude to risk. According to Silvia Stroe, Vinit Parida, and Joakim Wincent (2018), entrepreneurs' assessment of their business performance, their perception of risk and the combination of these largely determine the logic of decision making in the business environment. Weiqi Dai and Steven Si (2018) argue that the positive attitude of businessmen towards economic policy and their political connections, along with the level of institutional

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development of the country, stimulate economic activity.

However, David L. Poole (2018) argues that, fairly often under the cover of developing measures to boost the SME sector, presented as the effective cure for countries with low per capita income, politicians act on the basis of unsaid claims and are influenced by a wide range of people, for example, microloan providers, management consultants or economists who adhere to different theories.

Moreover, according to Petra Dickel and Peter Graeff (2018), corruption and non-compliance with laws is all the more likely, the higher the expected economic profit is. Entrepreneurs' neglect of legal norms and their tendency to take such actions are caused by expected economic benefits and the high probability that they will get away with these illegal actions.

In this context, considering the legal framework and business environment, Ashantha Ranasinghe (2017) focuses on the unavailability of unofficial payments, various forms of cash back or extortion which reduce the capital profitability and increase business costs. Here it should be noted that internal self-restraints in behavior and ethical norms are much more difficult to represent in theoretical terms than informal restrictions that maximize personal gain.

According to Jose Joaquin Lopez (2017), such phenomena as tax evasion and the informal sector are more common in developing countries. At the same time, increasing tax burden and unavailability of tax evasion may cause officially registered companies to move into the informal sector.

3.2. The attitude of Russian business to tax authorities

According to the results of the survey that included 300 managers of small, medium and large enterprises, almost half of the entrepreneurs (47%) consider the problem of tax burden to be the main obstacle to economic activity in Russia, and entrepreneurs name tax authorities to be the main factor hindering business. Respondents noted a high share of mandatory payments, taxes and non-tax fees. They have a negative or critical attitude to the size of the cadastral value and anticipate the further growth of tax burden.

In addition, most entrepreneurs named a huge tax burden as the main

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obstacle for doing business (see Table 1).

Table 1 - **Opinion of respondents on economic problems that enterprises encounter in their work**

No.	Answer options	% to the total of respondents
1	Taxes	47.0%
2	Control and supervision	22.0%
3	Power supply and natural monopolies	15.7%
4	Execution of court decisions	13.2%
5	Measures of state support for small and medium businesses	12.9%
6	Certification, licensing and technical regulation	11.5%
7	Land registration, land relations and property rights	10.5%
8	Unauthorized trading	9.1%
9	Violation of entrepreneurs' rights during the inquiry and investigation	7.7%
10	State and municipal procurement	6.6%
11	Construction, housing and utility services	6.3%
12	Natural resource management and ecology	5.6%
13	Migration policy and labor legislation	5.6%
14	Transport	4.5%
15	Organizing and participating in fairs	3.8%
16	Antitrust regulation	3.5%
17	Anti-corruption in law enforcement	3.1%
18	Implementation of investment projects	2.8%
19	Customs regulation	2.4%
20	Other	1.0%

As for the authorities that create the greatest obstacles to doing business, 30% of the entrepreneurs surveyed said that tax authorities were the most burdensome factor (see Table 2).

Table 2 - **Respondents' assessment of the state agencies posing the most significant obstacles to economic activity**

No.	Answer options	% to the total of respondents
1	Tax authorities	30.0%
2	Authorities regulating trade and consumer right protection	11.8%
3	Authorities responsible for sanitation and epidemic control	9.8%
4	Authorities in charge of technical supervision	8.0%
5	Local governments	7.0%
6	Regional authorities	6.6%
7	Internal affairs agencies	6.3%
8	Other regulatory authorities	5.2%

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9	Customs bodies	4.5%
10	Transport supervision agencies	4.2%
11	Labor protection agencies	3.5%
12	Authorities in charge of quarantine and phytosanitary supervision	2.1%
13	Authorities controlling the distribution of ethyl alcohol	1.7%

It is worth noting that the respondents' opinion on increasing the tax burden is largely due to the policy conducted by the Federal Tax Service of Russia that is aimed at increasing the transparency of payments, strengthening tax administration and countering shadow economic relations. This refers to the use of online cash desks, following the adoption of the Federal Law No. 290-FZ on July 3, 2016 which increased the requirements for cash registers when making cash payments.

In the opinion of entrepreneurs, these measures aimed at improving tax administration and transparency of economic relations contribute to an increase in the tax burden. Therefore, the surveyed entrepreneurs said that the state should reduce the tax burden and consider the economic situation and the level of demand when changing tax rates. They also see it viable to introduce tax incentives for enterprises that have been in business for a long time and have a good record, to reduce pension and insurance contributions, not to introduce online cash registers, etc.

In addition, it is fairly challenging for individual entrepreneurs and small enterprises to calculate taxes and monitor legislative changes in taxation by themselves.

Talking about problems that arise during the interaction with tax authorities, directors of the companies also mention controversial and vague recommendations of tax authorities, the Ministry of Finance of the Russian Federation on accounting and economic feasibility of expenses when calculating the tax base for income tax and value-added tax. They also note that it is difficult to challenge the claims of the tax office, regulatory authorities, etc in court. In addition, it is almost impossible to opt for tax incentives at the design stage of the project that precedes the implementation stage due to the absence of the taxation objects.

3.3. Position of tax authorities

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Financial and tax law are of public nature. The financial and legal science and legislative practice are to a large extent determined by the idea that implies the dominance of the state interest in the regulation of financial relations. The norms of financial law provide the mechanism for protecting public property interests. Therefore, in this aspect, financial and tax law act as an institutional regulator and a tool for coordinating interests (Krokhina, 2012).

In recent years, the Federal Tax Service of Russia (FTS) has been reforming tax control over business, which has a great influence on the activities of tax authorities. Modern information and telecommunication systems, software and big data technology used in the tax control procedures enable to maximally reduce the human factor. Tax authorities conduct far fewer on-site inspections. Value chains, taxes payment and desk audits are monitored without direct contact with the taxpayer. Application of special information systems makes it possible to prevent tax evasion and attempted fraud in the reimbursement of taxes paid. Using cash registers to transfer information to the tax authorities helps control financial and commodity flows and also eliminates the possibility of tax evasion. Marking of certain types of products (such as drugs or tobacco products) ensures greater transparency of business operations and allows identifying behavior patterns of economic entities and their possible attempts at tax evasion.

The measures taken by the FTS contributed to the situation when for five years tax revenues were growing at a significantly faster pace than the revenues of the consolidated budget of the Russian Federation [Grunina, 133]. According to D.K. Grunina, further improvements carried out by the tax authorities should include creating an environment for taxpayers which is more comfortable for fulfilling their tax obligations and that would provide favorable conditions for doing business and increasing business activity.

However, at present the most acute problems of tax administration in Russia are the schemes for profound tax minimization developed by taxpayers. This violates the balance of interests in competition: companies that do not use such schemes are in less favorable financial conditions, which makes it

necessary for them to either switch to the shadow economy or apply the same or similar schemes.

In Russia, tax evasion is a fairly common practice which seriously undermines the economic security of the state.

Companies use various methods of tax evasion, including:

- fraudulent misrepresentation in accounting documents,
- cash operations without appropriate reporting in financial statements;
- unreasonable allocation of various expenditures to production costs,
- fraudulent misrepresentation of economic indicators,
- underreporting of the volumes of purchased and sold products,
- taxable entity concealment (substitution, false export),
- fraud carried out through one-day firms or intermediary affiliates.

At the same time, most representatives of the business community do not have negative attitude towards tax evasion or shadow companies. Replying to the question whether business feels negative influence of shadow companies that do not pay taxes, 26.8% of the respondents gave an affirmative answer, 30.3% said that it was not so. Moreover, almost half of the respondents did not answer the question.

The current imperfections of the tax system have a significant impact on public opinion and the attitude to paying taxes, respectively. In the Russian Federation, in comparison with developed countries, taxes have the opposite effect on stimulating the efficiency and initiative of individuals and legal entities. The analysis carried out in this article revealed the negative influence of the tax system on promoting entrepreneurial activity and the working efficiency of people. Thus, the tax system can be named the main cause of tax evasion for individuals and entrepreneurs.

The reasons for both individuals and legal entities to evade taxes can be very different, from the hopeless situation due to the insolvency of business and people or breaches in tax legislation to the psychological aspects of people's behavior.

One should not forget about the tax culture of society, which also determines the extent of tax payment to the budget. Not all Russians consider paying taxes their civic debt. In addition, in many cases it is possible to evade taxes because government agencies do not have total control over all accounting and financial information of legal entities.

Aloys Prinz, Stephan Muehlbacher, and Erich Kirchler (2016) name two ways of increasing tax collection: avoiding tax evasion through audits and fines, on the one hand, and creating trusting relationships with taxpayers by providing additional services and consulting support, on the other. They substantiate the importance of both instruments for collecting taxes and see them as a compulsory and efficient incentive for complying with tax laws. The researchers point out that constraint and persuasion measures can substitute or complement each other depending on the reaction of taxpayers, given that the behavior of taxpayers is formed by the behavior norms prevailing in society.

At the same time, as Jose Joaquin Lopez (2017) claims, in a developing economy the informal sector is shrinking, whereas the volume of tax evasion in officially registered enterprises is increasing, which reduces the potential collection of tax payments.

Small businesses and individual entrepreneurs tend to evade taxes by doing unreported business activities, while large officially registered enterprises evade taxes on a much larger scale. Economies in which tax evasion is carried out on a large scale and it is possible to dramatically increase tax revenues by eliminating the informal sector have to compromise between tax collection and the cumulative efficiency of tax revenue collection. This is due to the fact that increasing tax collection from officially registered enterprises that evade taxes, the state may push them into the informal sector.

Jose Joaquin Lopez notes that if we consider a certain permissible share of the informal sector as a by-product of development, and not vice versa, tax authorities can create a reliable tax base by minimizing tax evasion of officially registered enterprises (Lopez, 2017).

In a broad sense, protection of taxpayers' rights implies political, socio-economic, legal and organizational

guarantees. In a narrow sense, this refers to the appeals to certain government agencies to consider the legality and validity of actions or inaction of tax authorities for each particular taxpayer.

The fact that the state represented by tax authorities has broad powers to limit the constitutionally guaranteed private ownership of a taxpayer leads to unjustified prevalence of public interests over private ones. At the same time, in some cases, taxpayers do not believe that their appeal to a higher tax authority may be successful and deliberately do not disclose all their arguments in the complaint, withholding them until investigation in court. This results in a situation when the tax authority cannot fully prepare and substantiate its position on all the arguments of the taxpayer before court proceedings.

3.4. Measures for reconciling the interests of the state and business in tax relations

At present, the procedures for handling tax disputes are rigorously monitored by the legislative and judicial systems of Russia. This includes taking certain measures, for instance, in 2009 a mandatory pre-trial procedure was introduced for appealing against the decisions of the tax authorities based on the results of tax audits. In 2014 the pre-trial settlement of all tax disputes became mandatory; there were changes in the rules for consideration of tax disputes in court; taxpayers received an opportunity to appeal against private letter rulings of the Federal Tax Service of Russia (Krokhina, 2016).

The Federal Tax Service of Russia currently faces the task of further improving pre-trial resolution of tax disputes, preferential resolution of out-of-court tax disputes by tax authorities, reducing the burden on the judicial system. One of the principles to promote pre-trial resolution of tax disputes is the customer-focused approach simplifying taxpayer's interaction with the tax authorities.

To ensure the balance of private and public interests, it may be viable to introduce into the practice of pre-trial settlement of tax disputes the possibility of providing compensation for the taxpayer's expenses for the services of tax advisers incurred during the administrative appeal in case the taxpayer's complaint is satisfied by a higher tax authority.

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In most countries with developed market economies, tax legislation contains a fiscal rescript procedure that ensures the observance of tax rights and reduces tax risks. It seems relevant to consider the possibility of introducing this procedure into the Russian tax legislation. This procedure implies receiving a written statement of tax authorities that the planned actions and transactions of the taxpayer do not violate the law or are not aimed at any illegal tax optimization.

The fiscal rescript allows the taxpayer to obtain the preliminary assessment of their planned transactions. Basically, this procedure presents an explanation of the tax authorities that signifies their approval of the way of doing business or disapproval if there are signs of abuse.

Creating within the tax authority a mechanism for approving the planned business operations of the taxpayer, in which their approval or disapproval will be mandatory for both the tax authority and the taxpayer, will eliminate the risk of cases when a conscientious taxpayer may be held accountable and requested to pay arrears, penalties and fines.

In addition, the fiscal rescript can perform the function of preventing tax offenses and counteract the development of the shadow economy. The taxpayer that did not receive approval of the planned business operations will not commit an offense to avoid being held accountable.

It should be noted that in the case of a large number of such requests, the FTS, which has recently experienced a significant staff reduction, may not be able to cope with the deluge of appeals. In addition, the fiscal rescript has a significant drawback associated with the likelihood of increased corruption, since decisions, as international experience shows, are most often taken on the individual basis.

4. Conclusion

The decrease in business activity and the opinion of entrepreneurs on the current system of business taxation in the Russian Federation suggest that the effectiveness of the tax system is measured not only by mathematical statistics, whereas the material interests of fiscal authorities should not always prevail over other interests.

It should be mentioned that the relations arising between private and

public actors associated with the financial activities of the state and regional or local governments are multidimensional and complex. There is initial conflict of their social, political and legal aspects, which results in a large number of tax disputes.

At the same time, considering the problem from the perspective of the state interests, the expansion of the shadow economy manifesting itself through tax evasion can lead to the loss of significant financial resources and undermine the economic stability of the state. Thus, the tax system of the Russian Federation can serve as a factor that threatens the economic security, and not ensures it.

To improve the situation, it seems reasonable to develop a set of organizational and legal measures controlling and preventing tax evasion and to carry out regulatory improvements which will minimize the legal ways of tax evasion. At the same time, increasing accessibility of financial information on the activities of a company, the formation of tax culture and morality in society remain crucial issues.

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THE PRINCIPLES OF INTERNATIONAL SCIENTIFIC AND SCIENTIFIC AND TECHNICAL COOPERATION IN THE SCO, CIS AND ASEAN: COMPARATIVE ANALYSIS OF SUPRANATIONAL LEGAL REGULATION

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Abstract: the current development of international scientific and technical cooperation is constrained by a whole range of economic and political factors. In such circumstances, regional ties between states are formed and strengthened, which, among other things, seek to consolidate efforts to develop international scientific and scientific and technical cooperation as one of the main factors in the sustainable development of the state and the foundation for the formation of a new and innovative type of economy. At the same time, the legal aspects of this sphere of cooperation tend to receive little attention. However, differences in national legal systems necessitate the development of uniform and understandable principles of legal regulation of international scientific and technical cooperation.

In the study, using the method of comparative analysis, more than 20 international legal acts on the legal regulation of international scientific and scientific and technical cooperation, including documents of three major

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regional associations of states (The Shanghai Cooperation Organization, the Commonwealth of Independent States and the Association of Southeast Asian Nations), in terms of approaches to the consolidation of principles of legal regulation of scientific and scientific and technical cooperation at the supranational level, have been studied.

As a result, the authors propose a system of principles of legal regulation of international scientific and scientific and technical cooperation, consisting of three key components: general principles of international law (lex generalis), branch principles of international scientific and scientific and technical cooperation (lex specialis), and intra-branch principles of international scientific and scientific and technical cooperation (lex internus).

The allocation of these principles will improve the quality of legal regulation of scientific and scientific and technical cooperation at the supranational level and contribute to its further development.

Keywords: science; cooperation; international law; the Shanghai Cooperation Organization; principles of international law; regional international organizations.

1. Introduction

The development and intensification of scientific and technical cooperation between states plays an important role in addressing the global challenges facing humanity. The development of fundamental scientific problems and the discovery of new technical horizons require significant material and organizational costs, which are sometimes unbearable or burdensome for one state. Combining efforts can significantly save both the time spent on the development of existing technologies and the funds needed to create the infrastructure used in large-scale scientific researches. In addition, there is the best minds unification to solve urgent technical problems and promote the results of scientific researches. Many states are making efforts to develop international scientific and technical cooperation on a parity basis within the framework of regional interstate associations.

It should be noted that current research covering various aspects of international scientific and technical

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cooperation mainly addresses economic, social or political issues of such interaction. At the same time, the important role of legal regulation of scientific and technical cooperation is unreasonably ignored.

In this regard, the principles of legal regulation of scientific and technical cooperation play a significant role. They not only lay the foundations for the subsequent development of an international legal framework, but can serve as the general principles for the national legislation of member states of regional international organizations on the legal regulation of scientific and technical cooperation. In addition, the literature on international law notes that the principles of law act as a legal means by which gaps that arise in the absence of rules, governing the relevant relations (non liquet)coo, can be addressed [1, p. 98]. First, it should be noted that there are many gaps in the supranational legal regulation of international scientific and technical cooperation; consequently, the importance of principles of such cooperation becomes practically important.

The qualitative development of the system of legal regulation of international scientific and technical cooperation on a global scale is largely determined by the degree of its development at the regional level of cooperation. It seems that the development of a single global system of international scientific and technical cooperation is constrained by the growing trend of multipolarity in the social, economic and political spheres of life of the world community. In such geopolitical conditions, scientific and technical cooperation is being developed actively, first of all, within the framework of regional international organizations, uniting states on the basis of common interests and actualization of mutually beneficial directions of development of science and technology.

In recent years, scientific and technical cooperation is being actively developed within the framework of regional associations of developing countries, which include such large states as Russia and China. In the future, the advancement of scientific and technical partnership in regional organizations with the participation of these countries can compete with Western European associations in a similar field.

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According to the authors, there is a great potential in the development of scientific and technical relations within the Shanghai Cooperation Organization (hereinafter – SCO), Russia and China are its participants, along with other countries. However, this area of cooperation between the SCO member states is just beginning to emerge. In this regard, it seems necessary to consider the experience of legal regulation of international scientific and technical cooperation of other regional organizations with a similar membership of states parties, with a longer period of cooperation and a higher degree of scientific and technical integration. An example of such an organization is the Commonwealth of Independent States (hereinafter – CIS), which unites, among others, five states that are the SCO members (Russia, the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan, the Republic of Uzbekistan).

The above regional organizations not only actively develop their cooperation, but also build a dialogue with other leading regional associations. In particular, according to the Memorandum of Understanding between the Secretariats of the SCO and ASEAN in 2005, the possible areas of interaction of these organizations include economics and finance, energy, including hydropower and biofuels, tourism, environment and the use of natural resources, social development [47]. In addition, the experience of the Association of Southeast Asian Nations (hereinafter – ASEAN) in the development of legal regulation of regional scientific and technical cooperation may be useful due to the fact that one of the ASEAN members is Singapore – the center of high technologies of Southeast Asia, which managed to make a rapid jump to the level of the economy of developed countries, including through the active development of high-tech industries.

As a rule, in the texts of international treaties, the principles of legal regulation of cooperation are disclosed in relation to the relevant sphere of interaction of the contracting parties. Thus, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990) [2], the *Criminal Law Convention* on *Corruption* (1999) [3], the Council of Europe Convention on Laundering, Search, Seizure and

Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005) [4] contain sections on the principles of international cooperation. However, these sections are small and limited to a brief and abstract description of the general principles of cooperation. However, in the field of international scientific and technical cooperation, there are no special agreements on the principles. Nevertheless, it should be noted that scientific collaboration is somehow regulated by the norms of international law, which are the main principles of legal regulation of this sphere of international cooperation.

2. Materials and methods

The research plan includes four main stages.

(1) The analysis of the main international instruments of the United Nations. At this stage, it is expected to identify some general principles of international law applicable to the sphere of legal regulation of international scientific and technical cooperation.

2) The study of international instruments of regional international organizations. Research of both documents regulating directly scientific and scientific-technical cooperation, and economic interstate relations. The main task is to identify the principles applicable only to the regulation of relations arising in the field of scientific and technical collaboration. At this stage, the question of the place of international scientific and technical cooperation in the system of public international law should also be resolved.

3) The fragmentation of international scientific and technical cooperation into separate components in order to determine exclusively intra-branch principles of legal regulation of inter-state cooperation in the field of science and technology on the examples of some regional organizations.

4) The analysis of application of identified principles of legal regulation of international scientific and technical cooperation. The task is to determine the real significance and relevance of the selected principles in the activities of regional international organizations.

A comparative analysis of 21 international legal acts on the legal regulation of cooperation, including science and technology has been conducted during the study. This method

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allows identifying both general approaches to consolidation of legal regulation of scientific and technical cooperation in the sources of international law, and features specific to some regional international organizations. In addition, this method makes it possible to compare different principles of legal regulation of international scientific and technical cooperation, depending on the scope.

In order to determine the most suitable for regional international organizations principles of legal regulation of international scientific and technical cooperation, three international regional organizations (SCO, CIS and ASEAN) have been compared.

The choice of these organizations is not accidental. These associations are characterized by varying degrees of integration, including in the scientific field, so the consideration of accumulated, but not uniform experience is important from the point of view of subsequent development. It is possible to estimate prospects and advantages of development in the sphere of international scientific and technical partnership on the example of various regional associations. Depending on the branch principles, underlying the legal regulation of international scientific and technical cooperation, the international regional scientific collaboration will develop so successfully. In addition, in the conditions of tough sanctions policy of the United States and the European Union, expressed in the deterioration and even the destruction of scientific and technical relations between individual states [18], there is the urgent need to develop new promising areas of cooperation in the sphere of science and technology. In this regard, the Asian vector of development of regional international cooperation has a high potential.

3. Results and discussion

According to the authors, there are three levels of such regulation, each of which is based on certain legal principles.

The first level consists of the general principles of international law (lex generalis). They are enshrined in the Charter of the United Nations (UN Charter) [5] and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance

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with the Charter of the United Nations (1970) [6]. Being formulated in the abstract, these principles are an authoritative recognition of the creative function of the courts, which can be applied by them [7, p. 63].

The second level includes branch principles of international law (lex specialis). In the science of international law, the principles of international space law, the principles of international environmental law, international maritime law, international humanitarian law, etc. are distinguished [8, 9, 10]. The sphere of international scientific and technical cooperation is no exception. Although this area of international law is currently insufficiently studied and regulated, the analysis of normative treaties and acts in this area suggests the existence of branch principles of legal regulation of these relations.

The third level is represented by intra-branch principles of legal regulation of international scientific and technical cooperation. These principles form the legal basis for the regulatory regulation of certain areas and components of scientific and technical collaboration.

Section 3.1. General principles of international law (lex generalis)

Professor Wolfgang Graf Vitzthum meaningfully states: “General principles of international law are enshrined in the UN Charter and they are binding on all participants. In addition, they were embodied, first of all, in the traditional right to coexist, in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations... They contribute to the clarification of the essence and actions of international law” [11, p. 47].

Undoubtedly, not all the general principles of international law have a direct or significant impact on the sphere of international scientific and technical cooperation. Of all the principles listed in article 2 of the UN Charter and the 1970 Declaration, some are relevant to this area:

- the principle of good faith fulfillment of obligations;

- the principle of sovereign equality of states;

- the principle of respect for human rights;

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- the principle of cooperation between states.

Despite the universal nature of the above principles, there is a question of their conversion to the sphere of legal regulation of international scientific and technical cooperation.

The principle of sovereign equality of states according to the 1970 Declaration includes several elements; however, with regard to the interaction in the field of science and technology, the attention is paid to some of them. First of all, the principle under consideration presupposes the legal equality of states. In the literature on this subject it is noted that, entering into treaty relations, the states can create rights and obligations that other states do not have, and can limit their rights on a voluntary basis [9, p. 52]. The principle of sovereign equality is also relevant in connection with the participation of states in international organizations [12, p. 291]. This principle is mentioned in regional agreements on scientific and technical cooperation. In particular, it is mentioned in the preamble of the Agreement between the Governments of the SCO Member States on Scientific and Technical Cooperation [13].

The principle of good faith fulfillment of obligations (pacta sunt servanda), represented in the 1970 Declaration, implies not only compliance with obligations, arising from the UN Charter; it also means that the rules and obligations contained in ratified international agreements are considered necessary to be performed, they are subject to various protections or exceptions and should not be ignored when preferences are changed [14, p. 122].This principle is reflected, for example, in the Agreement on Creation of General Scientific and Technological Space of the State Parties of the Commonwealth of Independent States (art. 7, para. 2) [15].

The principle of respect for human rights, although not explicitly enshrined in the UN Charter and not mentioned in the 1970 Declaration, however, permeates almost all major international human rights instruments. From the content of the principle, the prohibition of discrimination (article 7), formulated in the Universal Declaration of Human Rights is derived [16]. Regional scientific and technical cooperation accepts this principle. Thus, ASEAN Plan of Action on Science, Technology

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and Innovation (APASTI) for the period 2016-2025 provides for a number of provisions aimed at overcoming discrimination in science. One of the main goals of APASTI is to create an innovative economy, including more active involvement of young people and women in science [17]. Another manifestation of the principle of respect for human rights in science can be found in the light of article 27 of the Universal Declaration of Human Rights. It establishes, inter alia, the right of everyone to participate freely in scientific progress and the right to protection of moral and material interests resulting from the authors' scientific works. Thus, by concluding agreements in the field of scientific and technical cooperation, the contracting states should ensure respect for the rights of scientists involved in international scientific and technological projects.

The principle of cooperation between states in the literature on international law is considered as a link between other general principles of international law [9, p. 68]. The 1970 Declaration emphasizes the need for cooperation in the field of science and technology and promotes progress in the world in the field of culture and education [6]. This principle is particularly relevant for regional associations of developing states, which, thanks to joint efforts, are able to achieve sustainable economic growth through the development of innovations in the framework of international scientific and technical cooperation. In particular, the Agreement between the Governments of the SCO Member States on Scientific and Technical Cooperation (Bishkek, 13 September 2013) includes the development of such cooperation (art. 1, 2) and ensures the protection of rights to the results of intellectual activity obtained in the course of scientific and technical cooperation [13].

Thus, the general principles of international law (lex generalis) are the first (general) level of legal regulation of regional scientific and technical cooperation; they are reflected in several international treaties and acts on issues of international scientific and technical cooperation and set the direction for the development and operationalization of industrial and intra-branch principles.

Section 3.2. Branch principles of legal regulation of international

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scientific and technical cooperation (lex specialis)

The actualization of problems of regional international scientific and technical cooperation emphasizes the issues of its legal regulation and registration of relevant relations. Since supranational legal regulation of the relations under consideration is carried out mainly at the macro-regional level, the principles of international scientific and technical cooperation at the level of regional international organizations are of interest. However, the number, content, legal quality and even the interpretation of the principles are diverse.

It should be noted that in order to distinguish the branch principles of legal regulation of international scientific and technical partnership, it is necessary to focus on the position of legal norms, regulating the sphere of social relations in the system of international law. The problem is that the legal doctrine generally considers scientific and technical cooperation as an integral part of international economic law [19, p. 604]. The attribution of international scientific and technical cooperation to the sphere of economic cooperation can be observed in the structure of the activities of regional international organizations. Thus, within the CIS, the scientific, technical and innovative sphere is referred to the field of economic cooperation [20]. Similarly, the ASEAN economic community includes a meeting of heads of ministries and departments of science and technology [21].

At the same time, some authors note that scientific and technical cooperation is a special type of inter-state relations, while economic interaction of states is, first of all, a kind of trade relations [22, p. 335]. A similar approach can be observed in the literature on international economic law. Thus, the works of Ignaz Seidl-Hohenveldern “International Economic Law” [23] and Matthias Herdegen “Principles of International Economic Law” [24] do not consider international scientific and technical cooperation as an integral part of international economic law.

However, at present the question of the position of international scientific and technical cooperation in the system of public international law has not been sufficiently investigated. It should be noted that international law, as well as

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any other sphere of legal regulation, is characterized by fragmentation, as a result of which new areas are formed, the society is interested in their regulation [25, p. 6]. As the main reasons for the fragmentation of international law, Professor G. Hafner calls the rapid spread of international rules; increasing political fragmentation; regionalization of international law; specialization of international rules [26, p. 849-850]. The history of international law demonstrates that such branches as the law of international organizations, international security law, international economic law, international labor law, international space law and others have been formed and distinguished as independent elements.

As a rule, the definition of a branch in the international law is not an easy task, as there are no generally recognized criteria and parameters of the branch of law. One can even reveal that international law is a disorganized system [27; 26, p. 850]. However, it is possible to meet reverse judgments, according to which "the system of international law is the result of the influence of a number of factors of objective and subjective order, determining the development of international relations and the law governing them" [28, p. 42]. The main element of this system is the branch of international law, which, according to D.I. Feldman, should be understood as "a set of agreed legal norms, regulating international relations of a certain kind, a set characterized by the relevant subject of legal regulation, a qualitative originality, the existence of which is caused by the interests of international communication" [28, p. 47]. From this perspective, it is possible to demonstrate that international scientific and technical cooperation has the features necessary for this sphere recognition as an independent branch of law.

The first line involves the regulation of international relations of a certain kind. According to the authors, the homogeneity of the above-mentioned relations lies in the fact that all of them involve the development of cooperation between states in order to conduct joint research and scientific and technical developments, as well as the development of sustainable links between national scientific communities. The emerging system of international cooperation in the field of science and

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technology includes such interrelated elements as "international scientific relations aimed at solving theoretical and experimental problems of fundamental and applied science, and international technical and technological relations, training; international assistance in the implementation of individual works and the creation of technological processes; ensuring the safe use of scientific and technological progress" [29, p. 201].

The second feature is the interest in legal regulations of relevant relations in the international community. Such interest is evidenced by the existence of international acts focused on legal regulations of international scientific and technical cooperation (for example, the Agreement on Cooperation in Science and Technology between the European Community and the Government of the Russian Federation, 2000).; Agreement between the Governments of the SCO Member States on Scientific and Technical Cooperation, 2013 and others), and the emergence of structures and units involved in the development of interstate scientific and technical cooperation in international organizations (for example, the Interstate Council for Cooperation in Science, Technology and Innovation (CIS); meeting of heads of ministries and departments of science and technology (ASEAN and SCO); African Research and Innovation Council (African Union) and others).

Without denying the close relationship of such areas as science, technology, economy, it should be noted that the level of development of science and technology largely determines economic growth. On the contrary, excessive commercialization or privatization of science contributes to constraining the development of fundamental science and reduces the availability of new knowledge (according to Professor P. Stephan) [30]. The authors suggest that the international legal regulation of scientific and technical cooperation and the economy should take into account the various objectives pursued within the framework of regulations of these relations. Therefore, it is necessary to consider international scientific and technical cooperation as a separate branch of public international law.

At the same time, a number of branch principles of international economic law are harmoniously integrated into the

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system of legal regulation of international scientific collaboration. In particular, it is possible to distinguish such principles as the principle of freedom of choice of forms of organization of foreign economic relations; the principle of mutual benefit; the principle of national treatment [31, p. 370-371]. The manifestation of these principles can be found in the international agreements on scientific and technical cooperation of the regional organizations under consideration. Thus, the principle of freedom of choice of forms of organization of foreign economic relations, adapting to the sphere of scientific and technical cooperation, is transformed into the principle of **freedom of choice of forms of organization of scientific relations** and it is described in article 8 of the Agreement on Creation of General Scientific and Technological Space of the State Parties of the Commonwealth of Independent States (1995) [15]; article 2 – The Agreement between the Governments of the SCO Member States on Scientific and Technical Cooperation (2013) not only contains an open list of forms of international scientific and technical cooperation, but also the possibility of choosing both bilateral and multilateral bases of cooperation [13]. An example of consolidation of the **principle of mutual benefit** can be the provisions of the Agreement on Creation of General Scientific and Technological Space of the State Parties of the Commonwealth of Independent States (1995), establishing that participation... in programs and projects of multilateral cooperation of interested countries is carried out on a mutually beneficial and voluntary basis [15].

Also, the agreements of regional organizations on scientific and technical cooperation may enshrine **the principle of national treatment**. For example, article 2 of the Agreement on Creation of General Scientific and Technological Space of the State Parties of the Commonwealth of Independent States (1995) provides for the mutual provision of national treatment for research organizations, scientists and specialists of the States parties to this Agreement in the field of scientific and technological goods and services, as well as participation in competitions for open state orders [15]. The ASEAN Framework Agreement on Services (1995), which covers, in particular, the

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field of research and technological development, also introduces equal national treatment for service suppliers in ASEAN (article 5) [32].

Some authors highlight the principles, aimed at establishing the legal regulation of international scientific and technical cooperation: the principle of freedom of scientific research; the principle of freedom of choice of the form of organization of scientific and technical relations; the principle of cooperation in the application of scientific and technological progress; the principle of scientific and technical assistance, equality and non-discrimination in scientific and technical relations; the principle of equivalence in the exchange of scientific and technical achievements; the principle of reciprocity [33].

It seems that not all of the above principles should be recognized as branch principles of international scientific and technical cooperation. Thus, the principles of cooperation and reciprocity, as previously explained, are manifestations of the implementation of the general principles of international law (lex generalis).

International documents on scientific and technical cooperation of individual regional organizations (CIS, ASEAN, SCO), as a rule, do not contain clearly defined branch principles of legal regulation of the relevant relations. However, in some CIS documents it is possible to find the lists of principles that are directly related to the area under consideration.

In the recommendation legislative act “On the General Principles of Cooperation of the CIS Member States in the Field of Science and Scientific and Technical Activities” (1995) the following principles of cooperation in the field of science and scientific and technical activities are listed: coincidence of long-term interests and goals related to the need to combine efforts in the activities of the CIS member states; mutual respect by the parties of the state interests, features and traditions of each of the participants; recognition of international legal norms; equal participation in the joint solution of problems of interest to cooperating states and organizations; ensuring mutual benefit from cooperation on state and non-state lines; mutual responsibility of the parties; taking into account the

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features of the current stage of social and economic development of the CIS member states [34]. However, this document mainly reflects either lex generalis (for example, the principle of recognition of international legal norms) or intra-branch principles (for example, the principle of mutual benefit, which is also relevant to international economic law).

The decision on the Main Directions of Long-Term Cooperation of the CIS Member States in the Field of Innovation (2009) [35] and the Program of Innovative Cooperation of the CIS Member States for the period up to 2020 [36] also distinguish a number of principles that are directly related to the field of scientific and technical cooperation: independence, equality, observance of national interests, ensuring optimal proportionality based on the allocation of the leading links; complementarity of the regional Program in relation to national programs in science, technology and innovation; compatibility and consistency with the main international programs of innovative development.

From a position of functions of legal regulation, not all the principles specified in the Program of Innovative Cooperation of the CIS Member States for the period up to 2020 should be considered as the main branch principles of legal regulation of international scientific and technical cooperation. Most of them are organizational and managerial in nature (for example, complexity; scientific validity; consistency; unity of purpose; transparency; adequacy; objectivity; competitiveness; transparency). The legal principles in their pure form should include, perhaps, only the principles of independence, equality, and respect for national interests. At the same time, the principles of independence and equality in their content refer to the principles of the first level (lex generalis), and the principles of ensuring optimal proportionality based on the allocation of the leading links, the complementarity of the regional program in relation to national programs in the scientific, technical and innovation spheres, compatibility and consistency with the main international programs of innovative development cover exclusively the issues of regional development programs in the scientific, technical and innovation spheres, they

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should be considered as third-level principles (intra-branch principles).

Special attention should be paid to such branch principle as **the principle of respect for national interests**. On the example of this principle it is possible to trace in detail its concretization in the texts of international acts on international scientific and technical cooperation.

Within the SCO, the application of the principle of respect for national interests is manifested in the Agreement between the Governments of the SCO Member States on Scientific and Technical Cooperation (2013): in accordance with the national legislation of the SCO member states, the development of scientific and technical cooperation is carried out (art.1, 2) and the protection of rights to the results of intellectual activity, obtained in the course of scientific and technical cooperation, is implemented [13].

The Agreement on Creation of General Scientific and Technological Space of the State Parties of the Commonwealth of Independent States (1995) [15] to some extent narrows the application of the principle of national interests: the abolition of customs restrictions on the exchange of research results within the framework of the Commonwealth, experimental and experimental samples and technologies, the transfer of scientific literature, scientific and technical information, instruments, experimental equipment, reagents and other materials for research; mutual provision of national regime for research organizations, scientists and experts of the state parties to the present Agreement in the markets of scientific and technological goods and services, as well as the participation in tenders for public orders (article 2); the coordinated actions in the preparation of relevant national regulatory legal acts (article 8). At the same time, the common scientific and technological space of the CIS provides for the provision to each state party to the Agreement of the possibility of using scientific and technological spaces, markets of scientific and technological goods and services of other parties to the Agreement, in accordance with the national legislation of the parties (article 1). The latter provision clearly demonstrates that the principle of respect for national interests remains relevant in the case of high scientific and technological integration

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between the states parties to regional organizations.

The principle of respect for national interests is also taken into account in the exchange of scientific and technical information. Thus, in the Agreement on Cooperation in the Field of Interstate Exchange of Scientific and Technical Information (2014), it is noted that taking into account the interests of national systems of scientific and technical information, draft programs of joint activities in the field of interstate exchange of scientific and technical information are formed [38].

Within ASEAN, a reflection of the principle of national interest can be found in some provisions of ASEAN Plan of Action on Science, Technology and Innovation (APASTI) for the period 2016-2025. In particular, the exchange and mobility of scientists and researchers, both from public scientific and technical institutions and from the private sector, is carried out in accordance with the laws, rules, regulations and national policies of ASEAN member states. The peaceful uses of outer space and cooperation in areas such as the technology transfer, joint technological research and development, capacity-building efforts in the field of space technologies and their applications are carried out in accordance with international laws, national legislation and the rules of states parties [17].

Thus, the second level of legal regulation of international scientific and technical cooperation consists of the following branch principles (lex specialis): the principle of free choice of forms of organization of scientific relations; the principle of mutual benefit from participation in the programs and projects of international scientific and technical cooperation; the principle of national treatment for the subjects involved in the implementation of joint scientific and technical projects; the principle of freedom of scientific research; the principle of scientific and technical assistance, equality and non-discrimination in scientific and technical relations; the principle of equivalence in the exchange of scientific and technical achievements; the principle of respect for national interests with participation in international scientific and technical cooperation.

However, depending on the degree of mutual integration of states parties to

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regional organizations, some principles may not be applied. For example, the principle of national treatment is used in the CIS and ASEAN, but not in the SCO.

Section 3.3. Intra-branch principles of legal regulation of international scientific and technical cooperation (lex internus[7])

In modern literature, insufficient attention is paid to the structuring of principles of international law. In most writings, only the general (lex generalis) and branch (lex specialis) principles of international law are distinguished. The latter are sometimes referred to as intra-branch principles, implying that these general principles regulate relations without going beyond one branch of international law, i.e. they are opposed to intra-branch principles that are applied for the purpose of legal regulation of several branches of international law [39].

At the same time, it seems justified to take into account the institutional aspect, which consists in the fact that the sphere of international scientific and technical cooperation includes several main components (institutions) that make up the internal content of the branch, in each of which one can distinguish its own general principles of legal regulation of the relevant relations, referred to, at the authors' suggestion, lex internus.

According to the authors, the general components are:

- exchange of scientific and technical information;

- financing of scientific and technical cooperation;

- rights to the results of scientific activity and technology obtained by the results of scientific and technical cooperation;

- development of international scientific, technological and innovative development programs;

- the status of subjects of joint international scientific and technical activities.

Unfortunately, not all of the above components are properly developed and regulated in the documents of regional international organizations. An example of such an organization is the SCO, which has yet to develop scientific and technical cooperation in these areas. However, this is due to objective

[7]From Latin "internus" – internal.

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reasons, as the SCO unites the states that do not have a long history of close scientific and technical cooperation, and the regulatory framework for its development began to form only in 2013 (adoption of the Agreement between the Governments of the SCO Member States on Scientific and Technical Cooperation).

Therefore, the intra-branch principles of legal regulation of scientific and technological collaboration, which are reflected in the activities of regional organizations with a longer history of cooperation, can serve as a good example of the constructive development of legal regulation of the relevant components of scientific and technical cooperation between the SCO member states.

The legal regulation of the exchange of scientific and technical information is very detailed in the CIS documents. The main acts in this field are the Agreement on Interstate Exchange of Scientific and Technical Information (1992) [40], the Agreement on Free Access and the Order of Exchange of Open Scientific and Technical Information of the CIS Member States (1998) [41] and the Agreement on Cooperation in the Field of Interstate Exchange of Scientific and Technical Information (2014) [38]

The literature states that the Agreement on Cooperation in the Field of Interstate Exchange of Scientific and Technical Information (2014) is based on the following principles:

- implementation of a coherent science and technology policy supporting the interaction of national information systems;

- preservation, development and effective use of the existing information infrastructure and information resources of the CIS member states;

- mutually beneficial interstate exchange of information and economic feasibility of participation of the CIS member states in interstate scientific and technical activities [42].

In general, sharing this point of view, this list can be supplemented.

Analysis of the above agreements allows formulating the following principles of **legal regulation of the exchange of scientific and technical information**:

- the principle of free access to sources of scientific and technical information;

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- the principle of joint and mutually beneficial use of accumulated scientific and technical information;

- the principle of voluntary participation in programs and projects for the development of interstate exchange of scientific and technical information;

- the principle of full formation and effective use of resources of scientific and technical information.

Funding for scientific and technical cooperation is also subject to some intra-branch principles. The following principles are reflected in the ASEAN Plan of Action on Science, Technology and Innovation (APASTI) for the period 2016-2025:

- the principle of cost-sharing for the implementation of projects and activities of international scientific and technical cooperation. This principle also implies that the profit from participation in the project is determined in proportion to the costs incurred for the implementation of the project. In addition, this principle means that in cases of granting the right to finance international scientific and technological projects as a share of the participation of the states concerned, such investors are given the priority right to profit from the project (Annex 7) [17].

- the principle of targeted use of funds provided for the funding of scientific and technical cooperation (Annex 5) [17].

- the principle of equal participation in the funding of scientific and technical cooperation (Annex 6) [17].

- the principle of prohibiting the provision of contributions to the funding of scientific and technical cooperation with reservations or restrictions on their use (Annex 6) [17].

- the principle of separate funding of scientific and technical cooperation and funding of organizational needs of regional organizations, as well as other sectoral funds (Annex 6) [17].

The Agreement on Creation of General Scientific and Technological Space of the State Parties of the Commonwealth of Independent States (1995) [15] mentions the principle of mutual settlements and payments to support joint scientific research, which should be considered as an integral part of the principle of cost-sharing for the implementation of projects and activities of international scientific and technical cooperation.

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With regard to **the rights to the results of scientific activity and technology obtained by the results of scientific and technical cooperation**, the principles of legal regulation of their distribution are important. Within the CIS, these principles are listed in the decisions of the CIS Council of the Heads of Government of 2 November 2018 "About the distribution of rights to intellectual property objects created as a result of implementation of interstate innovative projects and actions within the interstate Program of Innovative Cooperation of the CIS Member States for the period till 2020":

- compliance with the legislation of the states associated with the Program;

- proper protection of intellectual property created as a result of and (or) used in the implementation of interstate innovation projects and activities under the Program;

- integration of the respective contributions of the participants;

- effective use of intellectual property;

- equality of participants in interstate innovation projects and activities under the Program;

- protection of confidential information;

- implementation of measures aimed at the prevention and suppression of offenses against intellectual property [44].

According to the authors, the above principles should include only the principle of proper protection of intellectual property created as a result of and (or) used in the implementation of interstate innovative projects and activities; the principle of integration of contributions of participants in the creation of intellectual property; the principle of effective use of intellectual property; the principle of protection of confidential information. The remaining principles are of a general nature, for example, the equality of participants in interstate innovation projects and activities under the Program is only a concretization of the general principle of equality.

The analysis of the Agreement between the Governments of the SCO Member States on Scientific and Technical Cooperation (2013) reveals the establishment of the principle of adequate protection of intellectual property created as a result of

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international scientific and technical cooperation (art.3) [13].

In order to develop **effective regional programs for international scientific, technological and innovative development**, it is necessary to comply with such intra-branch principles as ensuring optimal proportionality based on the allocation of the leading links; complementarity of international regional programs in relation to national programs in the scientific, technical and innovative spheres; compatibility and consistency with the main international programs of innovative development. In particular, in the CIS, these programs are proclaimed in the decision on the Main Directions of Long-Term Cooperation of the CIS Member States in the Field of Innovation (2009) [35] and the Program of Innovative Cooperation of the CIS Member States for the period up to 2020 [36].

The provisions of article 4 of the Agreement between the Governments of the SCO Member States on Scientific and Technical Cooperation (2013) also contain a reference to the principle of coordination of scientific and technical programs and projects [13].

Ignoring the above principles may result in the fact that regional scientific and technical cooperation may lag behind global trends in the development of science and technology and act as a deterrent to the innovative development of the member states of the relevant regional associations.

The status of subjects of joint international scientific and technological activities should also be regulated by intra-branch principles. However, there is currently a lack of legal regulation of this component in the regional organizations under consideration.

International scientific organizations and centers as well as scientists and researchers are attributed to the subjects of joint international scientific and technical activities. However, according to the authors, this sphere should also include organizations engaged in the practical implementation of the results of scientific and technical activities.

Some principles governing the status of international scientific organizations and centers, scientists and researchers can be found in the CIS Convention “On the Establishment and Status of International Research Centers and

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Scientific Organizations" (1998) and in the Model law of the CIS "On the Status of Scholars and Researchers" (2008):

- the principle of privileges and immunities necessary to ensure the activities of international scientific organizations and centers (article 9 of the CIS Convention "On the Establishment and Status of International Research Centers and Scientific Organizations" (1998) [44];

- the principle of freedom of scientific creativity and scientific activity (article 4 of the Model law "On the Status of Scholars and Researchers" (2008) [45];

- the principle of recognition of personal and property rights to the results of scientific and technical activities of the relevant subjects (article 8 of the CIS Convention "On the Establishment and Status of International Research Centers and Scientific Organizations" (1998); article 9 of the Model law "On the Status of Scholars and Researchers" (2008) [44; 45].

Some of the above principles are also reflected in ASEAN documents. Thus, the principle of freedom of scientific creativity is mentioned in the main objectives of APASTI for 2016-2025 [17].

Unfortunately, this component of scientific and technical cooperation within the SCO has not actually been developed yet, due to the short period of development of the sphere of scientific and technical cooperation within the framework of this regional organization. Nevertheless, it seems that the principles of freedom of scientific creativity and scientific activity, as well as the recognition of personal and property rights to the results of scientific and technical activities for the relevant subjects are universal within the framework of the component under consideration and do not change significantly depending on the type of regional organization.

Intra-branch principles are also important for law enforcement and they are used in the practice of international judicial bodies. Thus, the economic Court of the CIS in the case on the interpretation of certain provisions of the Agreement on Cooperation in the Field of Investment Activities (signed on 24 December 1993) applied a number of intra-branch principles relating to the funding of scientific and technical

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cooperation [46]. In particular, the Court applied the principle of targeted use of funds provided for the financing of scientific and technical cooperation and the principle of separate financing of scientific and technical cooperation and financing of organizational needs of regional organizations, as well as other funds. The first principle was applied in the interpretation of the above-mentioned documents in order to draw a conclusion that the property of the Interstate Fund for humanitarian cooperation of the CIS member States can be used exclusively for financing activities in the field of humanitarian cooperation, while the financing of the content of The Executive Directorate of the Fund does not meet these goals. In accordance with the second principle, the Court found that the property of the Interstate Fund for humanitarian cooperation of the CIS member States and the expenses for the maintenance of the Executive Directorate of the Fund are distinguished by the sources of formation (the property of the Fund is formed by voluntary contributions credited to the account for earmarked revenues, while the funds for the maintenance of the Executive Directorate go to a special open only for these purposes separate Bank account – "the account for earmarked revenues for the maintenance of the Executive Directorate of the Fund").

Thus, intra-branch principles (lex internus) saturate and set the vector of legal regulation of individual components of international scientific and technical cooperation, which is especially important in the deepening of scientific and technical collaboration of regional organizations in the initial stages of development of integration processes.

4. Conclusion

The study demonstrates that the principles of legal regulation of international scientific and technical cooperation have a complex three-level structure. The first level is represented by the general principles of international law (lex generalis), among which are: the principle of good faith fulfillment of obligations; the principle of sovereign equality of states; the principle of respect for human rights; the principle of cooperation between states. These principles are fundamental and can be applied even in the absence of their

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direct mention in the texts of documents of regional organizations on scientific and technical cooperation. They also serve as a guide for the formulation of the main provisions in the field of international scientific and technical cooperation. However, the lex generalis principles are rather abstract and there is the need for their implementation at the branch level. Thus, for example, the general principle of sovereign equality is further developed within the lex specialis in the principle of respect for national interests.

The allocation of branch principles largely depends on determining the place of international scientific and technical cooperation in the system of public international law. Despite the discussion of the chosen position, the authors suppose that international scientific and technical cooperation is an independent branch of international law, which regulates relations in the field of cooperation between states for the purpose of joint research and scientific and technical development, as well as the development of sustainable relations between national scientific communities. The need for in-depth regulation of these relations organically leads to the conclusion of the emergence of the principles of the second level, complementing lex generalis, taking into account the specifics of regulated social relations.

The second level of principles is the branch principles of international law (lex specialis). Taking into account the fact that international scientific and technical cooperation is derived from the branch of international economic law, the principle of free choice of forms of organization of scientific relations, the principle of mutual benefit from participation in programs and projects of international scientific and technical cooperation should be considered as the main; the principle of national treatment for the subjects involved in the implementation of joint scientific and scientific and technical projects; the principle of freedom of scientific research; the principle of scientific and technical assistance of equality and non-discrimination in scientific and technical relations; the principle of equivalence in the exchange of scientific and technical achievements.

However, depending on the degree of mutual integration of states parties to regional organizations, some principles

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may not be applied. For example, the principle of national treatment is used in the CIS and ASEAN, but not in the SCO.

At the same time, a complex system of relations in the field of international scientific and technical cooperation involves the presence of special components (institutions). In this case, lex specialis can effectively regulate the interaction between such components; however, they are not enough to regulate relations within institutions due to their narrow specialization. Thus, there is a need for a third level of principles of legal regulation of international scientific and technical cooperation.

The third level of principles of legal regulation of international scientific and technical cooperation is only at the stage of its formation. It is proposed to define this level as intra-branch principles (lex internus). The principles of this level are diverse and depend on the regulated component of scientific and technical cooperation. The existence of these principles indicates a deeper level of interaction between the states parties of regional organizations.

Lex internus can qualitatively complement both general legal and branch principles of legal regulation of scientific and technical cooperation. With their help, it becomes possible to construct a coherent system of legal regulation, each element of which has its own regulatory framework: 1) international public law (lex generalis); 2) the branch of international scientific and technical cooperation (lex specialis); 3) narrowly focused components (institutes) of the branch of international scientific and technical cooperation (lex internus).

This system can be illustrated by the interaction of the following principles. It follows from the general principle of sovereign equality that, within the framework of scientific and technical cooperation, states cooperate as partners, respecting each other's national interests. However, this message requires clarification, which becomes possible due to the allocation of such branch principle of scientific and technical cooperation as the principle of national interests. However, this may not be enough to regulate certain narrow areas of international scientific and technical cooperation. In particular, without additional (intra-branch) regulation, it is not clear how the principles of sovereign equality and

respect for national interests can be implemented, for example, in the development of international scientific, technological and innovative development programs. In this situation, the application of such an intra-branch principle as the complementarity of international regional programs in relation to national programs in the scientific, technical and innovation spheres logically completes the system of legal regulation of international scientific and technical cooperation, taking into account the regional aspect of such interaction.

Being institutional by nature, lex internus can be effectively used in law enforcement practice. The example given in this paper demonstrates the relevance of intra-branch principles in the resolution of cases by international judicial bodies on the interpretation of the provisions of international instruments and the elimination of legal conflicts.

Thus, in order to strengthen scientific and technical ties, as well as sustainable economic development of the member states of regional international organizations, it is necessary to focus on strengthening the system of principles of legal regulation of the interstate partnership in the field of science and technology, as well as the implementation of intra-branch principles of legal regulation of international scientific and technical cooperation in regional international acts.

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REGULATION OF SMALL BUSINESS DEVELOPMENT IN RUSSIA

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Abstract: Entrepreneurship is a special kind of economic activity, which is based on independent initiative, responsibility and innovative entrepreneurial idea. The relevance of the study is conditioned by the fact that, despite the fact that the level of scientific, technical and production potential of any state is determined by big business, the basis of life of the country are small businesses as the most wide-scale, dynamic and flexible form of business life. It is determined by the great socio-economic importance of this sector, which unites the present-day interests of the bulk of the population involved in labor activity. National policy in the field of small business development is characterized by a comprehensive approach to creating favorable conditions for its functioning. The approach includes the following regulatory methods: improving the regulatory framework, forming branched and multi-level infrastructure for support of small business entities, ensuring availability of credit and financial mechanisms, and supporting foreign economic and innovative activity of small business entities. The formation of a well-developed business environment helps small businesses to become competitive at the market by fulfilling their economic potential, which contributes to successful development of the national economy as a whole. The development of small business is one of the priorities in the policy of the Russian Federation. In this regard, the paper is focused on studying the situation of small business development in Russia and identifying

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the main reasons hindering its development. The leading method for the study of the problem is the method of collecting empirical data and processing the research results, allowing a comprehensive review of methods and mechanisms for regulating the development of small business in Russia, comparing that with the experience of developed foreign countries. The paper presents the data on the level of small business development in the world's major economies, describes forms and methods of regulation of small business development in Russia and abroad, and identifies the main factors hindering the growth of entrepreneurial activity in the area of small business. On the basis of the conducted research the key directions of improving the system of state regulation of small business development in Russia are substantiated.

Keywords: economy, small business, entrepreneurship, state support, regulation, subsidy assistance

1. Introduction.

The relevance of the research conducted in the present paper is based on the fact that in conditions of macroeconomic recessions, sanctions regimes and high taxes the role of small business grows. This economy sector is a core element of any developed economic system without which the economy and society as a whole cannot exist and develop normally. The development thereof is a strategic necessity for stabilizing the political, economic and social life spheres of modern society, since small business responds to the changes in the market demand more promptly and thus ensures the required flexibility of the economy. The development of small business helps enhance the economic activity of the population, create additional work places and attract investments to various economic sectors. Being a site for practical introduction of innovations, small business helps to increase the tax yield of the budgets of all levels, and decrease the unemployment rate. It also secures the required level of competitiveness among the market participants by way of the market saturation with diverse goods and services thus ensuring an efficient operation of the national economy alongside with major companies [25].

Encountering a great many of threats and risks including economic, institutional and legal ones, small

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business entities demonstrate strong susceptibility to the market fluctuations. The small business sector responds to them by changes in the number of companies thus causing the changes in the structure of demand and supply, alterations in the employment pattern and level of income of the population and budgets of different levels [1].

Studying the experience of small business development in the countries with highly advanced economy makes it obvious that sustainable development of this sector requires an efficient system of state support. The objective of such support is to create proper conditions for the development of highly profitable and competitive entities of small business at an effective application of the state financial, material and technical, and information resources that are allocated as per the programs for business development support [10]. In Russia the system of support of small business development is also executed by means of the special-purpose program. However it is of general nature and does not depend on the types of activity [7]. Thereby there is an imbalance between the programs of business support and daily needs for certain types of target programs. There are a number of other problems as well.

The goal of the study is to reveal the problems that suppress the efficient growth of entrepreneurial activity among the entities of small business in Russia and to develop key directions for improving the processes regulating the development of this sector of economy.

A significant number of scientific papers have been devoted to the problem of regulating the development of small business. The major achievements in the sphere of studying small business are associated with the names of such foreign economists as A. Smith, D. Ricardo, J-B Say, D. Gorham, R. Cantillon, J. Schumpeter, S. Myers, M. Porter, W. Sharpe etc. In their papers not only the fundamentals of entrepreneurial activity were studied and the problems of small business establishment and development were investigated, but the necessity of state support of small business development was identified. A significant contribution to settlement of a problem of regulating small business was made by the studies of such Russian scientists as L.I. Abalkin, M.V. Bespalov, M.G. Lapusta, E.V. Kalinkin, D.S. Lvov, A.Yu. Manokhin,

I.V. Rozmainskiy, Yu.B. Rubin, Yu.P. Starostin, S.S. Sulakshin, P.M. Teplukhin, Yu.V. Yakovets, E.G. Yasin et al. In their papers the peculiarities of establishment and development of the Russian small business were studied, the strengths and shortcomings of the system of state support of small business in Russia were determined, and solutions to revealed problems were offered [9, 23].

At the same time with respect to the Russian practice not only the issues of the role of small business in the formation of competitive economy require further studies, but also the issues of state participation in regulation thereof. Taking in consideration the above the theoretical studies of the state regulation of small business and elaboration of recommendations encouraging its efficient development in terms of the measures on increasing the competitiveness of the Russian economy seem relevant.

Elaboration of improvement lines of the Russian system of state support of small business shall be based on classification of the factors preventing the efficient operation of this economy sector and shall consist in small business development via the improvement of the institutes of the state support thereof. A pivotal role in business support in Russia belongs to the local government authorities (municipal powers), since they are in direct contact with business in situ and influence the entrepreneurial climate within the specific territory [8]. The efficiency of national development on the whole is ensured at the municipal level by way of adequate spending the budgetary funds, and by proper fulfilling of measures for small business support [20].

2. Materials and Methods.

The credibility and consistency of the statement, conclusions and proposals is established by the use of numerous materials published in scientific literature and periodicals, thesis research, electronic resources etc. The research effectiveness is ensured by the use of different methods for collecting empirical data and processing the research results. The empirical research methods applied in the paper consist in describing the essence of small business and characteristic criteria; studying the system of state regulation of the small business development in Russia;

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comparing the applied methods of state support with the practice used in the countries with highly developed economy; and generalizing, analyzing and synthesis of the information obtained.

3. Results.

In Russia there are three key criteria as per which the business unit can be referred to the small business entity: limit on the level of income; limit on the staff number; limit on the other companies' participating interest in the charter capital. Small business entities can be: medium-sized enterprises, small enterprises and microenterprises. If the companies and entrepreneurs meet the above criteria they are considered to be the representatives of small business irrespective of the tax regime. From August 1, 2016 the calculation of the upper limit of income for the enterprises of small business over the past year includes not simply the total cash revenue, but all the income as per the tax declaration. The main criteria of referring the enterprises to small business are presented in Table 1.

As of today the Government Resolution No. 265 "On limit values of income received from implementation of business activity for each category of small and medium-sized enterprises" is in force [21]. It contains the limit values of income for small and medium-sized enterprises. At that previously in order to determine the belonging of the enterprise to small business the sales revenues were assessed, whereas from 2019 a broader notion of "entrepreneurial income" is used. Therefore, in accordance with the RF Government Resolution dated April 04, 2016 No. 265 the calculation includes not only the sales revenue but all income as per the tax records. From 2019 the headcount is determined on the basis of average staff number, the report on which is annually provided to the tax office.

Table 1 – The criteria of referring the economic entities to the category of small and medium-sized enterprises (SME) [13, 20]

Criterion	Medium-sized enterprise	Small enterprise	Microenterprise
Income value	2 bln. rubles	800 mln. rubles	120 mln. rubles
Staff number	101–250 persons	100 persons	15 persons

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Participating interest of other persons in the business capital	The participating interest of state formations (RF, RF entities, municipal formations), public and religious organizations and foundations is not more than 25% in total
	The participating interest of common legal entities (including foreign ones) is not more than 49% in total
	The participating interest of legal entities that are also the entities of small and medium-sized business is not limited.

In accordance with the Federal Law No. 209 "On the development of small and medium-sized enterprises in RF" dated July 24, 2007 (edited as of December 27, 2018) there are exceptions with respect to the interest in the charter capital. The limits are not applied to [13]:

– shareholders of the tech-intensive (innovative) sector of economy;

– Skolkovo project participants;

– companies that apply in practice the latest technologies developed by their founders – budgetary or research institutions;

– companies the founders whereof are included in the governmental list of persons rendering state support to innovative activity.

From December 01, 2018 the Federal Law No. 313-FZ "On making amendments in the Federal Law "On the development of small and medium-sized business in Russian Federation" dated August 03, 2018 added economic companies to the list of small business entities [22].

Successful development of small business is possible when it does not oppose large business, but they function together. In the developed countries such collaboration is based on the cooperation principle, the implementation of which allows large and small business to be complementary, especially in the sphere of sole productions and in innovative developments [2, 6].

Large business can save on production scales, thus raising the general economic performance. However it is small enterprises that have the capabilities of quick structural and technical changes, that is make the economy mobile and flexible in the dynamic external environment.

Small business is characterized by relatively small investments that restrict the production frameworks, at the

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same time limiting the opportunities of attracting additional resources (scientific and technical, financial, production, labor etc.) [14].

Limited resources of small enterprises determine their relatively short life cycle in many respects. According to the World Bank a year after the establishment of new small enterprises only 50% remains functional, in three years – about 7-8%, in five years – not more than 3%. At that the total number of small enterprises either grows or remains unchanged. High intensity of internal reorganizational processes inside the sector of small business should also be noted, which helps to optimize the use of its potential under conditions of the market economy which ensures relative stability of the total number and production level [11].

In conditions of unstable market economy and economic recessions typical of it, as well as under the economy restructuring, the production in traditional sectors drops with constant decline in jobs. In such cases there is a strong evidence of one of the essential features of small business – the possibility of quick generation of new work places, which significantly relieves social tension in depressed regions [12, 14].

According to the United Nations, in the global economic system small businesses are employers for almost 50% of working population across the world. The production level in the sphere of small business in developed countries makes from 33 to 67% of GNP. The data of structural analysis are presented in Table 2 [20, 23].

Table 2 – Interest of small business in primary economic indicators, %

Indicator	Interest of small enterprises in GDP of the country	Interest of small enterprises in total employment	Interest of small enterprises in the number of enterprises
USA	52.0	50.1	97.6
Germany	57.0	69.3	99.3
Great Britain	52.0	55.5	99.1
Italy	55.0	71.0	99.2
France	49.8	56.6	97.6
Japan	51.6	69.5	99.2

The provided data demonstrate the pivotal role of small business in the socio-economic and political life of each country, since this segment covers the overwhelming majority of enterprises, focuses the greatest part of economically active population and generates approximately half of GDP. Thus the relative share of enterprises of the small business sector in such countries as Great Britain, Japan, Germany and Italy exceeds 99% of their total number. Out of 880 thousand of industrial enterprises in Japan only four thousand have over 300 employees and 700 thousand have over 1000 employees. In EU countries the number of enterprises with a number of employed over 500 persons does not exceed 12 thousand [19]. A positive foreign experience of small business development shows that small business requires a comprehensive state support. The primary forms of support of small business in foreign countries are as follows: financial, legal, personnel, insurance and informational support. The practice of the leading countries demonstrates that assistance should be sustainable and permanent.

The Table 3 presents the volumes of annually allocated state financial support for the development of small business in different countries.

Table 3 – The volumes of annual financial support of small business, bln USD

Indicator	Support	Loans	Warranties	State order and subcontracting
USA	0.8	21.6	1.67	There is a nationwide system for searching and providing orders
Germany	1.8	61.9	n/a	
Great Britain	1.37	6.3	6.3	
Italy	5.05	15.2	n/a	
France	1.5	9.2	4.7	
Japan	1.64	39.9	5.5	

The data in Table 3 shows that in countries under study there is a nationwide system for searching and providing orders. The greatest number of loans provided to small enterprises falls on Germany. At the same time the greatest state support is provided to the entities of small business in Italy.

State support for small business development is implemented via the

establishment of developed infrastructure. The data on the level of development of infrastructure of services for small business in different countries is presented in Table 4.

Table 4 – Indicators of development of services infrastructure for small business, ea.

Indicator	USA	Japan	Germany	France	Italy	Great-Britain
Credit and financial services	There is a nationwide multi-branch network of banks, foundations, investment and insurance companies					
Centers for development of SME	1100	313	374	600	1200	450
Information centers	1100	13	33	34	50	45
Business-incubators and technoparks	330	11	182	216	26	471
Export promotion centers	20	network	network	26	123	60
Social centers	118	186	90	41	n/a	98
Public support	Lobbying by different public, business and professional associations at all levels of legislative and executive authorities					

In countries with the developed market economy great attention is also given to small business lending. The state establishes special structures and foundations for these purposes. The examples of such structures are as follows: Small Business Administration (USA); Loan for Medium-Sized and Small Companies (France); Corporation of Insurance Lending for Small Business (Japan). The government of the countries aims to maintain and develop the competitive environment encouraging the manufacturers to move towards using more efficient technologies.

The representatives of state authorities in foreign countries seek to ensure the maximum legal protection of the small business interests. Thus for instance in USA in the Small Business Administration there are departments of Bar Association and arbitration. The representatives of the structure hold hearings aimed at enhancing business

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performance, train entrepreneurs free of charge, and provide free access to information resources. The department is a linking between entrepreneurs and federal structures.

The sphere of Russian small business is not as developed as in other countries. The greatest part of problems arises due to the lack of circulating funds. The state provides subsidies and concessionary loans. However the amounts given free of charge are not sufficient and it is quite difficult to obtain a loan at the opening stage of the company [20]. A comparative characteristic of the level of development of small business in Russia, EU countries and USA is presented in Table 5.

Table 5 – Comparative characteristic of the level of development of small business in Russia, EU countries and USA [23, 24]

Indicator	EU	USA	Russia
Interest of small enterprises in total number of enterprises, %	98.7	86.2	30.7
Interest in total employment, %	50.2	52	25.7
Number of small enterprises for 1000 residents, ea	42	75	2
Tax contribution to consolidate budget, %	33.4	44.3	15
Contribution to GDP, %	39.8	50	21

The share of small business in GDP of Russia is about 21%, whereas this indicator in the developed countries is over 50%. Similar situation concerns the share of employed population falling on this sector. In Russia small business ensures only 25% of permanent jobs. At that the average size of added value produced by one entity of small business yields remarkably to the level of developed countries.

4. Discussion

As of today in Russia there have been formed the primary elements of the system of state support of small business that are generally accepted in countries with the developed market economy. The key factor for successful development of small business appears to be the improvement of the whole system of state support of small business with due account for modern conditions and problems of its development [20].

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Small business support has different forms in Russia. The RF government adopted a program of social and economic development of the country till 2020 which covers the special aspects of assisting small business. The assistance aims at establishing healthy competition and improving general living standards of the population. Providing state support raises the possibilities for opening new business. The assistance to entrepreneurs is rendered within the frameworks of the federal and regional programs. The events to be held within the frameworks of federal programs as well as the requirements for participation are established by the order of the Ministry of Economic Development of the Russian Federation which is elaborated with due consideration of the current legislation of RF. In the strategy of the socio-economic development of Russia till 2020 it is specified that the development of small business is one of the main priorities for the development of national economy. At that the measures of state support are directed at enhancing the efficiency of small business development as one of the key elements of the market economy. Within the framework of this strategy the state support is enshrined at the statutory level.

The system of state support currently consists of [23]:

– regulatory acts directed at support and development of small business;

– government machinery as the aggregate of the state institutional structures ensuring the execution of the state policy in this sphere and regulating the areas of small business and managing the infrastructure for the support thereof;

– state infrastructure for support of small business which includes non-profit and for-profit organizations the activity of which is directed at fulfilling the system of state support for the development of small business.

The primary instrument for execution of state policy in the sphere of development and support of small business are the federal, regional, sectorial (inter-sectorial) and municipal programs. The following forms of support are implemented within the frameworks of such programs:

1 Providing subsidies. If the entrepreneur complies with the requirements imposed on the program

participants, he(she) can obtain financial support from the state on the non-repayable basis within the program frameworks. The subsidy can reach 300 thous. rubles. The decision to provide the subsidy is taken after a comprehensive assessment of the business plan.

2 Providing free consultations. This form of support is fulfilled on the basis of employment centers, Federal Tax Agencies or Business Development Foundations. The employees of the institutions provide consultations on the subjects associated with taxation, maintenance of accounting and tax records, planning and the issues of interaction with state agencies.

3 Training to conduct business. Regional foundations for business development hold trainings and lectures, the primary objective of which is rendering assistance to first-time entrepreneurs in the issues of their awareness of business activity.

4 Providing land and premises on lease on favorable terms. The entrepreneur can obtain a ground plot or fixed assets for temporary use which allows saving on purchasing of one's own premises or ground plot from private persons.

5 Providing concessional loans. Currently there is a number of programs enabling the entities of small business to obtain low-interest loans.

6 Arranging free participation of small business entities in exhibitions and markets. Product presentation at free trading platforms allows not only reducing costs for advertising campaign, but also getting access to information and potential consumers.

Execution of such policy is controlled by the Ministry of Anti-Monopoly Policy and Business Support of the Russian Federation represented by the Department of Small Business Support.

Financial support of the measures on the development of small business stipulated by the Federal program is implemented by the Federal Foundation for Small Business Support. On regional and municipal levels this function is fulfilled through regional and municipal foundations. Regulating the development of small business by means of the special-purpose program allows ensuring concurrency, timeliness, financing and comprehensive fulfillment of the issues thus ensuring the efficiency of using the funds and the required result.

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Execution of the state policy for support of small business entities based on the target-oriented approach combined with the efficient control system allows not only achieving target indicators, but also creates conditions for subsequent, more dynamic development of this sector of economy.

State machinery of the system of support of small business includes state structures that are responsible for the development of small business on the federal level.

Currently the basis of the state infrastructure for support of small business is a system of state and municipal foundations. The system structure includes: the Federal Foundation and 75 regional foundations [8], 24 of which were established with the participation of the Federal Foundation. Municipal foundations are commonly founded with the participation of regional foundations [8]. The founders of regional foundations are the governments of the constituent entities of the Federation and municipal foundations – local authorities. There are three primary factors that determine the condition and efficiency of the activity of state and municipal foundations:

– legislation;

– state measures for support of small business (programs for support of small business);

– personal attitude of the top officials of executive authorities to the small business entities.

State foundations in their activity and development rely on the Federal Law “On state support of small business.” The statutory act provides rather great capabilities for supporting small business.

The unemployment fund together with the regional centers can render financial, consultation and information assistance. Training workshops at the training centers of the employment service are one of the channels providing assistance to business where firstly, the professional skills are practiced, secondly, temporary employment is provided, and thirdly, not only professional but also organizational competencies for establishing similar workshop in a regional center for instance are acquired [8].

The primary objective of the local government authorities is creating favorable climate and rendering a comprehensive support for business

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development. The local government authorities by arranging the events of state support for small business entities on the jurisdiction areas, at the same time establish their own program of support of small business based on the priorities of the socio-economic development of the municipal unit and financial capabilities. At that there is a broad list of mechanisms with the help of which municipal administrations ensure the assistance to business activity development at the regional level. The duties of the local government authorities include elaboration of and participation in fulfilling the municipal target programs for development and support of small business at the expense of attracting and using municipal funds and resources as well. Also, the governmental authorities at local level are entitled to provide the entities of small business with additional exemptions and concessions at own expense [3, 4].

The analysis of research and publications devoted to the problems of regulating and developing small business in Russia enables to identify the following primary groups of problems hindering the efficient development thereof:

– instability of the external business environment;

– organizational and legal problems;

– financial problems;

– informational problems;

– safety problems.

At that the main problems hindering systematic assistance to the entities of small business from the state are as follows:

– poor regulatory framework;

– growth of the taxation burden;

– bureaucratization of state institutions fulfilling supervisory functions;

– inefficient system of financing the business entities;

– instable factors of the external environment (inflation, growth of prices in all production spheres etc.).

Another problem of small business enterprises in Russia is a lack of information for business entities. The entities of the segment under study are in the information vacuum not only about the external environment but also about their own business (except for the information required for accounting

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statements). The current situation is associated with saving funds on development of information technologies on the part of representatives of small business, and often total shortage of such. Also, the methods of business support specified in the regulatory legal acts are often not fulfilled in practice. This situation also has a negative impact on the development of small business [5]. However the state undertakes attempts to remedy the situation introducing new forms of business support from time to time.

A positive result of implementing the state program is also a possibility for operating enterprises of small business to be reimbursed for part of costs for interests on loans, and for purchasing production facilities. Allowances are provided to enterprises fulfilling innovative activity as well as to companies executing investment projects. However, in practice it is quite difficult to obtain such assistance for newly founded companies, whereas it is them that lack capital most of all. Special attention should be paid namely to this category of entrepreneurs.

The elaboration of the lines of improving the current system of state support for small business shall be based on classification of the factors preventing the efficient operation of this economy sector and shall consist in its improvement via the development of the institutes of state support. By the institutes is meant the aggregate of both the infrastructure of state support and institutional rules ensuring high-efficiency operation of entities of small business patterns. The infrastructure for support of the companies of this segment should consist of the agencies and development centers, small business credit assistance and support foundations, investment funds, science and technology parks, innovation centers and subcontract support centers, business incubators, marketing centers, business training centers, product export support agencies, leasing companies, consulting centers and other organizations.

In general the considered peculiarities of small business development in Russia allow identifying a number of strategic milestones for implementing support, regulating small business development, and enhancing

the performance of its activity. They include:

– changing the approach to state support of small business and creating favorable entrepreneurship climate;

– determining the level of needs for credit resources of small business companies on a regular basis and preventing groundless rise in credit interest rates;

– improving the mechanisms of providing state guarantees, and of subsidizing of credit interest rates;

– elaborating the information system for small business entities on the available mechanisms of state support envisaged by the regional and federal programs in force;

– encouraging cooperation of large and small enterprises: subcontracts (production cooperation), franchising, outsourcing etc.

Implementation of these strategic alternatives in practice will allow increasing the efficiency of regulating the development of small business in Russia that will help to enhance its economic safety during the crisis.

5. **Conclusion**.

Thus in the process of studies by means of comparative analysis of the data on the state of development of small business in Russia and developed economic countries, there were revealed the primary reasons for decrease in efficiency of national regulation of small business development in Russia. The necessity of further improvement of the measures of state support of development of this business sphere was logically substantiated. There were stated specific proposals of general-methodological and practical nature aimed at improvement of the system of state regulation of the small business development in Russia for the purposes of increasing the efficiency of development of this segment of economy, and consequently of the national economy as a whole.

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VIOLATIONS OF THE LAW DURING THE PRELIMINARY INVESTIGATION IN THE RUSSIAN CRIMINAL PROCEDURE

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Abstract. This study identifies the violations committed by authorized officials in the exercise of their powers, as well as their causes and consequences for criminal process. The law enforcement practice of the preliminary investigation and its legal basis was carried out. Violation of the law during the preliminary investigation reduces its efficiency and diminishes the authority of state power in specific public relations. The study describes typical law violations in the investigator's actions in criminal procedure and concludes the priority of ensuring personal legal status in criminal procedure. The determinants of violations in the course of criminal procedure are determined on the basis of the analyzed criminal cases. It is concluded that the demands on the investigator's actions should be raised with the simultaneous increase of their personal responsibility for compliance with the relevant procedural framework of criminal process.

Keywords: principle of legality; legal status of parties to the criminal process; preliminary investigation; investigative activities; return of the criminal case to the prosecutor; rights and interests of parties to the criminal process

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1. Introduction

It seems that is the lawful, detailed, professional investigation of the facts of committing the criminal acts that determines the efficient crossing crime along with other circumstances. This is to ensure the principle of the unavoidability of punishment and the restoration of the legal status of criminal offence victims. Also, the conduct of legitimate investigations minimizes the risk of prosecution of the wrongfully convicted. This work develops recommendations for improving the preliminary investigation in criminal cases. The common goal of the international documents containing regulations of public relations in criminal procedure is to enrich national legal systems with the requirements of a fair and prompt investigation, strict provision of personal legal status in this process, and compliance with the most significant common principles of the considered actions.

2. Materials and methods

The study considered issues have been studied by many scientists, among which we tend to allocate Antipova I. A., Bykov V. M., Erofeev A. G., Kudryavtsev V. N., Kamneva E. V., Middleton W., Macdonald S., Neganov D. A., Petrov V. A., Petrukhin I. L., Pospelova J. S., Romanovsky G. B., Samochkina R. R., Sviridov M. K., Stepanov, Y. I., Tarichko I. Yu., Titov K. A., Tyunin, V. I., Shirvanova A. A. , and Florya D. F. It is reported that the preliminary investigation, along with the inquiry, allows solving the most important tasks in the criminal process. It is no coincidence that researchers [1, p. 171] note serious changes in criminal justice. The works [2, p. 41; 3, p. 225; 4, p. 225] report the inadmissibility of illegal limitation of human rights and freedoms, as well as the impossibility of substantiating such facts by any interests of law enforcement agencies. At the same time, the principle of legality is required for all stages of criminal process, as it allows to achieve the goals of criminal process and to ensure the strict observance of human and civil rights and freedoms [5, p. 4]. Attention is drawn to improving national systems of legislation by detailing and specifying the stage of preliminary investigation, strengthening the guarantees of personal legal status of the involved in social activity with the simultaneous increase

of optionality and competitiveness of the investigation activities and its simplification.

The research is based on the means of such common scientific cognition method as materialist dialectics. In this case, the study crucially needs such methods as induction and deduction, analysis and synthesis, generalization and analogy, a systematic approach and content analysis. In order to obtain reliable results, the study involved such specific scientific methods as system and structural specifically sociological and formally legal analysis. The conclusions are based on the results of empirical research, which analyzed the criminal cases tried in the form of preliminary investigation. In addition, the staff of investigative units (69 people), prosecution agencies (34 people) and judges were interviewed. In the course of direct oral communication with investigators of the internal affairs agencies and the Investigative Committee of the Russian Federation, the difficulties of direct law enforcement and the causes of law violations were emphasized. The purpose talking with representatives of the Office of the Prosecutor General of the Russian Federation was to determine the most typical violations detected during the implementation of the supervisory authorities. Interviews with the court staff discovered the most common reasons of the returns of criminal cases to the prosecutor according to Article 237 of the Russian Federation Code of Criminal Procedure, as well as the determinants of complaints on the actions and decisions of investigators according to the article 125 of the Code.

3. Research results

The study found that it is the violation of obligations on the part of authorized bodies that is illegal; it causes the negative consequences for society and the state due to non-compliance with the procedural order.

To achieve certainty in the understanding of the term 'law violation' in criminal process, it is recommended to take as not fulfilling the requirements of the criminal procedure legislation by the power entities of the criminal process. In this case, it possibly is the imposition of obligatory ensuring the established order and the corresponding violation of the procedure, the rights and legitimate

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interests of parties by officials that entails negative legal consequences in the preliminary investigation.

The non-compliance with the established procedure for intelligence operations is probably the reason for recognizing the derived evidence unacceptable. Thus, the duties of the investigator include verification of the legality of the activity of operational while bringing the procedural status of the information obtained from intelligence operations.

According to the results, the possible consequences of violating the principle of legality may be classified intolegal, non-legal and the consequences that are important for the criminal case and not related to the course of its investigation. The classification takes into account the qualitative features and legal norms.

The analysis of the provisions of the Russian Federation Code of Criminal Procedure and the Criminal Code of Russia allows talking about the system of legal consequences of violating the principle of legality in the preliminary investigation, among which the following aspects are the most significant: recognition of non-compliance with the legal order of the conducted investigative actions and applying the rule on incompetent evidence to the results obtained during them; implementation of procedure of return of criminal case to the prosecutor and transferring it to its investigator for its extension and revision; bringing the person who violated the established order to disciplinary, administrative or criminal liability; restoration of the violated status.

The subject that has violated the established procedure of criminal process during preliminary investigation may be held liable under criminal, administrative or disciplinary branches of law. At the same time, bringing an official to the appropriate type of responsibility may not entail negative consequences for law enforcement activities in the framework of pre-trial proceedings.

Legal consequences have the most negative impact on the subjects that ensure the implementation of the principle of legality during investigation, as well as on the course and results of the investigation. Illegal consequences, which are possible in case of violating the Art. 7 of the Russian Federation Code

of Criminal Procedure (RF CCP), can not be ignored.

In most cases, the consequences of violating the principle of legality in course of investigation is of complex character. This means that unfavorable moments of non-compliance with the law of criminal process are reflected both in the successful criminal investigation (calling it into question) and directly on the identity of the official who committed the violation. Due to the serious and negative nature of violations of the principle of legality and their consequences during the investigation, the problem of their prevention becomes relevant not only for theoretical studies, but also for law enforcement agencies.

According to the analysis results of criminal cases, it is possible to consider the following violations of criminally-remedial norms in the investigator's activities:

1. Failure to comply with the requirements of RF CCP while preparing the indictment, provided that these violations prevent the further development of criminal process and would not allow the court to make an informed and legal decision on the criminal case;

2. Ignoring the requirements of the criminal process legislation on the delivery of a copy of the indictment to the accused, or not recording this fact appropriately;

3. not explaining to the accused their legal status when studying the materials of the criminal case, which does not allow them ensuring the implementation and protection of their legal status;

4. Termination of criminal process in the pre-trial stage, followed by the transfer of the preliminary investigation materials to the court in order to decide on the use of compulsory psychiatric care, with the existing grounds for an indictment;

5. Investigator's non-acceptance of the procedural decision on combining of criminal cases subject, provided that there are grounds according to Article 153 of the criminal procedure code of the RF CCP

6. Improper qualification of actions of the accused, the person against whom the proceedings on the compulsory psychiatric care is conducted.

7. Violations allowed in the preliminary examination of the report of

the crime and decision-making according to Art. 145, 146, 148 of the RF CCP, which call into question the legality of the subsequent preliminary investigation or the admissibility of certain evidence obtained in the course of an illegal investigation.

4. Discussion

Preliminary investigation acts as the most important part of the pre-trial proceedings, which forms the evidence base of the criminal case [6, p. 131] and implements a set of measures aimed at solving the crime. As a matter of fact, transition of the criminal proceedings in further stages is possible only after the successful investigator's activities, the establishment of identity of people involved in crime [7, p. 135], bringing charges against them with a further indictment, transferring the criminal case to the prosecutor and to the court.

Russian criminal process is based on international standards of protection of human rights and freedoms, the provisions of national legislation based on the Constitution of the Russian Federation and regulating specific public relations, and it requires rejecting the priority of sending a criminal case to the court, but not to solve this problem to the detriment of the personal legal status and the procedure of the considered activities. It is unacceptable to excuse the law violations in criminal process with the need to solve the problem of combating crime, since the diminution of the personal legal status can not be justified by this goal.

Indeed, the principle of legality in criminal process according to article 7 of the RF CCP, requires authorized officials to strictly comply with the procedure established by criminal process legislation. Actions of investigation officials within the investigation that violate the procedural framework, cause the negative legal and organizational consequences [8, p. 77] that in turn minimize the efficiency of the preliminary investigation.

Law violation remain a controversial concept and is understood as a violation of the regulatory procedure of criminal process [9, p. 102], failure of the authorized entities to comply with the requirements of the legislation regardless of the expression of the illegal act [10, p. 53], deviation from the requirements of criminally-remedial norms [11, p. 219], guilty wrongful act

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committed by a delictual subject of remedial relations, for which the procedural reliability measures are applied [12, p. 39], various variations in investigative and judicial practice, which are manifested in actions that do not comply with the procedural rules or act as an unlawful result of the act of cognition [13, p. 301]. The definition of law violation, which says that it is the outlawry of the legal norms, provided that the result is harm to the process of law enforcement, committed by the subject of legal relations at any stage of the criminal process, being either action or inaction, is quite successful.

When considering this problem, such category of procedural offense as breach of procedural obligation provided for by the RF CCP to commit certain actions in the interest of others, which has a normative procedural consolidation and provides for the possibility of enforcement, should be emphasized. Despite the classification into authorizing and mandatory provisions, which is common for the scientific literature, the authorized subjects of criminal process (including investigators) lose this differentiation due to the fact that their rights granted by the legislator are actually their liabilities, from the execution of which they can not refuse.

The activities of officials of preliminary investigation carried out within the criminally-remedial procedure that ensure the achievement of their objectives (protecting the rights and legitimate interests of individuals and organizations aggrieved of crimes) and also allows protecting a person from illegal and unwarranted accusation, conviction and limitation of rights and freedoms.

Based on the provisions of the RF CCP, it is possible to assert the extension of the requirements of the principle of legality to the results of other areas of activity that are used in proving a criminal case. Here it is about the results of intelligence operations, as well as security procedures carried out in correctional facilities of the penitentiary system. This conclusion is based on the article 89 of the RF CCP that prohibits the use of the results of investigative activities in proving case is they do not comply with the requirements for evidence.

The loss of legal effect of the evidence collected during the

preliminary investigation is a significant negative circumstance that complicates or excludes the final decision-making on the criminal case. The complexity is getting even worse with the inability to eliminate the consequences of the law violation. Indeed, violations of the criminally-remedial law are more likely to occur during preliminary investigation [14, p. 73], and the issue of excluding evidence is most often resolved after a certain time during the trial. Such time interval is intentional, since in this case the possibility of eliminating violations is almost lost.

A negative consequence of the requirements of the FR CCP to preliminary investigation is the return of the criminal case for additional proceedings. This is possible both on the initiative of the prosecutor following on from studying the materials of criminal case submitted with the indictment, and by the decision of the judicial body made during the preparation of the case for trial in accordance with article 237 of the RF CCP.

Based on the study of the essence of criminally-remedial violations [15, p. 15], it is permissible to identify measures to restore law and order and negative legal sanctions among the consequences of violations of the principle of legality during the investigation.

The most significant violations related to the restriction of human rights and freedoms entail criminal liability. It is potentially possible to apply sanctions of articles 286, 290, 292, 299, 300, 301, 302, and 303 of the RF CCP to the officials.

Exceeding official authority in the preliminary investigation is usually unreasonably commission of certain actions, as well as going beyond the provided boundaries of legal status. The subject of official forgery during the preliminary investigation as a rule are official documents that are able to establish or change elements of the legal status of the involved in the considered activities. What for bribery, it should be noted that this corruption is the most common type of crime by far. It should be noted that bribetaking is conditioned by some interest from a person transferring it and entails the further criminal acts in a bribe-giver's benefit. Violation of the principle of legality, committed to create the necessary conditions for bringing the known to be innocent to criminal responsibility,

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entails the sanctions to the involved official conducting the investigation contained in Article 299 of the Criminal Code of the RF. At the same time, illegal detention, confinement or custodial detention carried out by an official of the investigative unit is an independent part of the criminal act that harms the constitutional right of a person and a citizen to freedom and personal integrity. If there is evidence tampering in a criminal case, the perpetrator may be punished according to part 2 of Article 303 of the Criminal Code of the RF. Forgery, invention of material evidence, protocols of investigative actions and evidence inconsistent with reality can cause significant harm to human rights and freedoms due to distortion of the actual picture of what happened in the criminal case.

Punishment by warning or fine of preliminary investigation bodies officials has certain specifics. It is due to the fact that these entities consist of people with special ranks. According to Article 2.5 of the Code of the Russian Federation on Administrative Offenses, law-enforcement officers, bodies and organizations of the penal system, Russian State Fire Service and customs authorities having special ranks bear disciplinary responsibility for administrative offenses. The subjects violating the principle of legality who ensure its implementation in criminal process, are administratively responsible according to Art. 17.7 of the AOC RF, which establishes that the deliberate noncompliance with the requirements of the prosecutor arising from his powers established by federal law entails the imposition of an administrative fine on officials.

The peculiarity of criminal and disciplinary liabilities is that their application requires the presence of a proven criminally-remedial offense. Disciplinary measures are a universal means of responding to violations of the principle of legality in the preliminary investigation carried out by the relevant official. Their application is carried out by the heads of investigative units on the basis of the results of the internal audit.

In case of violations of the principle of legality committed within the framework of the preliminary investigation, the restoration measures are applied to diminishing the legal status of the participant in the criminal process and non-compliance with the

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procedural requirements for the production of the preliminary investigation. Such measures consider it reasonable to include the repeal or amendment of illegal acts, the enforcement of an obligation, and compensation of the caused harm (rehabilitation). As a rule, restoration measure are used together with some punishment of the guilty in violating of the principle of legality during inquiry.

Non-compliance with the principle of legality during the investigation entails a certain reaction of the supervisory authorities. Taking into account the law enforcement practice, one needs to highlight the following non-legal consequences of violations of the principle of legality: lack of time in the work of the investigating authorities; the occurrence of the uneven burden on the investigators; the complexity of certain proceedings; the complexity of interactions with other services. The specified negative factors of law enforcement activity arise when the prosecutor returns the criminal case for production of additional investigation or recalculation of the final document.

The complexity of individual investigation is related to the time passed from the commission of the criminal assault. For example, many investigative activities are aimed at restoring the accident picture on the basis of available visual memories of the participants (examination of witnesses, investigative experiment, etc.). Over time, the accuracy and reliability of information that is reflected in the memory of the perceiving subject is lost.

Despite the various legal guarantees to ensure the rule of law in criminal process (internal control [16, p. 17], prosecutor's supervision [17, p. 6], and judicial control [18, p. 88]) in the activities of investigative units, there are cases of non-compliance with the established remedial order and the requirements of departmental legal acts.

The most significant are the facts of non-compliance with the procedure of finishing the preliminary investigation by preparing the indictment. Law enforcement practice of investigative bodies and analysis of criminal cases returned for additional investigation allows identifying the most typical violations committed during the preparation of investigator's indictments that form the basis for the return of the criminal case to the prosecutor in the

framework of the judicial control function [17, p. 7]:

1. Inconsistency of the description from the prepared indictment with the circumstances listed in the resolution on the arraignment, or in other materials of criminal case, inconsistent statement of those or other circumstances established during preliminary investigation (for example, the indication of various places of the commission of crime, omitting the circumstances mitigating or aggravating punishment, etc.).

2. Obvious mistake of the person responsible for the investigation when classifying crimes according to RF CCP, the incorrect use of the norms of other branches of law, the breach of which was committed during actions of the guilty (for example, criminal cases on road accidents [19, p. 57], violation of safety rules, etc.).

3. Incomplete description of modus operandi, which does not allow to describe the case.

4. Investigator's disregard of requirements to the establishment of the caused damage by a crime with the description of its type and scale.

5. The lack of complete characteristics of the personality of the guilty, for example, non-indicating the past and outstanding conviction.

6. Failure to comply with the requirement to summarize the content of the evidence in the final documents.

7. The lack of indication of motives and consequences of the accused actions.

8. Contradictory description of the accused's actions in case of copartnership, which does not allow determining the role and the degree of responsibility of each of the accused.

9. Mistaken identity of the object of the criminal attack (for example, mentioning the organization as the object of the attack in case of robbery).

The study of this aspect allows concluding that in these cases violations of the law are due to the elementary inattention of the person conducting the investigation.

Particular attention should be paid to the violations committed at the stage of initiating the criminal process [20, p. 226], which lays the conditions for the subsequent efficient investigation [21], allowing to achieve the goals of the

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criminal process. Indeed, these violations reduce the efficiency of activities at the pre-trial stages and call into question the legality of the subsequent remedial activity of the investigator. One of the reasons for the decrease in the efficiency of preliminary investigation is the lack of flexibility of response and its timeliness to the crime [22, p. 201] due to making illegal decisions during the preliminary inspection in accordance with Article 144 of the RF CCP. Violations at this stage of criminal process stipulate that more than 35% of criminal cases are initiated on the basis of materials, which were refused to initiate criminal process, but later the relevant decisions were found illegal and canceled by the prosecutor's office. The result of this approach is quite expected: 15% of criminal cases were initiated about 2 months after the detection of the crime. It does not allow reacting quickly to the commission of crime, which considerably reduces the potential of its solving.

Pre-investigation check in these cases was not complete, and the decisions about refusal in initiating of the criminal case did not meet the requirements of part 4 of Article 7 of the RF CCP; in other words, they were unjustified and illegal. This circumstance is supposed to be a consequence of the internal affairs bodies struggling for positive indicators of crime solving.

There are also cases of unjustified initiation of criminal cases [23, p. 255], although their share is insignificant: it is about 5% of the total. These violations are most typical upon the drug, psychotropicsubstances and their analogues trafficking, as well as fraud. In case of illegal initiation of criminal cases there were no objective data on sale of drugs, psychotropic substances or their analogues. People, from whom the drugs were withdrawn, usually explained that they had accidentally found and kept them. The specified approach to investigation of crimes does not allow receiving objective data on the sale of drugs. These violations at the stage of initiation of criminal process also take place upon the identification of the committed fraud. Therefore, when making remedial decisions under clauses 1 and 2, part 1 of Article 145 of the RF CCP, the actors do not take into account the provisions of

clauses 3 of part 2 and part 5 of Article 151 of the RF CCP, which enshrine the competence of the considered officials. As a result, a number of criminal cases are initiated by investigators of the Ministry of Internal Affairs of the Russian Federation, despite the fact that the crimes are under thecompetence of the investigators of the Investigative Committee of the Russian Federation. The reason for the illegal initiation of criminal process upon fraud is also the incorrect establishment of the location of the crime and as a consequence – the erroneous definition of competence. Besides, there exist the violations of clause 7.4.7 of the Order of the Ministry of Internal Affairs of the Russian Federation of January 04, 1999 No. 1 "On the measures for implementing the Decree of the RF No. 1422", according to which it is necessary to efficiently use the working time of investigators, excluding the inspection of the crime scene, which are beyond their investigative competence.

These violations reduce the efficiency of the preliminary investigation and cause a significant number of unsolved crimes (about 75%).

In some cases, it is necessary to draw attention to the untimely initiation of criminal process. The study found that when initiating a criminal case, the investigators are usually guided by the requirements of Article 146 of the RF CCP. At the same time, on a number of criminal cases it is established that their initiation on duty days was early. For example, in cases upon crimes under paragraph "C" of part 2 of Article 158 of the Criminal Code of the RF, at the time of their initiation there were no materials confirming the significance of damage. With the proper preliminary investigation in the manner prescribed by Article 144 of the RF CCP, it is possible to establish the significance of damage. In addition, the operational services officials can identify the perpetrators of the crime. However, as practice shows, after the initiation of a criminal case upon a non-obvious crime, the field agents lose interest in it and the case receives no operational escorting. Assume that the investigator, being the head of investigation, is responsible for its lawful and efficient solving and has to provide the activity of operational escorting of the case, particularly of the unsolved crimes, using the powers

granted by clause 4, part 2 of Article 38 of the RF CCP. According to it, the investigator is authorized to give the body of inquiry obligatory written instructions on criminal intelligence, specific investigative activities, resolutions on detention, compulsory attendance, arrest, or other remedial actions, and also to receive assistance in their implementation in the known and established cases and obligatory for execution.

The organizational violations in the investigators' activities are considered separately. It seems that planning the pre-trial investigation in a particular criminal case is due to objective circumstances, namely the complexity and diversity of the activities of the investigator, presence of several cases under solving at a time, and the need to organize interaction with various law enforcement agencies. However, contrary to the instructions set out in departmental regulations, 62% of criminal cases lack the planned investigation. Such situations can entail unsystematic character of pre-trial criminal process and does not allow for effective interaction with the bodies of inquiry and, in particular, with their criminal intelligence units.

Depending on the nature and the severity of consequences for criminal process and its participants, the violations of the criminal process law can be significant and insignificant. At the same time, within this legislation, there is no clear distinction between the violations committed in criminal process. This method of regulating public relations involves the formal approaches to changing or canceling the remedial decision made within the criminal process. In particular, even minor deviations from the established procedure and technical errors allow questioning the admissibility of the results of the investigator's remedial activities. This position is supported by E. V. Kameneva and A. A. Shirvanov, who point out that only compliance with the criminal process is important, which allowed the court to decide on the abolition or change of the sentence solely on a formal basis without appropriate assessment [13, p. 302].

4. Conclusion

Justifying violations of the law in criminal process with the need to solve

the problem of combating crime is impossible since the diminution of the personal legal status cannot be justified by the achievement of any goal.

The study made it possible to draw the following significant conclusions:

1. Pre-trial investigation acts as an important part of the pre-trial process, which forms the evidence base of the criminal case and takes a set of measures aimed at solving the crime.

2. A large number of violations of regulatory legal provisions during the pre-trial investigation is due to subjective factors directly related to the investigator's personal features.

3. Violations of law at the stage of initiating the criminal process entail the adverse consequences for the pre-trial investigation, cause the inability to use the formed evidence, cause the inability to complete the investigation and terminate the relevant process with the person brought to criminal responsibility being able to use the right to rehabilitation.

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LEGAL REGULATION OF STATE – SOCIETY PARTNERSHIP

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Abstract: The importance of the present paper lies in ensuring guarantees of domestic stability and stepwise development of the country, a crucial role in which belongs to the ability of law to effectively respond to external and internal challenges through stimulating evolvement of positive processes in social and political and social and economic life and protecting society from the impact of negative factors. State and society partnership is a newly appeared phenomenon in the system of social relations, which began to exponentially develop under the influence of technological (digital) revolution; it is related to gradually blurring the boundaries between public and private spheres, and establishing the whole new relations of partnership between state and society. Hence, this paper is aimed at identifying and revealing the legal nature of partnership (subject-subject) relationship between state and society in the present-day conditions, and developing theoretical and methodological approaches and practical opportunities for setting up an effective constitutional and legal regime in the mentioned sphere of social relations. A broad and restricted understanding of the state-society partnership category has been suggested.Theoretical analysis and empirical method are the key approaches to study the problem in question. They allow to consider in an integrated manner the degree, to which the problem is examined by the leading scientists, and some practical aspects of the stated problem. The paper presents the results of studying institutionalism of partnership relationship between state and society, contemporary conceptual approaches and legal analysis of state-society partnership, problems of its categorical framework, international experience of legal regulation of state-society partnership. The main problems have been identified, and the author's classifications and viewpoints have been suggested in the course of studying. The

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paper materials are of practical value for governmental authorities, civil society institutions, scientists-legal experts, whose academic interests involve studying the problems of legal regulation of interaction between state and society.

Keywords: state; society; partnership; legal regulation; state-society partnership, government control; civil society; social relations; state authority.

1. Introduction

It is changes that occur in the modern world, which test the stability of sovereign political and social systems to destruction. In such conditions, the ability of law to effectively respond to external and internal challenges through stimulating evolvement of positive processes in social and political and social and economic life and protecting society from the impact of negative factors, plays an important role in ensuring guarantees of domestic stability and stepwise development of the country. A new phenomenon in the system of social relations, which began to extremely rapidly develop under the influence of technological (digital) revolution, is linked to gradually blurring the distinction between public and private spheres, deepening the processes of "state socialization" and "governmentalisation of society"[1], establishing the whole new relations of *partnership* between state and society.

Intentional development of partnership relations between state and society to achieve social development goals in a concerted effort serves as a tool for prompt establishment and effective functioning of a new model of social relations. Nevertheless, to date, the speed, at which social innovations appear, and creative force is generated in the sphere of partnership interaction between state and society, has outpaced the real potential for developing the highest standard legal regulation in a proactive manner. According to the experience, legalization (legal registration, juridification) of new forms and mechanisms of state-society partnership at the federal level is mostly reactive, whereas the problems of institutional design, to be resolved by state, in present-day conditions require

[1] Habermas J. Strukturwandel der Öffentlichkeit. Untersuchungen zu einer Kategorie der bürgerlichen Gesellschaft. Frankfurt a. M.: Suhrkamp Verlag, 1962. P. 141.

the creation of necessary legal incentives and the establishment of effective legal regime in the mentioned system, based on the ideas and principles, stipulated within legal boundaries and by the Constitutions of states, in particular.

The present study is intended to theoretically comprehend a constitutional-legal nature of partnership (subject-subject) relationship between state and society in present-day conditions, and to define theoretical and methodological approaches and practical abilities to formalize an effective constitutional-legal regime within the specified area of social relations

2. Materials and methods

Since the nature of the studied object and subject is complex, comprehensive, and changing, the formulated scientific problem definitely requires that the conceptual approaches of both constitutional law and other legal disciplines (constitutional law of foreign countries, theory of state and law, civil law, social welfare law, international public and private law) be thoroughly understood in a creative way, and theoretical and methodological tools of other social sciences be involved.

The theoretical and methodological context of the present study is unique through lack of the available conceptual approaches of legal doctrine to the phenomenon of the state-society partnership.

A concept of communicative action of J. Habermas and, firstly, the viewpoints on the importance of subject-subject relationship, based on the principle of dialogics, respect, and perceiving the other as a self-reliant person, is one of the most useful, in terms of the tools available, for the purposes of the study.

The sources of information for the study include: statistical data of the integrated system of UN civil society organizations (iCSO System, UN DESA NGO Branch), results of NPO monitoring within the oldest (from the beginning of the 1990's) academic project of comparative study of non-profit organizations of J. Hopkins research university (The Johns Hopkins Comparative Nonprofit Sector Project, USA), and financial statistics and reviews of the status of civil society organizations as part of the development program with participation of OECD countries-donors (OECD Civil Society platform).

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The phenomenon of *partnership* has actively been studied within subject areas of various scientific disciplines of economics, politology, and sociology even from the 1980's. A concept of partnership in political economics was developed in the form of either studying social technology, aimed at fostering unity within state authorities and communities through providing some or other social benefits (social services, labour, and employment status), or analysing the processes of interaction and decision-making between actors involved in the problem of co-management, when certain social norms and institutions are created, protected, or reproduced. The publications of A. Fowler, J. Harriss, S.P. Osborne, J.M. Brinkerhoff, C. Knox, R.W. McQuaid, L.I. Yakobson, I.V. Mersiyanova show that state-society partnership constitutes, first and foremost, a form of organization, where accomplishments of the partners depend on the presence of trust, self-organization, skills, and motivation of the involved persons.

3. Results

Institutionalisation of partnership relationship between state and society as a major trend in today's world

Specialists in the area of civil society comparative studies point out that if the XVIIIth century became the golden age of representative authority, the XIXth century was the "age of bureaucracy", then a "non-profit sector" might be considered a symbol of the second part of the XXth century, the development of which came to be an indicator and, simultaneously, an incentive to change the precedent principles of the state-society relationship.

A phenomenon of non-profit organizations and, in broader terms, a concept of partnership relations between state and society came to careful attention of theory and practice due to, first, a so called "crisis of state", which had been unfolded almost worldwide over the last decades of the XXth century. This crisis cast doubts on the traditional social policies in many economically developed countries, and caused frustration of the developing countries with the opportunities for

attaining social progress goals solely under supervision of state.

Financial crises and turmoil threw into question even the confidence in the universal nature of market methods for economic regulation. As a result, many political leaders proceeded with seeking for some new ways, which would had enabled to combine market values with the advantages of a more extensive social protection. According to Lionel Jospin, the Prime Minister of the French Republic, “Yes - to market economy, no – to market society”. Not surprisingly, while seeking for the tools to solve the arisen problems, most researchers and politicians turned their focus towards such a resource of social innovations, as civil society organizations.

A further essential factor is the impact of technological revolution. Modern social reality, partly owing to digital technologies, is by far the most organized and structured, than that, which surrounded us until quite recently in the late XX century. On the one hand, more ordered social life means greater potential for inner freedom of an individual, however, the price of this freedom involves a complex system of organizational structures and social institutions of society. On the other, modern, quite ordered life of society, overloaded with systems of control and risk management in all areas, is characterized by a growing need for increasing the speed and improving the quality of response to challenges arising in the rapidly changing world, including more social problems that emerge. Any traditional hierarchical system of controlling in the case of exponential growth in the number of various challenges, shall not objectively cope with responding in an effective manner, hence, new political and legal and social technologies are needed alongside with the collective interaction legal institutions and development of partnership (subject-subject) relations between state and society. Particularly, it is for this reason there is a rising popularity of discussing public policy, which complements objective widening of the scope of state-society relationship, including that under the influence of modern technologies that facilitate development of new ways and forms of communication between the state-public and the social-private.

An intrinsic, material aspect of these processes involves institutionalisation of various forms of

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interaction between state and civil society structures, expansion of activity of the "third sector" into a wide variety of social development spheres, including participation in the administration of state affairs.

Table 1 presents the structure of the most common directions of civil society organizations' (NGOs) "entering" into the area of "state responsibility" as of 2018 (as per the data of the Integrated Civil Society Organizations System (iCSO System) of the UN Department of Economic and Social Affairs (DESA UN NGO Branch)).

Table 1. Main spheres of NGOs' activity (2018)

Sphere of activity of non-government organizations	**Share, %**
Economy and social sphere	**25.5**
Financing of development	**4.7**
Gender issues and progress in women's rights	**15.6**
Population	**4.7**
Effectiveness of government control	**4.4**
Social development	**16.5**
Statistics and accounts	**3.2**
Sustainable development	**18.6**
Development, resolution of conflicts and new partnership for Africa	**6.8**
***Source:* iCSO System, DESA UN (NGO Branch), 2018**	

State-society partnership: contemporary conceptual approaches

The processes of modernization of the state-society relationship, which have been speeded up under the impact of various factors existing in the fast-changing world and technological revolution, attract close attention of the domestic legal theory and practice. Innovations in social and political creative works become not only the subject of constitutional and legal comprehension, they also facilitate development of legal rules and enhance attention to effectiveness of legal regulation. However, it should be noted that the unique nature of theoretical and methodological status of this study is

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linked to the lack of the available conceptual approaches of legal doctrine to the phenomenon of state-society partnership. Since the latter (broadly speaking) constitutes a complex social phenomenon, affecting all spheres of social life, it has gained attention of many social sciences: politology, economics, sociology, philosophy long time ago. Hence, the concepts and analytical results of the allied disciplines are essential to understand the subject matter and specific features of the state-society partnership phenomenon, its place in social life and its role in social development.

Insights about subject matter and importance of the state-society partnership are closely related to the concept of *inclusive democracy*. The latter as a *politological concept* (political project), linked to the form of social organization, which reintegrates society into economy, policy, and nature, should be distinguished from the inclusive democracy as a specific *dynamic indicator* of overcoming a syndrome of "non-participation" of citizens in most of state and social institutions. A real inclusive democracy is such a form of social life, which expands opportunities of each individual, and enables him to choose life strategies pursuant to his own preferences, and, finally, increases the space for democracy and freedom.

Of importance for forming theoretical approaches to the analysis of state-society partnership is the *theory of limited choice*, which is closely related to searching the answer to the question on how suitable the institutions of the developed society are to be transferred onto the developing societies. State institution is closely linked to the method of solving the problem of violence. According to North D., Wallis D., and B. Weingast, *natural state* and *open access order* shall be distinguished.

Natural state implies restriction of access to political and economic resources. Most of contemporary societies live "in the shadow" of violence. Personal relationship prevails in the system with limited access, and the problem of violence is solved at the expense of rent income, appropriated by the representatives of privileged interest groups, including that at the cost of political manipulation, and the state itself slowly evolves into a well-established type. Competition rather than rent begins to play a leading role in the open access order, and depersonalization of social relations occurs. It forms, in its turn, the

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basis of *civil society*, when representatives of multiple social groups are prepared to defend their interests using political methods.

The works of A. Giddens, an outstanding social scientist, are in-between economic and sociological concepts. In his theory of reflexive modernization, he proved that trust in partnership is a defense mechanism, which helps the subjects of partnership with lowering the risks and uncertainty in communities. The studies of *constitutional mechanisms of social partnership* performed by M. Stelzer fall into the same category of research.

Problems of categorical framework of state-society partnership

A particular feature of scientific literature devoted to studying ideology, principles, procedures, and mechanisms of state-society partnership, is the fact that there are almost no works, where formalized criteria and definitions in terms of the categories of law are used. At the same time, social and economic changes in the XXth century, creation of digital society, and emergence of new social communication practices not only expand a request for *public participation* in developing state policy, but are also indicative of increasing the importance of network structures, when the *intensity* of relationship between state and society becomes the key resource for enhancing effectiveness and democratic nature of government control.

The necessity for introducing social innovations to improve effectiveness of controlling social development, attaining goals of sustainable development of client-oriented, open, and accountable state and many other factors, relevant for all the countries in the world, create incentives for the constant creative search for the various forms of state-society interaction. As a result, a whole variety of multiple partnership institutions appear in the international practice, which differ in not only the names, but in the list of participants and the intended purpose (see Table 2).

Table 2. Various institutional forms of state-society partnership

English term	Translation

Public-Public Partnership (PUP or P2P)	Государственно-государственное партнерство / state-state partnership
State-Civil Society Partnership	Партнерство государства и гражданского общества / state-civil society partnership
Public–Community Partnership (PCP)	Партнерство государства и местных сообществ / partnership between state-and local communities
Public–Private–Community Partnership (PPCP)	Партнерство государства, бизнеса и местных сообществ / partnership between state, business, and local communities
State-Society Partnership	Государственно-общественное партнерство / state-society partnership

Critical analysis and systematization of the concepts utilized in literature and practice, considering the reality beyond them, allow to identify more precisely the particular features of that model of state-society partnership (broadly and strictly speaking), which is the subject of this study.

Public-Public Partnership – PUP or P2P.

Public-Public Partnership is a cooperation between two or more state authorities or organizations, which are based on solidarity, for the purpose of increasing the potential and effectiveness of one partner in, as a rule, providing services or facilities (for example, public water supply, electric power supply, sanitation). Special-purpose non-profit organizations (professional unions, pension funds, organizations and unions in the sphere of certain types of activity, community groups) may take part in public-public partnership together with state authorities and bodies of state authority.

Public-public partnership differs from *public-private partnership* (PPP), which is based on contractual relationship between state contractor organizations and non-profit organizations to design, finance, build, operate, and perform maintenance of state public facilities (for example, schools, hospitals, bridges).

Public-public partnership allows to avoid PPP risks, when implementing socially-oriented projects (breach of

contract, increase in transaction costs, a need for renegotiations, difficulties in regulation, commercial opportunism, monopolistic pricing, commercial secret restrictions, currency risk and lack of public support).

State-Civil Society Partnership

In the most general terms, *state-civil society partnership* shall be understood as an act of joint participation of state authorities and civil society institutions, hence, the framework takes on a particular importance, in which the conditions of cooperation for coordinating and regulating potential conflicts will be specified.

On the one hand, there are no guarantees of democratic nature of interaction only due to the fact of this interaction as such. On the other, partnerships between state and civil society institutions need not involve full "cooperation" between civil society and state. Partnership might be a place of tremendous fight, when the subjects of civil society continue to oppose the control of dominating system in various ways.

In conditions of global instability and rapid economic transformations, long-term and scalable models of partnerships between state and civil society, which are based on finding common values, take on profound importance. For example, the developing countries may have the models of partnership based on supporting and extending economic rights and possibilities for the young in several sectors at once (retraining, employment, and entrepreneurship programs).

Partnership between state and local communities – "Public–Community Partnership – PCP"

"Public–Community Partnership" concept is linked to the mechanisms of interaction between state authorities and local self-government authorities. The partnership of this type is intended to widen the opportunities of local communities for accessing resources and types of activity, which are capable for ensuring sustainable development and human conditions to such communities.

"*Community Partnerships"* term is often used in practice and in literature, as applied to implementing mini-projects, associated with strengthening solidarity within communities (for example, organization of joint holiday lunches, campaigns to help neighbours,

etc.), and in terms of developing external relations of the community (for example, the internship program for local volunteers in the health care institution to increase the first aid potential within the community).

Partnership between state, business, and local communities – "Public–Private–Community Partnership" - PPCP

"Public–Private–Community" (or community) Partnership is a type of state-private partnership, in which local community (community) is one of the participants.

"Public–Private–Community" partnership is formed in the sphere of solving the issues of sustainable development at the local level, therefore, it focuses on helpful social and social-economic innovations (transfer and introduction of new skills, knowledge, and technologies), rather than on profitability as the only parameter of success. Partnerships of such type are widely used in public sector projects in the sphere of providing services (for example, water supply and sanitation), and in the projects aimed at reducing digital inequality.

State-Society Partnership

There are many definitions of "*state-society partnership"* concept in various subject areas of contemporary social sciences. However, systematization of approaches shows that the key difference derives from the fact that some scientists focus their attention on intrinsic ("material") attributes of state-society partnership, others - on its operational ("procedural") aspect.

From the standpoint of *intrinsic* approach, state-society partnership is a form of interaction between public authority and civil society institutions, which relies on trust, that, in its turn, may facilitate enhancement of both effectiveness of state authorities, quality of democracy, strengthening of potential and increasing stability in society, and make these partnerships a locus of inclusive democracy.

From the standpoint of *operationalist approach*, state-society partnership constitutes the *processes and forms* of interaction among state authorities, bodies of state authorities, state institutions, and large social groups, characterized by large volumes of interpersonal communication (societal groups), to discuss, what is the way, in

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which public authority is exercised, and how people may influence it. These interactions are focused on such problems as specifying mutual rights and duties of state and society, discussing the way of distributing state resources and establishing various forms of representation and accountability.

The main attention in the course of forming and functioning certain state-society partnerships is paid not to the specific institutional forms, but to the character of relationship and the search for the complete consistency between the functions of state and social institutions (engl. *relational function*). Neither state, nor society are considered in the paradigm of state-society partnership as acting separately, or within the framework of subject-object influence. What it involves is the establishment of the authentic (subject-subject) relations of partnership. Here, the capacity of state to interact with both individuals, and organised and active, civil societies becomes the main tool for ensuring its legitimacy.

International experience of legal regulation of state-society partnership

Historically, the state-society partnership subject had its origin abroad in the so called utilitarian trade-union context, when the establishment of the system of interaction among the bodies of state authority, professional unions, associations of employers to regulate social and labour relationship, i.e. *social partnership*, was underway. Nowadays, legislation of all the European countries, USA, Canada, Australia, New Zeeland, Japan, and Korea incorporates, as the integral parts, certain norms, special laws, and constitutional provisions, intended to ensure stable relationship of mutual recognition, developed cooperation institutions and the means for regulating the sphere of interaction among the organized work-force, business, and state.

The particular features of constitutional and legal regulation of partnership interaction between state and society (primarily, in the sphere of *social partnership*) are illustrated by the following specific examples.

The Republic of Austria is the most prominent and representative

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example of constitutional practice for consolidating certain forms of social partnership, which is beyond the limits of social-labour relations as such. Civil society in Austria is very inhomogeneous in the spheres of its activity, legal forms of organization and structures of financing. This relatively small European country has more than 122 thousands of civil society organizations, which provide social services, are involved in human rights activities or constitute crucially important elements for the local communities. The key feature of the Austrian "third sector" is in its close connection with the bodies of state authorities and political parties, also known as "corporatism". Traditionally, the "third sector" organisations obtain a considerable portion of their income from the federal budget and are the main agent of social services in the country. Hence, in 2008, the capacity of the "third sector' organisations to take part in developing government decisions in the area of social policy in the form of "social partnership" were officially enshrined in the Constitution of the country.

From the institutional viewpoint, the "third sector" of Austria involves several large, firmly established organizations in the form of professional associations and unions, which have close relations with political parties, and multiple small associations, which are very essential for the social life in communities. Corporatism, in its turn, in Austrian German language means the binding nature of participation of professional associations and unions in the processes of making political decisions. Actually, this is the essence of the Austrian constitutional system of "social partnership", within which formalised and multi-stage negotiations are conducted between labour organizations, associations of employers and political parties to ensure balance between the national-level and community interests.

There are four main known Austrian associations in the sphere of social partnership:

Federal Economic Chamber of Austria (Wirtschaftskammer Österreich, WKÖ) represents the interests of business community;

Austrian Chamber of Agriculture (Landwirtschaftskammer Österreich,

LK) represents the interests of agricultural producers;

Austrian Federal Chamber of Labour (Kammer für Arbeiter und Angestellte, Arbeiterkammer -AK, in short) represents the interests of workers and office employees;

Austrian Trade Union Federation (Österreichischer Gewerkschaftsbund - ÖGB).

All these organizations not only represent the interests of their members, but also, in the strictest sense, being the partners in tariff agreements, the interests of lobby organizations, which provide services to their members. Apart from the fact that the chambers are the legal representatives of interests with the compulsory membership for employers and employees, they are utilised in the Austrian political system in various ways.

Thus, constitutional subject matter of the Austrian "social partnership" is not limited to the social and labour relations as such. It also involves the procedures for providing advice to political parties, approving draft laws, resolving social conflicts, and even meditation of partnerships between political parties and the Catholic church of the country.

Switzerland provides one more example. In 1937, here, the so called "labour peace" was established, within which workers and employers refused to call strikes, the collective instrument of the class struggle, in favour of the dialogue at the negotiating table, i.e. the mechanism of social partnership.

For over 80 years, all economic matters in Switzerland have been based on, on the one hand, acceptance of the fundamental principles of market economy by the professional unions, and on the other, recognition of the professional unions as guarantors of stability in social and economic relations, by entrepreneurs. High values of economic growth indicators are largely the result of social consensus, and are reached in Switzerland through dividing income between employers and employees and replacing confrontation with negotiations.

Social partnership in Switzerland, likewise in the nearby Austria, is the most essential pillar of the Swiss statehood, also enshrined in the country's constitution. Although the Federal Constitution of the Swiss

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Confederation dated April 18, 1999, does not contain an extensive model of social partnership, as in Austria, however, it has the special chapter on the nature of goals and objectives of the country's social policy (Section II. Chapter 3 «Social goals»). As per cl. 2 and 3 of Art.41 of the Country Constitution, "Confederation and cantons are for protection of each individual from economic effects of age, physical disability, disease, accidents, unemployment, motherhood, orphanhood, and widowhood. They seek to attain social goals within their constitutional competence and using the means in disposal". Thus, a legal framework is created in the Swiss Confederation Constitution (considering federate nature of the country) to develop inclusive democracy.

Analysis of the studies devoted to the particular features of legal regulation of social partnerships has shown that experts traditionally specify three major models, which constitute a kind of coordinates of the state-society partnership "space":

– *Scandinavian* (or Swedish) model of social state or state of wealth (with the primary role of public authority institutions, provision for equality of social groups, high level social guarantees based on the higher rates of taxes). Main subjects: the countries of the Northern Europe, including the countries of Scandinavia and Iceland;
– *continental* (or corporate) model of social state (central role of private sector; relationship between the level of income and the level of social protection; special role of social insurance institutions; essential role of the corporate and industrial agreement; restrictions on the right to strike). Main subjects: the Republic of Austria, Federal Republic of Germany, the French Republic, the Kingdom of Belgium, the Netherlands;
– *liberal* (or Anglo-Saxon) model of social state (limited role of public authority institutions, essential role of the universal standards of social security, relatively low rate of taxes, principle of freedom for activities of professional unions and associations and professional ethics). Main subjects: United Kingdom, Ireland, USA.

In the modern conditions, these models have rather an abstract-analytical meaning, enabling to differentiate between specific features of legal regulation of state-society partnership

sphere, while in practice dynamic changes and convergence of various models and approaches are underway. For example, complex methods of flexible institutional design and their legalization replace strict differentiation and fixing of the specified institutional forms. From this perspective, not specific forms of material law, but constitutional and legal principles of creating conditions to maintain the presence and development of the sphere of public relations between state and society begin to play an ever-greater role. A classic example of the constructive role of the FRG Federal Constitutional Court on the issue of interpreting the subject matter and meaning of constitutional principle of the social nature of state may be given.

4. Discussion

The results of the study show that the most relevant directions of activity of non-governmental organizations are related to the questions of social and economic development: if positions "Economy and social sphere", "Social development", "Sustainable development" are summed up, the share of non-governmental organizations, active in the above-mentioned spheres will amount to 60.6 %, i.e. to almost two thirds.

In the whole, various forms of partnerships are considered from the viewpoint of subject and institutional aspects of participation of social groups and public institutions when aligning interests of policy and achieving certain, including i.a. socially important goals (concept of social capital). The results of theoretical developments of Bourdieu, Iglehart R., Coleman J.S., Portes A., I.E. Diskin, A.T. Kon'kov, S.A. Khmel'nitskiy, L.I. Nikovskaya, V.N. Yakimets demonstrate that social relations and atmosphere of trust, emerging in the process of interactions and effects of participation, constitute an essential resource for social and economic development, improvement of the effectiveness of joint public-social activities and reducing information asymmetries. However, the mentioned authors focus their studies on resource attributes and productive function of partnerships in terms of utility maximization or analysis of state control mechanisms based on the procedures of

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horizontal partnership (public policy phenomenon).

An ambiguity and multi-aspect nature of "partnership" term and specific social relations "behind this term" is an objective reflection of the defining attributes of the modern world with its instability, uncertainty, variability (VUCA-world). In each specific situation, this term might mean something definitely stated but not constant, woven from many shades of meaning and connotations from philosophy, politology, economy, sociology, and psychology. Some authors think that the idea of partnership is so ubiquitous that it essentially cannot be strictly defined.

As a result of the performed study, the difference is revealed between "broad" interpretation of the state-society partnership as a system of relationship between state and society, with trust and mutual responsibility as the key attributes, and "narrow" understanding of the state-society partnership as a special legal form (organization) for consolidating and regulating state-society partnership to jointly solve the problems of social development.

Discussing an empirical part of the study of international experience gained when forming legal framework of state and society, and in terms of its suitability for transferring as well, brings about to identification of a number of basic principles, important for legal regulation of state-society relationship sphere. Among them:

Design principle. From operational (procedural) viewpoint, the methods and forms of interaction between state and society have the design basis (life cycle);

Principle of equivalence. The relationships between state authorities and civil society institutions involve the mechanism in effect of subject-subject relations, which implies equality between partners in the processes of discussing, decision-making, and joint activities;

Principle of compliance. Trust, character of relationship, and potential achievement of the rigid conformity between the functions of state and social institutions are the most essential aspects in the process of partnerships' forming and functioning;

Principle of dividing jurisdictions. From a legal and organizational perspective, various levels of interaction between

partnerships imply the use of different models of their implementation;

– *Principle of inclusivity*. Organizational and legal models shall take into account and comply with the specific economic, social, political, and cultural conditions of implementation.

The considerations of, first and foremost, social and economic nature, became the key aspect of establishing international practice of state-society partnership, especially, in the forms of social partnership and socially oriented non-profit organizations. Global economic crises of the late XX century (shortly before new technological revolution) led to revising an idea of community philosophy and intersectoral partnership that stems from the industrial development period, forming a concept of social capital and analysing the role of cooperation between state and society based on the principles of trust, facilitated understanding that the degree of cooperation among citizens in social life directly affects economic development. Finally, an objective material basis was formed to expedite the processes of legalizing the developed sphere of state-society partnership.

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GOVERNMENT AND BUSINESS PARTNERSHIP: SEARCH FOR A STRATEGIC PROSPECT

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Abstract: The research is important due to insufficient elaboration of theoretical aspects in the field of cooperation of the governmental agencies of various layers and the business organizations assuring the balanced economic, social and environmental development of the society. In view of this, this article is aimed at setting forth and substantiating a scientific idea about mutually-advantageous partnership of the interested groups with account taken of qualitatively new regularities of the phenomenon researched. The article is aimed at substantiating the necessity of a mechanism of the government and business cooperation on the basis of a strategic partnership assuring the development and strengthening of the long-term relations with the interested parties, the focus on the corporate social responsibility and on the society problems. The leading approach to researching this problem is a systemic approach oriented toward formation and maintenance of the long-term relations of the government agencies and the business organizations. The offered transformations outcome is a modern mechanism of social relations between the government and the business, which is designed to efficiently solve issues of the national (including regional) social and economic growth. The article materials are of practical value to develop the regional management strategy that is oriented toward the long-term sustainable development with account taken of the global tendencies assuring the balanced economic, social and environmental development of the society.

Keywords*:* a mechanism of the government and business cooperation, strategic partnership, corporate social responsibility, systemic approach.

1. Introduction

The all-Russian public opinion poll brought to light an enumeration of key tasks that are to be solved urgently and as soon as possible. They include the growth in the population well-being, availability and

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quality of services in the field of public health, education, housing problem solution and many other things. What is indisputable is the government's efforts to implement the said tasks included in the goal sets and the national projects, and the critical strategic documents. However, insufficient budgetary resources for the full-fledged socio-economic development do not make it possible to speak about a systemic approach to solving the problems of the socio-economic development, in view of which, one has to state that the government performs its obligations to assure the national interests inefficiently.

In view of this, the government and business strategic partnership is getting especially important in improving the socio-economic situation in modern Russia. They are getting more and more conscious that it is necessary to have a constructive dialogue between the government, the business and the society and to select the most acceptable forms and methods of this cooperation, specific technologies of their implementation.

The research is aimed at analyzing the existing approaches to the government and business cooperation and at assessing the strategic partnership importance as a promising approach of their interests reconciliation.

This goal necessitates the solution to the following tasks:

- to substantiate a scientific hypothesis that it is reasonable to use the strategic partnership as a mechanism of the government and business cooperation in the regional development processes;

- to develop a scientific concept of mutual partnership of the interested groups with account taken of qualitatively new regularities of the phenomenon researched.

At present a topic of the mechanism of the government and business cooperation is discussed more and more intensely by Russia's businessmen and scientists. An idea of social contribution to the society's sustainable development as a distinguishing feature of the civilized business conduct and a necessary component of the corporate culture is supported actively by the business community and the government agencies.

The partnership mechanisms use is enshrined in the Concept of socio-economic development of the Russian Federation to 2020, where the public-private partnership and the corporate social responsibility are considered as promising tools of the territories development [11].

The necessity to have a constructive dialogue between the business, the state and the society is covered in the papers by Sh.M. Valitov [4], M. Delyagin [7], I. Ziralov [10],

D.S. Lvov [17], F. Kotler [13], J.-J Lambin [16], A. Mayer [18], M. Meskon [21], S.A. Plisko [22], E.D. Razgulina [23], A. Yarovoy [33] and others. The study of issues of the businessmen's participation in development of the local community in covered in many papers by the Russian and foreign authors. Their research subject are motives and aspects of the businessmen's charitable activities (Belyaeva I.Yu., Eskindarov M.A. [12], Zelenova E.A. [9],Tulchinsky G.L. [28]), the corporate social responsibility (K. Devis [36], P. Drucker [37], A. Carroll [38], M. Kramer [41], Th. Levitt [40], J. Post, L. Preston [42], M. Porter [41], M. Friedman [39], Blagov Yu.E. [2], Gainutdinov R.I. [5], Galiev G.T. [6], Krichevsky N.A. [14], Kuzevanova A.L. [15], Litovchenko S.E. [24], Malgin V.A. [19], Markova E.V. [20], Friedman M., Bowen H., Wood D., Davis K., Owen R., Walton K.), the companies' influence upon the regional development (Bratyuschenko S.V. [3], Uskova G.V. [31], Turkin S. [29]).

The practical developments in the field of the Russian business' corporate social responsibility include the long-term research results presented in the reports about social investments in Russia – 2004, 2008, 2012 and 2014.[8], "Big Russian business: a social role and social responsibility (the population's position and the experts' assessments)", "Big business in Russia's regions: territorial development strategies and social interests", "Analytical report", "From Russia with love", "National contribution to the global context of the corporate social responsibility" and others. They note importance and currency of using the mechanism of the social partnership of the government and the business within cooperation with the local communities and implementing the regions' social policy.

For all that, in spite of the whole scientific importance of the contribution made by the above-mentioned scientists, it is impossible to say that these problems are researched in full. Theoretical and methodical fundamentals of efficient cooperation of the government agencies of various layers and the business organizations in Russia are in the making.

Importance of the problem considered, its insufficient theoretical, methodological and practical development determined a choice of this research topic.

2. Materials and Methods

In modern conditions, the state's socio-economic policy must build a sphere of social relations on the basis of creating the structural conditions to translate the national economy into the innovation development. The human capital is one of the main

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elements of the modern system of social relations along with its other constituent parts: a partner state; socially-responsible business; innovation economy.

In the interrelation with participants in the social relations the state plays a dominant role. The government agencies create conditions for developing the economy and the private entrepreneurship, set the parameters of the business organizations' influence upon the socio-economic situation in the region.

The business is the most important subject in the social partnership system, since, as a matter of fact, the human activities are protected and assured economically. A level and quality of the population's life are determined directly by a level and quality of the national economy. So, the social relations system includes the whole set of interests of the state, the business and the society.

It is recognized that goals of the government agencies and the business organizations are quite different (Table 1). The government agencies' goal is the socio-economic development of territories, while the business organizations' goal is the increase in profits and the capital accumulation. If the interests of a sector are prevailing over the interests of other sectors, this is an inefficient type of the social structure.

Table 1

Goals, interests and expected results of participants in the social relations

GOVERNMENT	BUSINESS	SOCIETY
The main goals		
Socio-economic development of a territory	Creation of comfortable conditions for the business	Sustainable development
The basic interests		
- Receiving of means of control over the social situation in the region. - Facilitation of verification of compliance by the region's employers with the labor laws.	- Improvement of the enterprise's image. - Enlargement of demand for the manufactured products.	- Creation of new jobs. - Construction of social facilities (kindergartens, schools, hospitals, sports buildings). - Education maintenance.

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GOVERNMENT	BUSINESS	SOCIETY
The main goals		
- Stimulation of solution to the social problems by the employers. - Making of the region more attractive in the labor market; enshrinement of the able-bodied population in the region. - Receiving of a positive assessment of the administration's activities by the voters.	- Enhancement of attractiveness in the labor market. - Improvement of the labor conditions, making the employees more interested in their work. - Management of the risks appearing in the social sphere. - Obtaining of "the social license" for doing the business. - Establishment of good relations with the government. - Enhancement of investment attractiveness.	- Maintenance and holding of cultural and sports events. - Relieving of social tensions. - Beautification of populated areas. - Reduction of harmful effects upon the environment. - Economical use of the nonrenewable resources. - Infrastructure creation.
The expected results		
SOCIO-ECONOMICAL DEVELOPMENT OF TERRITORY	STABLE PROFIT, CAPITALIZATION GROWTH	WELL-BEING

Of course, the business' social policy differs fundamentally from the state's social policy. The social protection measures taken by the state are oriented towards the "stability" and "equality" goals. The main social security systems follow, in the first place, the equivalence principle that is supplemented and, sometimes, overlapped by the solidarity principle. The citizens' social security is based, above all, on the fact that the social security system, which is guaranteed by the existing laws, will remain in force, the citizens' rights for the social

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protection will be reserved, and its level will remain unchanged.

The business follows different principles – the profitability, the competitiveness, the survival rate. The social protection measures, which the business offers, are determined, on the one hand, by the state (the laws), and on the other hand – by a strategy of the business itself, its policy in the existing conditions. In this case, the social security is assured by confidence of the parties to social relations in the fact that the business' financial position and policy will change for the worse neither in the short term nor in the longer term.

An approach of the state and business participation in the society development is of interest. The approach is offered by Russia's Managers Association in the "Business and State" program, and the approach makes it its goal to develop a broad mutually-advantageous strategic partnership between the business and the state (Figure 1) [1].

max The state's participation in the society development *min*	Business irresponsibility	**Balanced participation of each party**
	"Wet market"	State irresponsibility
	min Business participation in the society development *max*	

Figure 1 – Matrix of content of the state and business relations
in the society development

As is seen from the above-mentioned matrix, in order to approach to the right top quadrant, it is necessary to build an efficient mechanism of the government and business cooperation. One should remember that it is possible to do the socially responsible business only in a socially responsible state.

Thus, the modern business fits into a system of relations, to which the businessmen must react in their everyday activities. This behavior provides for a systemic approach

considering the business from the perspective of the relations with the government and other interested groups and with account taken of a range of their interests.

The system implies a lot of cooperating elements, which are related to and connected with each other, which form a compound. It follows from the definition that the system is characterized by the following significant features:

- availability of many elements;
- availability of ties between them;
- integrity of this compound.

3. Results

It should be noted that at present there is no a single worldwide definition of the corporate social responsibility. Even now this issue is very controversial. The corporate social programs are often taken as an obligatory rather than as voluntary participation of companies in the territories development. Just as the government agencies' expectations run high, the businessmen say that it is impossible to replace the state with themselves, to indemnify for a low quality of the state and municipal administration, inefficiency of the budget funds expenditure.

The Managers Association enquiries, which were held within the international inquiry project "Corporate social responsibility: public expectations", during which more than 1500 respondents were polled, who included the representatives of the big and medium business, experts, members of the mass media from the entities of Russia and the Central and Eastern Europe countries, showed:

- 78% of the respondents believe that the groups entitled to benefits and disadvantaged groups must be served by the state, the other groups must be able to choose from alternative (private) social policy subjects on the market conditions;
- 52.9% of the respondents among major and medium companies hail a model, in which the state and the business jointly set the social policy priorities and the areas, where the business can carry a social load with maximum account taken of its interests;
- 17.6% of the pollees believe that the business must assume the main part of functions in implementing the social programs" [1].

In other words, in spite of a contradictory nature of the considered problems, the overwhelming majority of businessmen believe that the state and the business, as the country's most powerful institutions, are equally responsible for their actions to the society.

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The research results showed that the American economist H. Bowen laid the groundwork for the modern approach to the corporate social responsibility (1953) [34]. He proceeded from a conviction that several hundreds of the largest companies were the vital centers of power and adoption of decisions, and that these companies' actions deal with the citizens' lives and a great deal of relations.

Another American theorist D. Brennan (1979) wrote what, in the changing world, is of great importance to obtaining good economic results of the corporations' activities, so that they positively "perceived various types of social and political responsibility and reacted to them. This behavior serves as an indispensable condition of "survival of the free competition system" and, therefore, of the business itself" [35].

As positive sides of the corporate social responsibility concept, some critics sorted out the violations of a principle of the profit maximization and the cost increase in consequence of the use of a part of the business resources for social needs, and the business competitiveness deterioration on the whole [21]. Such a nature of the considered problems makes it possible to sort out several aspects that were the most widely used in the international practice, within which the social responsibility of business is interpreted in different ways (Figure 2):

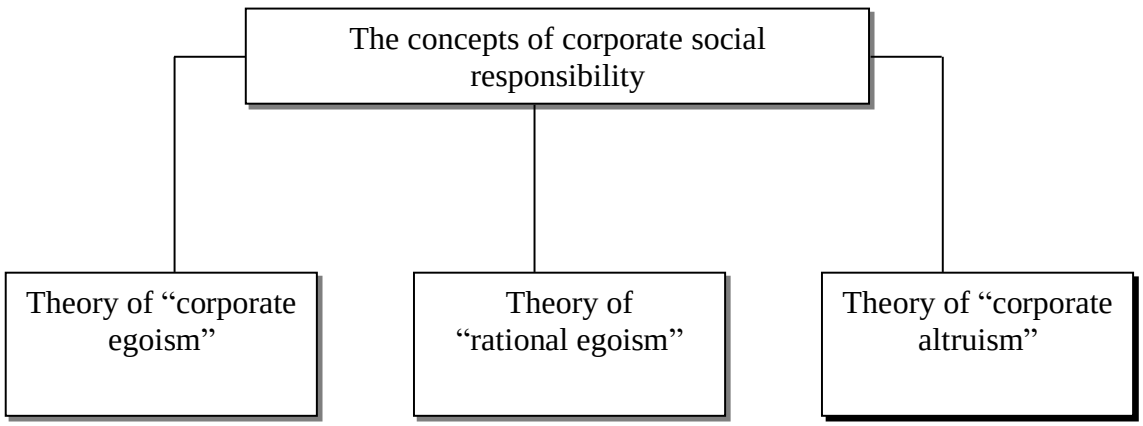

Figure 2 – The existing concepts of social responsibility of business

According to the theory of "corporate egoism", the only business responsibility is the profits increase for its shareholders. This point of view was formulated by the Noble-

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prize winner M. Friedman in 1971. In his book "Capitalism and Freedom" he writes: "In a free economy there is one and only one social responsibility of business — to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud". [39]. Thus, M. Friedman tries to confirm the business ethics or, at least, its part, which he calls "social responsibility of business", only on a motive of profits. He believes that the corporations' managers must not be distracted to study, assessment and solution to any social problems of the society, but they must mind only their direct business – to organize the production of goods and the rendering of services. As regards the social problems, they must be solved by the interested persons themselves, the state and the community [30].

M. Friedman is not alone in his opinion. Another scientist Th. Levitt (1958), when opposing the social responsibility of business, said that "The function of business is to produce sustained high-level profit. The essence of free enterprise is to go after profit in any way that is consistent with its survival as an economic system. The well-being and the society are not business of a corporation. Its business is to make money, and not soft music" [40].

One can't but agree that an economic goal – profit earning is the basis for establishing any enterprise. This approach really implies performance by an enterprise of the economic function of manufacturing the products (rendering the services) that are necessary for the society. The approach also assures control over the enterprise's financial and economic activities, thus increasing its assets. Special functions of such an enterprise are restricted by assurance of employment for the citizens, making a maximum profit and a fee for the shareholders. However, in new conditions of the economic management, keeping of the business' social responsibility to this minimum is quite incorrect. M. Friedman's opinion does not give the main aspect of the modern thinking on the social responsibility's issues.

The second approach is that the theory of "corporate altruism" is exactly the opposite of M. Friedman's theory. The theory appeared simultaneously with publication of Friedman's sensational article and it belonged to the Economic Development Committee. The main idea is that the business must care about the profit growth and, apart from that, the business must make as accessible as possible a contribution to the

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social problems solution, improvement of the quality of life of the citizens and the society, and to the environment preservation. The Committee's recommendations emphasized that "corporations are obliged to make a major contribution to improving the quality of the American life". The companies cannot keep themselves aloof from the social problems, since they are open systems, while taking an active part in lobbying the laws and other state decisions, sponsoring various parties and other non-governmental associations [12].

The author believes that the third position – the theory of "rational egoism" is of interest and is the most scientifically substantiated. The theory proceeds from that it is necessary for the business to restrict its current profits, when creating prerequisites for successful long-term development, for the favorable social environment of its employees and territories of its activities. The business' expenses for pursuing the socially responsible policy are long-term investments that are aimed at improving the business conditions.

Apart from the sorted out varieties of the concept of the socially responsible business, in the 1990s an integrated approach to the social responsibility started to be formed, within which the companies' social activity was more and more focused around a certain sphere, which was directly connected with the man aspect of the organization's activities. Such an approach to understanding the sense of the social responsibility of business was called the socially important aspects of activities. Its main advantage is that this approach mollifies the contradictions between interests of the business and the society, using for that the whole set of tools available to the business, and the social programs are not considered as sources of inefficient expenses.

4. Discussion

Thus, the balance of economic reasonability and social justice consists in serving the interests of all the parties (Figure 3).

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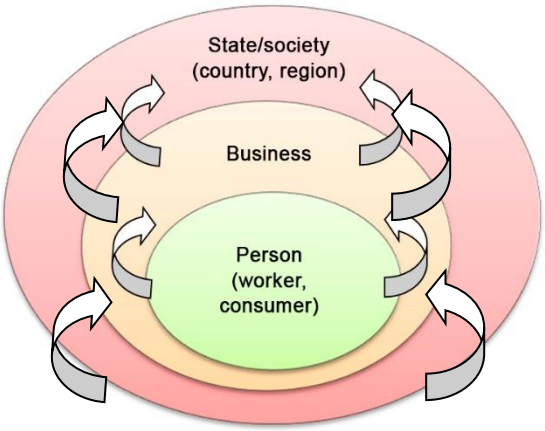

Figure 3 – The main areas of cooperation of the participants in social relations

Each participant in social relations, having reasonable and closely interweaving interests, must make its contribution to the social responsibility development.

It is possible to achieve the said balance only upon condition of the mutual tripartite partnership in obtaining the final outcome, which is oriented towards the person, to creating real conditions that are sufficient for his or her all-round development.

A long way of the business genesis as a special form of organization and implementation of the human activities is connected, above all, with principles of the free exchange and the free competition based on the private ownership. A history of the business formation and evolution indicates the permanent change of the structural-functional principles of the business' organization as well as its value-motivational characteristics.

While using a constructive abstractness of various interpretations of the business, it is possible to propose the following main primary features.

Firstly, the business is a kind of activities, which is utterly rationalized, which chooses the means of achieving a goal purposefully and consistently, with a priority of motivation of the success achievement.

Secondly, the business is an autonomous institution, which is built on independent individualist decisions, which maximizes a function of usefulness, a task of achieving its own blessing, whose rational inward-looking egoism makes it possible to go beyond the scope of a

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habitual social field, to position itself beyond the traditional social relations.

Thirdly, the business is a subject of the social and political process, which is the most predictable in its economic preferences and reactions to changes in the macro- microenvironment, which has the greatest competence, knowledge and information about functioning of institutional environment of the demand and supply, which is able to formulate and to exactly calculate its demands, its profit as well as to initiatively construct ways of their meeting and achievement.

Fourthly, the business is an object, which is the most susceptible in terms of the political management, influence upon which can be minimized by means of expansion or restriction of the resource possibilities, and the power influence can fall beyond the scope of usual and culture-approved methods, acquire a latent social and political form [32].

In view of the foregoing, a search for models of efficient cooperation between the government and the business is a quite complicated issue. Forms and methods, which are used by the government and the business on further optimization of their cooperation, can be quite different (Table 2).

Table 2

Existing forms and methods of the government and business cooperation

Forms and methods of cooperation	Results of cooperation
Regular business participation in the working events of the government agencies (branch ministries and agencies)	Concerted actions on multifaceted assistance to the business development
Holding of a procedure of the social examination of the draft regulations	Equitable business participation in the legislation, compliance with rights and legal interests of businessmen in adopting the decisions
Participation of businessmen in the work of regional	Practical cooperation of the government agencies and the business organizations; interests consolidation for working out

Forms and methods of cooperation	Results of cooperation
commissions, councils, working groups	proposals on the main aspects of work; participation in implementing the region's economic policy
Joint work on performing the agreements between the region administration and trade unions	Compliance by the employers with standards of the labor laws, the labor protection
Entering into agreements between the branch ministries and the non-governmental associations of businessmen	Joining of the forces and coordination of the actions aimed at developing all the spheres of the economy and the region
Periodical holding of the meetings with businessmen, the forums, the conferences, departures to the municipal units	Joint discussion of the problems and finding of ways to solve them
Holding of professional and rating competitions	Development of the business initiative, making of the business activities more socially important
Holding of the exhibition-fair events	Popularization and promotion of the goods made by local manufacturers, increase in the sales and the sales market.
Joint work on developing the inter-regional and international cooperation	Expansion of sales markets of the products made by the local manufacturers, development of the foreign economic ties, experience exchange

The world experience shows that the most efficient mechanism of the government and business cooperation is a strategic partnership, in which preference is given to cooperation with working out common interests connected with the region development and the investments attraction [26; 27].

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A driving force of such cooperation is interests of the partnership subjects, while the cooperation goal is implementation of these interests in the long term. The partnership is also aimed at enhancing the synergistic effect from joining the forces in achieving the common goals. This partnership is a modern mechanism of social relations, which is designed to efficiently solve issues of the national socio-economic growth. Today this vector is forming the main demand in the world market, when guaranteeing the innovation national economy the competitiveness and the high standards of protection and assurance of the human activities in the country.

Among the variety of existing approaches to defining the "strategic partnership" notion in the research the following approach is the most reasonable: "Strategic partnership is a union between the parties representing the government, the business, the civil society, which strategically unifies the resources and the abilities of each party in order to respond to the key time challenges. This is a tool favoring the sustainable development, which is based on principles of sharing the risks, expenses and the common benefit [25]. Thus, strategic partnership is the most important organizational resource, which is based on sharing of the risks and the responsibility, implementation of which makes it possible to achieve common strategic goals, to meet the needs of the parties interested, to increase the competitiveness and to assure the sustainable development.

Thus, in the market conditions of economic management, which are characterized by the availability of severe socio-economic problems and the lack of budget funds, the economy management implies the strategic partnership of the government agencies and the business organizations, which is based on principles of the social responsibility of economic entities. This tool of implementing the joint socially important programs will make it possible to enhance a role of the business in the territorial development, to keep the costs down in implementing the infrastructure projects, to assure the accessibility of the socio-economic infrastructure, the capital, the labor force, to make the budget sector more efficient and to improve the population life quality.

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One of the reasons for the week use of this tool in the region economy management consists in insufficient knowledge of the experience, which is accumulated in the world, new aspects and forms of organization, in difference and contradiction of the interests of the government agencies and the business organizations. It is also possible to sort out other problems of the government and business cooperation during the region economy management:

− a low level of confidence between the main cooperation subjects;

− the business organizations' desire for individual cooperation with the government, which automatically leads to a refusal from the interests concolidation with the business community on the whole;

− absence of a clearly worded and presented government strategy in the process of building the relations with the business;

− imperfection of the legal framework regulating the joint partner activities of the government and the business (the tender laws, the concessional laws), and total absence of the legal regulation of the lobbyism, which favors the shadow expansion;

− availability of mechanisms of the resources redistribution, which determine the administrative market essence, which are preserved from the Soviet economy, which complicate the process of building transparent, organic relations between the government and the business [23].

In order to streamline and to promote an idea of enhancing a role of the business in the territorial development, in the first place, it is necessary to improve the economic policy in terms of the organizational-institutional tools that open the main aspects of forming the responsibility of enterprises and that are designed to step up their participation in social-economic development of the territories.

5. Conclusion

Negative socio-economic tendencies indicating the state inefficient administration make important the task of searching for the ways and new sources of the regional economic growth, assuring the high quality of the population life and they confirm a conclusion that it is necessary to attract private resources to the socially important regional projects.

In this situation, one of the most important conditions of solving the set tasks is consolidation of the restricted resources on the basis of development of active cooperation between the government and the business. The established world practice shows that an efficient model of the government and business cooperation is the strategic partnership, since the strategic partnership makes it possible to use the competitive advantages of the parties (government and private sectors) to the fullest extent possible, to make them more interested in successful achievement of the joint activities results, to attract the significant extrabudgetary funds, the innovation technologies to the state competence sphere.

The partner cooperation is characterized by availability of coordination and a balance of interests of the government agencies and the business organizations, regulation of their rights, obligations, cross sharing of the risks and joint and several responsibility. The economic nature of partnership implies the close cooperation of the participants to achieve the set goals and the fulfillment of all the commitments that they entered into. Only in this case it is possible to use the synergistic effect reached as a result of such cooperation through the fact that each party has certain resources, an access to which can be of use to the partner.

It is possible to form the socially responsible behavior in the business environment only with purposeful support from the state and its active participation in solving the social problems. Thus, the business' social responsibility can become a platform for the effective business and government cooperation, and it must do that.

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PUBLIC ADMINISTRATION IN COMBATING CORRUPTION IN THE RUSSIAN FEDERATION

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Abstract: The article reviews the legal instruments used in Russia to combat corruption in order to propose recommendations for their improvement. It is noted that the country has extensive legislation to counter corruption, which according to domestic and international estimates is not very effective. For writing the article, the formal legal method and the method of comparative jurisprudence were used. The ineffectiveness of measures used to counter corruption, in the opinion of the authors, is due to the disunity and insufficient reasonability of the legal norms of these institutions. The authors identify the blocks of legislative and enforcement problems that require resolution. The conclusion is to harmonize the norms of various anti-corruption institutions. In particular, it is proposed to clearly define the list of elements of administrative offenses and criminal offenses with a corruption focus; update legislation on enforcement proceedings in order to improve the efficiency of work to recover damage caused to the state; at the civil service institute, clarify the concept of conflict of interest, adjust the legislation on the control over the conformity of expenses and incomes of public servants. In general, the authors express concern about the quality of legislative regulation

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in connection with authoritarian trends in the development of Russian statehood.

Keywords: anti-corruption, civil service, responsibility for corruption offenses, control over the compliance of incomes and expenses of civil servants, anti-corruption expertise.

1. Introduction.

Anti-corruption is the most important area of public policy in many countries of the world. It can be recognized that individual states, such as Denmark, New Zealand, Finland, Sweden, Singapore and others, have succeeded in it [1; 2; 3]. While in the Russian Federation, according to domestic and international assessments, the problem of corruption, of course, remains one of the central in the effective state-building. It is estimated that about 40 percent of gross domestic product in Russia is the shadow market [17, p. 15]. *Russia ranked 138th (out of 180) in the corruption perceptions index prepared by the international human rights organization Transparency International (*https://transparency.org.ru/research/indeks-vospriyatiya-korruptsii/rossiya-v-indekse-vospriyatiya-korruptsii-2018-28-ballov-iz-100-i-138 mesto.html).

The relevance of the research issue is due to negative manifestations, destructive processes associated with the growth of corruption in modern Russia, creating a real threat to national security of the state, as well as the need to counter this phenomenon, especially in the system of main branches of law (administrative, civil, criminal law). Today, the need for inter-sectoral coordination of anti-corruption mechanisms comes to the fore, rather than a sectoral impact on negative corruption processes.

2. Materials and methods.

The formal legal method, method of comparative law, hermeneutics, synergetics and dialectical method were used for writing the article. In particular, the formal legal method was the basis of the study, as the priority was given to the analysis of legal norms on combating corruption of various industries, the main normative acts in the field of combating corruption (in the context of recent changes and practice of their application). The method of comparative law was used to compare various legal

institutions to combat corruption, comparison with international instruments and foreign experience was partially implemented. Such general scientific methods as hermeneutics, synergetics and dialectics were used in connection with consideration of anti-corruption legislation in its diversity and development. The legislation and corruption were considered as complex legal systems with an obvious role of accidents in them; understanding the author's approaches to anti-corruption policy was of great importance.

Scientific literature was focused on the study of anti-corruption relations in Soviet and post-Soviet Russia. Thus, A.I. Alekseev, A.A. Aslakhanov, S.A. Altukhov, V. V. Astanin, S.E. Borisova, O.N. Vedernikova, L.G. Dashkova, V.V. Luneev, L.V. Petelina, M.A. Semko, A.D. Safronov, R.V. Skomorokhov, A.A. Tirskikh, T.A. Khabibulin, V.A. Shabalin, P.A. Shurygin, P.S. Yani devoted their works to the special analysis of anti-corruption measures. The works of I.N. Barsits, N.V. Bolva, E.I. Golovanova, M.A. Dolgova, A.M. Lomov, L.Z. Macheladze, A.V. Kurakin, N.M. Konin, N.Yu. Khamaneva and other scientists expressed some aspects of anti-corruption. At the same time, most of the authors analyzed countering corruption from the standpoint of any one branch of law. The value of this paper is in the interdisciplinary view of the phenomenon under consideration. At the same time, in addition to a clear focus on the law enforcement aspect of the chosen topic, the authors of this work tried to embrace actual modern works of representatives of various areas of legal knowledge, so mainly articles, not monographs were used as scientific sources.

3. Results.

Public authorities of the Russian Federation have been actively demonstrating their efforts to overcome such a negative phenomenon. The country has more than 200 regulations aimed at combating corruption. Almost all the major institutions known in the world are used to minimize corruption risks (but a special anti-corruption body was not created). In particular, criminal, administrative, disciplinary and civil liabilities are established for corruption offenses; the institute of public service introduced prohibitions, restrictions, qualification requirements, there is

regulation of conflicts of interest and personnel reserve is formed; legislation on public procurement and privatization is updated; the state continues to "get out of economy", reducing administrative barriers, it develops the idea of public control and e-government. These innovations have led to some improvement in the practice of law enforcement. It is obvious, for example, that now it has become easier to receive public services, it is more difficult to bribe in the conditions of normative prohibition of direct receipt of fines by regulatory authorities, the ban on officials to have accounts abroad, the media reports on investigated criminal cases of corruption offenses are encouraging, there is information about the facts of dismissal of officials for non-compliance with prohibitions and restrictions.

However, in general, public administration in Russia cannot be considered effective in combating corruption (due to general disunity and imbalance of anti-corruption legislation).

First, there is not consistency of norms in the institutions of legal liability for corruption offenses in Russia. With the general tightening of criminal liability for corruption crimes, there is an imbalance in the amount of a fine provided for different types of corruption crimes. For example, when analyzing Articles 160, 285 and 290 of the Criminal Code of the Russian Federation, it follows that when accepting a bribe in the amount of more than 150 thousand rubles, a perpetrator faces imprisonment (the term is 7-12 years with a fine of 9 million rubles). However, in the case of misappropriation or embezzlement of entrusted property in the amount of up to 1 million, when a person uses his official position, the maximum fine is from 2 months to 6 years in prison with a fine of up to 10 thousand rubles. It is obvious that a legislator has no uniform balanced approach to establish criminal liability for corruption crimes. At the same time, the study of judicial practice suggests that judges often impose penalties for corruption crimes that are not associated with real deprivation of liberty, since the acts are not violent [5, p. 50]. The deterrent effect of criminal liability remains questionable.

Administrative liability has also been strengthened: according to The

Code of the Russian Federation on Administrative Offences, a legislator is obliged to conduct administrative investigations in corruption offences, the limitation period for bringing to administrative liability for such acts has been increased to 6 years compared to the general limitation period of 2 months, a legislator has introduced new elements of offenses (e.g. illegal remuneration on behalf of the legal entity). However, the effective application of these norms is hardly possible in those conditions when the list of corruption elements of neither crimes nor offenses is not legally defined, and the legislative definition of corruption does not allow to identify the act as corruption (Federal Law of December 25, 2008 No. 273-FZ (ed. of October 30, 2018) "On combating corruption"). Accordingly, the competent application of the principle of the presumption of innocence raises the problem of establishing the range of offences to which the strict procedural rules can be applied.

Civil liability is possible for corruption offenses. The Civil Code of the Russian Federation allows you to recover from the guilty damage caused to the state. According to Federal Law of December 03, 2012 No. 230-FZ (ed. from November 03, 2015) "On Monitoring Consistency of Expenses of Public Officials and other Persons with their Income", prosecutors have the authority to make a claim in court to convert movable and immovable property into state revenue, in respect of which employees have not provided data that it is acquired using lawful source of income. However, the practice of implementing these provisions of the law leaves much to be desired. For example, according to official statistics, the number of corruption crimes amounted to 29.6 thousand in 2017, the total damage is 39.6 billion rubles [18, p. 60]. While in the first half of 2017 prosecutors made only 17 claims in court to convert movable and immovable property into state revenue for a total amount of 75 million rubles (the official website of the Prosecutor General's Office of the Russian Federation. URL: http://genproc.gov.ru/smi/news/genproc /news-1229634/ (accessed: February 15, 2019). It turns out that in respect to the bulk of property damage caused by corruption offenses, the state does not work to compensate for the damage.

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Moreover, considering weak effectiveness of implementation of legislation on enforcement proceedings in the Russian Federation, the state loses huge amounts of administrative and criminal penalties imposed for corruption offenses at the stage of enforcement, as well as compensation awards [20, p. 22].

Regarding complaints to legislative regulation of prosecutor's office and its functions on converting the damage caused by corruption offenses into state revenue; it should be noted that limitation of supervisory powers by transactions directed on land acquisition, other real estate objects, vehicles, securities, shares. Operations with other types of property, including buying jewels, artwork, and antiques fall outside of control of the prosecutor's office [20, p.23].

In order to improve the institution of responsibility for corruption offenses, the proposal of individual authors to expand the practice of using an operational experiment in the form of a provocation of bribery should be taken into account [5, p. 51]. It is also true that the main preventive effect of punishment is not so much its severity as its inevitability. Although the share of corruption due to its latency still does not exceed 1.5 percent in the total volume of registered crime [18, p. 64].

Secondly, new institutions aimed at combating corruption lacks coordination and, in some cases, clarifications in the legislation on public service.

The legal definition of a conflict of interest as a situation in which interests (direct or indirect) of a person holding a position, substitution of which provides for obligation to take measures to prevent and resolve a conflict of interest, affects or may affect the proper, objective and impartial performance of his official duties (exercise of powers), in the opinion of many authors, leads to the unnecessarily broad interpretation. It is suggested that in this case the list of relatives or other persons, types of benefit is excessively expanded and goes beyond the criminal-legal concept of corruption [25, p. 16]. As a result, in practice, there are many problems with the recruitment of authorities and even state and municipal institutions. Public policy is often unreasonably damage professional dynasties, struggling not with a conflict of interest, but with

prospective relations.

The excessive government control is also noted by researchers with regard to the prevention of conflicts of interest at termination of official duties. The objective side of the composition of an administrative offense provided by Article 19.29 of the Code of the Russian Federation on Administrative Offenses, is illegal actions, expressed in the failure to notify representatives of an employer at the former place of service of the former state or municipal employee and involves the liability regardless of the fact that the state or municipal employee has management functions of an organization that has concluded an employment contract with him or a civil contract [4, p. 76].

Federal Law No. 230-FZ of December 3, 2012 (ed. November 3, 2015) "On control over consistency of expenditures of persons holding government offices and of other persons to their incomes" does not regulate the actual procedures for comparing income with expenses. Therefore in practice there is a set of difficulties at clarification of the term "income", at correlation of objectively not coinciding data provided by banks and other organizations to employees and materials received from the same sources by prosecutor's office at declaration of income of spouses of employees who are engaged in business or are not citizens of Russia. It remains unclear from the content of the law whether it is possible to verify the information provided by employees, using operational and investigative measures. According to some researchers, the monitoring institution of revenue of officials is not quite logical regulation; it overburdens ordinary representatives of the state apparatus and it does not contribute to the real disclosure of information and unjustifiably does not apply to representatives of the largest legal entities with significant state participation [11, p. 5-10; 28, p. 100; 21, p. 57]. In this regard, a proposal is made to oblige representatives of employers or registration and tax authorities, and not the civil servant, to provide information on the income and transactions of officials. The global ban on having accounts abroad often also does not seem entirely rational in situations involving small amounts, border areas, family relationships and different types of accounts. There are obvious

contradictions between prohibitions for civil servants and the rule of Article 575 of the Civil Code of the Russian Federation, allowing "ordinary gifts" worth up to three thousand rubles.

It was to be hoped that proposals developed by the Ministry of Justice of the Russian Federation jointly with the Ministry of Labor of the Russian Federation, the Ministry of the Interior, with the participation of the Office of the Prosecutor General and the Investigative Committee of the Russian Federation on consolidation of the term "force majeure" in legislation on anti-corruption, filling income, expenses and property declarations and members of officials' family, providing data about the degree of consanguinity or affinity to prevent conflict of interests, the notification of cases of involvement in corruption activities. The position of the Ministry of Justice of the Russian Federation on referring to those circumstances when officials unable to provide data on income and expenses of minor children on dissolution of marriage is justified; the compliance with conflicts of interest in indigenous communities in enforcing the ban to replace managerial positions of state and municipal service relatives is problematic. Civil servants for objective reasons cannot comply with the requirements of anti-corruption legislation also for health reasons, on a long business trip, etc. (the Ministry of Justice gave examples of force majeure: https://kadrsov.ru/all/ofitsialno/1230-ministerstvo-yusticii-privelo-primery-obstoyatelstv-nepreodolimoj-sily).

Thirdly, there are criticisms of other anti-corruption institutions. The current legislation on anti-corruption expertise excluded a significant amount of legal documents from the objects of anti-corruption expertise, such as individual legal acts adopted by state and municipal authorities, official documentation of legal entities: contracts, regulations, orders, decisions and protocols [27, p. 138]. There is a weak participation of independent experts in the anti-corruption expertise. With the general orientation of the normative array on openness to public control, there is a certain artificiality of creating tools of public control and their insufficient effectiveness [24, p. 105].

Considering the legal Public Procurement Institute, it is suggested that the most important goal of it is

eliminating corruption [29, p. 6]. Despite the reform of the system of legal regulation of public procurement, this area remains one of the most corruption-intensive, according to experts. At the same time, on the one hand, the state's losses from purchases at inflated prices are still high, and on the other hand, the conditions created by the current legislation for "chasing" low prices lead to significant abuses from suppliers in terms of quality and performance of obligations [19, p. 49]. And officials of organizations – budget recipients are forced to "balance between price and quality" at risk of criminal liability. "Withdrawal of the state from the economy", accompanied by liberalization of licensing legislation, self-regulation, technical regulation, weakening of control functions of authorities, according to many researchers, does not reduce corruption risks, but rather poses a threat to the food, technological and industrial security of the country [7, p. 178; 14, p. 35; 23, p. 88]. There is a feeling of formation of some double legal standards in the country, when one rule is officially proclaimed in the law, but it is presumed in advance that in practice it can be reduced to another. S.A. Denisov calls it the slogan of the modern authoritarian state: "For my *friends* – everything, for my *enemies* – *the law*" [9, p. 12].

4. Discussion.

The issue of combating corruption is widely discussed in Russian legal science. First of all, it concerns the very understanding of the term "corruption". Federal law No. 273-FZ of 25 December 2008 (ed. October 30, 2018) "On combating corruption" offers the following definition: "corruption: a) abuse of official position, giving bribe, acceptance of bribe, abuse of power, commercial bribery or other illegal use by a physical person of his/her official position in defiance of the legitimate interests of the society and the State for the purpose of profiting in the form of money, valuables, other property or services of material nature, other rights of property for oneself or for third parties, or illegal provision of such benefits to the said person by other physical persons; b) commitment of acts, specified in the subparagraph "a" of the present paragraph, on behalf of or in the interests of a legal entity;

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This definition is generally criticized because it is the enumeration of some (not all) corruption-related offences. The legislation does not differentiate between types of corruption and it does not define it as a "phenomenon". Accordingly, "economic corruption", "political corruption", "petty corruption", "elite corruption", etc. are not legally indicated. Eventually, on the one hand, arbitrary terms appear in regulations, such as "payoff" (the Decree of the President of the Russian Federation No. 147 of April 1, 2016 "On the National Anti-Corruption Plan for 2016-2017"), on the other hand, anti-corruption measures are not subdivided according to the specifics of the type of corruption. Although, according to some authors, the ways to counteract should be predetermined by the type of corruption. For example, according to P.N. Feshchenk, a significant increase in the wages of municipal employees would be effective for "grassroots corruption" where bribes are 5-10 thousand, while for the "elite", where the amounts are in the millions of rubles and dollars, seizure of property, a lifetime ban on civil service or expulsion from the capital to distant regions of the country, as in tsarist Russia [26, p.139] would be effective. Of course, the types of measures to combating corruption of certain types are debatable, but the appropriateness of their adaptation to the classification of a number of corrupt behavior is obvious. It seems that perhaps not to consolidate the types of corruption in the law, but the calculation methods of anti-corruption should be built on the basis of the scientific of the proposed types of corruption.

Another difficult point is the question of other types of personal interest as a motive for corruption. From the above rules it follows that the legislator, when defining corruption is quite clearly leans towards restrictions of motivation is only self-serving. Therefore, the legal literature discusses the problem of the lack of criminalization of the concept of intangible benefits in the current Russian anti-corruption legislation [8, p. 15].

However, the problem of legal definition of corruption, though considered significant, cannot be recognized as the main in the evaluation of Russian anti-corruption legislation, as the phenomenon of corruption is

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complex and multifaceted. All countries face the problem of the adequacy of this term formulation in regulations. Even the international documents in the sphere of combating corruption, according to many researchers, contain a controversial definition. Therefore, it is possible in implementation of legal regulation to rely on doctrinally developed approaches to the definition of corruption, its types, causes and conditions.

However, the essential point in the comparison of the Russian legislation and international acts is the fact that international documents (The United Nations Convention against Corruption; The *Convention* drawn up on the basis of *Article K.3* (*2*) (*c*) of the *Treaty* on *European Union* on the *fight against corruption involving officials* of the *European Communities* or *officials* of *Member States* of the *European Union* of 26 May, 1997; Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 21 November, 1997, The Convention on Criminal Liability for Corruption of 27 January, 1999, etc.) reveals the concept of "corruption" through an act for which a normative legal act establishes civil, disciplinary, administrative or criminal liability. Thus, it refers to such a term as corruption offenses, although Russian legislation has not yet defined the concept and list of corruption crimes and offenses, which in the light of the study is significant. But to improve Russian legislation in this part, it is not necessary to change the legal definition of corruption; it is enough to establish a list of corruption offenses in criminal, civil, administrative and disciplinary legislation. In particular, the Federal Law of 27 July, 2004 No. 79-FZ (ed. of December 11, 2018) "On the State Civil Service of the Russian Federation" introduces the concept of "corruption offenses", but it does not establish its definition. The main problem is in the unformed system of legal responsibility of public civil servants. Corruption offenses are considered as legal grounds of civil servants' official responsibility [15, p. 53]; corruption offenses are also referred to a special category of disciplinary offenses of civil servants [10, p. 50].

Apart from the discussion about the definition of corruption, there is currently no consensus in Russia on how

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to improve specific ways of combating corruption. Thus, in the legal literature it is proposed to establish a system of material and moral incentives for citizens who report to law enforcement agencies about corruption offenses [26, p. 139]. This proposal was accepted by the Ministry of Labor, which prepared the bill on material and moral incentives for citizens who reported bribes and embezzlement of budgetary funds (with the participation of the Civic chamber of the Russian Federation, 2015; the Ministry of Labor of Russia prepared a bill aimed at protecting persons who reported corruption offenses // URL: http://www.rosmintrud.ru/labour/public-service/102 (accessed 26 April 2018). However, the authors' attitude to such an initiative is skeptical, because corruption offenses are latent and they are committed most often without witnesses. In conditions of a low standard of living in Russia, such a rule can create an incentive for citizens to provide false information about corruption offenses. There may also be massive difficulties in determining the extent of "honest mistakes" in the evaluation of such reports of citizens.

In addition to moral and material incentives, it is traditional to use the fear of responsibility as an incentive for law-abiding behavior. In this regard, some authors positively assess the introduction of Article 205.6 of the Criminal Code of the Russian Federation, establishing criminal liability for non-reporting a number of preparing or committed crimes of a terrorist nature. It is proposed to add a similar article in relation to liability for failure to report multibillion embezzlements of budget funds [26, p. 138]. However, it seems that this measure is also not crucial for combating corruption and it is difficult to implement because of the heavy workload of law enforcement agencies.

The opinion that it is necessary to radically toughen the punishment for corruption crimes up to the death penalty is quite popular in Russian society. However, professional lawyers consider the improvement of activities of law enforcement agencies to combat corruption to be more important task in combating corruption [6, p. 47]. Indeed, in law enforcement practice, there are a number of problems associated with bringing the perpetrators to justice for corruption crimes. For example, it can be difficult to distinguish bribery from

fraud, or fraud from commercial bribery, to prove qualifying signs of crimes. Therefore, the high qualification of law enforcement officers is extremely important.

The authors can agree with the opinion that imposition of a more lenient punishment due to an error can lead to inefficiency in combating corruption, to the failure to achieve such goals of punishment as the restoration of social justice, the prevention of new crimes; and occurrence of more strict legal consequences than a legislator fixed for commission of a specific type of crimes, in turn, it will lead to violation of the principle of justice according to which punishment has to correspond to the character and degree of public danger of a crime, circumstances of its commission and the identity of the perpetrator. Therefore, a thorough analysis of all the circumstances of each criminal case and an individual approach to sentencing are necessary [22]. At the same time, it is possible to take into account the opinion of D.Yu. Kaigorodova about expediency of distribution of imposition of a more lenient punishment than that provided for the given crime a milder punishment that provided for this crime, also on serious and particularly serious crimes of corruption orientation (Article 64 of the Criminal Code of the Russian Federation) [13, page 22]. This measure can help to increase the effectiveness of combating corruption, as well as implementation of the criminal law principle of justice and the principle of proportionality of criminal punishment to the committed crime.

Another direction of discussion on the improvement of anti-corruption legislation is the discussion of raising the legal awareness of citizens. For example, it is proposed to create in universities, academies, institutes and other educational institutions certain free sources of public opinion: newspapers, magazines, public electronic resources, which should draw public authorities' attention, especially the attention of law enforcement agencies, in the process of identifying and exposing corruption in education [6, p. 49]. It seems that such measures may have a positive impact, but they are also not decisive for combating corruption. The policy documents of Russia include the following measures: assistance in involving the population in decision-making processes; ensuring effective

public access to information, contributing to the creation of an atmosphere of intolerance towards corruption in society. However, these measures are not specific.

Therefore, the authors consider it more appropriate to present in this article a comprehensive cross-sectoral and at the same time formal legal view on the need to harmonize anti-corruption legislation in various fields of law.

5. Conclusion

Thus, legal measures to combat corruption in the Russian Federation need to be comprehensively improved, it is necessary to find a balance of legislative regulation between various anti-corruption institutions. It seems that a legislator should clearly define the list of administrative offences and criminal offences with a corrupt orientation and balance the penalties, expand the possibilities of using the investigative experiment. It is necessary to systematically update the legislation on enforcement proceedings in order to improve the efficiency of work to recover damage caused to the state by persons who committed corruption offenses. At the institute of public service, there is a need to clarify the concept of conflict of interest, need to coordinate the norms on gifts and prohibitions to employees. Legislation on the control over the compliance of expenses and income of state and municipal employees, as well as other persons, the provision of which certificates of income, expenses, property and obligations of a property nature is mandatory, it is advisable to adjust in terms of the distribution of duties on Income and Expense Declaration, establishing procedures for comparing income with expenses. The processes of “withdrawal of the state from the economy” require additional analysis and improvement. In general, it is extremely important in the formation of such procedures of law-making which would involve much discussion and representativeness, and would also help to get rid currently available monocentrism of the power, because excessive centralization of state gives rise to the adoption of insufficiently well-considered initiatives.

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ORGANIZATIONAL AND TACTICAL FEATURES OF CERTAIN INVESTIGATIVE MEASURES IN THE INITIAL STAGE OF THE INVESTIGATION OF CREDIT FRAUD WHICH INCLUDES ILLICIT REAL ESTATE TURNOVER

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Abstract: The presented article is aimed to determine the organizational and tactical features of certain investigative measures in the initial stage of credit fraud investigation, including the crime involved illicit realty turnover. The **Methods** were represented by strategies and tactics of investigation of fraud in the field of lending and credit in real estate malpractice. **Results:** Investigative and judicial practice indicates that officials and other authorized entities violate the legal real estate turnover established by applicable law when registering illicit transactions. The circumstances of the commission of illegal actions directly depend on the labeling process, which may result in fraud (Art. 159 of the Criminal Code of the Russian Federation), abuse of power (Art. 285), forgery by an official (Art. 292), and other accusations. **Conclusions:** Additional methods of detecting and exposing false testimonies are also quite effective in their practical application. In particular, such techniques include the utmost detalization (forcing the interrogated person to 'make up' facts and circumstances that can later be verified); re-interrogation (provides an opportunity to 'play on' certain testimony discrepancies, which are inevitable as the evidence in the case accumulates); and

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listening to a deliberately false messages without expressing any doubt or mistrust (allows exposing the false testimony of the interrogated after proper examination).

Keywords: organization, tactics, initial stage, search, interrogation, illegal transactions.

1. Introduction

Currently, the formulation of certain conclusions and proposals aimed at improving the methodology for investigating credit fraud is gaining a specific relevance in scientific studies. In the future, this issue will acquire further scientific consideration with a view of the corresponding formulation of certain conclusions and proposals aimed at improving the methodology for the investigation of fraud in the field of real estate lending.

The following system of investigative (search) measures was developed and proposed for the investigation of credit fraud:

1) Inspection of the premises, belongings, Internet content (devices, gadgets), social networks and documents;

2) Interrogation (of the victim, suspect, witnesses, relatives, employees, managers, staffers of a legal entity and other persons);

3) Temporary access to documents and personal belongings;

4) Documentary and inventory audit;

5) The legal search of the suspect's place of residence (place of work);

6) Involvement of a specialist and/or expert;

7) Information retrieval from transport telecommunication networks and electronic information systems;

8) Audio and video facial-expression monitoring.

The study of the features and tactics of individual investigative (search) measures in the investigation of credit fraud is of particular importance. The issue at stake is resolved depending on:

1) The state of investigative and procedural actions [2];

2) The scope of circumstances that the investigator needs to clarify;

3) Goals and objectives (this refers to the type of specific action: content and nature of obtaining criminalistic data) [4];

4) Procedural regulation and tactical content of certain investigative (search) measures;

5) A particular stage of investigation;

6) Particular stage of certain investigative (search) measures;

7) Investigator's position;

8) The motivation of the position of the very individual;

9) Positions in action of the representative, defense counsel and other persons or government bodies that represent the interests of the individual;

10) Investigator's arrangements for investigative (search) actions;

11) Availability of certain information or evidence;

12) Type of crime committed;

13) Procedural status of the individual;

14) The age of the individual;

15) Circumstances to be clarified;

16) Type of investigative (search) measures and other factors.

Great significance in identifying and revealing the signs of credit fraud is given to the features and tactics of conducting an investigative examination of documentation that allows reproducing certain parties and moments of an objectively existing crime event in a certain way; as well as reflecting information on the identity of the offender and the particulars of the subject of the criminal offense (along with the method of committing the crime), on the basis of which the possible explanations can be put forward; obtaining data on the number of offenders who acted in the commission, etc. The criminal investigation technique distinguishes the following types of documentation: electronic, written (texts), graphic (drawings, figures, diagrams), photos, film, and video documents. According to the sources of origin, all documents can be divided into official (the turnover of which is normatively provided for) and unofficial (most often drafts and documents of a personal nature: letters, notebooks, diaries), and by legal nature - into genuine and counterfeit.

2. Materials and methods

It should be borne in mind when inspecting electronic documents that their sending and transmission are carried out by the author or intermediary in electronic form using the means of information and telecommunication or

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by sending electronic media containing a prerecorded document. An electronic document is considered to be received by the addressee from the time the author receives a confirmation from the addressee also in the electronic form. In the absence of such confirmation, it is considered that the electronic document has not been received. The integrity check of an electronic document is carried out by the identification of an electronic digital signature. It should also be remembered that the subjects (such as banks, in particular) of electronic document circulation may ensure compliance with the requirements for the preservation of electronic documents by using the intermediary services, including archive institutions.

The specificity and complexity of financial documentation, including its electronic version, requires mandatory participation in the examination of an expert who assists the investigator in identifying, recording, seizing and preserving evidence, and advises on issues requiring special knowledge. In the capacity of such experts, it is advisable to involve specialists in the field of financial operations, computer systems engineers, auditors, and employees of alternate banking institutions [15].

Quite a significant role in the investigation of real estate lending fraud is played by the search; the latter helps to identify evidence or other guiding information. A sufficient number of scientific works of domestic and foreign academicians is devoted to the study of the essence of the search, its types, the features of the preparation and tactics, and also to the proposal of tactical techniques [5].

The investigation of credit fraud is driven by the need to determine the sequence of interrogation of certain individuals [1], and also by the procedural arrangements, which are regulated by the norms of the Russian Federation Code of Criminal Procedure; the compliance with the Code is mandatory.

The schemes of interrogation involve the use of a set of tactical techniques in their most advantageous sequence and combination. Criminalistic theoretical studies had recently revealed tendencies toward the analysis of goals and forms of tactical options and their systematization on certain grounds [14]. Moreover, attempts have been initiated

in modern criminalistic theory to develop tactical systems of certain types of interrogation [2], the analysis of which allows distinguishing the following tactical systems:

1) Establishment of psychological contact with the interrogated;

2) Prompting to testify;

3) Clarification of statement and elimination of contradictions;

4) The actualization of the recalls and flashbacks of the interrogated;

5) Exposure of lie;

6) Elimination of distortions in case of a good faith error.

Therefore, it is advisable to provide certain recommendations on a narrow application of individual tactics. Thus, firstly, the tactics of interrogating individuals involved in committing fraud in the field of real estate lending involve the employment of surprise in conducting such investigative action. Authors are entitled to the opinion that the best-performing option is to interrogate at the very location of search and seizure or immediately after the delivery of the suspect to the department of internal affairs, while:

1. The suspect is in a state of stunning confusion;

2. The suspect did not come up with the system of producing false versions;

3. The suspect still didn't think over the position during interrogation; during this period, the suspects are most often inclined to tell the truth. Options like the presentation of evidence, the announcement of testimonies of other parties involved or the results of investigative actions, and raising various questions, may bring an immediate result in the process of such an interrogation.

The interrogation specifics in cases of crime in the field of real estate lending are also determined by the following features:

1. Among the individuals involved or otherwise related to the particular crime event, in most cases could be revealed those with special financial, economic, legal, technical education or professional computer training. Suspects often have professional experience in commercial and financial bodies; they know all the features and shortcomings of the financial system, accounting, banking technology or related financial and economic activities, workflow, accounting, and control. Therefore, they immediately notice the unpreparedness

of the investigator, his uncertainty and 'wandering' in the evidence.

2. During interrogations, the investigator often has to deal with specific terminology (professional slang), which is used by most of the interrogated. The use of unfamiliar terms can lead to the situation when the investigator might miss the opportunity to take control promptly, fail to hit with the clarifying question, or fail to put on record (or just underestimate) useful information that the interrogated might provide (even accidentally or unwillingly).

3. The purpose of interrogations at the initial stage of the investigation is, first of all, to clarify the general picture of the event that took place, the schemes for conducting particular transactions, the transcript of numerous documents, accounting entries, accounts, and individual digital records; and also to obtain appropriate explanations regarding the findings. Therefore, if the investigator is not well versed in special economic issues, it is essential to fill this gap in the very beginning of the investigation or to attract a specialist in this field. Such preparation may include the familiarization with special literature (textbooks, manuals, guidelines, regulatory documents), as well as the assistance of experts of economic profile and the receipt of various reference information for a general analysis of the documentation or the direct participation of an experts during the interrogation [16].

3. Results

A significant part of investigative and judicial practices indicates that officials and other authorized entities violate the legal real estate turnover established by applicable law when registering illicit transactions. The circumstances of the commission of illegal actions directly depend on the qualification of the act, including but not limited to fraud (Art. 159 of the Criminal Code of the Russian Federation), abuse of power (Art. 285), forgery by an official (Art. 292) and others.

The presence of cases when real estate is withdrawn from legal turnover for further action is indicating the possibility of fraud in registering such realty transactions. Under-pricing or over-estimation of the actual value of real estate causes difficulties in proving

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the amount of damage caused and the very intent of the transaction.

The research results had proven that a successful fight against economic crimes in many respects is possible due to the improvement of the criminalistic support of crime investigation activities [7].

The 2019 amendments to legislation allowed changing development strategy over to the construction of multi-apartment buildings with the primary attraction of bank funds. The main objective of the reform of shared construction was to reduce the number of defrauded home buyers. Starting July 1, 2019, raising funds from citizens will only be possible using escrow accounts; a separate account must be opened for each shareholder. Opening such accounts is impossible without the participation of the bank; the participatory interest agreement will, in fact, become a tripartite agreement: the developer, interest holder and the bank [17].

Also, it is necessary to point out that while choosing tactics of interrogation and evaluating the evidence obtained, it is essential to reveal the following:

1) The conditions under which the witness or the accused observed described objects and/or phenomena (day, night, close, far, i.e. objective factors);

2) The mental state of the interrogated at the time of perception or immediately after (the witness was frightened, shocked, worried, was intoxicated or even unconscious, etc.);

3) The general state of the sensual capability of the interrogated (eye health, hearing, smell, etc.);

4) The general ability of specific perception and memorization (oral information provided by the interrogated should clarify his/her peculiarities on perceiving and memorizing colors, numbers, surnames, etc.) [10].

The vast majority of crimes committed in banking structures are accompanied by the production and use of various fake documents; an analysis of the latter affects the nature of the issues that need to be clarified during interrogations. Moreover, interrogations in cases of fraud are carried out, as a rule, using specific documents. The interrogation report must clearly state what comments the interrogated gave regarding a particular document or

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subject. If necessary, the interrogated must be allowed to build a composite portrait of the fraudster; the corresponding description along with the suspect sketch obtained should be reflected in the interrogation report. The investigator should also put on record any documents or items evidencing criminal activity produced by the interrogated, as well as detailed explanations on the nature and characteristic features of the items turned over to the authorities.

The interrogation of witnesses in cases of fraud in the field of real estate lending differs from the same procedure elsewhere in criminalistics, primarily by the specifics of the subject of interrogation. Tactical features of interrogation of witnesses in such cases may be divided into the following groups:

a) Actualizing the recalls and flashbacks of the witness;

b) Facilitating the verbal reproduction of the witness knowledge (on the incident);

c) Exposing the lies and establishing the motives of non-disclosures in the witness testimony;

d) Establishing errors in the testimony (with their further elimination).

The interrogation of witnesses has its particular difficulties. For example, gaps in accounting activities or the HR are quite expected when studying the operating conditions and office procedures of a financial institution or an enterprise with no strict accountability; the same goes for investigating other facts of such fraud in this or another institution. Among the tactical methods of conducting the interrogation, it will also be advisable to pose neutral or conditionally neutral questions combined with significant and key questions, as well as with the security and situational questions. In particular, during the interrogation of witnesses in criminal cases of the category in question, it is quite necessary to obtain answers to the following questions:

1) When, by whom and by which manner was carried out the alleged activity, the contents of which revealed fraud in the field of lending with real estate?

2) Who made the corresponding management decision when issuing a loan?

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3) Whose competence included the authority to issue such a loan?

4) Have you reported the facts of the unlawful activity of an official to someone from the management or law enforcement and control-and-auditing bodies? If so, what were the results of your appeal; and if not reported, what were the reasons for this non-disclosure?

5) Are you aware of any other facts of committing fraud in the field of lending by this official? And if so, what are the facts, etc.

Again, it is necessary to point out that while choosing tactics of interrogation and examining the evidence obtained, it is essential to reveal the following:

1) The conditions under which the witness or the accused observed described objects and/or phenomena (day, night, close, far, i.e. objective factors);

2) The mental state of the interrogated at the time of perception or immediately after (the witness was frightened, shocked, worried, was intoxicated or even unconscious, etc.);

3) The general state of the sensual capability of the interrogated (eye health, hearing, smell, etc.);

4) The general ability of specific perception and memorization (oral information provided by the interrogated should clarify his/her peculiarities on perceiving and memorizing colors, numbers, surnames, etc.) [10].

The vast majority of crimes committed in banking structures are accompanied by the production and use of various fake documents. Their due diligence investigation affects the nature of the issues that need to be clarified during interrogations. Moreover, interrogations in cases of fraud are carried out, as a rule, with the use of particular documentation; the interrogation report must clearly state what comments the interrogated gave regarding a particular document or subject. If necessary, the interrogated must be allowed to build a composite portrait of the fraudster; the corresponding description along with the suspect sketch obtained should be reflected in the interrogation report. The investigator should also put on record any documents or items evidencing criminal activity produced by the interrogated, as well as detailed explanations on the nature and

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characteristic features of the items turned over to the authorities.

The interrogation of the suspect or the accused is one of the most difficult types of investigative actions, which has its own procedural and tactical features [2]. This refers to the fact that the investigator a priory is significantly less informed than the suspect; moreover, this is quite a piecewise knowledge. This kind of interrogation is intended to solve two the following tasks. First of them is obtaining detailed information on the actions of the accused; in the process of making the statement the latter may suppress the facts such as the time of crime occurrence, which, in turn, forces the interrogated to change the structure of the evidence, allow contradictions or reservations, or providing just false information. The second task involves creating the impression of a significant awareness of the investigator, which prompts the accused to give truthful testimony in a situation that seems hopeless. In this context, noteworthy is that in all cases of the suspect interrogation, the employed tactics should be aimed at the exposure of lie; the tactical features are to be selected by the investigator in the sequence and in the combination that seems most appropriate to achieve this goal.

The procedure and tactics of interrogation of the suspect and the accused, despite some similarities, have several fundamental differences. While forming own idea of the investigator's awareness, the suspect is not able to take into account the information that the investigator received during the prejudicial inquiry. The suspect has only limited data on the available evidence of his criminal activity. At the same time, the accused can possess the experience of taking part in previous interrogations and other procedural actions. Knowing the content of the indictment, the accused may conclude on the real evidence in hands of the prosecution, thus being able to assess the situation realistically and choose the appropriate tactics of behavior.

4. Discussion:

S.A. Udovichenko [15] among the other features notes that during the investigation of fraud in real estate lending, the condition, properties and content of corporeal and electronic documents are perceived, studied, and recorded directly.

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L.B. Krasnova writes, in particular, that '… the examination of seized digital equipment is not a new type of search as such but only a new object of a search on-premises or elsewhere, although, of course, it determines certain tactical features of its conduct' [12].

A.B. Kochubey and O.V. Gorbachev stated that since the Criminal Procedure Code does not contain anything on searching and seizing computers (to obtain electronic evidence in criminal investigations), the use of this term in some context other than the Criminal Procedure Code is unacceptable. The extraction of information contained on the computer's hard drives should be carried out as part of the investigative action so that the information received acquires procedural evidence status.

Despite all the controversy of such views, the specificity and necessity of such investigative actions cannot be denied. Thus, L.B. Krasnova speaks to the fact that when investigating crimes committed using computers, networking systems or other electronic equipment, the investigator encounters unconventional corpus delicti or traces of criminal activity; this refers to the rise of new objects in forensic processing: computerized information and means of computer technology [12].

One cannot agree that a direct examination of the computer memory is almost always a part of the traditional search [12]. The availability of computer networks allows accessing information without physical penetration of the search site. However, although the investigator himself and all the participants of this procedural action (which should include the person who is being searched) can be located at a considerable distance from the actual computer/server whereabouts, therefore their actions should be considered as an unlawful entry [18].

The features of the search in the investigation of fraud in the field of real estate lending are due to the group nature of this crime, as well as to the specifics of the area and the objects that are being searched for. The latter causes the need for a group search, which is described in the criminalistic literature.

V.O. Konovalova also notes that no matter what the circumstances involved in conducting a group search, such procedure always (regardless of the

number of objects) remains a group action, that is, the single action in terms of content and procedural characteristics. Thus, in the traditional comprehension, such a search cannot pretend to be the name of a tactical operation, because the latter is a combination of several criminal-investigative and intelligence-gathering actions that are heterogeneous in their purpose [11]. Another point of view expressed in the criminological literature considers a group searches as a tactical operation. A group search involves a set of coordinated searches. The use of the tactical 'group search' operation is associated with the following circumstances: the existence of a stable criminal gang whose members are not taken into custody; the dispersal of search objects; the presence of a streamlined system of interaction or a permanent relationship between these gang members; the presence of a driving force leadership in their criminal activities [6].

According to V.M. Vartsaba [3], a group search is a tactical operation, in other words, it is a complex of coordinated searches and not just one single action. A group search is always consisting of several searches conducted in different particular places at the same time and aimed at solving the local problem of the investigation. In this case, the investigator, having determined the necessity of carrying out a particular criminalistic operation and the sufficiency of the available case-related information, should develop a joint plan of action (together with the operations and search division officers). Such a plan should reflect the most favorable time and place, the number of officers and the distribution of roles between them, the nature of the technical means and methods employed, and the procedure for recording its progress and results [13].

5. Conclusion:

Additional methods of detecting and exposing false testimonies are also quite effective in their practical application. In particular, such techniques include the utmost detalization (forcing the interrogated person to 'make up' facts and circumstances that can later be verified); re-interrogation (provides an opportunity to 'play on' certain testimony discrepancies, which are inevitable as the evidence in the case accumulates); and

listening to a deliberately false message without expressing any doubt or mistrust (allows exposing the false testimony of the interrogated after proper examination) [16].

Thus, during the interrogation of the suspect and/or the accused in crimes of the category in question, it is essential to obtain answers to the following questions:

1. What were your previous position and the work experience?

2. When exactly you were appointed to this position?

3. What are the rights and duties of the current position, and what normative acts are they regulated by?

4. What was the attitude of the accused to the performance of official duties?

5. Have you previously been prone to misconduct; and if so, when and in which manner it was expressed, and what disciplinary action was taken?

6. When did you become aware of facts of fraud in real estate lending, and for which reason and in which manner these facts were uncovered?

Under the modern conditions of lending fraud investigation, a new type of search is gaining importance – the search of the digital environment [8]. This new type of search is quite relevant (although controversial) in forensics since modern criminal gangs actively employ various data storage media, information technology, and high-end equipment. It should be noted also that there are opponents of the very term of ‘digital search’, as well as of the classification of such a search as an independent kind [3].

A search of the computer or electronic media may claim an independent type of search for the following reasons:

1) Digital information is a specific object of the search;

2) Inspection of computer equipment and media storage may acquire independent significance;

3) It is not always possible to seize the computer (s) and individual components to examine and put on record information by other procedures;

4) Inspection of computer equipment and media storage always implies the need to invite an appropriate expert (in the field of computer technology, digital networks, etc.);

5) Computer technology has become widespread; there are various

programs for the protection and emergency elimination of the stored information [3].

The study and consideration of particular features of investigative (search) actions are very important both in theoretical and practical meaning. Additional options will contribute to the improvement of the methodology for the investigation of fraud in the field of real estate lending.

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ILLEGAL RECEIPT OF A CREDIT: FORMAL LEGAL ANALYSIS, QUALIFICATION AND JUDICAL PRACTICE

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Abstract: The aim of this article was to identify legislative and law enforcement problems, to formulate scientifically sound legal positions regarding the doctrinal interpretation of the criminal legislation of the Russian Federation and to improve practical application through a comprehensive legal study of the corpus delicti associated with the illegally receipt of a credit or a credit fraud. The theoretical basis for this research was the works of scientists and practicing lawyers who thoroughly analyzed the issues of crimes in credit and finance. The methodological basis included systemic, comparative legal, formal legal and sociological research methods. The empirical basis of the study was the open data of Russian ethic and legal statistics on credit frauds, the results of criminological and criminal law studies, the directives of the Supreme Court of the Russian Federation on judicial practice, the results of the analysis of criminal cases on credit crimes. Based on the conducted research, generalization of the materials of judicial practice, the authors identified the specifics of the target, object, subject, objective and subjective sides of the illegal receipt of a credit, qualification and delineation from related corpora delicti. The formulated provisions and conclusions can be used for developing proposals on improving legislation on the constructive elements of the illegal

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receipt of a credit and a credit fraud. The research results can be used for accurate qualification of committed socially dangerous acts within criminal law to ensure the uniform application of legal norms concerning the liability for the illegal receipt of a credit by the pre-trial investigation bodies and courts.

Keywords: illegal receipt of a credit, illegal receipt of a state special-purpose loan, credit fraud, misappropriation of budget funds.

1. Introduction

Credit crimes affect the interests of legal business entities and entrepreneurs and pose a serious threat to the normal functioning and the civilized development of market relations in the country. Loan and credit frauds, malicious evasion of paying off credit debt are so widespread that they undermine the work of credit organizations and the development of the whole banking system in Russia. For instance, according to the NBCH (the National Bureau of Credit Histories), in 2016, over a million of loans with elements of fraud were issued, which is 69.5% more than that in 2015. The public danger and the frequent occurrence of loan crimes determine the relevance of criminological and criminal law studies of the problems of combating crime in credit and finance.

Problematic issues of criminal liability, criminal law characteristics, qualifications of loan and credit frauds, other crimes in the field of lending, as well as their delineation with related offenses have been studied by many researchers. Definitely, these works have laid a solid foundation for the science of criminal law and law enforcement practice. However, radical changes in Russia's economic structure, permanent changes in criminal, civil, and banking legislation, vague wordings of criminal law norms, the debatable nature of the provisions in scientific papers, the contradictions of the investigative and judicial practice require further development of this research topic.

The goal of this research was to improve the current criminal law and its practical application in order to increase the effectiveness of the criminal law protection of public relations in the field of lending. To achieve this goal, the following objectives were formulated: to develop theoretical provisions related to objective and subjective elements and

the criminal law qualification of the illegal receipt of a credit, preferential credit terms, as well as illegal drawing and misuse of state special-purpose loans; to perform a formal legal analysis of the most significant theoretical and practical problems associated with doctrinal and judicial interpretation and application of the criminal liability norms regarding the illegal receipt of a credit.

2. Materials and Methods

The methodological basis of the research is represented by the dialectical-materialistic principles of interconnection and determinism, objectivity and comprehensiveness. These were applied to explore social relations in the field of lending, including the provision of state special-purpose loans for the development of certain sectors of the economy, criminal law norms implying the liability for credit frauds and related offenses in specific historical, socio-political, socio-economic and criminological context. In line with these principles, we considered criminal liability for the illegal receipt of a credit as a measure of state influence on numerous fraudulent actions. This measure is aimed at better protection of public relations in the field of lending, which turned out to become frequent subject to criminal offences.

To achieve the research goal, we used the formal legal method. When analyzing various legal positions on the elements of the target, object, subject, objective and subjective sides of the illegal receipt of a credit, its delineation from other related crimes, as well as when developing the key concepts of the crime in question, we used the legal model of criminal law science—"corpus delicti", which includes a set of objective and subjective elements established by criminal law that allow qualifying a certain socially dangerous act as a specific crime.

When analyzing various approaches to defining the basic criminal law concepts of the crime in question ("illegal receipt of a credit", "preferential credit terms", "deliberate misrepresentation", "economic situation or financial condition of an entrepreneur or an organization", "a state special-purpose loan", as well as when developing other operational definitions, we used the systematic, comparative legal, and sociological research methods.

For instance, the comparative method was used to determine the parts of the illegal receipt of a credit and its difference from the corpora delicti of related crimes and offenses: a credit fraud (Article 159.1. of the Criminal Code of the Russian Federation, hereinafter referred to as "the Criminal Code"), misuse of budget funds (Article 285.1 of the Criminal Code), and a loan fraud (Article 14.11. of the Administrative Code of the Russian Federation).

The theoretical basis of the study was formed by the scientific works of B. V. Volzhenkin, N. A. Lopashenko, I. A. Klepitsky, V. D. Larichev, V. Yu. Abramov, A. N. Lyaskalo, A. A. Sapozhkov, Yu. I. Selivanovskaya, V. I. Gladkikh, E. S. Tyutyunnikova, O. V. Ermakov, G. A. Rusanov, M. V. Feoktistov and other authors whose scientific approaches, provisions and conclusions laid the basis of the criminal law characteristics of credit frauds and related offenses.

The empirical basis of the study included the statistical data of various departments, the norms of the current Russian legislation, including the norms of the Criminal Code, the Civil Code, the Budget Code, the Tax Code, other legislative acts, acts of official interpretation presented in the decisions of the Plenum of the Supreme Court of the Russian Federation, materials published and posted in legal information resources "Consultant Plus" and "Garant", and the information website "Judicial and normative acts of the Russian Federation" on criminal cases of crimes provided for in Articles 176 and 159.1 of the Criminal Code.

The research was carried out in several stages.

At the first stage we determined the research goal: we drew up a plan, put forward a preliminary goal and objectives of the study and identified the sources of empirical material. This stage also included initial selection of literary and normative sources: first, we studied works on criminal law and comments to the Criminal Code, then—dissertations, monographs and scientific publications on problems of criminal liability, qualifications and improvement of criminal law in the field of creditors' rights protection.

At the second, preparatory, stage of the research we studied of Russian legislation regulating and protecting

public relations in the field of lending, specialized legal publications on the selected topic, and the instructions of the Supreme Court of the Russian Federation on judicial practice in cases of credit fraud. At this stage, we adjusted the plan, goal and objectives of the research, formulated some fragments, preliminary provisions and conclusions of the study.

The third, empirical, stage primarily included selection and in-depth study of materials published and placed in the reference legal systems and Internet sites on criminal cases dealing with loan and credit frauds. This stage of the research also included an in-depth analysis of statistical data, legal norms of legislative acts, new publications on problematic issues of the criminal legal characteristics and qualification of credit crimes.

At the fourth, theoretical, stage of the study we performed a thorough analysis of the criminal legal concepts of the studied crime in question presented in publications. We considered scientific debates and judicial practice regarding objective-subjective elements and criminal law qualification of loan frauds. Next, we formulated our legal position on the doctrinal interpretation of criminal law in the Russian Federation and the improvement of its practical application.

The fifth stage included completion and presentation of the research results. We completed work on the text of the paper in accordance with the generally accepted requirements of the IMRAD model: structuring the work, eliminating editorial inaccuracies, clarifying the output data of normative sources and publications.

3. Discussion and Results

The public danger of a crime provided for in Article 176 of the Criminal Code is connected with the fact that it violates the procedure for receiving and issuing loans to borrowers. As a result, loans can be granted to dishonest persons resorting to credit fraud. The immediate object of the illegal receipt of a credit includes the whole range of public relations in the field of lending. Credit relations are regulated by the norms of the Civil Code, the Budget Code, individual federal laws “On the Central Bank of the Russian Federation (Bank of Russia)”, “On Banks and Banking Activities”, “On

Consumer Loans (Credit)" and others legislative acts. Credit relations can be described as relations connected with the provision of funds on the basis of repayment, urgency, payment, security and special purpose. Loans are granted not only by banks, but also by other non-bank deposit-credit organizations: pawnshops, credit cooperatives, mutual assistance funds, leasing centers, and insurance companies. According to the norms of the Civil Code of the Russian Federation, a loan can be legally issued with a loan agreement or as a credit contract.

Legal experts have different opinions on what its immediate object is. N. A. Lopashenko believes that the immediate object of the illegal receipt of a credit is economic relations implying the principle of the integrity of economic entities. According to M. V. Feoktistov, the main immediate object of the illegal receipt of a credit is the financial system of the Russian Federation, the procedure for lending to citizens and economic entities, and the economic interests of creditors as an additional object. G. A. Rusanov assumes that the main immediate object of this crime is public relations ensuring the rule of law in the field of lending. An additional immediate object is public relations ensuring the interests of the state, citizens and organizations in this field.

The target of the crime is the credit itself, preferential credit terms, and a state special-purpose loan, according to the disposition of Article 176 of the Criminal Code. Based on the provisions of Article 819 of the Civil Code, a credit should be understood as monetary funds provided by a bank or another credit organization (lender) to a borrower in the amount and subject to conditions stipulated by the agreement that the borrower is obligated to return and pay interest on their use. Given the wording of Article 176 of the Criminal Code and the provisions of Article 822 of the Civil Code on a commodity loan, the target of a loan fraud can be other things determined by generic characteristics. This is confirmed by investigative and judicial practice.

The court of the Saratov region convicted an individual entrepreneur under Part 1 of Article 176 of the Criminal Code for non-repayment of an acceptance credit to Sberbank of Russia. In another case, the target of a commodity loan was petroleum products

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delivered to the Rostov region for agricultural producers. The fact that most of the fuel was sold for other purposes, resulting in damage to the regional budget and, as a result, non-fulfillment of the loan terms, was subject of a criminal investigation on the grounds of Part 2 of Article 166 of the Criminal Code for property managers—heads of Rostov Donnefteproduct Company. The fact of misuse of two budget commodity loans was investigated in a criminal case in the Stavropol Territory. Loans from the regional budget were issued in the form of grain for the production of ethanol to meet the needs of medical institutions and enterprises of the region. During the contract period, alcohol was sold outside the region.

A mandatory element of the subject of the crime in question is the receipt of these funds precisely during the lending, that is, due to the provision or a receipt of a bank, commodity or commercial loan. Despite the legal framework for receiving a loan strictly specified by civil law provided for in the judicial practice under Article 176 of the Criminal Code, there is often a broader interpretation of the legal form of the illegal receipt of a credit.

The court convicted T. of the illegal receipt of a credit. As the director of the Company, T. intentionally, with the aim of illegally receiving a credit, prepared and submitted to the branch office of Bank V in Belgorod accounting documents containing deliberately false information about the financial condition, economic position and the collateral of the Company. As a result, the Company illegally received a bank guarantee for USD 3,500,000. Using this bank guarantee, T. subsequently received a loan for the indicated sum from an international organization. The branch of Bank V. in Belgorod made a payment at the request of a foreign financial organization in accordance with the agreement on the bank guarantee. However, in turn, the Company did not fulfill its obligations to Bank V. As a result, Bank V. suffered material damage from T.'s illegal actions in the amount of USD 3,927,488.79 due to the bank guarantee obtained with deliberately misleading information. In the cassation appeal, convicted T. and his counsel requested to quash the court's verdict as unlawful and unreasonable and to terminate the criminal case against T. due to the absence of a crime event. It

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was claimed that the court, when passing the verdict, did not take into account that T. had not received a loan from the bank as such, and therefore could not be held responsible under Part 1 of Article 176 of the Criminal Code. Contrary to the arguments set out in the cassation appeal of the defense, the Belgorod Regional Court, relying on the provisions of Articles 819 and 368 of the Civil Code, reasonably did not agree that the agreements concluded by T. on behalf of the Company with Bank V and the international organization did not imply lending since, according to the requirements of the criminal law, it is a loan and the terms for receiving it are the subject of a crime under Part 1 of Article 176 of the Criminal Code.

The objective side of the illegal receipt of a credit (Part 1 of Article 176 of the Criminal Code) implies receiving a credit or preferential credit terms by an entrepreneur or the head of an organization by submitting to a bank or other lender deliberately misleading information about the economic situation or financial condition of an entrepreneur or organization, if this act causes large-scale damage. Receiving a credit (cash or other property) or preferential credit terms for obtaining it is an unlawful act associated with deceiving a bank or other lender. According to the instructions of the Supreme Court of the Russian Federation and with respect to the objective side of the crime in question, a loan fraud means providing the creditor with deliberate misrepresentation or inaccurate information about the economic situation or financial condition of an entrepreneur or organization that is required by the creditor as a condition for granting a loan, which is done to mislead the creditor.

As stated in Part 1 of Article 176 of the Criminal Code, the creditor may be represented by a bank with the right to conclude a loan agreement, or another lender that has concluded a contract for a commodity or commercial loan.

A bank denotes a credit institution that has the exclusive right to carry out all of the following banking operations: collecting money from individuals and legal entities into deposits, placing the indicated funds on its behalf and for its own account on the basis of repayment, payment, urgency, opening and maintaining banking accounts of individuals and legal entities.

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A concessional loan denotes more favorable terms offered by the lender to the borrower. These terms, as a rule, imply a reduced interest rate for using a loan, a longer period for repaying the borrowed funds, and a larger amount of a granted loan. As practice shows, courts rarely consider criminal cases under Article 176 of the Criminal Code where the subject of the crime was a concessional loan. According to A. N. Lyaskalo, this is due to the fact that illegal receipt of preferential credit terms is not considered a qualifying circumstance, but is one of the elements of the objective side of a loan fraud, as well as the fact that it is rather difficult to establish the damage from illegally received preferential credit terms.

A deliberate misrepresentation is false information when the borrower is aware that it distorts or conceals the true picture of their economic situation or financial condition, which misleads the creditor. A. A. Sapozhkov indicates that a deliberate misrepresentation can be included into documents by a hard or intellectual fraud as:

- Including in the original document entries that do not correspond to reality, while the document retains the elements and details of the original (it is made on the required form, contains the names and positions of the persons who are to sign it, etc.); however, the data entered into it (text or digital materials) are false;
- Forgery of a document that includes manufacturing (preparation) of a completely forged document; the entire document is forged—its form and content;
- Falsification of a document (partial falsification)—inclusion of distorted information into an authentic document by, for example, destroying or correcting part of the text, some words or numbers by any means (eroding or erasing, etc.), as well as forgery of an official's signature, changing the issue date of the document, and putting a forged seal on the document.

The use of forged documents implies liability for committing a crime under Article 327 of the Criminal Code: falsification, production or sale of forged documents, state awards, stamps, seals, or forms. Since that the objective side of a loan fraud includes the submission of a deliberate misrepresentation to a bank or other lender, then Part 3 of Article 327 of the Criminal Code, providing for the liability for the use of a deliberately

forged document, cannot be applied. However, actions related to falsification of official documents by the subjects of a crime under Part 1 of Article 176 of the Criminal Code, or other manufacturers of these documents are not covered by this crime and are subject to independent evaluation. In this case, there is a combination of two crimes, that is, Parts 1 or 2 of Article 327 of the Criminal Code and Part 1 of Article 176 of the Criminal Code.

In this case, the legal papers discuss the qualification of the falsified documents. Some authors believe that all the elements of a crime under Article 327 of the Criminal Code are covered by Article 176 of the Criminal Code. Others claim that the forgery of documents used for the illegal receipt of a credit should be independently qualified under Part 1 or Part 2 of Article 327 of the Criminal Code. The Plenum of the Supreme Court of the Russian Federation in its commentary that the theft of a person's property or the acquisition of the right to it through a fraud or breach of trust, committed using a forged official document granting rights or relieving oneself of duties, requires additional qualification under Part 1 of Article 327 of the Criminal Code. Judicial practice for a crime under Article 176 of the Criminal Code demonstrates that the courts, hearing criminal cases of a loan fraud, very rarely consider the issue of additional qualifications and sentencing for forgery of documents (Part 1 of Article 327 of the Criminal Code). Such an approach, in our opinion, is due to the incorrect qualification of a crime at the stage of initiating and investigating a criminal case.

The Magassky District Court of the Republic of Ingushetia established that T. A. Elmurziev, to illegally receive a loan from Rosselkhozbank in the amount of RUB 10 mln, purchased from an unidentified person a copy of forged documents necessary for the analysis and evaluation of the financial condition of the borrower—Uran Company. T. A. Elmurziev entered deliberately false information about the income of Uran Company into these documents, while the tax and accounting statements of this company for 2010 and the first quarter of 2011 were submitted to the Interdistrict Inspectorate of the Federal Tax Service of Russia with zero values. The court found T. A. Elmurziev guilty only of an offense under Part 1 of Article

176 of the Criminal Code and sentenced him for two years.

The Leninsky District Court, the city of Tambov, established that R. V. Pyatibratov, as the head of the Company, received a loan by submitting to the bank intentionally misleading information about the economic situation and the financial condition of the Company. R.V. Pyatibratov deliberately, for the purpose of obtaining personal benefit, to create conditions for the implementation of his criminal intent, produced fictitious financial and economic documents on behalf of fake organizations that do not carry out any activities, including sales contracts and consignment notes. Using the provided fictitious documents containing deliberately false information about the number of goods and materials, R. V. Pyatibratov, as the head of the Company, and the Bank signed a loan agreement for a period of 24 months, according to which the Bank transferred credit funds to the Company's settlement account in the amount of RUB 4 mln. The court qualified the actions of R. V. Pyatibratov and found him guilty only of committing a crime under Part 1 of Article 166 of the Criminal Code and sentenced him to two years in prison.

Neither the disposition, nor the notes to the articles of Chapter 22 of the Criminal Code define the concept of "economic situation or financial condition of an entrepreneur or an organization." According to the definitions given in the legal studies, the following concepts can be considered as:

- economic situation is a set of internal and external data characterizing the civil and economic status of an entrepreneur or an organization, their production capabilities, partnerships, and economic activity;
- financial condition is the economic condition of an entrepreneur or an organization, expressed in monetary terms based on the analysis of information about their financial results, property, business transactions, liabilities and the ratio of assets to liabilities.

As the judicial practice shows, in cases of loan frauds, the information about the economic situation or financial condition of an entrepreneur or organization can be found in:

1) Charter documents of the organization with fragments of false information or charter documents completely falsified by the borrower;

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2) Financial statements (balance sheet, statement of financial results and their annexes) that contain false information about the financial position of the organization or are completely false;

3) A technical and economic substantiation of the need for a loan that contains completely or partially inaccurate data on the purpose of the loan, the timing of transactions at the expense of the lender, sources and timing of repayment, and the planned income;

4) fake agreements (contracts) for the proposed transaction, presented as justification for the requested credit funds (for example, on the procurement and delivery of products, the provision of services, and work performance);

5) fake and falsified documents that act as security for loan repayment (a pledge agreement, a surety agreement, guarantees, and an insurance agreement).

Ch. was found guilty of two crimes under Part 1 of Article 176 of the Criminal Code: receiving a loan by the head of the organization by providing the bank with intentionally misleading information about the economic situation and financial condition of the organization that caused large-scale damage. Namely, under the circumstances specified in the verdict, as the general director of Company A, to receive loans, he provided to Bank U the balance sheet of his Company for the period up to June 30, 2007 containing inaccurate information about the economic situation and financial condition of Company A. After that, on the basis of inaccurate information provided by Ch., the bank's employees made a decision on granting two loans to Company A in the amount of RUB 20 mln (September 5, 2007) and RUB 10 mln (November 1, 2007). Due to the financial insolvency of Company A, the amount of the loans not returned to the bank estimated: for the first loan—RUB 18 mln, and the second—RUB 9,710,000.

One cannot classify as deliberately misleading the information about the economic situation or financial condition of an entrepreneur or an organization, as well as the information provided by a borrower to a bank or other lender about his honesty, decency and business reputation, timely repayment of previously received loans, because due to the constructive elements of the

disposition of Part 1 of Article 176 of the Criminal Code this information does not constitute the content of the objective side of the crime in question.

The corpus delicti of a loan fraud provided for by Part 1 of Article 176 of the Criminal Code occurs only in case of large-scale damage. According to the note to Article 170 of the Criminal Code, large-scale damage is the damage in the amount exceeding RUB 2,250,000. Legal experts have different opinions on the concept of large-scale damage in relation to a loan fraud. Some authors believe that the amount of damage is made up directly of the amount of credit received and accrued interest. Others believe that according to Part 1 of Article 176 of the Criminal Code the damage denotes losses in the sense in which this term is used in clause 2 of Article 15 of the Civil Code, namely, the real damage caused by the crime and loss of profit. The third group believes that large-scale damage is an assessment category, which should include all socially dangerous consequences of a loan fraud for the lender: the risk of bankruptcy of the creditor organization, violation of its normal operation, including scuttling unplanned transactions, reducing financial turnover, forced tax evasion, failure to fulfill other obligations, and the need to make a forced staff reduction Finally, the fourth group claims that the damage caused to the creditor by not repaying a loan constitutes an offense under Article 177 of the Criminal Code "Deliberate evasion of the repayment of debts". They propose to abandon the material structure of the corpus delicti of a loan fraud, but focus on such a crime element as a large loan amount.

The concept of large-scale damage due to a loan fraud is directly related to another issue—the moment of crime completion. Since a legal fraud is directly associated with socially dangerous consequences, most authors link the completion of the crime with the moment when the damage was done to the creditor. However, the theory of criminal law and judicial practice define the moment of causing large-scale damage differently: 1) from the date of loan repayment; 2) before the loan repayment date: after the termination of loan repayments; after the debtor is declared bankrupt; 3) from the date of receiving a loan and crediting it to the borrower's settlement account; 4) after the completion of bankruptcy

proceedings, when the creditor's claims remained unsatisfied; 5) the combination of several approaches to determining the moment when large-scale damage was inflicted to the creditor.

Due to the inconsistency of the above judgments, it is worth mentioning the position of the Supreme Court of the Russian Federation on large-scale damage due to a loan fraud and the moment of crime completion, since it is mandatory for courts considering criminal cases under Article 176 of the Criminal Code. This position unites several fundamental principles:

1. A loan agreement between the lender and the borrower, the concept of which is defined in Article 819 of the Civil Code, is connected with risks. Risk is understood, first of all, as the probable loss by the bank of part of its financial resources, receiving less income or additional costs for lending. This concept also includes the risks associated with criminal actions of the borrower—the illegally receipt of a loan by an entrepreneur or a company's head;

2. A situation when the creditor bank takes unaccounted credit risk, due to an unsecured loan; it threatens the interests of creditors and depositors, and this, in turn, is the damage (risk) for the bank stated by the legislation in the disposition of Article 176 of the Criminal Code;

3. Disposition of Article 176 of the Criminal Code and its title itself (the illegal receipt of a loan), implies that a loan should be repaid to a bank; therefore, the arguments that this crime should be considered completed from the moment when the loan should be covered are not based on law. Moreover, even the full repayment of a loan by an unscrupulous borrower does not preclude criminal liability for its illegal receipt.

Considering the above provisions, the Supreme Court of the Russian Federation formulated two important conclusions:

- The objective side of the crime provided for in this article is the unlawful receipt or granting of a loan to a borrower, but not the failure to repay it or satisfy accounts payable, as provided for in another article of the Criminal Code;
- When determining the moment of crime completion under Article 176 of the Criminal Code, neither the fact of satisfaction of the accounts payables, nor

repayment of the entire loan, which can be very long, will have legal bearing, but the time of the damage, that is, when the bank issued the funds to the unscrupulous borrower (that is, the date of transferring the sum to the borrower's account).

Large-scale damage is a mandatory element of the objective side of the crime under Part 1 of Article 176 of the Criminal Code, and this is the difference between a criminal offense and an administrative offense. Article 14.11 of the Administrative Code of the Russian Federation establishes administrative liability for an illegal receipt of a loan or preferential credit terms by providing the bank or other lender with deliberately false information about its economic situation or financial condition. The legal liability established in this article as well as the liability provided for in Article 176 of the Criminal Code, applies to the act when the guilty person provides the creditor with deliberately misleading information about the economic situation or financial condition of an entrepreneur or organization not with the purpose of embezzlement of funds, but with the purpose of receiving a loan or preferential terms of credit and intends to fulfill contractual obligations. As many authors justly point out, the only element distinguishing a crime from an administrative offense of a similar nature is the presence or absence of large-scale damage as a socially dangerous consequence of these actions. In case of large-scale damage, that is, when the damage exceeds the amount of RUB 2,250,000, the guilty person is prosecuted for illegally receiving a loan under Article 176 of the Criminal Code. If the damage is less than the specified amount, the person is found administratively liable under Article 14.11 of the Administrative Code. It should be noted that if the borrower has the intention to use the money for his own benefit or the benefit of third parties and has no intention to return it, such actions are qualified under Article 159.1 of the Criminal Code as a loan fraud. Courts adhere to this position in their work.

By the verdict of the Essentuki City Court of the Stavropol Territory, V. V. Cheremushkina was convicted under Part 1 of Article 176 of the Criminal Code: as an individual entrepreneur, aiming to illegally receive

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a loan, on February 17, 2009, she provided deliberately false information about her financial condition to the additional office of the Stavropol regional branch of the Bank, and the Bank granted a loan based on this information. In her cassation appeals, the convict and her counsel asked to cancel the verdict and to acquit her due to the lack of corpus delicti in her actions, terminating the case on the basis of clause 2 of Part 1 of Article 24 of the Code of Criminal Procedure. The Judicial Chamber on Criminal Cases of the Stavropol Regional Court, after studying the case materials, discussing the arguments of the cassation appeals, overturned the verdict of the city court. In its decision, the Judicial Chamber on Criminal Cases of the Stavropol Regional Court stated: since the loan amount did not exceed the sum of large-scale damage indicated in the note to Article 169 of the Criminal Code in force at the moment when V. V. Cheremushkina received a loan, her actions to receive a loan by providing deliberately misleading information about the economic situation and financial condition did not cause large-scale damage to the bank. Therefore, such actions do not constitute a crime under Part 1 of Article 176 of the Criminal Code, and they contain elements of an administrative offense under Article 14.11 of the Administrative Code.

The objective side of the corpus delicti, provided for in Part 2 of Article 176 of the Criminal Code, is connected with an illegal receipt of a state special-purpose loan, as well as its use for other purposes, if these acts caused large-scale damage to citizens, organizations or the state. Thus, the objective side of the crime in question includes two alternative socially dangerous acts: 1) the illegal receipt of a state special-purpose loan; 2) the use of the state special-purpose loan not for its intended purpose.

A state special-purpose loan is a loan issued on behalf of the state by the Central Bank of the Russian Federation for the implementation of targeted programs. It is a loan in the form of cash or things that is repaid with interest that has some generic characteristics, for instance, provision of various benefits. State special-purpose lending (grounds, procedure for granting loans, and the terms of their repayment) is carried out

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within the public law and is regulated by the Budget Code, the Tax Code, laws on the budget, and some legal acts regulating budget relations. A budget loan and an investment tax loan are types of state special-purpose loans.

According to Article 5 of the Budget Code, a budget loan is funds provided by the budget to another budget within the budget system of the Russian Federation, to a legal entity (with the exception of state (municipal) institutions), a foreign state, a foreign legal entity on a repayable and reimbursable basis. Article 93.2 of the Budget Code states that: 1) a budget loan can be granted on the basis of an agreement concluded in accordance with the civil legislation of the Russian Federation, on the terms and within the budget appropriations that are provided for by relevant laws (decisions) on the budget; 2) when the budget is approved, the government establishes objectives for which a budget loan can be granted, as well as the terms and procedures for granting budget loans, budget allocations for their granting for a period within a financial year and for a period beyond the financial year, as well as restrictions on recipients (borrowers) of budget loans; 3) a budget loan can be granted only if the borrower provides security for fulfilling their obligation to repay the specified loan, paying the interest and making other payments stipulated by the relevant agreement (contract); 4) only bank guarantees, sureties, state or municipal guarantees, property pledge in the amount exceeding 100% of the granted loan can be a surety bond of a legal entity, or a municipality that guarantees the repayment of a budget loan, paying interest and making other payments stipulated by law and (or) an agreement; 5) a prerequisite for granting a budget loan to a legal entity is a preliminary evaluation of the financial condition of the legal entity—the recipient of the budget loan, its guarantor or co-borrower, as well as their consent to the inspections by the authorized body to check that the recipient of the budget loan complies with the terms, goals and procedure for its provision.

According to Article 66 of the Tax Code of the Russian Federation, investment tax credit represents such a change in the tax payment deadline, when the entity, if there are statutory grounds, is given an opportunity, to reduce its tax payments with subsequent

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phased payment of the loan amount and accrued interest within a certain period and within certain limits. Investment tax credit can be granted for a period of one year to five years, and in some situations—for a period of up to ten years. Article 67 of the Tax Code states that an agreement on an investment tax credit should provide for a procedure for reducing payments on the corresponding tax, the loan amount (indicating the tax for which the organization is granted an investment tax credit), the term of the agreement, the interest on the loan amount, the procedure for timely loan repayment, not exceeding the period for which, in accordance with the agreement, an investment tax credit is granted, the procedure and maturity of accrued interest, an indication of the method for securing the obligation and liability of the parties.

The use of state special-purpose credit for other purposes (misuse) is disclosed in Article 306.4 of the Budget Code. It is understood as the allocation of budgetary funds within the budget system of the Russian Federation and payment of monetary obligations for purposes that do not fully or partially meet the goals defined by the law (decision) on the budget, consolidated budget quarterly breakdown, budget quarterly breakdown, budget estimate, contract (agreement) or another document acting as the legal basis for the provision of these funds.

The research results and the analysis of judicial practice for crimes under Part 2 of Article 176 of the Criminal Code indicate that the subject of the illegal receipt of a state special-purpose loan is, as a rule, a budget loan. In this case, the method of committing a crime is the submission of deliberately misleading information about the right to receive a budget loan or its use for other purposes. The state represented by the subjects of the Russian Federation, from the budgets of which budget loans are granted, are recognized the victim in such cases. Judicial practice also shows that under Part 2 of Article 176 of the Criminal Code (the illegal receipt of a state special-purpose loan) the persons who illegally receive special-purpose loans in banks as part of programs to support various types of economic activity are brought to justice.

By the verdict of the Khasavyurt City Court of May 17, 2012, A.S., the head of Nasip Company, was found

guilty under Part 2 of Article 176 of the Criminal Code. It follows from the verdict that A.S., as the head of Nasip Company, with a criminal intent, prepared fictitious documents for entrepreneurial agricultural activities and on May 21, 2010 concluded an agreement with the Russian Agricultural Bank on receiving a state special-purpose loan in the amount of RUB 15 mln for the purchase of equipment and feed manufacturing. On May 31 A.S. received the specified amount in his account in Khasavyurt, cashed it and used it for other purposes, spending it on personal needs, which caused large-scale damage to the state in the amount of RUB 15 mln.

The crime provided for by Part 2 of Article 176 of the Criminal Code is completed from the moment of causing large-scale damage to citizens, organizations or the state, the size of which should exceed, according to the note to Article 170 of the Criminal Code, RUB 2,250,000. Such damage may be caused to the creditor in case of default on obligations under the loan agreement, that is, upon non-repayment of a loan or the interest. Judicial practice shows that the absence of socially dangerous consequences or compensation for damage caused to a citizen, organization or the state due to the committed crime is the reason for terminating the criminal prosecution or the court acquittal.

The Judicial Chamber on Criminal Cases of the Samara Regional Court did not change the acquittal verdict of the Isaklinsky District Court of the Samara region for G. G. Abramova. As can be seen from the case file, the preliminary investigation bodies charged G. G. Abramova with the fact that, as the director general of a company, according to the results of the competition, it received a budget loan for organizing pork production in the amount of RUB 2,902,393. This amount should have been spent on the construction of a mini-feed workshop and the acquisition of young animals, but was not spent for its intended purpose. The act provided for in paragraph 2 of Article 176 of the Criminal Code is defined as using the state special-purpose loan for other purposes, that is, spending a state budget loan not in accordance with the intended purpose, or misuse of the state budget loan. A mandatory attribute that characterizes this element of the corpus delicti is the consequence, namely the

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infliction of large-scale damage to citizens, organizations or the state. Consequently, this crime is completed from the moment the consequences occur. As can be seen from the materials of the case, the company headed by G. G. Abramova repaid the entire loan before the loan repayment deadline. Thus, no material damage to the state was caused by the actions of the head of the company. In addition, the allegations by the prosecution that the funds had not been used for their intended purpose did not correspond to the circumstances established in court. Under such conditions, the Judicial Chamber on Criminal Cases recognized the court verdict of the acquittal of G. G. Abramova committing the act under Part 2 Article 176 of the Criminal Code legal and reasonable due to the lack of corpus delicti in her actions.

The subjective side of the crime under Article 176 of the Criminal Code implies intentional guilt in the form of direct intent without a selfish purpose. The culprit is aware of the social danger of their actions, that is, receiving a loan or preferential credit terms by submitting to the creditor deliberately misleading information about their economic situation or financial condition, anticipates the possibility or inevitability of socially dangerous consequences in the form of large-scale damage to citizens, organizations or the state and wishes them to occur.

Legal experts have different opinions on the content of the subjective side of the crime provided for by Article 176 of the Criminal Code. Some authors believe that regarding the damage caused by non-repayment of a loan, only indirect intent is possible (otherwise, with direct intent, the act is a fraud), and in case of default on the loan interest we can talk about direct intent. At the same time, it is believed that the intent can be direct if the damage is caused by non-repayment of the loan within the time period specified in the agreement, whereas the borrower actually intends to repay the loan. Others believe that guilt in this crime can be both in the form of intent and in the form of negligence. In this case, direct intent can take place only if a person acquires preferential credit terms by deception (if the preference is connected with the price of the loan).

In case of a loan fraud, the offender intends to receive a loan or preferential credit terms without a selfish

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purpose, that is, without the intention of free circulation of funds for their benefit or the benefit of third parties. Moreover, intent can only be direct. Firstly, because the prerequisite for recognizing an act as a crime is the receipt of a credit by providing **deliberately** misleading information about the economic situation or financial condition of an entrepreneur or organization, which is the basis for issuing a loan, and causing large-scale damage to a bank or other lender as a result of these actions. Secondly, fraud as a way of illegally receiving a loan may consist **solely** in deliberate communication (submission) of knowingly false, incorrect information aimed at misleading the creditor. Finally, the foresight and desire to achieve a criminal result (to receive a loan) are present both at the time of knowingly giving false information about the economic situation or financial condition, and after the lender issued money to an unscrupulous borrower. A different approach would contradict the legal meaning of Article 176 of the Criminal Code, since the ban established by this norm under the threat of criminal punishment was originally aimed at preventing the receipt of a loan by providing deliberately misleading information, that is, the reason for granting a loan, whereas the criminal law does not connect the corpus delicti of this crime with violating the terms of the loan repayment or the timing of interest payments by the person who had received a loan.

If there is a lucri causa, the act should be considered a fraud and qualified according to Article 159.1 of the Criminal Code. The ruling of the Supreme Court of the Russian Federation states that the actions of the borrower that include receiving cash or non-cash funds by submitting to the bank or other creditor deliberately false and (or) inaccurate information for gratuitous transfer of funds for their own benefit or the benefit of third parties with the intention not to return this money in accordance with the agreement terms should be qualified under Article 159.1 of the Criminal Code.

Therefore, the main difference between receiving a credit illegally and a credit fraud, as noted by many authors, is expressed in the subjective aspect of the crime: 1) if the person intends to steal the illegally received credit, the deed should be qualified under Article 159.1 of the

Criminal Code; 2) if the person intends to use the illegally received credit for the purpose of entrepreneurial and other economic activity and its subsequent repayment, and if there is large-scale damage, the deed is qualified under Article 176 of the Criminal Code.

Given the complexity of distinguishing between the illegal receipt of a credit and a credit fraud, the Plenum of the Supreme Court of the Russian Federation in its resolution draws the attention of the courts to the fact that in cases where a person receives another's property or acquires the right to it, without intending to fulfill obligations associated with the terms of granting the indicated property or the right to him, as a result of which the victim suffers material damage, the offense should be qualified as a fraud, if the person had had such an intent before stealing another's property or taking the right over it. The resolution states that the following circumstances may indicate the presence of such intent: 1) when a person is deliberately unable to fulfill the obligations of the agreement terms; 2) when concluding the agreement, a person uses forged documents, including identity documents, statutory documents, letters of guarantee, or certificates; 3) when a person conceals information about debts and collateral of property; 4) when a person uses the received property for personal purposes contrary to the terms of the agreement. Reviewing decisions of lower courts, higher courts strictly adhere to the instructions of the Supreme Court of the Russian Federation on judicial practice in cases of the illegal receipt of a credit and a credit fraud.

The verdict of the Naberezhnye Chelny City Court of May 27, 2011 found A. V. Farafontov guilty and convicted him under Part 4 of Article 159 of the Criminal Code to four years in a general penal colony. The verdict stated that A. V. Farafontov, as the director of Orenburgsky Company, with lucri causa, by deceit and breach of trust, having provided deliberately misleading information that the company had property on pledge, received money from the Leasing Company in the amount of RUB 45 mln that he stole. A. V. Farafontov used the money at his discretion by transferring it to the accounts of TPO and Spetsavtotsentr companies, which he actually headed. The cassation ruling of the Judicial

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Chamber on Criminal Cases of the Supreme Court of the Republic of Tatarstan of August 19, 2011 upheld the court sentence. The Presidium of the Supreme Court of the Republic of Tatarstan, changing earlier court decisions, indicated that the mere fact of the convict providing false information about the availability of property on pledge did not yet constitute a fraud, since in this case the convict intended to receive a loan for the purchase of motor vehicles and spare parts. According to the testimony of the convict, he was going to repay these loans, which, in particular, was confirmed by the official letters available in the case file with a request to extend the loan repayment period due to the difficult financial situation of the enterprise, as well as partial repayment of interest on the loan. By implication of law, if the head of the organization, when receiving a loan or a credit, provides deliberately false information about the economic situation or financial condition of the company, but is not going to appropriate the received loans for their own benefit or for the benefit of third parties, this does not constitute a fraud, as there is no intent to steal the funds, but the person intends to illegally receive a loan by misleading the lender. Under these circumstances, due to the lack of intent to steal the funds, the offense cannot be qualified under Part 4 of Article 159 of the Criminal Code, as these actions must be qualified according to a special norm—Part 1 of Article 176 of the Criminal Code, as an illegal receipt of a credit.

The subject of a criminal offence provided for by Part 1 of Article 176 of the Criminal Code is an entrepreneur or the head of the organization. On the other hand, according to the provisions of the budget and tax laws, the subject of a crime under Part 2 of Article 176 of the Criminal Code can only be the head of the organization who illegally received a state special-purpose loan or used it for other purposes, causing large-scale damage to citizens, organizations or the state.

It should be noted that the subject of a crime under Part 2 of Article 176 of the Criminal Code cannot be officials receiving budget funds, that is, heads of state bodies, local self-government bodies who have the right to take on and (or) fulfill budgetary commitments on behalf of public law entities, as well as

heads of state (municipal) institutions providing state (municipal) services, perform work and (or) perform state (municipal) functions, the financial support of which is carried out at the expense of the corresponding budget through budget estimates (Article 6 of the Civil Code). According to A. Ya. Asnis, this circumstance is connected with the fact that Article 285.1 and Part 2 of Article 176 of the Criminal Code provide for elements of crimes clearly distinguished by two defining, core criteria: the addressee of the budget funds and the subject of the crime. In the corpus delicti under Article 285.1, this addressee is a state body, local government, state or municipal institution, the Armed Forces of the Russian Federation, other troops and military units of the Russian Federation, whereas the subject is an official. In the corpus delicti provided for in Part 2 of Article 176, it is another organization—a legal entity or an individual, the head of the organization or an entrepreneur. Therefore, in cases of the illegal receipt of a state special-purpose loan and its use for other purposes, these heads, depending on the offence, bear criminal liability under Article 285 of the Criminal Code, for abuse of power, or under Article 286 of the Criminal Code, for exceeding authority, and under Article 285.1 of the Criminal Code for misuse of budget funds, provided that the amount of budget funds spent exceeds RUB 1,500,000. In cases where this person, due to the abuse of power or exceeding the authority, has added deliberately misleading information or corrections into official documents distorting their original content, the offense must be additionally qualified under Article 292 of the Criminal Code.

Given the disposition of Article 176 of the Criminal Code, the subject of the crime is the borrower—an entrepreneur or the head of an organization. In this regard, individuals who are not entrepreneurs but who have provided the bank or another lender with deliberately false information in order to receive a loan cannot be the subjects of the crime in question. Depending on their actions, they can be qualified according to Articles 159, 159.1 or Article 165 of the Criminal Code. The borrower, as noted in the resolution of the Plenum of the Supreme Court of the Russian Federation of November 30, 2017 No. 48 “On judicial practice in

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cases of fraud, misappropriation and embezzlement", is a person who has applied to the creditor with the intention to receive, who is receiving or has received a loan in the form of cash in their own name or on behalf of a legal entity represented by him legally. The legal evaluation of the committed act depends on the borrower's legal status in the illegal receipt of a credit. For instance, if no legal entity was concerned (not registered or liquidated), and the perpetrator only presented deliberately forged documents with details of a nonexistent organization to the creditor in order to receive a loan or when the borrower is a person who has obtained his borrower status from the forged documents in the name of another person, the guilty person is not a special subject—the borrower—and their actions cannot be qualified as a criminal act in the field of lending. Depending whether there was an intent of a theft or not, the offence should be qualified according to Article 159 of the Criminal Code as a fraud, that is, a theft of another's property or acquisition of the right to another's property by a fraud and breach of trust, or under Article 165 of the Criminal Code as causing property damage through fraud or breach of trust without elements of theft. In its directives, the Plenum of the Supreme Court of the Russian Federation indicates that in cases where, for the purpose of the embezzlement of funds, a person, for example, pretended to be someone different by presenting another's passport when applying for a loan, either acted on forged documents on behalf of a non-existent individual or legal entity, or used other persons who were not aware of his criminal intentions to receive a loan, there are no grounds for qualifying the offense under Article 159.1, and the culprit is liable under Article 159 of the Criminal Code. The analysis of court decisions shows that most courts are guided by this provision.

By the verdict of the court, T. was found guilty of committing fraud, namely, that he, together with unidentified persons, stole funds belonging to Bank A and Bank B, by providing the Banks with deliberately false documents about his identity and place of work, which allowed him to receive consumer loans. In the appeal, T. disagreed with the qualification of his actions, indicating that his intent was exclusively aimed at committing a crime

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in the field of credit relations, which was also confirmed by the actual circumstances of the act. T. believed that his actions should be requalified into Part 1 of Article 159.1 of the Criminal Code. The Judicial Chamber on Criminal Cases of the Moscow City Court, having studied the case file and having discussed the arguments given in the appeal, found that the convict's arguments about the need to qualify his actions under Part 1 of Article 159.1 of the Criminal Code contradicted the provisions of criminal law. According to the disposition of Article 159.1 of the Criminal Code, fraud is in the field of lending, if it is committed directly by the borrower, that is, a person who has legitimately applied to a credit institution for a loan. No such circumstances were established in the case, on the contrary, as the court found during the trial, and it follows from the charges, T. applied to the banks using forged documents, pretending to be a different person, and was not a borrower in this connection in accordance with the law. Given the foregoing, the crimes committed by the convicted person cannot be regarded as the ones committed in the field of lending.

4. Conclusion

The results of the criminal law analysis regarding the criminal defense of public relations in the field of lending and the practice of its application can be summarized as follows:

1) Criminal liability for the illegal receipt of a credit is aimed at protecting the entire complex of social relations in the field of lending and is a prerequisite for eliminating the threat to the further development of civilized market relations in Russia. The subject of the crime provided for in Article 176 of the Criminal Code is the credit itself, preferential credit terms, and state special-purpose loans;

2) The illegal receipt of a credit is an unlawful act connected with deceiving a bank or other lender. Deception consists in presenting to the creditor deliberately false or inaccurate information about the economic situation or financial condition of an entrepreneur or organization with the aim of misleading them and obtaining a loan;

3) The objective side of the crime under Article 176 of the Criminal Code consists in illegally receiving/issuing a loan to a borrower, but not failure to repay it or evading repayment of payables. Therefore, to determine the moment of the crime completion, the fact that the repayment of the payables

stopped and the fact that the loan payment period has expired do not have legal bearing—it is the time of the damage, that is, when the bank issued the funds to the unscrupulous borrower;

4) The presence of large-scale damage is a mandatory element of the objective side of the crime under Part 1 of Article 176 of the Criminal Code, which makes it possible to distinguish between a criminal offense and an administrative-legal delict;

5) The subjective side of the crime under Article 172 of the Criminal Code is characterized by intentional guilt in the form of direct intent without a selfish purpose. The presence of direct intent is indicated by: 1) obtaining a loan by providing knowingly false information about the economic situation or financial condition of the borrower; 2) a conscious communication (presentation) of deliberately false information aimed at misleading the creditor; 3) foresight and desire to achieve a criminal result (the receipt of a loan);

6) The main difference between the illegal receipt of a credit and a credit fraud is reflected in the subjective side of the crime, namely, the intent of the perpetrator: 1) if the intent of the person is aimed at embezzlement of money, the act can be qualified under Article 159.1 of the Criminal Code; 2) if the person intends to use the illegally received loan for entrepreneurial and other economic activities, the act can be qualified under Article 176 of the Criminal Code;

7) According to the disposition of Article 176 of the Criminal Code, the subject of the crime is the borrower—an entrepreneur or the head of an organization. In this regard, individuals who are not entrepreneurs and who provided the bank or other lender with knowingly false information in order to receive a loan cannot be the subjects of the crime in question. Similarly, persons pretending to be others, representing someone else's passport when applying for a loan, or acting on forged documents on behalf of a non-existent individual or legal entity, cannot be the subject of the illegal receipt of a credit.

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REORIENTATION OF PERSONAL CHARACTERISTICS OF CONVICTS USING PHYCHO-CORRECTIONAL METHODS

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Abstract: Due to the growing level of aggressiveness and conflicts among juvenile convicts, it is necessary to use new methods. The article is aimed at reorienting the personal characteristics of convicts, raising such features with the help of a set of techniques that would allow them to actively engage in working life after their release. A typological approach was the leading approach in the educational work with juvenile convicts. The article reveals effective measures of psycho-correctional influence.

Keywords: pedagogical work, conflict, activity, employee, penitentiary system

1. Introduction.

Rehabilitation of convicted adolescents in places of detention is a considerable difficulty due to the specifics of the object of influence. “Successful socialization and integration of a person into society are the essence of psychological and pedagogical activity aimed at the formation of acceptable behavior of individuals, groups of individuals, social groups and social organizations in accordance with the norms” [Egorova, 2013, p. 9].

The state of crime is characterized not only by an increase in the volume, but also by an increase in the number of crimes committed by juveniles. Recently, the level of aggression and conflicts among minors has increased significantly.

“In the case when the conflict leads to undesirable results, disorganizes convicts, the administration also applies radical (non-psychological) methods of resolving conflict situations” [Mastenbroek, 1996, p. 81].

The problem of conflict situations in youth detention centers, the ways to resolve them is very relevant, and

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currently requires resolution. A conflict is an actualized contradiction, a clash of oppositely directed interests, goals, positions, opinions, views of subjects of interaction or opponents [Mastenbroek, 1996, p. 238]. A.N. Sukhov writes that a conflict is a multi-level, multidimensional and multifunctional socio-psychological phenomenon [Sukhov, 2003, p. 255], a number of authors argue that "...to exhaust the conflict means to establish and destroy the true cause, separating it from the reason, and to eliminate possible emotional or ideological consequences in order to create favorable opportunities for further interpersonal interaction" [Pishchelko & Sochivko, pp. 95-97].

Adolescents can easily be influenced and for such convicts it is necessary to create favorable conditions in youth detention centers, taking into account individual characteristics.

In modern society, it is quite difficult for a young person to adapt and socialize. He is influenced by a plentiful stream of different information, which has different effects on his immature psyche. An adolescent at this time has not yet formed protective mechanisms for adaptation to the social environment. He does not have his deliberate position in life. An adolescent faces the consequences of various crises, ideological differences. In the media there is a flow of spiritual poverty, other people's values, customs, which leads to a violation of continuity with the older generation. This raises a sense of confusion and irritation among adolescents, which can lead to frustration. And as Dollard wrote, frustration always leads to aggression in some form; aggression is the result of frustration. Frustration provokes aggression (induces aggression), which in turn facilitates or supports aggressive behavior.

Age-related restructuring of the nervous system determines the expressed affective color of mental activity of adolescents, but at the same time there is aggression in behavior of some minors as a relatively stable personality trait. "Pedagogical efficiency of education and training is closely dependent on the extent to which anatomical and physiological features are taken into account..." [Khripkova, 1990, p. 3].

The main objective of the study is to review the process of reorientation of personal characteristics of convicts.

2. Materials and methods

In the process of individual study of the personality of each convicted person, the presence of aggressiveness in his behavior was revealed. In determining the method of reduction of aggressiveness, the information about this convicted person, who "started" the conflict, was gathered. When a conflict arose, its true cause and the essence of the problem of its occurrence were studied. Staff predicted how the conflict would proceed and what forms it would take, whether it could be self-regulating and what the consequences would be after that to ensure a positive outcome.

Knowledge of the causes of conflicts among convicts, foreseeing the development of specific contradictions, competent use of methods of conflict resolution or localization has an impact on the success of employees. All this makes us face the need to study the main directions of pedagogical work in the penitentiary system among convicts, conduct psychological research using a set of techniques aimed at studying the characteristics of conflicts among sentenced persons, finding new ways, forms, methods of their prevention and constructive resolution. Methods and main directions of pedagogical work in the penitentiary system among convicts are connected with the elimination of aggressive behavior and conflicts. Difficult situations often arise among convicts in the process of adaptation in places of detention.

There are different ways to resolve conflicts. Ways to eliminate the occurrence of aggressive behavior and conflicts depend on the actions of employees. By capturing the moods, views and aspirations of convicts, the educator can achieve effective personal influence through his speech on each convict and on the collective, his unity [Kovalev, 2008, p. 220]. To perform these tasks, he contacts with all services of the corrective colony [Igoshev, 2006]. Once in places of isolation and not being able to communicate with family, peers and faced with negative situations that affect the psyche, a convict is looking for a way out, how to adapt to new conditions. Such convicts may have aggressive behavior. Leonard Berkowitz gives the following

definition of aggression – "some kind of behavior, physical or symbolic, which is motivated by the intention to harm someone else" [Berkowitz, 1993, p. 32]. In K.E. Izard's works it is stated that "aggression is verbal or physical actions of offensive or harmful character" [Izard, 1980, p. 266]. N.P. Fetiskin writes that "...aggressiveness occupies a special place among behavioral deviations" [Fetiskin, 2007, p. 51]. Aggressiveness as any personal trait has a different degree of manifestation: from complete absence to the maximum development. Each person has a certain degree of aggressiveness. "Aggressiveness can be defined as a personal characteristic acquired and fixed in the process of personality development on the basis of social learning and consisting in aggressive reactions to various stimuli" [Ovcharova, 2001, p. 263].

"PSYCHOMETRIC EXPERT" was used in the psychological research of convicts. It is a multifunctional software environment, including the system of planning and conducting psychological diagnostics of individuals and groups. This system is a multifunctional automated workplace of a prison psychologist, which allows organizing both practical and research activities. In comparison with other psycho-diagnostic programs, "PSYCHOMETRIC EXPERT" stands out because it is a powerful environment for the accumulation and analysis of psycho-diagnostic and other data in a single database; it has a developing customizable database that can keep records of any information; it has a wide range of options for customizing the tasks of a particular user: it allows you to create almost any diagnostic technique and check the "quality" of the existing: it has a wide range of data input, including from the scanner: it allows processing and analyzing large amounts of data: it contains and allows you to replicate materials (forms, questionnaires, keys) necessary for the daily work of a psychologist; it has a simple intuitive, but very flexible interface.

The main task set by the developers of the program was not so much the creation of a computerized psycho-diagnostic program (there is quite a large number of developers of computer tests), but the creation of a universal software environment, a powerful and

maximally open system that allows you to manage a variety of data and carry out their in-depth analysis. This helps practical psychologists to organize and regulate their activities. A convenient "viewer" of results allowed to display the results of one (battery of tests) in one window or several surveys of any number of people on several tests in combination with group profiles, the results of non-standardized methods (interviews, observations, projective tests, etc.).

The proposed program specifies the work of psychologists to overcome a negative direction and to form a positive orientation of juvenile convicts in the process of adaptation to the conditions of the colony in the process of psycho-correctional work.

The choice of effective measures of educational influence implied knowledge of the personality of convicts. The skillful use of special psychological techniques provided assistance to the teacher in this task, especially those that allow characterizing the personality focusing on rehabilitation.

The following traditional methods of studying convicts have become firmly established in educational practice: observation of behavior in various activities and situations of communication, analysis of personal files and other documentary sources, individual and group conversations. However, these methods do not always provide an objective picture of personality and the underlying stimuli of behavior; they do not provide penetration into the inner world of a person and also require considerable time and effort of educators. If these traditional methods of obtaining information are used, more or less comprehensive knowledge about a particular convict in the conditions of the colony is achieved, on average, in 6-10 months of work.

In order to study the personality of the convicted person, his actions in various situations are analyzed (work, mass events, the announcement of incentives or penalties, daily routine, as well as relationships with relatives). The formation of aggressive behavior of adolescents depends on a number of factors, which include: the immediate environment of adolescents – their family, peer groups, macro-educational institutions in which a child spends

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much time (school, college), as well as the traditions and laws of this culture, the media [Kadyrzhanova, 2010, p. 142].

The reaction of parents to the wrong behavior of a child, the relationships between parents and children, the level of family harmony or disharmony, the nature of relations with siblings – these are factors that can predetermine the aggressive behavior of a child in the family and outside it, as well as affect his relations with others in adulthood. The nature of the relationship between parents and adolescents is a very important factor [Bakhireva, 2008, p. 186-187]. That is why in the practice of correctional officers there is an urgent question of the development and application of methods, especially express methods to study the identity of convicted adolescents, which would allow combining objectivity and completeness of information with the minimum cost that is required to obtain it.

Among the existing scientific means of cognition of personal qualities the methods of psychological diagnosis are the most preferred. These methods are based on theoretical and experimental provisions of modern psychological science.

Parent-child relationship plays an important role in the destructive behavior of adolescents. Psychotraumatizing in these relations leads to the destruction of personality as a consequence of psycho-traumatic experience: physical and sexual abuse. Conflict relationships with significant adults lead to delinquent behavior as a form of protest behavior against the influence of parents (adults).

The reason for the destructive behavior of adolescents and personality disorders is upbringing in the atmosphere of emotional alienation and coldness. The work of a psychologist with these convicts has the following directions: techniques of constructive expression of their feelings and thoughts, non-provocative interactions in emotionally significant situations, psycho-correctional programs aimed at the development of conflict competence.

To implement these areas, the following programs have been tested:

“The organization and implementation of psycho-correctional

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work with juvenile delinquents and accused persons in particularly serious offences, who are in the detention center"; "A comprehensive program for the prevention of aggressive behavior and correction of the personality of delinquent adolescents in corrective colonies" – it aims at providing psychological assistance to adolescents serving sentences in corrective colonies; "Training of self-regulation of behavior in stressful situations", aimed at introducing the concept of stress (negative and positive characteristics), the study of scenarios of behavior in stressful situations, acquiring individual style of behavior in stressful situations and expanding the repertoire of behavioral strategies, teaching methods of psychological support to a person in a critical situation, developing the ability to provide, request and support; "Training of social development", aimed at testing different useful skills for overcoming behavior patterns;

The program "The use of positive and art therapy (phototherapy) to psycho-correctional work with juvenile delinquents, accused and convicted persons"; a comprehensive psychological intervention program "Wounded bird" aimed at preventing aggressive behavior among juvenile delinquents; "Psychological prevention of suicidal behavior among juvenile delinquents in places of detention".

3. Results.

The psychological research of convicts was conducted in corrective colonies of Federal Penitentiary Service of Russia of Tula and Voronezh Oblast in 2017. The sample included 80 people.

The work was built depending on the type of juvenile delinquents' personality. The typology was based on the nature of crimes and his characteristics.

Of the entire sample, 80 people underwent the initial diagnostics to determine the individual psychological characteristics of personality, using the methodology of the *Buss Durkee* Hostility *Inventory*.

Adolescents with abnormal psyche more than others tend to unintended actions and demonstrative behavior with regard to adults. This indicator can be changed after the training (21 %). There are accumulated fatigue warning

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signs among 52 % of the studied adolescents (according to the results of psycho-diagnosis). Changes after the training are 31 %. They are characterized by getting stuck on emotional experiences. Their main life energy is temporarily exhausted, fatigue can occur in conjunction with increased irritability. They passively react to difficulties, get lost in an unfamiliar environment. The remaining 23 % of adolescents demonstrate overall activity and success. Sociability is manifested in the naturalness and ease of behavior, the desire for cooperation. Strong-willed self-control is developed; they get out of stressful situations with dignity.

The use of the *Buss Durkee* Hostility *Inventory* allowed us to monitor the level of aggressiveness in the following scales: physical aggression, indirect aggression, verbal aggression scales, negativism, suspicion, irritation, guilt, resentment.

Analyzing the results of the studied minors, it turned out that 25 % of adolescents is manifested by excessive excitement (according to the results of the primary psychological diagnosis of neuropsychological state). Their adaptation is complicated by impulsiveness in response to weak stimuli, easy loss of self-control of emotions. Psychological and pedagogical work to combat aggression in the formation of convicts' law-abiding behavior is associated with external and internal factors that affect the emotional sphere.

The results of the study also showed that interference in the conflict of employees, according to convicts, has a positive impact on its results in about 21.8% of conflicts. However, in a fairly large number of cases, in 54.2% of situations, interference in it does not bring any results, and it causes negative consequences in 20.5% of conflicts. Based on the results obtained, depending on the types of conflicts, specific to places of detention, it is possible to distinguish the following methods of their regulation: organizational, economic, legal, socio-cultural, psychological.

In recent years, a significant proportion of convicts with various mental abnormalities, neurotic disorders, drug use have been admitted to corrective colonies. Often due to the difficulties of adaptation to the

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conditions of the colony, they have anxiety and depression. This complicates the educational impact on convicted adolescents and requires the inclusion of serious psychotherapeutic techniques to compensate negative mental states. Considering the suggestibility of minors, it is promising to apply such educational techniques as autogenic trainings, the method of autosuggestion, etc.

The results show that such individual and personal characteristics as the level of sociability in small groups, intellectual abilities and the level of emotional control are the most important in difficult conditions.

The circumstances of the committed crimes were analyzed according to the following scheme, but always from the point of view of why it is necessary, what information the studied circumstances can give to understand the identity of juvenile delinquents and individual work with them:

- what preceded the crime directly or indirectly, but closely related to it (the behavior of juvenile delinquents, the influence of friends, pliability effects, the confluence of complex life situations, the presence of serious material difficulties, etc.);
- what is personal blame for juvenile delinquents, what explains their behavior;
- what characterizes the very commission of the crime (time, place, presence of accomplices, their actions, ways of committing and concealing traces of the crime, whether it was committed secretly or in conditions of evidence, etc.). This is important for all offences and can clearly describe the criminal, his foresight, caution, the ability to assess circumstances, etc.
- what is the difference in behavior after the crime. Clarification of this circumstance sheds light on the needs and aspirations of individuals, their attitude to the deed, connections and the nature of communication in groups, lifestyle, in general. For example, information how

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stolen funds were spent can be very informative.

All these data are necessary for the differentiated application of receptions and forms of corrective influence on the convicted adolescents.

The method of gathering psychological information is appropriate for the creation of comprehensive profiles of juvenile delinquents. The author listed the main issues that were clarified:

- relationship with parents and family members. This is one of the key issues for adolescents.
- life goals, values and hobbies, the structure of values, which of them were preferred, spiritual needs and their place in life and what means were used to obtain material benefits;
- work before conviction, attitude to it, if a person did not work – the reason, whether he intends to work in the future, where, his occupation; study and attitude to it;
- relationship with friends, whether they are currently saved, whether they write and come to see, which is very important for adolescents;
- behavior violations in the past and present (truancy, drunkenness, hooliganism, immoral acts, etc.), the reaction of others;
- the most serious events in the past, including those related to the crime, especially if it was preceded by an acute conflict in the family;
- relationships with other convicted persons, participation in these or other informal small groups;
- participation in the social life of the colony, attitude to those whose social work can be assessed as active; reasons for unwillingness to participate in it;
- attitude to the administration, if there are conflicts with its representatives, then their reasons, as I intend to build these relationships in the future;
- attitude to the crime committed and the fact of conviction, whether he pleads guilty, and the sentence is fair, if not, for

what reason; whether injustice was allowed to him during the investigation and trial and how it was expressed;

- plans for the future, what they are associated with, what are the hopes for their implementation, what and what help is needed.
- For the successful implementation of educational work, based on the data of objective characteristics, a plan of its implementation was developed.

The educational project with every prisoner was made considering the above features, which are connected with his personality, behavior before and after committing the crime, the period of punishment, etc. The plan includes the following sections:

- the main long-term objectives focused on the reorientation of the personality, the lifestyle of a person, as a whole, including after release;
- specific tasks of individual rehabilitation, the solution of which contributed to the change in the behavior of juvenile delinquents during the sentence;
- specific methods and means of influencing the convicted person. It is important to provide for specific ways and forms of educational impact that an educator decided to apply to this person;
- measures to further study the personality of the convicted person. Planned methods, techniques and tasks to obtain the necessary information about convicts, their environment, relations with family and friends were planned in this section.
- According to the results of psycho-diagnostic study, it was decided to conduct autogenic trainings. Autogenic trainings were carried out in three stages. The purpose of the first stage (course) is to overcome psychological barriers that prevent convicts from perceiving the process of correction and rehabilitation. At this stage, the formation of some attitudes of correct behavior in the conditions of serving the sentence began. In the second stage, there was a deeper impact

on the emotional sphere of the psyche in order to awaken their guilt for what they had done, the desire for correction. The third stage is devoted to the preparation for release and life. Moral and ethical issues, role-playing, etc. were touched upon in the period between autogenic trainings. For the best perception of the material, individuals involved are chosen on homogeneous basis: convicted persons who want to improve, maladjusted, aggressive and with difficulties in adapting to the regime.

- Psychological examination was carried out before admission to any of these groups: there the degrees of suggestibility, socio-pedagogical neglect, social and antisocial activity, leading type of temperament were established.
- The practice at the first stage of autogenic trainings was built on indirect suggestion. Convicts were put into a state of relaxation (rest); in this state they were given a number of settings that do not have a pronounced social color. The conversation was about colors, nature, music, etc. However, in all trainings of this course the ground for the best subconscious perception of certain social attitudes and views was prepared. The main goal of the first stage is to make the convict think about his past, present and future. When conducting trainings at all three stages (courses), educators sought to transform the texts depending on the person involved, the nature of the crime committed.
- In the second year of psychological auto-trainings, the methods of persuasion and suggestion were more closely linked. The training program was designed to increase the independence of convicts to work, to stimulate their activity, providing transformative human activity in relation to him. The second year training was characterized by a great variety of organizational forms. Here

autogenic trainings became a means of stimulating mental activity of a person and a means of fixing the found ways on the basis of which certain attitudes were formed. At this stage, the classes are essentially transformed into social and pedagogical trainings; it is expressed not only in the abstract representation, but also in the playback of certain life situations.

- After a short break, the training in the third year was held; it was devoted to the problems of release of prisoners and socio-psychological adaptation there. Here, more than in the previous courses, attention is paid to the social aspects of preparation for release, the formation of acceptable views and attitudes among adolescents involved, aimed at social and moral awareness of themselves and their deeds.
- In addition to a special course of autogenic training in correctional institutions, the so-called mass version of autogenic training is used to improve the efficiency of the correction and rehabilitation process. The program of 100 classes was developed. Each lesson lasts 12-15 minutes, it is held daily before lights out.
- Convicted persons, hearing the familiar jingles, are preparing to sleep. With the help of special formulas of auto-training, under the voice of the educator, they enter a state of rest and relaxation. Against this background, the part of the training, which is designed to solve educational problems, takes place.

The analysis of experimental data obtained in the course of training showed a steady tendency to reduce the barrier of “resistance to education”: convicts become more contact with each other and with representatives of the administration, they have increased vitality, self-control, reduced impulsiveness and aggressiveness in behavior; the desire for self-education in accordance with positive ideals, formed socially significant attitudes appear.

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Psychologists held a set of seminars consisting of five trainings on self-education of convicts – one form of educational work in the corrective colony. Its purpose is to correct and rehabilitate the convict. However, a person can have the need for self-education only when he reaches a certain level of moral development. One of the most important tasks of correctional institutions is to bring and prepare a person for awareness of the need for self-education.

To this end, collective trainings were held in the colonies to prepare convicts for self-education.

After one-year trainings, a psychologist (with the help of employees) studied the behavior of convicts again. Personal changes that occurred as a result of environmental influences, self-education classes were identified, as well as changes in the level of readiness to further work on self-improvement.

Convicts, referred to the first level of readiness for the perception of material on self-education, did not represent the goals and objectives in general. Those of them, who belonged to the second level of readiness, aware of the work of self-education more than the first, but they have not yet formed their own desire to engage in self-education. Persons related to the third level of readiness, knew the essence of self-education, learnt to control them, engaged in introspection, but they did not always correlated cultivated qualities with requirements of society. Convicts of the fourth level of readiness were engaged in self-education, they had their own program for this purpose, according to which they tried to overcome their shortcomings and cultivate positive qualities of their personality.

The material in the area of self-education was grouped in accordance with the above levels of readiness of prisoners for self-education. Each topic is usually related to the reached level. Preliminary examination of the material helped convicts to perceive trainings in self-education better. Educational materials were given for the first level of readiness of convicts to self-education; the same information was offered in the form of materials about the fate of people who have achieved a lot in life through self-education (the second level); the third is characterized

by the presentation of information at the methodological level, most often it is expressed in recommendations for the implementation of data obtained at the second level; in the framework of the fourth level, the programs that allow to cultivate personal qualities corresponding to the prevailing moral standards of society, were created. This level aimed at the formation of conscious attitudes, social activity of persons. Work on the entire program of self-education lasted six months.

The results of work with convicts using methods of psychological and pedagogical influence were positively evaluated on a number of psychological parameters. After the start of trainings with the use of such techniques, the vitality is increased among 59.0% of convicted persons; the contact with the administration is established among 66.0%; the systematic manifestation of self-control in conflict situations is observed among 45.0%; trusting relationships with the educator was established among 48.0%; confidence in their abilities and opportunities to overcome the negative qualities of the person – 55.0%; self-esteem is increased among 39.0% of insecure convicts.

At the end of autogenic trainings and self-development, other positive psychological properties of the personality were manifested, in general, characterizing the formation of positive and socially important orientations. An increase in diligence (58.0% of the number of students), an increase in the sense of responsibility for their behavior (57.0%) were among these properties. Many convicted persons were willing to perform public instructions; they showed decency.

The formation of these and other similar psychological qualities of convicts contributed to the stabilization of the situation in the colony, as a whole, consolidation of the regime and discipline, reduction of relapse. After the trainings, the recidivism amounted to 8.1% – those who took only one course of autogenic trainings; 7.6% - took two courses and 0.7% – took all three courses. For other released persons from the same colony, the relapse rate is 34.8%. The results of surveys of those who have completed a course of psychological autogenic trainings and he did not re-offend after

release, suggest that such individuals are much more adapt at liberty compared with those who did not participate in psychological events.

4. Discussion.

Juvenile delinquency has increased dramatically over the past decade and, statistics show, crime is increasing both quantitatively and qualitatively. Therefore, the training of juvenile delinquents for life outside prison is significant. After all, the main task of professional activity of the team is not just a system of knowledge, norms and values, it is necessary to develop their ability and willingness to live in modern society, achieve socially significant goals, effectively interact with society and solve life problems" [Gnatyuk, 2012, p. 63].

Juvenile delinquents are characterized by audacity and cynicism. The aggressiveness of adolescents in everyday life to their peers and adults is growing, which often leads to the commission of serious offences. It is terrible that there is a tendency of growth of rejuvenation of juvenile delinquents. Therefore, the problem of causes that affect the development of various types of aggression in the behavior of adolescents is very relevant. "Aggressive antisocial behavior causes a steady negative attitude of society; it is a serious barrier to establishing meaningful contacts between individuals and environment" [Fetiskin, 2007, p. 42].

The competence of the leadership as a set of knowledge, skills and abilities to identify and manage conflicts with their retention in the constructive phase, as well as the possession of methods and methods of preventing destructive conflicts among convicts is of particular importance for resolving the conflict. "Any officer of criminal-executive system can successfully perform his work, only by understanding the society, occupying the public the correct position in the solution of professional problems..." [Kurbatov, 2006, p. 110].

It is a well-known fact that being in prisons, it is difficult for convicts in prisons to adapt to places of detention. "The problem of adaptation in the group is very important. Good relationships with employees, understanding and mutual help increase

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efficiency, promote talents and capabilities" [Kurbatov, 2006, p. 273].

This tendency points to the need for timely preparation of correctional institutions for possible changes in the environment of convicts, development of forms and methods of educational work, prevention of antisocial actions on their part during the period of serving the sentence. Their environment, relations with each other and with administration, the main socio-psychological processes were carefully studied. The content of the educational work was considered. "Education is commonly defined as a purposeful and systematic impact of the educator on the psychology of educated persons..." [Barabanshchikov, Glotochkin, Fedenko, & Shelyag, 1967, p. 154]. Aggressiveness in the personal characteristics of adolescents is formed mainly as a form of protest against misunderstanding of adults, because of dissatisfaction with their position in society, which manifests itself in appropriate behavior. Such his features as temperament, irritability and the power of emotions, contributing to the formation of such traits as temper, irritability can also affect [Pstrąg, 2006, p. 101].

And here it is meant not only that behavior which is estimated by investigation and court as criminal, but also their behavior during serving the sentence. In connection with the commission of illegal acts for which they are convicted, the majority of convicts feel guilt, concern for their future. They are characterized by the desire to change the existing situation, which they are dissatisfied with in a socially positive direction. Most of them have greatly increased anxiety, it is possible to allocate such types of aggression as angry in the case when the aim of the aggressor is causing the suffering to the victim; instrumental aggression characterizes cases when the aggressors are committing aggressive actions, pursuing the goals that are not related to injury [Bisaliev, 2007, p. 61].

Foreign experience also testifies to the importance and effectiveness of psychological support for the re-socialization of criminals. Thus, the psychological service in prisons in Poland, Hungary, the United States, Canada, Great Britain, France, Finland, Sweden and other countries has

achieved some success in the development of re-education programs for convicts. There are widely used psychotherapy and correctional techniques. Giving a definition of aggression, foreign researchers seek to do this primarily through the study amenable to objective observation and measurement of phenomena, acts of behavior [Klarin, 1988, p. 21].

Lucy Wainwright and Claire Nee in their article "The Good Lives Model – new directions for preventative practice with children?" write that "the growing popularity of rehabilitation approaches based on strengths, such as The Good Lives Model (GLM), is discussed due to its potential role in preventing youth crime. It is suggested that GLM principles could provide the necessary basis for interventions as well as rehabilitation and measures for identified delinquents" [Honts, Kassin, & Craig, 2008].

Sarah Jane Gerber and Michael O'Connell, in their article "Protective processes: the function of latent youth theories of crime in abusive behavior," write that "the results demonstrate the direct and indirect protective function of incremental crime information technologies for young people at risk, and emphasize the importance of further studying the protective processes that are involved in youth crime prevention" [Gerber & O'Connell, 2011].

Charles R. Honts, Saul M. Kassin, and Ronald A. Craig, in their article "I would know a false confession if I saw one": constructive copying with adolescents," consider results that "suggest that, as with adults, a high degree of caution is needed in evaluating confessions given by adolescents" [Wainwright & Nee, 2013].

Currently, there are a number of prerequisites for organizational, scientific, methodological, social order, indicating the appropriateness and timeliness of the use of psychological achievements in solving the problems facing correctional institutions, especially those where adolescents are serving their sentences. Already accumulated the considerable experience in the use of psychological techniques in the study of the personality of convicts, however, they were used more often by researchers.

First of all, questionnaire and psychological methods of studying

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personality should be used in corrective colonies. The method of multilateral study of personality and The Sixteen Personality Factor Questionnaire (16PF) are the most informative today. The Sixteen Personality Factor Questionnaire (16PF) allows obtaining psychological information, which can make the pedagogical process in corrective colonies more substantive and focused. The psychological properties of the person revealed by this technique can significantly help in predicting the behavior of the convict in a particular life situation, as well as in solving issues of professional competence and professional orientation. The data obtained with its help were evaluated in the context of conversations, as well as the results of observations of the behavior of convicts in certain situations and the study of all available materials.

In this regard, it should be noted that adolescents in isolation are very sensitive to the attention shown to them. Many issues cannot be solved successfully, such as early release, for example.

For the correct understanding of the behavior of convicts in the corrective colony, as well as determining the type of personality, it was important to clarify the circumstances of the main motive of crimes. These circumstances can be established by studying the personal file of the convict, listening to him.

It is important to know the motives of the behavior during punishment, because in this period the person is in different circumstances, he is affected.

In educational work with convicted adolescents, a typological approach was applied to everyone.

For prisoners, the educators used a variety of methods. Among them, special attention is drawn to such methods of psychological influence on convicts as persuasion and suggestion. It is important to apply "... psychological impact, which is a combination of various methods and techniques of influence on the mental processes, properties and state of a representative of another ethnic community that allows you to change his behavior in the desired direction" can be credited to the employee

[Krysko, 2014, p. 327]. The method of persuasion affects the consciousness, and suggestion – on the unconscious in the sphere of the psyche.

If we consider that the unconscious can play a decisive role in the formation of motives for criminal behavior, the sphere of the unconscious can have the opposite effect. In order to develop socially approved views and attitudes for serving sentences, it is possible to act on the consciousness of a person through his unconscious sphere of the psyche.

Considering the fact that the conscious and unconscious spheres are closely related to each other and they are in constant interaction, affecting one of them, we thereby influence the other. Hence there is a close connection and interchangeability of these methods used in pedagogy in the process of influence on human consciousness and the unconscious sphere of psyche.

Work with convicts began with an in-depth study of their personality and mental states. This laid the foundations of individualization of psychological and pedagogical impact on individuals, which made it possible to increase the effectiveness and mass educational activities. When examining convicted adolescents, the task was to identify their states of anxiety, depression, aggressiveness as forms of reaction to new, extreme conditions of places of detention. “The ability to withstand hardships are formed in the process of livelihoods, it is closely linked with perception of man’s own resources, with experience in resolving difficult life situations, with a choice of a way of overcoming obstacles in a difficult situation” [Mikhailova, 2008, p. 142].

Particular attention was paid to the study of the readiness of convicts to life and work in these conditions, the formation of the attitude to correction, removal of psychological barriers that prevent the perception of pedagogical influence, adaptation to the environment.

Psychological study of convicts, conducted in corrective colonies of Russia, showed that the use of psycho-correctional techniques can accelerate the process of correction and re-education. In general, given the sharp change in social conditions due to isolation from the usual conditions of life of convicted adolescents, a large

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number of adolescents with various forms of deviant behavior, methods of psycho-correctional work in places of detention have their own specifics. According to psychological research, some adolescents in prison do not have stable criminal convictions; socio-psychological adaptation is violated, but there are no serious defects. It is important for convicted adolescents to be evaluated by other people and the impression they make in places of detention. But such demonstrativeness of behavior is simultaneously combined with a decrease in control over it. They have a high impulsiveness, which leads to the actions of an explosive nature and severe aggression. “The goal set by practitioners is to prevent behavioral problems and to promote a normal productive life in society and its self-realization.” [Sandberg, Weinberger, & Taplin, 2005, p. 12].

Efficiency of purposeful educational influence on the personality will be greater if individual work on the basis of reliable information on personal properties of convicts begins earlier.

The considered mental processes are of great importance in human life and activity, but none of them can proceed purposefully and productively, if a person does not focus his attention on what he perceives and does.

The study of psychological characteristics of criminals continues to be one of the topical areas of modern scientific research and it is of practical importance.

The leading approach in educational work with juvenile convicts was a typological approach. The typology was based on the nature of the crime and characteristics of his personality.

5. Conclusion

The study of convicted adolescents with the proposed methodology shows promising opportunities for real correction and psychotherapy of aggressive behavior.

Application of methods of psychological and pedagogical influence on convicts brings noticeable benefit to their correction. Further work on the improvement of the described methods and their wider implementation will help to improve the efficiency of the correctional process in places of detention. Without

improvement and development of its forms and methods it is impossible to speak seriously about increase of efficiency of correction. But it is equally important to change the conditions in which it is carried out, the attitude to convicts.

All this creates serious prerequisites of humanization of conditions of imprisonment for convicted adolescents, significantly greater use of psychological and pedagogical methods of work with them, the formation of a humane psychological regime of the colony has a positive impact on the criminal environment, and a beneficial effect on the convicted person and to the reorientation of personal characteristics.

The call for humane attitudes towards convicted adolescents does not mean the requirement to provide benefits and privileges to everyone without exception.

The study showed that measures to maximize the social ties of convicts gave a positive result. The serious work of the administration of the colony and, of course, of convicts themselves should be the maintenance of ties with their families. Once released, this often becomes a decisive factor in re-offending. Even while serving a sentence, a adolescent who knows that after leaving the colony, no one is waiting for him, and he will have nowhere to live, begins to experience fear of the future, which does not contribute to correction.

That is why the heads of divisions and other representatives of the administration are obliged to take all possible measures to preserve the family ties of adolescents.

One of the most significant drawbacks is the inability of prison staff to enter into a trusting relationship with convicts.

The necessity of acquiring professional skills and abilities among employees is justified. The efficiency of purposeful educational influence on the personality which will be the higher if the individual work on the basis of reliable information on personal properties of convicts begins earlier is proved.

At the same time, educational work based on psychological and pedagogical knowledge is still not enough, which is primarily associated

with the training of correctional institutions.

The effectiveness of psychological work in the formation of law-abiding behavior in society depends on a set of measures aimed primarily at the moral formation of the personality of each convict, strengthening his communication links, the development of cognitive, emotional components.

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CRIMINAL PRIVILEGE OF AN ATTORNEY AND DEFENCE LAWYER

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Abstract: The boundaries of the attorney-client privilege are the main issue of theory and practice that directly touches upon the content of the criminal privilege of an attorney and defense lawyer. In procedural law branches the prohibition of their examination is acknowledged axiomatic. The paper calls attention to the existing moral and legal problem associated with preserving the attorney-client privilege in all the circumstances without exception, including the cases when the disclosure thereof can be justified from the point of view of protecting the interests of a person, society and state. The authors admit the possibility of restriction thereof provided that the law reflects an exhaustive list of crimes, the information on preparation or commission of which will not fall under the content of the attorney-client privilege. As a result it is proposed to eliminate the existing gap in the criminal legislation of RF that can be used in the foreign law.

The conclusions made by the authors are based on analyzing the judicial practice of the European Court of Human Rights (ECHR) for a period of 1980-2017; decisions and ruling of the Constitutional Court of RF made in 2001-2017; published judicial practice of the RF Supreme Court for 2003-2017; and results of the survey of 78 respondents (judges, prosecution office staff, attorneys and teachers of criminal law and proceedings).

Keywords*:* attorney-client privilege; privilege restriction; immunity; attorney responsibility; refusal to testify.

1. Introduction.

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Privileges have a long history. Some historians attribute their appearance to the emergence and development of the diplomatic (ambassadorial) law. In other words, initially the privileges were conditioned by the necessity of fulfilling the representative capacity by certain persons in interstate relations. Later on they were established in the national including criminal legislation. Therefore the privileges were studied to the fullest extent possible in the international law. The criminal law does not give due attention to them. However it is required to elaborate a scientifically grounded and socially acceptable stance on a number of circumstances, and first of all on definition of their notion and social conditioning. Implementation of the attorney and defense lawyer privilege in the criminal law is long overdue; in procedural law branches the prohibition of their examination is actually acknowledged axiomatic, established for centuries, probably from the time of a more or less formed institute of the bar. There was every ground for that both in the past and at present. Moreover, de-facto judicial practice including that of the European Court of Human Rights and RF Constitutional Court recognizes an absolute privilege of the specified persons. Upon enforcement of the privilege, the status of a person and content of the information that attorneys and defense lawyers may not disclose shall be reflected in the law.

The privilege being a complex legal phenomenon is studied within the frameworks of a number of branches of legal sciences. As it was already mentioned, it is elaborated more profoundly and in detail within the frameworks of the international law. The theory on testimonial privilege was elaborated rather thoroughly by the scholars in the criminal proceedings including the papers devoted to the activity of the bar. In the criminal law the privilege was commonly considered either when analyzing the operation of criminal law for a number of persons, or when characterizing the norms on certain crimes containing the exclusion from the parties involved reflected in the notes to the Articles of Particular Conditions of the RF Criminal Code.

The exceptions are PhD thesis of Kibalnik A.G. and Elizarova I.A.: the first one was devoted to the privilege in the criminal law on the whole (Moscow,

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1999); whereas the second one – to the international-legal privileges in the criminal law (Stavropol, 2004).

Certain aspects of the privilege were considered by Chuchaev A.I. and Kruptsov A.A. in joint monograph "Criminal-legal status of a foreign citizen: notion and characteristics" (2010).

In the paper for the first time an attempt was made to consider the problems of correlation of procedural privileges and exemptions provided by the procedural law (administrative, administrative legal proceedings, arbitration, civil and criminal), Federal law as of May 31, 2002 No. 63-FZ "On the advocacy activity and the bar in the Russian Federation" and note to Article 308 of the RF Criminal Code, not containing the exclusion of specified persons from the operation of criminal law because of refusal to provide testimony on the circumstances that became known to them in view of fulfilling professional duties. Proceeding from the requirements of law consistency in general, correlation of the criminal law and other branches of law in particular, on the basis of the RF Constitution, decisions of the Constitutional Court of RF and practice of the European Court of Human Rights, the proposals on elimination of the existing gap in the criminal legislation of RF were elaborated.

2. Materials and Methods.

In order to determine the privilege of an attorney and defense lawyer in the criminal law it is required to consider the evolution of legislation on attorney-client privilege, study the content of the specified notion, analyze discussions on these issues for the last two centuries, determine a complex of circumstances to which a regime of the attorney-client privilege is applied and the boundaries of it.

The legal framework of the paper covers the international law acts, RF Constitution, RF Criminal Code, the Criminal Procedure Code of RF, a number of federal legislative acts, and historic monuments of law. The criminal legislation of some foreign countries was used in the paper.

The empiric basis of the paper consists of the judicial practice of the European Court of Human Rights for certain categories of affairs for a period from 1980 till 2017; published materials

on crimes and violations of law committed by diplomatic agents in Russia and in other countries; RF Constitutional Court rulings and determinations on certain types of privileges made in 2001-2017; published judicial practice of the Supreme Court of RF for 2003-2017 on admission of proof unacceptable due to violation of norms on testimonial privilege; and results of the survey of 78 respondents (judges, prosecution office staff, lawyers and teachers of criminal law and proceedings).

3. Discussion and Results.

In accordance with Part 3, Article 56 of the Criminal Procedure Code of RF (CPC of RF) the following persons are not subject to examination as witness:

1) defense lawyer of the alleged criminal and defendant – on circumstances of the criminal case that became known to him or her due to his or her taking part in the proceedings on the given case;

2) attorney – on circumstances that became known to him or her due to his or her rendering legal assistance.

An attorney is a person that received a status of an attorney and the right to fulfill the advocacy activity in the procedure prescribed by law; and is acknowledged an independent professional legal adviser (par. 1 to the Article 2 of the Federal Law as of May 31, 2002 No. 63-FZ "On advocacy activity and the bar in Russian Federation"). Legal assistance with regard to which the attorney cannot be examined in the criminal procedure and the types of it are determined by law.

The notion of a defense lawyer is given in Article 49 of CPC of RF. It is a person fulfilling protection of the rights and interests of alleged criminals and defendants in the procedure prescribed by criminal-procedure legislation and rendering legal assistance to them in criminal proceedings. Attorneys act as defense lawyers. However, it should be kept in mind that along with the latter, a defender can be one of close relatives, or another person about the admission of whom the defendant applies for. In justice of peace proceedings the specified person is admitted instead of an attorney as well. Under Part 2, Article 49 of the CPC of RF, in pre-trial proceedings on the criminal case only attorneys can be defense lawyers.

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According to par. 4 to the Article 5 of CPC of RF close relatives involve husband, wife, parents, children, adoptive parents, adopted children, whole blood brothers and sisters, grandfather, grandmother, and grandchildren.

At the core of the privilege considered is the attorney-client privilege that has its roots deep in the past - the Roman Empire times. At that it should be noted that since then the attention to it does not drop at all: people disputed and still dispute, wrote and still write about it. Both distinguished foreign and Russian lawyers stated opinion about this privilege. In a word it is acknowledged to be one of the perennial problems of the bar and advocacy activity, a peculiar "quadrature of the circle" – the task of building a quadrate equal to the circle of a given radius. Vatman D.P. for instance specified that for advocacy activity being public-law by the content and unilateral in direction, vitally important is the attorney-client privilege established by law for the benefit of decent course of justice, protection of fiduciary relations between an attorney and client, strengthening the authority and social image of the bar.

The majority of specialists acknowledge the attorney-client privilege as a necessary condition of rendering real assistance to the client in terms of protection of rights and legal interests. For this category of lawyers by the way justifying its existence differently, the issue is only in the boundaries of the attorney-client privilege. At that some of them did not even admit this thought. Other well-known lawyers of the last centuries on the contrary spoke against the attorney-client privilege.

In the pre-revolutionary law of Russia, an attorney was called attorney at law. According to Article 403 of the Organization of Judicial Institutions, "the attorney at law shall not make public the secrets of the client not only during the proceedings of the case, but also in case of exclusion from it and even after the completion thereof".

In the first decade of the Soviet power, the problems of the attorney-client privilege were actively discussed in the legal community. Discussions proved a rather stable division of positions: some scholars and practitioners insisted on its firmness; the other on the contrary acknowledged a

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privilege a survival of times past incompatible with the socialist morale, professional ethics, regarded it as an obstacle to establishment of truth in criminal proceedings, a way of evading responsibility etc. All this inclined to search for an acceptable decision under conditions of an absolute domination of CPSU in all spheres of life of society.

In Article 65 of the CPC of RSFSR as of 1922 the resolution was confirmed that the following persons "cannot be called and examined as witnesses:

1) defense lawyer of defendant on the case on which he or she fulfills such duties..."

On May 26, 1922 there was adopted a Statute on the Bar that determined general features of the corporation and duties of the bars. There is nothing about the attorney-client privilege in the specified Statute; however it seems to us that it was assumed on the basis of the Article 65 of CPC of RSFSR prohibiting the examination of the defense lawyer. The Stature concerning the bar approved by the People's Commissariat of Justice of RSFSR as of July 5, 1922 also says nothing about the attorney-client privilege.

Probably that is why the discussions on the problem under study continued in the academic circles. In this respect the discussion of the attorney-client privilege among the Ukrainian legal community that took place in 1924 is of interest. The very name of the report by V. Skerst leaves no doubt that there is no unity in the point of view of the specialists – "Boundaries of Professional Privilege of Defense Lawyer in the Spirit of the Soviet Legislation". The viewpoint of the reporter was not consistent. On the one hand he asserted that under conditions of the Soviet reality and its ideology there is no question of the "holiness" of the professional attorney-client privilege. Therefore the problem should not be fetishized, when resolving it one should proceed from the practical expediency solely. On the other hand he came to the following conclusion: "An attorney ... is not entitled to disclose a secret entrusted to him or her, consequently nobody is entitled to insist on such disclosure".

Mamutov V., having supported the reporter noted: "One should not confuse two ideas and say that the defense lawyer is obliged to lodge information when all citizens are

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relieved of these duties... Elimination of the attorney-client privilege will result in situation where the institute of the bar will be needless. The lawyer is inconceivable without trust from defendant. The defense lawyer cannot denunciate to the court that the defendant confessed to the committed crime if the defendant pleads not guilty in court".

Disagreeing with it, Cherlyunchakevich K.S. got very tough on it: "One must not make secrets from the Soviet state;" Karashevich M.I. asserted: "Defendant or a client should know that everything told to the attorney should be known to the court as well, since the attorney cannot tell a lie together with a client as he or she is an office holder". Fishman L., Sanchov V., Rubinshtein L., Obukhovskiy V. and other declared against the attorney-client privilege.

Later Elkind P.S. spoke against the attorney-client privilege. She considered that the increased consciousness of the soviet attorneys in modern times contradicts the requirements of professional confidentiality in present volumes thereof. The author proceeded from the fact that the bar is meant to protect only legal interests of citizens, consequently, it should not conceal and silently protect the illegal interests without entering into a conflict with its governmental and socialist nature. According to the author, there are no such cases in practice when for protection of legal interests of the client the attorney would need the attorney-client privilege in the sense specified.

In legislation of that time (for instance in the Statute of the People's Commissariat of Justice of USSR as of August 16, 1939 "On the Bar of USSR") there was nothing about the attorney-client privilege. It was first mentioned in the Soviet history in the Statute on the Bar of RSFSR as of July 25, 1962 In accordance with the Article 33 of the Statute "the attorney shall not disclose the information told to him or her by the client in connection with his or her rendering legal assistance on the given case.

The attorney cannot be allowed as a witness on the circumstances of the case that became known to him or her due to his or her fulfilling defender duties on the given case". The specified prohibition was in line with par. 2 of Part 2 to the Article 72 of CPC of RSFSR as

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of 1960 in which it is said: "The following persons cannot be examined as a witness:

1) defense lawyer of the defendant – on circumstances of the case that became known to him or her due to his or her fulfilling defender duties..." However it should be noted that despite the circumstances specified, the attorney privilege was not reflected in the Criminal Code of RSFSR of 1960.

In the Law of USSR as of November 30, 1979 "On the Bar in USSR" (Article 7) there was actually fixed the same formula of the attorney-client privilege that in the Statute on the Bar of RSFSR as of July 25, 1962. However, the content thereof became much broader in our opinion which can be seen from the comparison of notions "rendering legal assistance" (in the Law "On the Bar in USSR") and "rendering legal assistance on the given case" (in the Statute on the Bar of RSFSR). However, it should be kept in mind that the criminal procedure characteristics of the prohibition to examine the defense lawyer remained unchanged.

Special legal regime was attached to the attorney-client privilege in the Statute on the Bar in RSFSR as of November 20, 1980 In particular it specified the following (Article 16): "The attorney is not entitled to disclose the information reported to him or her by the client due to his or her rendering legal assistance." In the Article 15 of Statute the prohibition of the attorney examination was broader than in the CPC of RSFSR: it covered the information obtained not only in connection with protection of the defendant, but also in connection with fulfilling the duties of a bailsman.

Zalogina O.G. considers that "from the moment of adopting the Law on the Bar in 1979 and the Statute on the Bar in 1980, the right and liability to keep the attorney-client privilege are associated not with the type of legal assistance rendered by the attorney, but with a special status of a person rendering legal assistance, i.e. the defense lawyer status". One can hardly agree with this assertion. System analysis shows that the attorney-client privilege rests on the dual basis: functional – performance of the duties of a defense lawyer; criminal procedure status (status indicator) – intervention in the criminal procedure in the property specified.

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The name of the secret as an attorney-client privilege is rather conventional, at least in criminal proceedings. In the criminal law taking into account the specific nature of refusal to testify as a crime stipulated in Article 308 of the Criminal Code of RF (CC RF) actually the question should be firstly about the defense lawyer in the broad sense of the word, not only about the attorney; secondly about the attorney when he or she renders legal assistance not associated with fulfilling the defendant duties.

For settling the issues of the defender privilege in criminal law, the content of the secret being considered is of prime importance. Tsypkin A.L. identified two groups of information making the secret: 1) information betraying the alleged offender or defendant in commission of an incriminated crime; 2) information that can directly or indirectly have an unfavorable impact on selection of the defendant liability.

Another opinion was reflected in the Federal Law "On advocacy activity and the bar in the Russian Federation." In Article 8 of the Law it is said: "1. The attorney-client privilege covers any information associated with the attorney's rendering legal assistance to the client...".

Even more broadly the notion is interpreted for instance by Barshchevskiy M.Yu. "From the moment the client crossed the threshold of the legal consultation office or a firm of attorneys, everything thereafter is a subject of the attorney-client privilege. The very fact of addressing an attorney is already a professional privilege... Moreover, even if it was not the future client himself who applied to the attorney but somebody of his relatives with whom no agreement for conducting of case was ever made, the general rule remains unchanged - all the information received from this relative and even the very fact of his or her applying to attorney is an attorney-client privilege."

The fact of applying to attorney, including the names of clients, is included in the content of the privilege being considered by the Code of Legal Ethics adopted on January 31, 2003 at the First All-Russian Congress of Attorneys of Russia (Article 6). However it should be kept in mind that in CPC of RF as it was already specified the questions are the circumstances that

became known to him or her in connection with his or her taking part in the proceedings on the case or in connection with his or her rendering legal assistance (the same is specified in the Article 6 to the Code). In this case the examination on the very fact of a person's application for legal assistance does not fall under the content of the criminal-legal prohibition in our opinion, and consequently, under the criminal-legal privilege of an attorney and defense lawyer.

In accordance with the specified Code, the attorney-client privilege regime also applies to

– all evidence and documents collected by the attorney when preparing for the case;

– information received by the attorney from clients;

– information about the client that became known to the attorney in the course of his or her rendering legal assistance;

– content of legal advise provided directly to the client or intended for him or her;

– all attorney's proceedings on the case;

– terms and conditions of the legal assistance agreement including monetary settlements between an attorney and client;

– any other information associated with the attorney's rendering legal assistance.

As an exception the Code of Professional Ethics stipulates the right of attorney to use without client's consent the information provided to him or her in the volume that the attorney considers reasonably necessary to justify his or her position upon investigation of a civil dispute between the attorney and client, or for protection of himself or herself on the disciplinary proceedings or criminal case initiated against him or her (par. 4, Article 6). Other exceptions can involve the situations with respect to which the international acts and federal legislation established special legal regime with due account for requirements of the attorney-client privilege.

The boundaries of the attorney-client privilege presently, just as before, are the main issue of theory and practice which in its turn directly touches upon the content of the criminal-legal privilege of an attorney and defense lawyer. Thus, Tsypkin A.L. thought that

the attorney-client privilege cannot be absolute, "..crimes differ, and we can encounter the most dangerous criminal to whom the attorney-client privilege may not be applied." The author proposed to specify such situations directly in the law. In fact, Podolnyi N.A. speaks about it as well: "The logic of public safety makes me look at the attorney-client privilege and conditions of preserving thereof in a slightly different way. It should not and cannot be absolute, that is be observed under any circumstances. There should certainly be specified the cases and situations where the attorney must distribute the information that became known to him or her to the bodies that conduct investigation and criminal intelligence operations."

Some authors when characterizing the situation described by Podolnyi N.A. refer to par. 2 to the Article 7.1 of the Federal Law as of August 7, 2001 No. 115-FZ "On countermeasures against legitimization (laundering) of proceeds of crime and terrorism financing", in accordance with which if the attorney has any reasons to think that transactions or financial operations (real estate transactions; management of cash, securities or other property of the client; bank account management, securities account management; attraction of money for establishing organizations, ensuring the activity thereof or management thereof; establishment of organizations and purchase and sale of organizations) are fulfilled with the purpose of legitimization (laundering) of proceeds of crime and terrorism financing, shall notify the authorized body about that. It as a false statement since in par. 5 to the Article 7.1 of the specified Law it is directly said that the statements of par. 2 of the same Article do not refer to the information covered by the requirements of RF legislation on attorney-client privilege.

Petrukhin I.L. made one exception from the content of the attorney-client privilege, and consequently from the criminal-legal privilege – the necessity of reporting the circumstances associated with crime prevention. Earlier a well-known Russian attorney Aria S.L. discoursing about it wrote: "One can positively think that the attorney must keep silent about the crime committed by his or her client. Upon the action committed, the reporting

of it can pursue one objective – punishment...

It is more difficult to answer the question regarding the correct behavior of an attorney when the client came to take counsel on the crime being prepared. It is obvious that the only piece of advice the attorney is entitled to give to such client is to earnestly convince to refuse from fulfillment of intention and specify the malignity of consequences. What shall he do next: is the attorney obliged to take other measures to prevent probably dire threat hanging over or follow the professional duty of preserving secret taking a risk to retain a sense of guilt for the whole life? In this case the question is already not in assisting in vindictive actions, but in helping other people and preventing a real disaster threatening them. Here the voice of moral duty sounds unbearably loudly. And it is hard to resist it...”

According to some specialists in the situations described there is neither right, nor legal interest of a client subject to protection. The information about the wish to commit some crime does not have any relation to protection, or rendering legal assistance to the client by the attorney.

The possibility (or obligation) to inform about the prepared crime with the purpose of prevention thereof shall be fixed regulatory. At that the law should clearly specify the crimes in question. Otherwise, “if the attorneys will start lodging information for instance about particularly serious economic crimes being prepared, the independent and publicly esteemed bar can be forgotten about.”

The paradox that formed between the ethic requirements to the attorney activity and interests of society shall be eliminated by means of recognizing the priority of the pivotal norms of human morale presuming an absolute value of the human life.

A number of criminalists suggest that making confidential information known to public should be considered in extreme emergency. The latter has nothing to do with the attorney-client privilege.

According to the Core principles with respect to the role of lawyers (Havana, 1990), “the governments acknowledge and secure the confidential nature of any relations and consultations between lawyers and their clients within their professional relations.” In

accordance with the Standards of Independence of Legal Profession of the International Bar Association (New-York, 1990) the attorneys shall be provided confidentiality of relations with a client.

Code of Conduct for lawyers in the European Community (Strasbourg, 1998) considers a necessary element of the advocacy activity the creation of such conditions for the client under which the latter can freely provide information to the attorney that he would not tell other people, and preservation of confidentiality of the information by the attorney as a recipient thereof. Confidentiality of relations between the lawyer (attorney) and the client is established in this Code as a primary and fundamental right and liability of the lawyer that shall be protected by the state.

In judicial practice of the European Court of Human Rights (ECHR) there are a number of cases on applications of attorneys from different countries in connection with violations of their attorney-client privilege (Germany, United Kingdom, Luxembourg, Moldova, Finland etc). On May 15, 2007 the ECHR considered a complaint from the attorney, Smirnov M.V. against Russia. The applicant contested the legitimacy of the search of his flat and seizure of 20 documents and computer system unit which caused the violation of the right for protection of his clients.

The Court came to a conclusion about the violation by the Russian authorities of the requirements of articles 1, 8, 13 (together with the article 1 of the Protocol No. 1 to the Convention) of the Convention for the Protection of the Human Rights and Fundamental Freedom (Rome, 1950). However, the ECHR did not reveal the violation of the attorney-client privilege at that.

4. Conclusion.

The attorney-client privilege is the information obtained by attorney or defense lawyer in connection with rendering legal assistance to the client or fulfilling protection on the stage of preliminary investigation of the criminal case or consideration thereof in court, having special legal regime that prohibits the disclosure thereof. It is not a privilege of attorney or defense lawyer, but the immunity of the client. This privilege is absolute which results as it was

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mentioned in moral and legal collision between the ethical and legal norms regulating the activity of the attorney and interests of a man and society in securing their safety. In this regard the restriction of the attorney-client privilege – exclusion from the content of it of the information about the prepared crime against human life or health (Articles 105, 106, 1101, 1102, 111–112, 120 of the Criminal Code of RF) and public safety (Articles 205, 205^{1}–205^{5}, 206, 208, 209, 210, 212 of the Criminal Code of RF) is expedient and morally and socially justified. Such exclusion does not contradict the RF Constitution and international legal acts. The specified exclusion is reasonable to formalize in Article 56 of CPC RF.

The notion of "confidentiality of data" is not identic to the notion "attorney-client privilege," they correlate as a part and a whole. The criminal-procedure prohibition underlying the criminal-legal privilege of an attorney and defense lawyer also has a narrower content than that of the attorney-client privilege. The criminal-legal privilege of specified persons should be defined proceeding from its procedural value.

Thus, the following persons have a criminal-legal privilege:

1) attorneys;

2) defense lawyers;

3) close relatives;

4) other persons. The latter can involve any persons that took part in protection of the defendant and permitted as such by the judge's ruling.

The functional foundation of such privilege is:

a) with respect to the first person – rendering legal assistance on criminal case; the latter as it was specified above covers the participation of a defense lawyer as well in criminal proceedings;

b) with respect to the second one – participating in criminal proceedings at both pre-trial and on-trial stages;

c) with respect to the last two persons – participating in criminal proceedings at the stage of judicial examination of the criminal case.

The place of norm on the privilege – is a note to the Article 308 of the Criminal Code of RF stipulating the liability for refusal to testify. The privilege considered and the crime are genetically connected with each other: since the attorney and defense lawyer cannot be examined provided that there

are circumstances specified in the criminal-procedure or other federal legislation, the refusal to testify does not constitute a crime. The available note reflecting the privilege of witness speaks in favor of such step.

The note to the Article 308 of the Criminal Code of RF can be stated as follows:

"Article 308. Refusal to testify

.....

Note. The following persons are not subject to criminal liability for refusal to testify:

2) attorney and defense lawyer – on circumstances of the criminal case that became known to him or her due to his or her taking part in the proceedings on the given case; or on circumstances that became known to him or her in connection with his or her rendering legal assistance, except for cases stipulated by the legislation of the Russian Federation."

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DEVELOPING AND APPLYING ROBOTIC TECHNOLOGIES AND ARTIFICIAL INTELLIGENCE SYSTEMS (USING AUTONOMOUS UNMANNED UNDERWATER VEHICLES)

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Abstract: The paper includes systematization of the main problems and contradictions in the development of modern national legislation and international legal order in the context of the processes of integrating robotic technologies and devices based on the artificial intelligence into the social life of society. The article discusses doctrinal, legal, ethical and socio-moral issues in the regulation of the development and application of artificial intelligence systems, robotic technologies, autonomous devices, etc. The authors substantiate the need to formulate a legal concept and the ethical standards for the regulation of these technologies and systems, propose directions, methods and forms for the development of a comprehensive program for the regulatory mediation of the development and integration of innovative processes in the social life of people. It is noted that the rapid development of robotic technologies and artificial intelligence systems creates an acute need of modernity - the legal regulation of relations associated with

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the application of RT and AI. At the same time, it is shown that a state that develops the effective legal models and legislative bases for regulation in this field will be able to win in an acute competitive struggle, to formulate the international legal standards and models for other countries.

Keywords: autonomous underwater vehicles (AUV), deontological codes, national legislation, artificial intelligence, international law, legal regulation, robotic technologies, ethical standards.

1. Introduction

Today, the leading priority in the development of the leading countries in the civil and military fields is the creation of not only air-, land-, but also sea-based robots and robotic complexes. At the same time, the development of robotics and artificial intelligence is an integral part of the development of Unmanned Underwater Vehicles (UUV), which in turn are divided into Remotely Operated Vehicles (ROV) and Autonomous Underwater Vehicles (AUV). Over the past 20 years, such countries as the USA, Britain, France, Germany, China, Japan, Norway and Israel have increased their R&D funding by 30 times to build civilian and combat robots and robotic complexes of primarily bottom infrastructure [13]. Particular attention is paid not only to the creation of the UUVs itself, but also to the software, the creation and development of a digital intelligent navigation system, etc.

In recent years, a significant number of civil and military UUVs have been created in various countries that have a leading position in the field of marine technology, hardware and software, digital developments in the field of navigation systems. During this period, the UUVs have not only demonstrated its effectiveness in the performance of reconnaissance, survey and exploration, depth survey, mine action and other works, but also opened up the fundamentally new areas of use. The latter is associated with the use of artificial intelligence systems based on the so-called strong AI system (autonomous artificial devices and robotic technologies capable of performing a whole range of intellectual functions, making operational decisions, effectively responding to emerging

factors, changing conditions, etc.). In general, the development of new technologies increases the scope of application and use of the UUVs. Over the past 5 years, the number of autonomous UUV developments has increased more than twice.

At the same time, the general concept of legal regulation of relations associated with the use of autonomous UUVs (based on both weak artificial intelligence (UUV-wAI) and strong artificial intelligence (UUV-sAI), as well as the moral and ethical coding of software development processes both at the level of current national legislation, adopted doctrinal legal acts and deontological codes, and at the international legal level, have not been formed.

Moreover, the lack of moral and ethical and doctrinal legal bases for the development of robotic technologies and related software, as well as constitutional and legal ideas and practices in this area, leads to the fundamental challenges to national and global security, to a serious lag in the legal development of social relations, to the possibilities of effective "legal coding" and governmental management of these processes.

2 Literature Review

The first effective autonomous unmanned vehicles appeared not in the United States or Western European countries and Japan, but in the Soviet Union. In 1976-1979, a group of enthusiasts of the Underwater Robotics Laboratory of Navigation and Control Systems OF the Department of Technical Cybernetics of the Far Eastern Branch of the Siberian Branch of the USSR Academy of Sciences under the leadership of Mikhail Ageev [3], created a unique and, in fact, the world's first deep-sea autonomous survey and retrieval robotics complex, which included the AUUV L-1 with the immersion depth of 2,000 m and L-2 with the immersion depth of 6,000 meters. The last device is considered one of the most outstanding technical achievements of the xx century, along with the first artificial Earth satellite and the Vostok spacecraft. The AUUV development was based on a modular technology that stipulated the unification of all major structural elements and was subsequently developed in all subsequent Far Eastern instruments. The creation of the autonomous underwater

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vehicles and marine underwater objects has been studied and practiced by Russian scientists since the last century. The last quarter of the last century may be called particularly productive in terms of the development of technologies for the creation of such devices. A significant contribution to the development of the technical side of the issue was made by the scientists of the Institute of Marine Technology Problems of the Far Eastern Branch of the Russian Academy of Science (FEB RAS) [1, 12, 17, 20, 25].

In the 1980s, several UUV models made repeatedly a deep-sea diving, and were also used to study the wrecks and submarines. In 1988, Mikhail Ageyev (since 1992 - the Academician of the RAS) headed the Institute of Marine Technology Problems (IMTP) of the FEB RAS created under his leadership. It continued to create the experimental samples of unique underwater robots. Naturally, during the years of perestroika and the neo-capitalist era that followed them, these works were slowed down, but they did not stop. In a sense, the market relations helped the institute, because it was allowed selling the intellectual property, which formed a long line of foreign customers. Many modern foreign AUUVs can be rightfully called the descendants of L-1 and L-2. More than a decade ago, the IMTP specialists developed an autonomous unmanned underwater vehicle of new generation "Clavesin-1R". Since then, a number of scientific centers of the Russian Federation have been engaged in the development and creation of new AUUV modifications.

In turn, the first comprehensive research and practical experience in the development and use of autonomous unmanned underwater vehicles and robotic complexes was obtained by the USA. At present, there is a fairly strong amount of literature, analytical materials, data on the implementation of military and civilian strategies for the UVV development, technical description of the current UVVs and the designed robotic technologies and complexes in this area. These theoretical and practical, technical and informational materials are available both in the English-language sources and are also presented in the languages of other countries occupying leading positions in this field. We should note that the above mentioned initial

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developments, data of strategic research programs and specific R&D have become a theoretical and practical basis for the development of UUV research and development in Russia, South Korea, France, Norway, China and other countries.

In general, the R&D experience and the application of the first UUV samples allows talking about three main conclusions that have stimulated the further development of this field in the leading countries of the world.

Firstly, the UUV development and use has shown the promise and significant potential for the development of autonomous vehicles and robotic technologies for the civilian needs (research of seabed, shelves, etc.) and the development of traditional means of the Navy Forces (changes in the strategies and nature of maritime combat, tactics of fleet use, etc.) [4, 5, 9, 10, 24, 27].

Secondly, the UUV development and production (as part of shipbuilding and instrument-making industries), because of its low material and labor intensity, does not yet have a decisive influence on the dynamics of the country's production forces, but contributes to the development and promotion of highly efficient technologies that can be used both in the traditional and in fundamentally new systems of civil and naval equipment because of its scientific complexity, because of its scientific complexity [2, 13, 22, 26].

Thirdly, the use of autonomous devices based on remote control caused a whole array of problems that could not previously be predicted. For example, the majority of operators and gunners diagnosed the signs of post-traumatic stress disorder, increased psychological excitability, rapid professional burnout, etc. after the contract expiration [11, 23]. All this stimulates the development of autonomous modes for the operation of unmanned vehicles, the creation of new forms and types of human-machine interaction, the development of possible risks and threats, as well as the insurance issues and damage compensation problems.

Based on these fundamental studies, conceptual conclusions, technologies for the development and production of the autonomous UUVs and their main systems, they were assigned to the strategic areas, and the research and development works on the problems

of their development, use, stimulation and regulation were declared priority.

3 Methods and Materials

The formation of a legal concept and ethical standards should take into account the following comprehensive program based on the regulatory triad:

- *firstly*, it is a universal level connected with the general principles and models of regulation of robotic technologies and robotics standards;

- *secondly*, it is the social and regulatory systems formed within a certain environment, conditioned by the socio-cultural and historical context, where any interaction or process is theoretically and ideologically loaded and conditioned by the socio-cultural factors and dominants;

- *thirdly*, on the one hand, it is the requirements of the formal legal language and legal technology, through which the regulatory and legal regulation of this interaction field is implemented; on the other hand, it is the requirements of mathematical, algebraic, program language and engineering-technical models, methods and standards (in the development of autonomous devices, their functioning, software, etc.), which should also become an integral part of regulation.

Therefore, it is needed the dialogue and joint fundamental research projects between the engineers, lawyers, programmers, etc. In this regard, this project is oriented to the post-disciplinary research strategy [8, 19]. The post-disciplinary strategy is not built on the basis of any discipline, thus setting and limiting the problem field and the theoretical and methodological arsenal. On the contrary, the team work is aimed at the formation of a comprehensive subject orientation, which is not limited to strict disciplinary frameworks, involving the achievements and positions, primarily of various social and human sciences, categories, concepts and ideological and conceptual innovations of natural and technical sciences into the communicative process [7, 21]. The following concepts and categories are an example of the latter: convergence (mixing, merger, differentiation, meeting of materials, substances, etc.), used in the political and legal system of knowledge to describe transitional, mixed political systems; or ideological and conceptual innovations

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of synergetics, organically included in the humanitarian research system. Another example is the formation of a philosophical system based on the mathematical justification and modeling of the social, legal and political specified by Alain Badiou [6].

Other important and system-forming methodological principles, which are relied on by the presented research project, include as follows:

1) the completeness principle in understanding the specifics of the behavior and interaction of people and robotic devices in the context of legal field, when, on the one hand, the legal institutions, structures and mechanisms that are taking place, largely determine human activity, set the norms and standards for the development of hardware, devices, nature and direction of their use, and on the other hand, the effectiveness and sustainability of specific practices of application and interaction are predetermined by the "subjective factor";

2) the "understanding interpretation" principle; the concept of legal regulation of robotic technologies is built by the methods of understanding and explanation, which generally corresponds to the heuristic postnonclassical (understanding) science. This approach allowed considering the field of legal everyday life in human interaction and robotic devices, the convergence of human cognitive structures and "artificial intellectual systems", the features of joint activity (social action and interaction using robotic and digital technologies);

3) the principle of social and legal conventionality means that the value-regulatory systems, operating in the society, have a specific historical and socially communicative nature, which are transferred to the structuring and ordering in the field of human interaction and robotic technologies by analogy. When forming the legal concept of regulation of the latter, it is necessary to take into account both this "transfer" and the convergence of social-normative regulators with new forms and methods of regulating specific relations between human and machine interaction (for example, personalities and robotic devices operating on the basis of "weak artificial intelligence"), human and digital, electronic personality (for example, personality and autonomous

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robotic devices functioning on the basis of "strong artificial intelligence"). At the same time, the development of a legal regulatory concept should take into account the following regulatory triad:

- firstly, it is a universal level connected with the general principles and models of regulation of robotic technologies and robotics standards;

- secondly, it is the social and regulatory systems formed within a certain environment, conditioned by the socio-cultural and historical context, where any interaction or process is theoretically and ideologically loaded and conditioned by the socio-cultural factors and dominants;

- thirdly, on the one hand, it is the requirements of the formal legal language and legal technology, through which the regulatory and legal regulation of this interaction field is implemented; on the other hand, it is the requirements of mathematical, algebraic and technical language and the algorithms, methods and standards (used in the development of autonomous devices, their functioning, software, etc.), which should also become an integral part of regulation.

4) the integrity principle is the methodological principle of systematic and organic unity, interaction and interdependence of all elements of the social and legal and digital life of society, the integrated accounting of value-regulatory, ethical and legal elements, digital and technological standards;

5) the objectivity principle, as the methodological principle of this study, assumes an orientation toward the reconstruction of existing representations and features of the legal and engineering-technological worldview, the influence of the latter on the processes of modeling the robotics development and rationing the development of the latter;

6) the reliability principle is focused on harmonizing the findings and provisions with the available theoretical and methodological achievements of social and humanitarian and technical sciences, analytical and empirical data, expert positions and technological developments;

7) the instrumental-legal realism means the cognition of factors and dominants that affect the development of autonomous robotic

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technologies, which are necessary not only for the formation of the legal concept of advanced legal modeling, but also for the management of real socio-technological phenomena and processes.

8) the methodological principle, substantiated by Anne-Marie Maul and John Lo [28], according to which people, things, and machines form together the special, specific relations, within the framework of which each of them is formed, mediated, defined, is significant for the present study. This principle is called the "assembly method" by the researchers, it focuses on studying the issue of how these specific relationships are created and how they unfold, and most importantly, the technologies and machines are considered as integral "agents" [16], shaping and influencing the practical activity and its nature, in these relations. Moreover, within the framework of these mobile and constantly changing relationships, there are always general organizational conditions and forms ("assembly forms") necessary for their existence and development; being multiple, they preserve and are transformed as a definite whole [15]. It is these ideological and conceptual orientations that will allow implementing social and legal modeling of the general conditions, forms and models of possible general and specific development of relations in the new digital reality.

4 Main Part

It should be noted that legal and dentologic regulation of the processes of introduction and use of underwater robotic technologies, development and application of artificial intelligence systems in the UUV, differs with the fragmentation and unsystematic nature today. The solution of the above-mentioned problems is connected with the stage-by-stage and comprehensive study of general conceptual, doctrinal and theoretical-practical issues in many respects. The resolution of the latter can be provisionally presented in four key and interrelated directions.

1. Formation, adaptation and substantive adjustment of key concepts and categories fixing the essence, social purpose, experience, nature and typical models of using the autonomous UVVs. To date, the problem lies in the fact that all the main parameters, the nature and specificity of functioning of the robotic technologies (RT), the development of

artificial intelligence (AI) in the autonomous devices, are described in the framework of the natural and technical field of knowledge.

The basic concepts that are used in this context are not substantiated and are used as the scientific metaphors (for example, the notions "artificial intellect", "robot", etc. are the essentially contested concepts) that are difficult to translate into a "legal envelope", formalize them into legal definition and propose a typical regulatory model for their regulation. At the same time, the basic processes of forecasting the development of RT and AI are described in a completely different discourse, as a rule, using the mathematical modeling apparatus. In this aspect, the advanced legal modeling (the key direction of development of legal framework in the XXI century according to the Academician [14], of the transformation of social relations associated with the use of RT and AI is hampered.

The main problem here is that the artificial models of regulation and ethical standards are largely artificially transferred to the fundamentally new relationships (human interaction and robotic technologies, digital relations, etc.) in the proposed projects of legal regulation and moral and ethical coding of RT and AI. For example, the draft Federal Law "On Amendments to the Civil Code of the Russian Federation Regarding the Improvement of Legal Regulation of Relations in the Robotics Field" (a draft is developed by Grishin Robotics) uses typical regulatory models for regulating the private-legal relations, which are almost mirrored in the human-robot relations (robot-agent).

Of course, the social value of the legal norm is that it expresses the experience of human interaction in a concentrated form, as it reflects not just single cases, but covers the most typical, often repeated forms and patterns of behavior. For many, the effectiveness of a legal norm is due to the fact that the latter fixes the patterns of behavior that have already settled and have positive implications for the preservation and development of the individual, society, state. Such norms allow ensuring the stability and long-term relations. This ensures the predictability of behavior of all the community subjects, thereby crystallizing a certain order of their relationships in different fields (social order, legal order, political, economic

and other types of order). However, the formation of order and interaction models in the field of RT and AI development in such a format does not allow ensuring the effectiveness of regulation of innovative and robotic processes in the society, since the latter are rapidly evolving, and the typical models of the relationships between person, RT and AI are not formed.

It is obvious that the state, as an expression of public interests, not only establishes the specific rules of behavior that guarantee a certain type and measure of interaction between the subjects, their mutual rights and obligations, but also establishes the basic norms fixing the principles and priorities for the development of social relations, that is, state, defines the legal framework for the subsequent development of society. Such activity is considered in two directions in the legal theory: This is a real reflection and consolidation of the existing patterns of social interaction, and a faster reflection of regulated social relations, that is, a legislative process, where the experience of the past and the present is projected onto the future.

In this regard, this project is oriented to a fundamentally different approach. The research team is convinced that the adaptation of existing regulatory models and the legal and technical "adjustment" of the available regulatory samples to a fundamentally new field of social relations will be mildly ineffective. In general, these relations are fundamentally different. In this aspect, we can talk about the convergence of social, digital, virtual, robotic, which requires a completely different approach to the rationing of their development.

The solution to this problem should be started with the formation of the concept of advanced legal modeling, the creation of a common doctrine, methodology and standardization of the processes of developing autonomous devices, software, predicting the relationship between human and machine, etc. And only then it is possible to implement a comprehensive program of legislative changes, the development of appropriate sub-sectors and individual branches of law.

This way is followed by the research teams of the European Union, the USA, the South Korea and other leading countries. For example, during the EU summit held in October 2017, it

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was decided to form a European concept of legal and ethical regulation of RT and AI in 2018. The official documents of the summit talk about forming the doctrine of advanced development and the development of key trends and directions for regulating this field. Based on them, it is further proposed to develop the relevant legal acts and ethical standards.

2. The specificity, complexity and integrity of relations in the development of autonomous robotic devices, software to them, requires the fundamentally different research strategies. There is a need for dialogue and joint fundamental research projects between the engineers, lawyers, programmers, etc. Of course, the interdisciplinary research is currently being implemented by analyzing the problems stated in a comprehensive manner, involving the achievement of a number of natural and human sciences in the cognitive process in this area. However, in the overwhelming majority, a "weak research position" is laid in the basis of the interdisciplinary approach. Here the adjustment of the "research optics", the thematization of the problems, the formulation of the hypotheses, categories, and concepts is mainly implemented and controlled by the disciplinary style of thinking.

Thus, the researches quite often "involve" the materials from various natural-technical and socio-humanitarian knowledge systems, with an aim of forming a different approach to the understanding and significance of the individual phenomena and processes. However, the latter is structured on the basis of "disciplinary dominants", which does not allow going beyond the established boundaries, to form another program and the "truth procedure". When involving new forms of cognition and thought registers in the new forms of cognition, the researchers place them in an "established theoretical and conceptual path", which ultimately leads to the eternal return of the same ideological and semantic (disciplinary) basis, which does not allow thinking the phenomenon differently.

Another aspect is based on the fact that the uncertainty of such notions as "artificial intelligence", "robot", "robotic technologies" etc., creates not only the theoretical gaps in the jurisprudence, but (which is more significant) does not allow legislatively regulating a significant part of the

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governmental-legal process management mechanism associated with the proliferation and use of autonomous devices, artificial intelligence, robots. In this regard, this research project is focused on the development of a theoretical and methodological understanding and definition of key categories and concepts, which will create the opportunity to bring the actual legal regimes of functioning of the state apparatus in line with the new realities of development of social relations, technologies and innovation processes in various fields of society.

3. Another important development direction, in addition to the conceptual and legal design of the categorical conceptual apparatus and the formation of a theoretical and methodological concept for the development of legal regulation of innovation processes, is the improvement of legal equipment. The development of this direction in legal science and the process of improving legal technology will allow starting to develop and adopt a whole set of the regulatory legal acts that would form the general legal framework for the development of RT and AI in modern society. According to the aspect discussed, it is necessary to create a new theoretical and legal concept of a legal subject, the so-called electronic subject of law, and the possibility of forming a concept of legal and moral-ethical responsibility of the software developers and the artificial intelligence.

This problem has not yet been properly developed in modern jurisprudence. As first attempts, it is possible to name only separate articles, which pose the issues of legal regulation in the field of robotics and artificial intelligence, and using the unmanned vehicles (for example, certain legislative innovations in the Air Code of the Russian Federation). At the same time, there is no legal regulation at the current national legislation level or in model acts of the international legal level as regards the use of autonomous UUVs and the responsibility for their use. Thus, at the international level, the legal status of traditional underwater vehicles is determined by the Convention on the Sea Law dated 1982 (Art. 87 of the Convention provides freedom of navigation and freedom of scientific research, including unmanned deep-sea vehicles on the high seas). Some rights

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are granted in the exclusive economic area, if they do not damage the coastal state, and if it is received the consent of the coastal state in accordance with Art. 246 of the Convention.

The complexity of forming legal bases for the UUV use, as well as legal modes for the operation of unmanned underwater vehicles is associated with the practice of numerous bilateral agreements concluded between the states. For example, Russia ratified the "Agreement between the Government of the Russian Federation and the Government of the Republic of Finland on Cooperation and Support in Providing Services for the Icebreaking Assistance for Vessels in the Baltic Sea" on November 28, 2015. At the same time, there is no special legal regulation of the mode of autonomous UVVs at the international level.

In this regard, it is necessary to develop epy model doctrinal and legal bases and deontological standards that could be applied both at the level of the current legislation and in the context of the international legal policy of the Russian state. The rapid development of robotic technologies and the autonomous devices forms the key need of modernity - the issues of legal regulation of relations related to the application of RT and AI. At the same time, the state that develops the effective legal models and legislative bases for regulation in this field will be able to win in an acute competitive struggle, to formulate the international legal standards and models for other countries.

Another important and logical stage of the research team's work is connected with the solution of theoretical and practical problems. It is aimed at justifying and developing the necessary changes in the sectoral legislation required to create a legal regulation of using the autonomous UUVs, which are widely applied in various fields of society.

At the same time, the theoretical and practical developments should be differentiated into four conditional blocks:

- firsty, the conceptual and legal formulation of the key concepts and relations, the formation of doctrinal and legal foundations and priority directions of the state's legal policy in the field of RT and AI development, the delineation and formation of appropriate legal modes for the operation of autonomous

devices on the basis of "weak AIs" (autonomously functioning device that performs certain tasks, laid and controlled by the software and (or) the operator) and "strong AIs" (autonomously functioning device, perceiving the external environment, making the decisions, choosing or correcting the interaction model, the operation mode, etc. by its own);

- secondly, the legislative innovations related to the promotion of the development of robotic and digital technologies, software, artificial intelligence, their implementation in the social processes in order to improve the quality of life of the citizens;

- thirdly, the regulatory and legal regulation of RT and AI in the context of ensuring national security, rights, freedoms and legitimate interests of citizens;

- fourthly, the development and implementation of ethical standards, metric certificates etc. in the development of robotics and artificial intelligence, which should be complied with by the developers, manufacturers and users of innovative technologies.

In addition, the formation of a theoretical and legal system of argumentation and the elaboration of the issue of creating a new sub-sector in the sea law regulating the relations related to the development and use of the autonomous UUVs, as well as the subsequent formation of a separate complex branch of law - robot law, possessing an independent subject and a legal regulation method, - is relevant and requested in the near future. A set of legal norms governing public relations in the development and production of software, the use of robotic technologies and autonomous devices based on AI should come out as the subject of this branch of law. This complex branch of law should include: firstly, the norms of public law - constitutional, criminal, administrative, land, sea, water, air, etc., which are based on the imperative legal regulation and ensure the protection of the rights, freedoms and legitimate interests of all participants in legal relations, and provide national security of the Russian state and sustainable national development; secondly, the legal norms of private law branches forming the specific legal interaction modes between the subject that are formed from an equal legal status and

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autonomy of the participants in these relations.

4. The next group of problems associated with the description and specification of subjects of law, as well as the formation of a concept of social (moral, ethical and legal) responsibility arising in the context of using the autonomous UUV (based on the weak artificial intelligence (UUV-wAI) and strong artificial intelligence (UUV-sAI). Obviously, the latter is caused by a constant increase in the number of potentially dangerous systems and technologies operating autonomously.

There are also four groups of problem questions.

The first one is connected with the definition of a new group of objects of legal relations and subjects of law (digital personality, autonomous robotic device). In this regard, it is necessary to formulate a legal concept that models the functioning of autonomous systems as intellectual vehicles, implementing not only a certain activity in the social field, but also a number of cognitive functions.

The second group of problematic issues is connected with the ethical standards and requirements that regulate the processes of software development and the introduction of autonomous systems in the life of society. At the same time, it is important to take into account a number of aspects: firstly, it is necessary to formalize the ethical standards as adequate for regulating the specific relations and innovative processes, and the latter's connection with the existing value-regulatory systems in the society (national and international legal levels); secondly, the forecasting and modeling of the impact of such norms on the development of RT and AI, the individual autonomous systems and robotic technologies. At present, the projects of such ethical coding for the development of RT and AI are just emerging. For example, the version of the Ethical Aligned Design ethical standard for the creation of robots and artificial intelligence of the Institute of Electrical and Electronics Engineers (IEEE), which justifies that the autonomous devices and the intelligent systems should function on the basis of a system of human value-regulatory and ethical regulators, in accordance with a universal standard of human rights and freedoms. A number of leading states offer to form the Universal Declaration

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of Robotics and Ethical Standards for the Development of Software Based on the Artificial Intelligence Systems.

The third group is associated with the insurance of liability for causing harm to health, rights and freedoms, the legitimate interests of subjects of law in the process of using RT and AI. The speed of developing the independence of robotics and the autonomy level makes the problem of establishing the guilty subject responsible for the damage caused a very complicated procedure. In this regard, it is necessary to develop a system of compulsory insurance of risks, potential threats associated with the functioning of robotics and AI.

Finally, the fourth group of problems is related to the harmonization of various regulatory and legal systems regulating the life of society and the functioning of robotic technologies. The key problem that should be posed in the development of any projects for regulatory mediation of relations. All the various social regulators of all levels, including the normative one, should be coordinated and act as consistently as possible. According to the Academician G.V. Maltsev, such an approach may serve as a guarantee for the formation of a harmonious system of developing the social system and its stability [18].

5 Conclusions

Thus, at present the main directions of doctrinal legal and ethical regulation of the processes of development and application of robotic technologies and artificial intelligence systems should be as follows:

- *firstly*, the solution of theoretical and conceptual problems in the description of RT and AI, that is, the problem of forming, adapting and substantively correcting the key concepts and categories fixing the essence, social purpose, experience, nature and typical models of using the artificial intelligence systems and the robotic technologies, is acute;

- *secondly*, the most important priorities for the development of legal science and practice are the development of a theoretical and methodological concept for the development of legal regulation of the innovation processes, as well as the improvement of legal techniques ensuring the transfer of specific relations into a "legal envelope" (rule of law, legal sets and etc.) in the discussed innovation field;

- *thirdly*, the key task of the next decade will be the development and adoption of a set of regulatory legal acts that would form the general legal framework for the development of RT and AI in modern society, as well as the legal concept of the subject of law (electronic subject of law, digital person, etc.) and the concepts of legal and moral and ethical responsibility ofthe software developers and the artificial intelligence. In addition, the model doctrinal and legal bases and deontological standards should appear in the coming years, which, will form the key forms, principles, priorities and directions for the development of RT and AI at the level of the current legislation, and in the context of the international law;

- *fourthly*, the issues of working out and forming new sub-sectors in the sea, air, civil and other branches of law regulating the relations related to the development and use of RT and AI, as well as the subsequent formation of a separate complex branch of law - robot law, possessing an independent subject and method of legal regulation, will be actualized in the near future;

- *fifthly*, in the very near future there will be sharp competition in the development and implementation of ethical standards, metric certificates etc. in the development of robotics and artificial intelligence, which should be complied with by the developers, manufacturers and users of innovative technologies;

- *sixthly*, the liability insurance for causing harm to health, rights and freedoms, the legitimate interests of subjects of law in the process of using RT and AI, is an important direction. The speed of developing the independence of robotics and the autonomy level makes the problem of establishing the guilty subject responsible for the damage caused a very complicated procedure. In this regard, it is necessary to develop a system of compulsory insurance of risks, potential threats associated with the functioning of robotics and AI.

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RENOVATION OF SYSTEMS AND TECHNOLOGIES TO MAKE PRODUCTION AS AN EFFECTIVE REGIONAL MANAGEMENT CONDITION

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Abstract: The article studies the orientation of professional potential of improving technologies with the goal of making production as an effective way to ensure the effectiveness of regional management, discloses the mechanisms for management professional potential transformation into the indicators of its effectiveness and efficiency. They provided the data of the sociological study "Professional potential reproduction system development among regional management personnel". The result of the study in this direction was the developed cumulative technology for computer assessment of the competence potential among regional management employees, which includes three blocks: assessment unit, planning unit, and control (correction) unit.

Keywords: renovation system, professional potential, public service, effective management.

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1. Introduction

Professional potential reproduction is of particular importance and relevance for effective management of the region under the conditions of its systemic renovation, the meaning of which is precisely the orientation of professional potential reproduction towards regional management effectiveness provision. During previous studies, they emphasized the first half of the logical link “the systemic renovation of professional potential reproduction - the effectiveness of regional management”. The second part of the link was implicated in the general context of the presentation. In this case, it acquires an already expanded, explicit character. In this regard, we clarify the general research task - to reveal the mechanisms of management professional potential transformation into the indicators of its effectiveness and efficiency. The task includes three subtasks: firstly, the ways of individual professional potential aggregation into group (structural) ones and then into institutional ones; secondly, the ways of model integration for professional and institutional effectiveness; thirdly, the organizational and technological models for regional management efficiency provision. At that it should be noted that the objectives of the study do not include clarification of efficiency and effectiveness concepts in relation to state and municipal government, justification of evaluation criterion system, the comparative analysis of evaluation methods, etc.

2 Problem Study Degree

There is a significant array of publications related to the topic of research. The competency-based approach (J. Raven, S.M. Spencer, S. Witness, S. Holliford) was widely used in the study of staff professional development issues in state and municipal government [17, 18, 22]. In the framework of this approach, professional competencies are studied actively (A. Nikitina, M.I. Sycheva) [16].

One should distinguish the group of scientific studies highlighting the issues of personnel and professional potential reproduction management, namely: personnel management strategy [8.9]; personnel policy [20,21]; the development of competency models

[14]; the assessment of professional development of personnel [19]; competency-based approach application to assess the certification of state and municipal employees [3,5].

This group also includes the research on social institution management methodology [4], the technologization of state and municipal government [6], the development of the sociological and socio-technological culture of managerial personnel [7,12], personnel technologies [2,23].

Let's note the studies that reveal the problems of state and municipal management effectiveness, the conditions and the ways for managerial effectiveness and efficiency improvement [13,15]. Criteria and performance indicators are defined and described in the works by T. Kartseva, I. Sheburakov [11,24], effectiveness evaluation methods - in the works by E. Akimova [1]. They should also highlight the works related to the consideration of regional management effectiveness [10].

3 Research Methodology

They used the materials of the study "The development of a system for professional potential of regional management personnel reproduction" - an expert study in five regions of the Central Federal District of the Russian Federation in 2013-2014 (127 government employees were interviewed), as well as the materials from the study "The study of the corporate culture of civil servants of the Belgorod Region" conducted in 2016 in the city of Belgorod (808 civil servants were interviewed). They used the data of the sociological study "The evaluation of the municipal personnel policy effectiveness of the city of Belgorod", conducted in the city of Belgorod in 2014 (1100 municipal employees were the respondents).

The collection of primary sociological information was carried out through a questionnaire, the analysis of documents, free interviews and observation included. The methods of empirical data grouping and typologization and the qualitative analysis of factors are also used.

The empirical sources of research are regulatory, legal and analytical documents of federal, regional and municipal governments on personnel policy and personnel potential reproduction;

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4 Main Part

127 experts took part in the sociological study “The development of professional potential reproduction among regional management personnel”, most of whom have been in the public service for more than 3 years. The emphasis of the study on this particular group of respondents is conditioned by the need for experts to analyze the real experience of public service.

The link between the development of professional competencies and management efficiency is unequivocally noted by the majority of experts (86.62%). The awareness of this relation by experts makes us to understand the need of causal interaction development between public servant effectiveness indicators and the indicators of success in regional management. Tracking and establishment the vector of dependence between acquired (or development level) professional competencies and the level of the entrusted region development involves the use of a qualitatively new approach to professional potential management among public servants.

The effectiveness of regional management is determined not only by its professional potential, but also by many other factors. Based on the expert survey, 17 factors were identified that mainly “cover” the area of managerial effectiveness determination. Then the experts were suggested that to evaluate the determination significance of the identified factors using 5-point scale.

Assessing the conditions that determine the effectiveness of regional government bodies, the experts determined the introduction of control not only over incomes but also over the expenses of employees (30.71%), the imposition of sanctions for rude and disrespectful treatment of employees with citizens (25.40%), the organization of broadcasts of meetings and online meetings via the Internet (25.98%) for the group of stronger influence.

The least significant conditions included accounting only for professional abilities and merits when you are hired for state and municipal services (32.28%), continuous improvement of managerial personnel professional potential (43.31%), the rational use of the managerial personnel professional potential (46.03%), the

optimization of career advancement of managerial personnel taking into account their professional potential (37.10%), the establishment of a direct dependence of employee salaries on the results of activities (46.03%). The absence of conditions assessed by experts as unambiguously important, a rather large group of conditions assigned to the group without influence allows us to conclude that there is the regression of the management mechanism that ensures the effectiveness of the governing bodies of the modern region.

An expert assessment directly indicates a critical situation in efficient and effective regional process provision. The current situation requires an immediate review of the existing system of measures to create the conditions for the professional functioning of regional employees, to search for innovative forms of incentives aimed at real-life requests of a modern manager.

Special attention is required to study the current situation with simulation practices ensuring the necessary conditions for the professional activity effectiveness of regional public servants. The imitation of conditions organization and fulfillment for the necessary support of professional activity deliberately eliminates all efforts to create an effective reproductive cycle of the regional management personnel professional potential.

According to experts, the most important reasons of public administration ineffectiveness are the following ones: an excessive bureaucratization of management (50.39%), incompetence of officials (39.37%), total irresponsibility in the management system (36.00%), corruption (48.41%), the lack of a national idea (31.50%), population distrust to state authorities (46.46%).

Having ranked the measures on current situation change, the experts consider the measures increasing the motivation of public servants, introducing special payment conditions to stimulate highly efficient work (55.12%) and to increase the professionalism and competence of public servants (51.97%) as the most important ones. According to experts, the increase of professional and civil responsibility of civil servants (40.94%) and the increase of public confidence in public authorities (39.37%) is no less significant.

Assessing the importance of new principles of personnel policy introduction in the public civil service system, the experts identified a number of the most promising areas of modernization in their opinion: the creation of objective and transparent competitive selection mechanisms (52.76%), the formation of personnel reserves through the selection, training and career growth of candidates for post replacement and their active practical use (52.76%), the establishment of a special procedure for remuneration depending on the achievement of professional performance indicators (41.73%), the improvement of material and moral motivation system among public servants (53.54%), the expansion of probationary period use practice during post replacement (33.07%).

Analyzing the comparative importance of material incentive measures, the experts found the following motivational measures to be most effective: the organization of remuneration depending on the achievement of professional performance indicators (59.06%), the payment of bonuses for the performance of especially important and difficult tasks based on work results (64.29%), raising the level of civil servant wages to competitive one at the labor market (63.78%).

Taking into account the general research task - to reveal the mechanism of the professional potential of regional management transformation into the indicators of its effectiveness and efficiency - it is worth noting in this study the ways they perform the aggregation of individual potentials of state and municipal employees into the competence potential of governing bodies.

The result of the studies in this direction was the cumulative technology we developed for computer assessment of the competence potential of regional government employees.

The analytical capabilities of the technology involve the evaluation of the regional government competence at various levels:

- individual competence potential (individual level) - involves the assessment of a particular employee who is in a particular position and performs the functions corresponding to that position. The need for this type of assessment is associated with the ability

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to determine the conformity of the position, individual work in problematic (scarce) competencies, the formation of individual professional development cards, administrative decisions on career and reserve strategies of a professional. Individual competence potential, both functional and promising, is a working tool for personnel and organizational planning. Personnel reserve personification can be used both at the regional and federal levels, provided that a regional and federal personnel portal is formed - the database of profiles and personalities that can satisfy certain requirements of a functional or prospective order, formed both at the local and federal levels;

- job competency potential (job level) - involves the cumulative assessment of some position, the possibility of functional and prospective order provision by the competency-based capabilities of the job subculture personnel who are in job niches, as well as an extrapolated forecast of performance and indirect regional indicators related to the functional main of the assessment. Such an aggregate assessment allows the global analysis of the regional government position and determines the corrective educational order;

- competency potential of management (structural level) involves a cumulative assessment of the department competency potential, which may be regional management departments, as independently functioning cells of the regional government and the elements of a single mechanism, to correct its competency deficit and determine the "weak" link of regional management. The emphasis of analysis at this level of assessment shifts from personal and official performance to the aggregate activity result of a department, which is possible with the existing competency picture. The forecast of each unit performance of the regional government allows us to anticipate violations in the supply chain of services to the population of the region and prevent consequences that may affect the social well-being and life quality of a regional client;

- the competence potential of the regional government body (administrative level) makes it possible to obtain the synthesis of diagnostic and analytical data on the competence deficit and surplus, functional and promising

problem field, to assess the likelihood of strategic goals and foresight guideline achievement. In fact, this level of assessment is some form of certification of the regional management competency level to the requirements of the social and administrative (federal) order to ensure an appropriate indicator of the region socio-economic development.

The coherence of analysis levels, their hierarchical elaboration, allows us to conclude about the state of local regional management by three main positions: competency-based potential - the effectiveness of activity - the quality of life in the region.

The cumulative assessment technology includes three units: assessment unit, planning unit, and control (correction) unit.

1. The assessment unit combines the functions of multilevel diagnostics and the analysis of the functional competence potential of regional government bodies. This unit consists of the following subunits:

1. The choice of competency profile - includes the personal orientation of an assessed respondent by official groups of regional management. In the case of an exact choice, the set of prototype competencies is first transformed into the competency model of the job group, on the basis of which, the profile for competency evaluation of a particular position is developed. The prototype, the models and the competency profiles of regional employees are in the databases, and can be supplemented, expanded or changed at the request, which allows the use of the program resource proposed for consideration to assess the competence potential of any organization, provided that its local database of competency profiles is created. Moreover, the universalistic potentialities of the proposed product will make it possible to obtain a system program in the database of which specialized complexes of manned organizations can be placed initially. The result of this sub-unit is a specific normative competency profile of the evaluated position, allowing the respondent to see the set of competencies and their implementation levels necessary for an effective performance of the official's functional load.

2. The diagnosis of competence development and implementation level recorded in the job profile, based on indicator models of the prototype

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competency set. This diagnosis can be represented by the data of specific employees or by the statistical majority of the unit. The program features allow you to reproduce comparative charts that reflect the overlap of real and normative competency profiles of jobs or comparative schedules of specific employees. Subunit results are the following ones:

A. Diagnostic and statistics data:

- Evaluation competency profiles of regional employees who have undergone diagnostics (individual level);

- Evaluation competency profiles with the statistical distribution of the posts that have passed the assessment (job level);

- Evaluation competency models with a statistical distribution among the personnel of organizational units that have passed the assessment (structural level);

- Evaluation competency prototypes with a statistical distribution throughout the regional government (administrative level).

B. Comparative statistics data:

- Comparative assessment charts of real competency profiles at an individual level of assessment (personal comparison) - the comparison of indicators of specific employees - helps in making personnel decisions regarding career and rotational changes, when you decide on the formation of a personnel reserve;

- Comparative assessment charts of normative and real competency profiles at the individual and job level of assessment (normative comparison) - allow you to visualize the problem deviation or the competency norm excess;

- Comparative evaluation charts of competency-based model indicators of regional government body units (structural comparison) - the use of comparative and competitive mechanisms in the development of labor collectives, as the motivating forms of professional potential development among regional employees. In the case of the expert or administrative formation of the normative competency profile of a unit, there is also the option of normative comparison implementation at the structural level - the specified normative profile for the unit is placed in the program database and can be retrieved

on demand to create comparative competency diagrams;

- Comparative assessment charts of real competency prototypes of regional government bodies (administrative comparison) - a potentially possible form of assessment, subject to network use of the resource and the creation of interregional and federal portals where competency indicators of regional administrative structures will be posted. As in the previous case, through the development of competency requirements for a regional government body by federal experts, a normative competency profile can be laid in the federal portal, with which it becomes possible to compare regions normatively with respect to the competence potential of their employees.

1. The analytical report on the diagnosis involves the development of a problem profile and the determination of functional competency deficit and surplus, presented in the form of a qualitative, quantitative and prognostic indicator.

- The qualitative indicator of functional competency deficit is a set of deficient competencies, indicating the required level of development and its indicator characteristic. The qualitative indicator of a functional competency surplus includes the set and the description of competencies whose development level exceeds the profile requirements;

- The quantitative indicator of the functional competence deficit is an integral coefficient of the functional load implementation effectiveness among employees and makes it possible to assess its performance. The quantitative surplus indicator makes it possible to obtain the coefficient of professional potential that is not used when you fulfill the functional load and to determine the probability of occurrence of all directions (scenarios) of professional regression pathologies. The analysis of this indicator in conjunction with its high-quality analogue, its correlation with functional requirements, suggest personnel changes and the change of official assignment complexity level;

- The prognostic indicator of deficit and surplus - makes it possible to establish the relation and clearly demonstrates the areas of possible problems and (or) success of the activity and the growth and (or) decline of performance indicators (directions and

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indicators) of the subject and higher level activity.

The analytical report on all indicators can be done at all levels of regional management competence potential evaluation: individual, job, structural and administrative. For the full implementation of all analytics capabilities at the structural and administrative level, it remains an important technical condition to create and place normative functional competency profiles of the same departments and a single regulatory profile for regional governments in the software base or on the regional, interregional and federal portal.

The results of this sub-unit are the following:

- The list of deficient competencies (mismatch with the functional order) for the individual and structural level. In the case of unit and body regulatory profile development - also for the structural and administrative level;

- The list of surplus competencies (functional order exceeding), with the same conditions of presentation;

- The coefficient of the functional load efficiency (maximum indicator 1), the same conditions of the coefficient calculation at all levels of assessment;

- The coefficient of unimplemented competency potential, epy indicators of pathological scenario likelihood for the development of a professional situation (professional regression, stagnation and burnout);

- The list of specific performance indicators of an employee, the main line, unit or body, as well as indirect indicators of the socio-economic development of the region, decreasing as the result of the functional competence deficit;

- The list of specific performance indicators of an employee, the main line, unit or body, as well as indirect indicators of the socio-economic development of the region, increasing the presence of a functional competency surplus.

2. The planning unit includes the functions of strategic orientation (foresight goal-setting) and strategic assessment of the competence potential for regional management. The

following subunits are located in this unit:

1) The definition of foresight goals and strategic objectives consists in a qualitative assessment of development prospects, political vectors, strategic priorities, which is transformed into high-quality managerial positions regarding the desired future and specific tasks for their achievement. The tools of the section are the clarifying concept windows, as well as the relevant material of programs, the strategies and the documents for planning policy and the Russian Federation and region development proposed for consideration. Concept windows offer step-by-step instruction for the development strategy determination in respect of regional management personnel, offering the user guiding questions and the options for expert assessments and suggestions on foresight goals and objective modeling. The result of the subunit is a formulated strategic landmark and strategic objectives in key areas of regional development.

The potential of the program allows you to accumulate the results of work on this subunit in the database and carry out the comparative and integrating function of the resource:

- the comparative function of the subunit is implemented by comparing two or more variants of the strategic vision of the region foresight scenario;

- the integrating function is the combining of the selected intelligent products in the database and their provision to the user as a single heuristic result of experts.

The level assessment is presented in this subunit as the possibility of strategic modeling of level tasks, with a consistent decrease of the hierarchical status: regional level - administrative level - structural level - job level - individual level. Moreover, the variability of goal hierarchy development allows the use of different procedural approaches:

- conceptual approach - a generalized version is possible, in which one basic level (for example, regional) is developed, which averages the requirements, but sets the boundaries of strategic and personnel guidelines for all levels.

- centralized approach - the entire hierarchy can be determined by

one expert or a group of experts at the same time;

- decentralized approach - the entire hierarchy can be determined by one expert or a group of experts at the same time. This approach can be implemented in two ways:

1) direct planning of the strategy - expert opinions can be used that are reference for assessment levels - a federal expert can formulate and post general strategic guidelines for the federation (federal level) on the federal portal; the heads of regional representations form the foresight strategies for a governing body (administrative level); the heads of structural divisions - the strategic guidelines of departments (structural level); job elites - the strategies for the job line development (job level); employees formulate personal professional strategies (individual level). Such an approach requires the consistent filling of all hierarchies, with the orientation to the previous heuristic;

2) top-down strategy planning - a federal expert can formulate and post general strategic guidelines for the federation and regions on the federal portal (federal and administrative level); the heads of regional offices formulate foresight strategies for departments (structural level); the heads of structural divisions - the strategic guidelines for positions and personnel (job and individual level); official elites - the strategies for the development of specific officials (individual level).

1) The development of a prospective competence profile - the profile is developed on the basis of an expert evaluation of the previous goal-setting and involves a consistent correlation of the selected guidelines for the development of the region with the competencies of the prototype. The result of the first stage is a promising competency model of a foresight expert. The second stage of the section is the definition of requirements for model components, which allows you to develop the competency profile of a promising expert (the expert of the future, foresight expert), whose presence is the prerequisite for promising area of strategic planning achievement. Such a result of the subunit will be obtained in the case of the main regional strategy development (conceptual planning) for the previous actions of the expert. In three other cases (centralized and

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decentralized approaches to planning), the result is a set of hierarchically arranged target profiles, each of which represents a personnel benchmark for the respective regional management services.

2) The assessment of the compliance of posts with a specific long-term profile of competencies, involves the diagnosis of individual, official, structural and administrative compliance with prospective competence potential. It can be carried out both by individual diagnostic methods (accurate assessment), and by expert determination of the necessary competence availability in groups or in the management body as a whole. The diagnostic procedures result of data monitoring, as well as comparative statistics similar by positions to the diagnostic sub-unit in the evaluation unit.

1) The analysis of the prospects for strategic goals and objective achievement on the basis of the existing prospective competence potential allows us to assess the likelihood of prospect implementation and determine the zone of prospective competency deficit or surplus. Consideration of this position from the point of view of specific competency-based characteristics allows for personnel planning and the launch of a mechanism for personnel potential reproduction in accordance with long-term requirements. These opportunities for promising action are especially relevant in the area of regional and federal government, and allow you to anticipate the equipping of administrative tasks and goals with appropriate professional support.

During the analysis, the function of strategic landmark planning correction (returning to the first planning sub-unit) can be implemented, which is possible in two directions:

1) The decrease of requirement level for the competency indicator, due to the groundlessness of the prospective request;

2) The increase of requirement level for the competency indicator, due to the presence of a surplus of competencies, or the development of new strategic guidelines that expand the horizon of long-term planning, due to the presence of unused, promisingly important professional potential.

The results of this sub-unit are the following ones:

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- the list of deficient competencies (inconsistency with the prospective order) for an individual and structural level. In the case of the regulatory profile development of the unit and body - also for the structural and administrative level;

- the list of surplus competencies (a prospective order exceeding), with the same conditions for submission;

- the list of problematic strategic tasks that are not equipped with competence support.

3. The control unit (correction). This unit includes four subunits.

1. The correction of functional competency deficit involves the consideration and the selection of educational correction programs. The programs are a downloadable unit and are updated according to the current offer of the educational services market of the regional DPO and interregional and federal centers. In addition to this function, the subunit provides for applying to the reserve of the Federal Portal, where reservists with the required competencies can be selected. If there is a lack of competencies within the framework of the official, structural and administrative level, a competency request may be generated in the Federal Portal (for one or several competencies) - in this case, the selection of a reservist is carried out by competency surplus analysis. The result of the subunit is the following:

1) the educational matrix, the development of which can be carried out at all levels of analysis (individual, job, structural, administrative), which is the report on the necessary educational programs that correct the existing functional competence deficit in terms of replenishment. Such a matrix plays the role of an educational order for educational service providers of a corporation, a region, and the Federation;

2) a functional competency order, consisting of deficient competencies, sent to the Federal Portal of Competency Management, and which is the guide during managerial decision making, personnel policy correction and rotation program development for regional personnel services.

2. The management of the functional competency surplus consists in the qualitative analysis of the surplus characteristics and the formulation of

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promising tasks that can be placed in the regional database and removed from there when you implement the function of long-term planning - and is offered to the manager as the options for strategic guidelines. The bearer of the competent competency surplus can be placed in the regional and federal personnel reserve base as the holder of specific surplus competency characteristics and at the same time the owner of a unique competency profile. The room of the reservist is accompanied by the additional processing of his personal and address (official) data (resume), in order to be able to extract complete information from the database and consider it during management decision making. The result of this sub-unit is the following one:

- the list of tasks for strategic planning;

- the candidates for a personnel federal and regional reserve development.

1. The correction of prospective competency deficit involves, in addition to educational correction, the connection to the databases of specialists meeting the competency requirements of the territory, which form the personnel reserve of the Federation and regions, and review their competency profiles against the background of perspective order profiles. Correction based on such a rotation and selection of personnel allows not only to receive timely human resources, but also to make a promising order for the Federal Portal to form an appropriate personnel reserve. As part of the work in this subunit, a request can be made to the Federal Portal, where the required promising profile or the scarcest competencies is loaded into the order area. In response to the request, the list of personnel service respondents capable of implementing the strategic guidelines of a specific Federation subject is formed in the database of the Federal Portal. The result of the work is a promising competency order of the subject and the list of reservists.

The management of a prospective competency surplus involves the actions similar to the actions of the functional surplus management unit, but at the same time, it makes it possible to review the level and the range of strategic tasks in accordance with the increased human resources of the regional government

5 Conclusions

1. As a result of the study, they substantiated and offered the solution to the problem of the competency-building potential aggregation of regional management — individual, official, structural, administrative through cumulative technology and computer assessment — has been substantiated and proposed.

2. The description of the cumulative technology is provided, consisting of assessment, planning and management units (correction).

3. The assessment unit includes subunits: the choice of competency profile; diagnostics of development and implementation level of the competencies recorded in the job profile; the analytical report on the results of the diagnosis, which involves the development of a problem profile and the determination of functional competency deficit and surplus, presented in the form of qualitative, quantitative and prognostic indicators.

4. The planning unit, performing the functions of strategic orientation and strategic assessment of competence potential, includes the following subunits: determination of foresight goals and strategic objectives; building a promising competency profile; assessment of the compliance of positions with a promising competency profile; analysis of the prospects for strategic goals and objective achievement on the basis of the existing prospective competence potential, which allows to assess the likelihood of prospect implementation and determine the zone of prospective competence deficit or surplus.

5. The control (correction) unit provides for the correction of functional competence deficit, the management of functional competency surplus, the correction of prospective competency deficit, and the management of prospective competency surplus.

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EDUCATING THE SOCIAL DISCOURSE ASPECTS OF THE XIX CENTURY WITH THE CASE OF KREUTZER SONATA" L.N. TOLSTOGO

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Abstract: "Kreutzer Sonata" L.N. Tolstoy is one of the key works of the late XIX century. The publication of the story served as an impetus that caused a wide discussion of the problems of family, marriage, gender, and the status of women. The ban on censorship only contributed to an increase in interest in the story. Kreutzer's sonata was read not only in capitals and large cities, but also in remote counties. The object of discussion was family values based on the concepts of marriage set forth in the Bible and the teachings of the Holy Fathers. The words of the main character of Pozdnyshev show flaws in the Orthodox marriage.

Keywords: L.N. Tolstoy, The Kreutzer Sonata, social discourse.

1. Introduction

"Kreutzer Sonata" L.N. Tolstoy was a momentous event in the socio-political life of the end of the 19th century, which caused a wide public resonance not only in our country, but also abroad. Its name corresponds to the name of the chamber sonnet of Ludwig van Beethoven, which indicates the particular importance of this musical institution in the context of the story [3], [4], [5], [6]. Exact quotes of the Gospel texts, taken as an epigraph to the tests, speak about the philosophical perception of the problem of the story, set the moral reference point of the work. The story was initially banned by censorship. Despite this, it spread throughout the country and in "distant provincial

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backwoods, almost everyone belonging to the so-called society considered it their duty to get out sometimes with great difficulties to read this work" [15: p. 15]. Permission to publish the story was obtained only after a personal meeting between the wife of the writer Sofia Andreevna and Alexander III.

2. Discussion of the Problem

2.1 Discussions related to the release of the novel "The Kreutzer Sonata" by L.N. Tolstoy

Immediately after the release of the story (1891), both enthusiastic and sharply criticizing articles appeared in the press regarding the problems of the family and marriage, the status of women, discussed by the heroes of the Kreutzer Sonata. V.A. Zhdanov in his work "Love in the Life of Tolstoy" traced the evolution of the writer's views on family and marriage, examining the family life of Tolstoy. The researcher believed that the "Sonata" condemns vices and glorifies morality, condemns "selfish love that interfered with the continuation of the family" [5: p. 62-63]. The publication of the story caused the appearance of articles on the status of women in Russian society, which has been developing for a long time, ideas about Christian marriage, male and female virtues. In Russian society, family values were based on Christian concepts of marriage, which were set forth in the Bible and the teachings of the Holy Fathers. By the end of the XIX century. the need has ripened for reforming the institution of the family. This fact was also recognized among the clergy, but there was no unity of opinion. In family matters, the Church defended the Orthodox canons. In his works, Tolstoy reflected in many respects the opposition to the Church views on the problems of Christian marriage, which led to the discontent of the clergy. So, in the sermon of the Kharkov archpriest Butkevich, it was said that Tolstoy's works were distinguished by "destructive power and corrupt character", and "Kreutzer's sonata" was characterized as "clumsy, dirty and immoral story" [Cit. according to the book: 12: p. 180]. Beginning criticism of the views of the writer subsequently resulted in the "Definition" of the Synod. As far as the writer was concerned, the problem of family relations raised by him, we can judge from his diary entries: "And then I wrote and write a story, a

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story about carnal love, sexual relations in the family. And this is more serious. Maybe not necessary And as always, when busy with good things, in this direction, supporting him, external events take shape. The other day I received letters and brochures from shakers from America. Do you know their teachings? Especially against marriage, i.e. not against marriage, but for the ideal of purity beyond marriage" [16]. For women and sexuality, Tolstoy throughout his work was controversial. Gradually he moves away from the denial of marriage. This can clearly be seen in the example of his late work. Tolstoy sees the meaning of a woman in childbirth and helping her husband (see L.N. Tolstoy "The Truth About Women"). Only a woman can give birth to a man, therefore, a woman's life is comprehended by the call "to give birth, feed and raise the greatest number of children who are able to work for people according to her worldview" (see L.N. Tolstoy "On Women"). To "grasp the worldview of her time", a woman does not need special education, she does not need to participate in social work, she only needs to "read the Gospel and not close her eyes, ears and, most importantly, hearts". Men and women are equalized before God in the call to serve him, but their forms of service are different. Thus, the work of the writer "Sexual Lust" and "On Women" is permeated by the idea of keeping the body and soul in chastity, as it "gives incomparably more benefits than even a happy marriage" (L.N. Tolstoy "Sexual Lust").

2.2 Disclosure of the views of L.N. Tolstoy on the "family issue"

The basis for the plot's concept was a letter from an unknown woman, which was received by Tolstoy in February 1886: "So, the main idea, rather, the feeling", Kreutzer sonata "belongs to one woman, a Slav who wrote me a comic-writing letter, but remarkable in content about the oppression of women by sexual demands".

In the "Kreutzer Sonata" L.N. Tolstoy [16] innovatively develops the theme of family and marriage, raises the problem of sexual relations between a man and a woman, shows the flaws of Orthodox marriage, gives a "new" interpretation of Christian dogmas (through the lips of the hero of Pozdnyshev), which causes a lot of

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controversy. The main opponent of Tolstoy, Archbishop Nikanor called Tolstoy the discoverer of the topic of sexual relations, and in the article "Conversation on Christian Matrimony Against Gr. L. Tolstoy “compares the “Kreutzer Sonata” and the novel by N. G. Chernyshevsky “What to do?”. Nikanor believed that the Kreutzer Sonata was harmful. “In our judgment, this new gospel is the word of a madman who decisively survives from the mind” [11: p. 46]. M.I. Spassky admired the “Kreutzer Sonata”, believing that Tolstoy was able to arouse highly moral feelings: even young men undergoing debauchery created circles in order to maintain physical purity before marriage [13: p. 5]. The writer expressed his view of the modern family in the words of his hero Vasily Pozdnyshev: “Our people get married without seeing anything other than copulation in marriage, and either deception or violence comes out. When cheating, it is easier to tolerate. Husband and wife only deceive people that they are monogamous, but live in polygamy and polygamy. This is nasty, but still coming; but when, as it most often happens, the husband and wife made an external obligation to live together all their lives and from the second month they already hate each other, want to break up and still live, then that terrible hell comes out from which they get drunk and shoot kill and poison themselves and each other" [16].

Thoughts L.N. Tolstoy regarding the meaning and significance of marriage had a public outcry. Many modern researchers believed that the concept of “universal chastity” is connected with the mental state of the writer at that moment and his personal biography. The heroes of the “Kreutzer Sonata” touch upon many aspects of the sexually reproductive side of the marriage: taboo of sexual relations during pregnancy and lactation, contraception, the problem of love as the basis of marriage, divorce and marital fidelity. Through the lips of heroes, the writer conveys to his readers his views: “And fear must be the first thing in a woman”; “As she, Eve, the woman, was created from the rib of a husband, she will remain until the end of the age”; “We need to shorten the female gender ahead of time, otherwise everything will be lost”; “In our country, people marry without seeing anything other than copulation in marriage. And it’s either

deception or violence ", etc. [16: p. 126-131. The debates that unfolded on the pages of the press prompted Tolstoy to justify his views and in 1890 the writer presented to the public an "Epilogue to the Kreutzer Sonata", in which he summed up his thoughts on marriage: "There can never be a Christian marriage and never was. ... The ideal of a Christian is love of God and neighbor, is renunciation of oneself to serve God and neighbor; carnal love, marriage, is self-service and therefore, in any case, is an obstacle to the service of God and people, and therefore, from the Christian point of view, it is a fall, a sin"[16: p. 124 - 125]. Love for God and neighbor implies renunciation of oneself in their name. This is the ideal of a Christian. Marriage does not contribute to the service of God and people. The gospel reflects the ideal of complete chastity: a married man does not need to divorce his wife to marry another, a person (married and unmarried) has a sin to look at a woman as an object of pleasure, an unmarried man does not have to marry to be chaste. According to the writer, it is important to understand that "abstinence, which is a necessary condition for human dignity in an unmarried state, is even more necessary in marriage". M.I. Spassky, having analyzed from the point of view of the Church the provisions cited by L.N. Tolstoy in the "Afterword" concludes: "Only he could, from the fact that Pozdnyshev's marriage was a blasphemous insult to the sacrament of marriage, deduce that in general Christian marriage is a deception and a lie" [15: p. 20]. Thus, not understanding the essence of the subject of love and accusing the Church of deceit. According to Tolstoy, family ties do not justify sexual passion. Sexual (or carnal love) is the strongest, "because if passions are destroyed and the last, most powerful of them, carnal love, the prophecy will be fulfilled, people will unite together, the goal of humanity will be achieved, and there will be no need for him to live" [16: p. 146). Awareness of one's spirituality is necessary to combat "lust," only in this case, sexual passion will appear to be "what it is: a humiliating animal property" [16: p. 9]. Children are atonement for sexual sin, and "a marriage consisting in giving birth and raising children is mediocre service to God through children" (see: L. Tolstoy About Women "This marriage, with its ensuing consequence – the birth

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of children – defines a new, more limited form of service to God and people for those who marry. Before marriage, a person directly in the most diverse forms could serve God and people; marriage, however, limits his area of activity and requires him to return and educate offspring descending from marriage, future ministers to God and people" [16]. However, marriage is not a means of having children. It is possible to educate ministers to God and society by adopting and adopting children: "it is much easier to maintain and save those millions of children's lives that perish around us from lack of, not to mention spiritual, but material food" [16: p. 116, 118, 125]. According to V.A. Soloviev, using the example of the Pozdnyshev family, Tolstoy demonstrated what marriage should not be [14: p. 30]. An even greater crime of morality is sexual intercourse, in which the possibility of having children is prevented, and the severity of the consequences is transferred to the woman. The writer concludes that abstinence is also necessary in marriage. In carnal relationships, the birth of children is perceived as a hindrance to the continuation of love relationships. Intemperance during pregnancy and lactation destroys the "mental strength of a woman". Russian philosopher and theologian A.F. Gusev approached Tolstoy's understanding of the family somewhat differently. He noted that Tolstoy acknowledged the fact of the existence of one percent of marriages: "those who" believe in the sacrament of marriage "and" go to church "do not look" as an empty formality "are happy in family life" [9: p. 46]. L.N. Tolstoy condemned premarital sexual relations and opposed the widespread assertion in society that sexual intercourse could be good for health: "I heard that my struggles and pains subside after that, I heard it and read it, I heard from the elders that it would be good for health OK; I heard from my comrades that there is some merit in this, youth" [16]. Parents, under public influence, "institute debauchery". The author concludes: "So I wanted to say that this is not good, because it cannot be that for the health of some people it would be possible to destroy the bodies and souls of other people, just as it cannot be that for the health of some people it is necessary was to drink the blood of others. "When solving pedagogical problems, parents should "set other goals

for themselves, except for a beautiful, well-groomed body", in which sensuality is "kindled" early and "terrible sexual vices" are formed. The writer also opposes chanting in novels, songs and poems of carnal love. Men and women should "stop thinking that carnal love is something especially elevated on the contrary, falling in love and connecting with the object of love (no matter how hard they try to prove the contrary in poetry and prose) never makes it easier to achieve a worthy person's goal" [16: p. 117-127].

3. Summary

Thus, L.N. Tolstoy in the "Kreutzer Sonata" raises the socio-ethical aspect of marriage and family relations. Numerous critical articles indicate that this story was perceived as a challenge to public opinion. The significance of the story lies in the fact that it caused a public outcry. Writers, poets, philosophers, clergymen and statesmen drew attention to the problems of family and marriage.

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CHARACTERISTIC OF PERSONNEL READINESS FOR CONFLICT MANAGEMENT IN THE PROMOTION OF TECHNOLOGY

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Abstract: The analysis of the personnel competence, reflected in the professional standards, allows us to identify the main areas of training that have a positive impact on the challenges of the technology. At the same time, employees of the organization, as a rule, have different professional training and practical experience. From this perspective, the phenomenon of in-house training of the personnel is updated, under which the training is carried out on the basis of the organization and aimed at achieving the objectives to develop it. Communication, as a mechanism of using communicative skills that can have both positive and negative effects, occupies a leading position in the professional activities of the personnel. Thus, it is connected, in most cases, with

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conflicts, in particular, the lack of personnel preparedness and readiness to manage them. Researchers are actively engaged in finding the ways to prevent and resolve conflicts, using various forms of post-graduate training, including in-house training of adult audience.

Keywords: Technology, Characteristic Of Personnel, Management, Conflict

1. Introduction

1.1 Introduction to the Problem

According to A.M. Zimichev, E. A. Klimov, N.V. Kuzmina and others, professional activity takes a special place among the diverse activities of the person. Since it constitutes the basic form of a person's activity, a significant part of human life is devoted to it. The majority of people find this type of activity as the only opportunity to satisfy the whole range of their needs, to reveal their abilities, to assert themselves as an individual and to achieve a certain social status.

By identifying the role of conflict in the lives of people and society, studying its positive functions and understanding it as an important component of personality development, modern researchers have shifted the focus from resolving a conflict, which involves complete freedom from it, to managing a conflict and defining effective strategies for the behavior of the participants in conflict situations [22]. In these terms, the forming of the employee's readiness to manage conflicts becomes relevant for various fields of activity, including professional one. The forming of personnel readiness to manage conflicts in professional activities can be described as systematic accumulation of positive quantitative and qualitative changes, including knowledge, skills, and personality traits, acquired in the in-house training system that can ensure constructive interaction between the employees in the conflict management process.

One of the important aspects for the organization of this type of training is the forming of the personnel readiness to manage conflict according to the structure of this type of readiness. This involves identifying a number of components, determining their content and clarifying their functions, which will allow us to organize a targeted process of its forming.

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1.2 The Urgency of the Problem

In terms of social change and the growing economic contradictions, the level of conflicts among employees significantly increases in the organization. The presence of conflicts in the process of professional activity of the person is a constant, objective and inherent phenomenon. Without proper management, conflict situations can grow in a destructive way and have a significant impact both on the psychological safety of individual employees and on the effectiveness of the organization as a whole [20]. This determines the need of the organization in shaping the readiness of employees to manage conflicts in their professional activities.

It is established that to a certain extent, this problem is solved with the use of in-house training opportunities, which make it possible to organize the educational process according to the requirements of your organization. Modern in-house training has a sufficiently high potential, which is currently not used in full, because it is often limited to specific professional areas without affecting the social problems of improving the activities of the organizations. One of these areas, allowing to significantly rise the efficiency of the organization is the forming of the employees readiness to manage conflicts in the process of professional activity.

1.3 Study of a Problem

In terms of the historiography of the problem that has had a significant impact on its current state, the scientific data of researchers were taken into account in the following main areas using periodization: the forming and development of in-house training (the second half of the 19th century - the beginning of the 20th century); history of conflict studies (beginning of 20 to the present); the birth and development of management theory (end of 20th century to the present). Additionally, this article uses data from the research on the current state of the issue of the forming of employees' readiness for conflict management in a professional activity of the organization (end of the 20th century -21st at the beginning).

A large number of psychological and pedagogical studies are devoted to the problem of the

forming of conflict management readiness, in which the problems of activity readiness of an individual are considered (N.D. Levitov, A.R. Luria, G. Walter, A.A. Ukhtomsky and others), professional readiness (I.A. Zimnyaya, N.V. Kukharev, L.M. Mitina and others), general management theory (V.G. Afanasyev, I. Ansoff, M. Meskon, G. Hale, etc.), conflict management in professional activity (T.A. Artemova, F.M. Borodkin, N.M. Koryak, L.N. Chumikov, U. Yuri, and others).

At the same time, despite the great interest of the researchers to the issues listed above, the problem of the forming of the employees readiness for conflict management at the organization in the process of in-house training remains insufficiently developed.

Historiographical analysis of the problem showed that under current assumptions, demonstrating the relevance of the problem, as well as possibilities for its solutions, the problem was not posed as an independent subject of the study. It remains insufficiently developed, in particular, in the process of postgraduate in-house training of the employees in the organization.

The following issues remain underdeveloped: the structure of the personnel readiness to manage conflicts in their professional activities in the organization, its component composition and informative content; scientific approaches to the forming of readiness for conflict management.

This circumstance determined the choice of the research topic.

1.4 Hypothesis

The article suggests that the forming of readiness for conflict management among employees of the organization in the process of in-house training will be effective on the basis of systematic, environmental, personality-activity approaches which are the basis for determining the structure, content and functions of this type of readiness.

2. Methods

The article uses a methodology based on a combination of systemic, environmental, and personal activity approaches. The choice of these approaches is determined by the following aspects: the purpose of the research is to clarify the essence, structure and content of readiness to

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manage the conflict of employees of the organization in the process of in-house training, which allows you to perform a systematic approach; conflict management, its resolution, anticipating, etc. directly depends on the organization's environment, which is provided by the environmental approach; change in personal qualities, taking targeted actions and carrying out a special type of activity focuses on the application of the ideas of the personal activity approach.

To study the identified problem, we have used system analysis methods such as structural and functional ones to identify the nature and structure of the personnel readiness to manage conflict and form the components of readiness under the subsequently targeted control. In terms of the environmental approach, we have analyzed the organization's environment, which implied the identification and organization of the effective functioning of the pedagogical parameters of the environment in which the in-house personnel training takes place. The environmental approach allows us to apply a method of the indirect management of the in-house training process. The personal activity approach is employed by using the analysis of the individual psychological characteristics of the person: motivation, adaptation, abilities, intrapersonal and interpersonal skills, level of aspirations, self-esteem, cognitive style and by taking all these features into account when designing the teaching process in the context of in-house training for adults. A historiographic method was used as well, which allowed us to determine the main stages and results of the research of the problem. The following empirical methods were used: observation, the study of pedagogical experience, testing, questioning, survey, and others.

This allows us to provide the analysis of the current state of the problem of forming the personnel readiness to manage conflict, to predict new trends in the study of the problem, and also to develop technologies for the forming of this type of readiness in the process of in-house adult education.

3. Discussion

Based on the above-mentioned scientific approaches and methods, we have made an analysis of the problem of the forming of the personnel readiness to

manage conflict in their professional activities.

The problem of the readiness of the individual to professional activity was studied by the researchers from the standpoint of various approaches and is interpreted by them as a short-term or long-term state in which the physical and mental resources, that are necessary to effectively stimulate the activity, are activated (E.P. Ilyin, K.K. Platonov, A.A. Ukhtomsky and others) [7, 14, 21]; manifestation of personality qualities in the process of a specific activity (K.A. Abulkhanova, B.G. Ananyev, L.I. Bozhovich) [1, 3, 5].

Single issues of professional readiness of the expert considered in modern foreign studies (G. Moskowitz, J.L.Holland). The authors believe that the personal qualities of an individual, manifested in his readiness for activity, prevail over education and qualifications [23, 24].

We share the view on the understanding of readiness for professional activity of such scholars as E.A. Klimov, J. Raven, A.V. Silkin and others who interpret it as a complex personal forming, which includes the system of professional and personal significant qualities, which allow the individual to quickly adapt to new professional conditions, achieve success in their professional activity and determine the direction of the personal professional growth of the employee [8, 15, 18].

Taking into account the definition of the concept of readiness, which is closely related to a specific activity, in our case, personnel conflict managing suggests that they have formed components of management activities based on an understanding of the nature of the conflict, ways and means of managing it and building relationships in a conflict-prone environment in accordance with strategic goals organization activities [11].

We define conflict management as the purposeful impact on its course in order to change its development. At the same time, depending on the goals of conflict management, its development can both be suppressed and stimulated.

In pedagogical theory and practice scholars consider various aspects of the problem of forming the personnel readiness to manage conflict in the organization. So, in particular,

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when we theorize and methodize conflict management, we take into account the fact that this is a branch of scientific knowledge that develops at the junction of a number of scientific disciplines - conflict resolution studies, social psychology, social management theory, organization theory, and pedagogy.

In pedagogical terms, from the point of view of E.E. Tonkov, the leading goal of conflict management for an employee of the organization is a positive change in the interpersonal relationships of the participants in a conflict interaction [20]. Proceeding from this, we consider the pedagogical aspect of conflict management to be a purposeful polysubjective process of development and a positive change in the interpersonal relations of participants in conflict interaction during professional activity[11].

The analysis of the research on the issue and the generalization of various points of view of the scholars has formed our understanding of the employees readiness to manage conflicts as an integrative quality of an individual which presents a system of motivational, cognitive, emotional and operational activity components. These components provide a targeted impact on the course of the conflict in order to change it and neutralize, the degree of which determines the readiness of an employee to manage conflicts in the process of professional activity.

We consider the motivational component of the personnel readiness be the basis for the forming of all other components, since the success of a professional activity is determined, first of all, by the appropriate orientation of the individual towards it [10, 17]. This component includes: needs and their corresponding motives (improving the quality of their own professional activities; the desire to master the theory and practice of conflict management; increasing professional competence in conflict management), interests (employee's interest in conflict management in professional activities; striving for finding productive ways to manage conflict; striving for personal self-development, self-realization in professional activities); employee's value orientations (accepting the value of mastering conflict management, awareness of the need to manage conflict; awareness of the importance of mastering the theory and practice of

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conflict management), which together reflect the psychological basis of readiness to manage conflict.

Since the forming of employees readiness to manage conflicts requires a large amount of knowledge about this phenomenon, the cognitive component of readiness is also important. It includes the necessary knowledge about the subject of conflict management, in particular, the knowledge about the readiness for conflict management; the information on the general principles of conflict management, which allows to diagnose the presence and causes of conflicts, to determine how to manage conflict effectively; the basics of management that allows to have a targeted impact on conflict interaction in order to prevent or resolve it; fourthly, the knowledge of methods and practical techniques that allow to carry out conflict management in the process of professional activity.

The researchers in the field of conflict management also pay great attention to emotions (A.Ya. Antsupov, L.A. Kozer, V.P.Ratnikov, A.I. Shipilov, and others). The emotional component in the employee's readiness to manage conflict implies the availability of emotional intelligence, emotional creativity, emotional culture, determining an adequate understanding of a communication partner, the ability to regulate their own emotions, not to respond with aggression in an unexpected situation, to mobilize in non-standard situations, adjusting their attitude and behavior [4, 9, 16].

The social skills identified by K. Saarni are greatly significant for us, too. They contribute to the development of the emotional component of the employee readiness to manage conflicts in the process of professional activity and include: the awareness of one's own emotional states; the ability to distinguish the emotions of other people; the ability to use the vocabulary of emotions and forms of expression adopted in a given culture (or subculture); the ability of empathic inclusion in the experiences of other people; the ability to cope with their negative experiences using self-regulation strategies that minimize the intensity or duration of such experiences (remove the "burden of experiencing") [25].

Operational and activity component characterizes the activities of

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an employee in conflict management, integrating the content of the above components. This component is also manifested in the skills required for an employee to manage conflict in the process of professional activity. The degree of the development of this component reflects the practical readiness of the employee to manage conflicts during their professional activity.

Determining the component composition of these skills, we have analyzed the classification of the skills, built according to the functions of the activity (N.V. Kuzmina, A.M. Zimichev, G.G. Noskova, and others) [2, 13], the stages of conflict management (E.V. Burtovaya, L.N. Tsoi, and others.) [6, 22], the logic of management (D.A. Novikov, and others) [12].

Definite skills were identified in the structure of readiness for conflict management in professional activities in the order of their use in the conflict management process. The following skills are related to them: determining the conflict situation; determining the type of conflict, its specific characteristics, causes, parameters and participants; determining the stages of the conflict; identifying and using means of influencing conflict; making conclusions on the analysis of the conflict and the peculiarities of its resolution to change the relations in the organization and determining the ways of their own improvement.

Each component of employee readiness to manage conflict has corresponding functions: motivational - stimulating function - the forming of psychological readiness for employees to manage conflict in the process of professional activity; cognitive - informing and orientation functions - the acquisition by an employee of a certain system of knowledge on conflict management in the course of professional activity; emotional - informational, evaluative, regulatory, ensuring an adequate understanding of a communication partner, the ability to regulate one's emotions, not to show aggression and mobilize in non-standard situations; operational activity component performs regulatory and evaluation functions of conflict management among employees and is developed through appropriate skills.

The in-house training involves the development of scientific and

pedagogical support, which we consider as set of substantive, organizational, pedagogical and procedural tools that are necessary for organizing and developing the process of forming the employees readiness to manage conflicts in their professional activity, which we consider as a further research perspective.

4. Conclusion

The analysis of the research on the issue has revealed its relevance due to a significant increase in the conflict potential in the professional activities through the change in social and economic conditions, insufficient readiness of the personnel to respond adequately to the circumstances of the professional environment, and insufficient theoretical and methodological development of these issues in the theory and practice of postgraduate education.

In modern scientific literature, the readiness of an individual to the professional activity is understood as a complex personal forming, which includes the system of professional and personal significant qualities, which are entirety responsible for the rapid adaptation to new professional conditions, the success of the professional activity, and determine the direction of the personal professional growth of the employee.

Management in social systems is determined to be understood as a conscious, purposeful impact on the social system as a whole or on its individual elements and it is based on the use of inherent in the system of objective laws and trends, the purpose of which is to streamline the organization of the system, to achieve its optimal functioning and development.

In accordance with this, it has been established that the readiness of an employee to manage conflicts is an integrative quality of an individual and has a systemic organization and serves as an aggregate of motivational, cognitive, emotional, and operational activity components.

The findings state that the forming of the personnel readiness to manage conflicts in their professional activity can be carried out efficiently within the framework of in-house training, conducted on the basis of the organization, taking into account the systematic, environmental, and personal activity approaches.

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IMAGE TOOLS OF USING POEM IN SPONTANEOUS SPEECH

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Abstract: The article presents a figurative component in spontaneous speech. It is proved that an image enriches speech, and provides its individualization. Imagery testifies to the creative potential of an individual. It represents a deviation from accepted communicative cliches. Experimental word formation is considered as a source of imagery. A significant role is played by the phenomenon of abbreviation semantics in the process of nomination and renomination.

Keywords: speech, word formation, image, communication unit, individualization of speech, word creation.

1. Introduction

Imagery, as the initial category of artistic discourse, is based on spontaneous creativity of living colloquial speech, which is understood as a non-standard type of nomination or predication. In both cases, the appearance of an image is associated with the transforming action of an author or a speaker, his desire (sometimes

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subconscious one) not to use, but to "influence the language" [5, p. 56]. This deviation from cliches and model conventions accepted in communication is aimed most often at the information flow or narrative sequence revitalization with a "spectacular" effect – a bright figurative "inlay" [19, p. 8], "shaking automatism" of perception [10, p. 76] and enhancing the expressive aspect of an utterance. From a pragmatic point of view, speech expressiveness increase invariably reduces its information content, which, in turn, determines the functional limitation of figurative means [17]. However, this situation, traditional for stylistics, has recently undergone significant changes under the pressure of communication "image" nature in the public sphere [1], [12], [15]. The illocutionary power of a speech act and the perlocution that was not obvious in it is appreciated much higher than information accuracy. Imagery allows not only to draw the attention of the audience to certain (sometimes secondary, non-essential) aspects of a problem, but also to emphasize a speaker's individuality, including the degree of his creativity. Thus, the demand for imaginative means in modern communication technologies determines the relevance of research aimed at observing and clarifying the mechanisms of linguistic influence, also by the means of creative deviations.

The study is based on the material of creative phenomenon files of the Department of Russian, Slavic and General Linguistics, the Taurida Academy of the Crimean Federal University named after V.I. Vernadsky. The bank of figurative names of aircraft abbreviations was formed on the basis of Internet sources.

2. Problem Discussion

Experimental word formation as imagery resource. The very concept of deviation is based on the concept of "norm" [7] not only as a theoretical basis, but also as a source resource. The figurative component arises not only during various types of semantic transfers, but also during morphemic combinatorics or morphological category shifts [14, p. 21]. In this case, the degree of derivative expressivity will vary according to the degree of used base violation.

The basic concept of speech experiments in the field of morphemics

is the concept of division. Contrary to the concept accepted in linguistics about the idiomatism of a word [16, p. 5] in live speech, a lexical or phraseological unit is perceived as "a construction consisting of individual elements with a clearly recognized meaning" [19, p. 74]. During the stage of an utterance development, an active choice is made of those drill elements of a word that most accurately express the objectified [16, p. 8] perfect meaning. In a situation of synonymy of homogeneous elements, their spontaneous imposition can occur, causing unconscious reservations that do not have creative potential, but testifying to dissected perception of a word and morphemic combinatorics in a speaker's mind [10, pp. 106-107]. Of course, the enrichment of speech with imagery has a purposeful nature and testifies to the creative potential of a personality as a whole.

The technique of morphemic combinations consists in the collision of a model with the grammatical task of the syntactic scheme [A.M. Peshkovsky, cit. from 10, p. 120], which is the factor stimulating creativity in practice. In such a sequence situational units arise, like *перееd*, *правдун*, or verb derivative nominations *обрахититься*, *облимонить*, *цукатиться*, *ярчить*. The creation of these units in speech is "provoked" in a certain way by situation components and statement structure. So, for example, the substitute for the verb переесть is represented by the noun: "*Я не могу, у меня перееd*" in response to the sentence "доедать оставшееся угощение". Given the construction of the phrase, it cannot be ruled out that the noun перерыв should have appeared in the position of the predicate (compare: **Не могу, у меня перерыв*), whose structural correlation with the semantic verb *переесть* brought to life an occasional nomination. The occurrence of the unit *правдун* in the speech of the child's offended friend is also dictated by syntactic parallelism and model scheme: *Я не врун, я правдун!* The element of spontaneous communication dictates the maxims of semantic compression when the normative prevalence of one part of a statement contradicts the task of expressiveness (cf.: **Я не врун, я говорю правду!*). Rhetorical conformity has a decisive effect on the derivational model violation: *вра-ть* + *-ун-* / *правд-а* + *-ун-*.

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The change the part of speech belonging of the producing base is the most radical deviation within the productive type. However, expressivity can also be achieved with a smaller deviation, an example of which is the verb formant *-и-(ть)*. The wide range of verb derivation using this affix allows the production of situationally accurate predicates. The meanings of the verbs *обрахититься, облимонить, цукатиться, ярчить* are open and interpreted out of context due to the visibility of the producing principles: ‘to become rickets, to weaken’; ‘to stain with lemon, lemon juice’; ‘to turn into candied fruits, sugar’; ‘Use something extremely bright’. In these occasionalisms, the verbal image is more consistently attracted to a specific object of content [2, p. 73]. With equal clarity of situations, the degree of occasionalism expressiveness is different: *облимонить* - describes the action in accordance with the model value 'to cover the surface with something uniformly', like the verb *ярчить*, implementing the meaning of the model 'endow with the quality called derivative adjective' (compare: *белить, синить*). At that, the prefixal-postfixal model *об- + -ся* with the meaning of ‘bringing the action on oneself to a certain limit’ is implemented in the unit *обрахититься* with the omission of the verb stage (compare: **рахитить*). The verb *цукатиться* has a smaller deviation from the meaning of the model ‘to be filled or covered with something that is called a noun’. In this case, it is appropriate to talk not about violation of the model components, but about metaphorization, since the phrase "Варенье очень густое, начинает *цукатиться*", contains a convoluted comparison of jam density degree with the hardness of candied fruits and does not mean the actual conversion of products into each other.

The final distribution of occasionalisms on the expressivity scale is the following one: *облимонить – ярчить – цукатиться – обрахититься*. Since the unusualness of word-formation violations invariably attracts attention and makes occasionalism the center of expression, a text-forming tool [3, p. 5], the verb expressiveness обрахититься is evaluated above the rest.

The separability of the word, recognized and exploited by the speakers, prevails over the laws of word

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formation, not only from model to derivative, but also in the opposite direction – with structural re-decomposition, or re-etymologization. The results of the "violent" division of the speech unit demonstrate that it concerns not only de-etymologized or unmotivated (borrowed, in particular) units, but also the words with obvious morphemic composition. The factors influencing this process are ambiguous: on the one hand, during re-etymologization, there is a steady tendency to create homonymous forms within the framework of the language game (*таксист* - dachshund male, *кремировать* – smear with cream), and on the other hand, redevelopment is often accompanied by the development of semantic shades laid in different models. So, in the word обеспечение, the single-root word "*печение*" stands out, but not as a verbal substance, but as the homophone of the word *печенье: Она лишила меня сладкого! Даже печенья! Это же обеспечение моей души!* Naturally, re-etymologization relies on the model value of the formant *обез- / обес-* 'to deprive something, release it from something', which expresses the essence of the situation in a compressive form. The situational meaning also fits into the proper name "Proletarian" reproduced on the bus window as the hallmark of a glass factory. The name provokes the question of the child-passenger about the meaning of the word proletarian. After listening to the vocabulary interpretation, the child examines the window for some time through the slit of which an insect flies and draws a situational conclusion: Proletarian is the glass through which flies fly. This example, with all its obvious comic nature, clearly illustrates the mechanism of the morphemic "adaptation" of the word to situational parameters. At that, the abstract concept acquires all the same subject-specific concreteness.

The imagery that accompanies the visibility of reproduced information can also arise regardless of extralinguistic meanings. So, the husband's response to his wife's tedious and detailed instructions – I'm a donut! – is rather oriented toward systemic laws and, although it follows the above-mentioned tendency toward homonymous re-etymologization, it differs from other examples by the abstractness of the derivative value:

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donut – 'the one, who understood, clever'. At the same time, the influence of the value of the initial form is noticeable – the name of the sweet flour product, which is very appropriate as the means of communication intensification [18, p. 74]. Such cases give reason to talk about the simultaneous manifestation of both values in one unit. This technique, which is very characteristic of poetic speech, is also used in speech, enriching an informative act in a visual way.

Re-etymologization deals with indecomposable borrowed units. Moreover, this process currently gives the results of mixing different linguistic phenomena – the actual re-decomposition of the basis and the adaptation of foreign-language morphemes in Russian word formation. An example of such a mixture is фломастер unit, acquired the meaning of 'master in floristry' in the phrase "*Я тебе такого фломастера на свадьбу нашла!"*, synonymous with the meaning of the word florist. When they compare two units, it becomes apparent that the speaker is striving to isolate the system root *флор-* as the part of an indecomposable unit *фломастер*. However, the factor of individual combinatorics in this case is the cognitive motivation for the subtype revealing: *фломастер* unit differs from the neutral synonym *флорист* not only by expressiveness, but also by the shade of superlative value – 'good, talented florist'. At the same time, the figurative component, which is the part of the occasionalism *фломастер*, turns out to be more expressive than the ugly meaning 'a person by profession, occupation' of the borrowed affix *-ист-* . The truncation of the root of a foreign word *флор-*, observed during re-etymologization, can be considered as the indicator of its further adaptation in the Russian language system when the technique is repeated [8, p. 152].

The examples of renominations caused by a paronymic attraction can be attributed to a variety of structural redegradation [6, p. 102]. These turn out to be the popular "nicknames" of cars popular in modern spontaneous speech: мурзик, мерин, финик, санька. The phenomenon of such renaming is associated not only with the desire to russify and shorten the elongated names of the Mercedes, Infiniti, SsanYong brands, but also in some extent to create the car image through a specific type of

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personification – assigning the name of an animal or a person to an inanimate object. During renaming, there is an axiological component that reflects the owner's satisfaction with his property. A critical assessment is expressed in such renames as маскарад and тазик, each of which distinguishes obsolete car brands Moskvich and VAZ as completely devoid of class features. This is noted when a Moskvich car passes a difficult stretch of road with the comment of another driver: *Смотри, как маскарад пыжится!* The second lexical occasionalism arises in a brief description of an accident: *Представь себе такую картину: летит старенький тазик, вовсе не Шумахер – 60-70 километров в час, – и в яму*. The paronymic influence of Моск-вич – маск-арад forms allows, albeit with difficulty, to identify the brand, while *тазик* can mean any non-modern car, and not just VAZ (compare: ВАЗ-ик – тазик). The illocutionary power of a speech act is aimed in both cases at an expressive image development of a mechanism that has lost the right to be designated as a car. *Маскарад* unit is characterized by the presence of the content sarcastic component that appears in the structure of the predicate *пыжиться* ('make vain, preliminary meaningless efforts'). In this context, the meaning of the systemic form is synonymous with the word *пародия*, which is very common in colloquial speech (cf.: *Не машина, а пародия! Бензин жрет и еле едет!*). The emergence of the unit *тазик* can have not only a phonetic-morphemic explanation, but also a phrasemic one – it is impossible to exclude the appearance of such image as тазика на колесах from the value of a stable combination *груда металла* fixed in usage as the designation of a faulty car. In occasionalism, the transfer of the nomination takes place on the basis of metal products uniting *автомобиль* and таз. In contrast to the sarcastic connotation of the unit *маскарад*, the nomination тазик is perceived more positively in the context, since the comic effect of this nomination is neutralized by the diminutive character of the affix -ик- in its structure, which is reinforced by the diminutive and caressing value of the agreed definition старенький.

The phenomenon of abbreviation semantics in the process of nomination and renaming. The unit of

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modern speech communication is not only a word or idiom, but also a word-abbreviation. The high intensity of modern information exchange and the activity of the tendency towards language economy affect the productivity of nominations of the abbreviation type. The activity of this process is recorded in some studies as the “abbreviation outburst” [4, p. 9], which also has colloquial "origin." The phenomenon of abbreviation nominations confirms that neutral ugly language means have no less figurative potential than multi-valued units or proper names. Abbreviations easily enter into speech and give derivatives, and the plurality of abbreviations in one thematic area invariably leads to renaming of a figurative nature by the type of tropization or homonymization. In other words, an abbreviation is not limited by the possibilities of speech experiments, and thus appears in a number of means of imagery creation.

The most striking and already used version of the abbreviation nest is the reduction of the American company IBM – the world-famous leader in the production of digital technology. The tradition of the abbreviation nomination of new devices with the initial letter of the company name in English (I-phone, I-pad) is learned and developed in Russian. First of all, there are stylistic options for the original calque: iPhone - *Айфоныч* and *Аймобила*, of which the first refers to the onymized model personification: им. *нарц.* + *-ыч- / -ич-*, and the second represents the contamination of the abbreviation and the Russian colloquial equivalent of “mobile phone” phrase. In addition to stylistic duplication in a modern spontaneous dialogue, the derivatives айфонщики and айфобия are recorded, indicating further “sprouting” of abbreviation in Russian everyday life, despite the negative connotation of these units in the sentence: *А тебе не кажется, что наши айфонщики покупают дорогие модели только ради того, чтобы повиппендриваться? Так много вокруг развелось айфонов, что у меня развилась айфобия*. It is noteworthy that inside the first phrase one more abbreviation derivative is contained as additional evidence of this type of figurative derivation activity. A neglectful tone of a generally neutral unit *айфонщики* arises during interaction

with the verb occasionalism that combines the semantics of the abbreviation VIP and the system verb *повыпендриваться*. At the same time, occasionalism, formed by the substitution of the word segment, allows a vivid figurative assessment of the action: the value 'to attract attention, to show off' is specified as 'behave like a VIP person' or 'portray yourself as a VIP person'. The final semantics of the verb is distinguished by a certain diffuseness, which, in turn, is the indicator of the language game. The activity of the abbreviation VIP (from the English VIP) is also confirmed by the fact of its derivative випари, in which the semantics is determined by the consituation – the unit is used to nominate the regulars of a night club VIP zone. Functionally, this abbreviation occasionalism is close to predication, since the affix model contains the indication of regularity, stability produced by an acting person (cf.: *пахарь*, *звонарь*, *токарь*, etc.). A stable phenomenon of colloquial speech is the formation of diminutives, which invariably include a figurative component in their semantics. In this process, the following abbreviations are also used: *дзешка* - from the contraction *д/з* (homework), *океюшки* - from okay (English ok). At that, the imagery of the latter diminutive is phonetically associated with a semantically similar Russian colloquial ладушки formed from the predicate ладно.

The imaginative abilities of abbreviations can be developed along the semantic vector. To illustrate this thesis, the names of Soviet aircraft and helicopters were selected. Each aircraft model has one or more designations. They can be official or informal. The following system was adopted for the official designation of serial aircraft in the Russian aircraft industry: the object had the initial letters of the name of the first general (or main) designer of the design bureau in which this artifact was developed, for example: An (Antonov), Be (Beriev), Il (Ilyushin), La (Lavochkin), Ka (Kamov), Po (Polikarpov), Su (Sukhoi), Tu (Tupolev), Yak (Yakovlev), etc. If there were several designers, then the initial letters of two or three creators of the authors were taken into account: MiG (Mikoyan and Gurevich), LaGG (Lavochkin, Gorbunov, Gudkov). More rarely, an object had one initial letter of its creator's

name: M - an aircraft designed by V.M. Myasishchev. After the initial letters of the surname or surnames the number of the original model, the letter code of the modification (if there is a variant or variants of the model) and in some cases a name (for example, An-8, Be-6, Il-112V, Ka-50 “Black Shark” and etc.). An exception was the marking for fighters, not associated with the name of the chief designer: I-1, I-16, I-153.

The created aircraft in the professional environment and among the military personnel immediately acquired other names, usually figurative, which function in aviation jargon.

Most of the considered figurative nominations of aircraft are based on the design features of an aircraft, primarily on the shape of the fuselage (IL-86, MiG-15, MiG-27, Tu-134, Tu-334, Su-24, etc.), for example, Su-24 – “Suitcase” or “Chest; later, for the possibility of nuclear weapon location on board, they began to use another nickname – “Nuclear Suitcase”;

The nose of the fuselage design of the MiG-27 fighter-bomber has an external resemblance to the corresponding parts of the animal world bodies, which was the basis for the names “Utkonos” and “Crocodile”.

Due to the long narrow fuselage and the characteristic high-pitched sound of the engine, the supersonic aircraft of the 60-ies Tu-134 received the nickname “Whistle”.

Due to the association, motivated by the apparent similarity of the fuselage shape with the barrel, the MiG-15 fighter received the figurative name “Beer keg”. Why BEER keg? – Internet does not provide an answer.

On the basis of a “hot” fuselage with a bulky container on its back, the BM-T-1 transport aircraft was called the “Flying barrel” (although it would be more correct to call this aircraft a “flying barrel carrier,” according to one of the participants of the aviation forum). The aircraft was deciphered as “Vladimir Myasischev-transport” (we pay attention to the appearance of the letter in the official name corresponding to the name of the designer, which has its own justification: see https: //www.aviaru.rf/aviamuseum/aviatsiya/ ...). Later, the aircraft received its own name “Atlant”.

In addition, the specific technical characteristics of aircraft (for

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An-72, An-148, Be-12, Il-18, Il-114, etc.) became the basis for the appearance of figurative names of abbreviations:

● the unusual location of the engines on top of An-72 wing, which was nicknamed “Cheburashka” and “Binoculars” – from the outside they really resemble large ears or the eyepieces of a “fieldman”;

● the similarity of An-148 airplane engines with the animal ears brought to life the nickname “Sad Donkey”, named after the sad donkey Ia, one of the heroes of the Soviet animated cartoon “Winnie the Pooh” from the tale of the same name by A. Milne;

● the specificity of the external design of Tu-134UBL nose cone served as the basis for its name “Buratino”, which has a cultural justification: Buratino (Italian Pinocchio – “a wooden doll-actor”) – a fictional character, a long-nosed wooden boy, the main character of the fairy tale by A.N. Tolstoy's “Golden Key, or The Adventures of Buratino” (1936): https://www.ru.wikipedia.org/wiki;

● many pylons under the almost direct wing of Su-25 were associated with a comb, which served as the emergence of a new name – “Comb”;

● deltoid triangular wing: MiG-21 – “Balalaika”, Be-12 (patrol aircraft) – “Seagull”;

● The high-speed engine of the BLA-139 reconnaissance aircraft was associated with a hawk. The name “Hawk” was also supported by the accuracy of aircraft navigation systems; and military transport aircraft Il-18 and Il-114 received the name "Sawmill" due to the characteristic noise of the engine.

The form of AN aircraft is also significant for the nomination process:

● elongated: civilian aircraft Yak-24 - “Flying Wagon”;

● conical, similar to a cigarette: multipurpose supersonic jet military aircraft Yak-28 - “Picket”.

In the process of nomination, the size of the aircraft (large / small) was also taken into account:

● large: Mi-26 helicopter – “Cow”, Mi-26T2 – “flying cow”;

● Small: Be-39 – “Air minibus”, Mi-2 – “Aeromol”.

The color sign is the basis for the appearance of figurative names for aircraft Ka-50, Mi-24, I-301, etc.

The abbreviation Mi-24 implements the figurative names “Striped” and “Crocodile”. The

"Striped" nomination is motivated by the camouflage color of the object. I-301 fighter was named "Royal" due to the dark red color of polished varnish on the tree (https://topwar.ru ›), and the light anti-reflective coating of the supersonic strategic bomber Tu-160 became an associative background for its unofficial name "White swan".

The aesthetic appearance of an aircraft is equally important. So, An-24 was named "The Ugly Duckling" because of its repulsive appearance (https://www.livejournal.com›), which in the minds of a native speaker is associated with the "ugly duckling" from the Danish writer's tale of the same name and the poet Hans Christian Andersen, as well as with the name of a hand-drawn cartoon produced in the USSR in 1956. And the IL-62 for its appearance was nicknamed "Mr. Elegance" (https://nashamoskovia.ru›).

The signs underlying the unofficial names of aircraft can be very diverse. For example, a combat training aircraft, a light attack aircraft Yak-130, equipped with the latest technology, was named "Flying Computer", and the Yak-28, without weapons on board, was nicknamed "Peace Dove".

This or that nomination can be supported by several associative signs. For example, the Ka-50 super helicopter received the nickname "Black Shark", thereby emphasizing the color and power of the invention of domestic military engineering by the nomination. The name was also promoted by the extra-linguistic factor – the Black Shark action movie released on the screens, where this helicopter was shot in the main role (http://www.aviarf.ru). https: //webmaster.yandex.ru/siteinfo/? Site = back-in-ussr.info

The same artifact, depending on the associative perception, can have not one, but several names, for example, the MBR-2 seaplane received the ironic and affectionate nickname "Ambarchik" for its angular shapes, and the sublime romantic "Marine seagull" due to its silver color(http://www.detectivebooks.net›).

3. Conclusions

The figurative potential of a language is realized in spontaneous speech in the same range and with the same power of visual expressiveness as in the texts of masters of a literary word. Speech creativity is distinguished by a

great connection with the pragmatic conditions for the implementation of a speech act and the absence of a preliminary attitude on artistry. The poetic function in live communication is often limited by the principles of communicative cooperation, which do not allow narrowly authorial, difficult to perceive deviations from the norms and laws of the language system. And at the same time, the heuristic phenomenon inherent in native speakers allows everyday collective language co-creation.

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SUSTAINABLE ECONOMIC DEVELOPMENT MODEL FOR AGRICULTURAL HOLDINGS BASED ON EFFECTIVE CORPORATE GOVERNANCE

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Abstract: During the last years of the post-crisis period, numerous barriers that have hindered the effective functioning of crisis integrated structures in the agro-industrial complex were especially hard. This situation forces top managers to apply the strategy of their division into highly specialized firms immediately after the consolidation of assets. The result of this situation is that the Russian agro-industrial complex loses the possibility of large-scale involvement of the scientific, technical and organizational potential of integrated structures, which, in theory, should act as the leaders in the modernization processes of the national agrarian economy.

The next global economic crisis, weighed down by the sanctions of the United States, the EU and several other countries, exacerbated the problems of technological modernization temporary boundaries for agro-industrial complex, which at that time became a strategically important economy sector due to a significant decline of GDP in 2014-2015 and worsened the socio-economic situation of the Russian Federation in the international division of labor.

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All previous years, the approaches to the development of integrated structures were not of a systemic nature, were not always an effective result of random searches and the development of tools to increase their macroeconomic performance. This situation could not but veil the importance of large integrated formations in the implementation of agricultural sector modernization goals in the national economy.

It should be noted that nowadays there is a lot of research work on the theoretical and empirical analysis of the modernization potential possibilities of large agro-industrial groups. At the same time, there is an urgent need to systematize new developments on the problems of building up the competitive advantages of integrated structures, which will make it possible to modernize the national agro-industrial complex and adapt the experience of advanced countries to Russian realities.

Keywords: world economic crisis, production decline, agriculture, large integrated clusters, agricultural holdings, modernization, competition, corporate governance.

1. Introduction

The problems of achieving the sustainability of the economic development of agricultural holdings are especially relevant for the domestic agricultural economy, because the formation and integration of corporate structures takes place in a difficult period. The integrated interaction of agricultural holdings allows them to provide more stable development in comparison with separately functioning enterprises. In modern realities, the agro-industrial complex of the Russian Federation has great economic potential, the management of which is extremely complicated by the highest degree of dependence on the geopolitical situation.

The economic sustainability of large agricultural holdings is quite strongly influenced by many factors, including the aggravation of the geopolitical situation, sanction barriers, price volatility, excessive tax burden, insufficient level of investment flow ...

In conditions of economic instability and increasing competition, one of the key points of sustainable economic development provision for agricultural holdings is the creation of an

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appropriate corporate governance system. And this is natural, for nowadays corporate governance acts as the primary factor of building up the competitive advantages and sustainable economic development of Russian agricultural holdings, and engaging the country socio-economic potential.

The use of the corporate governance strategy allows not only to determine the financial results of agricultural holding activities, but also to build effective management decisions, etc. as the basis for final financial indicator improvement [3,8,10].

The analysis of the problems agricultural holding creation and development through the use of a modern corporate governance system shows the relevance of the research topic on the development of tools and the formation of organizational and economic conditions that allow to develop an optimal model of corporate relation management in order to ensure economic sustainability and balanced development of Russian agricultural holdings.

2. Study Methodology

The theoretical and methodological basis of the study was the conceptual provisions of competitive development theory by Russian and foreign scientists, a number of the latest theoretical and applied research on the problems of corporate governance efficiency in the framework of integrated entities - agricultural holdings.

In the process of determination, analysis and diagnosis of the factors that have a multidirectional effect on the growth of agricultural holding competitiveness, they used the methods of comparison, expert assessment, classification, and modeling.

The empirical base of this scientific article was the statistical materials of the Federal State Statistics Service of the Russian Federation, as well as the data of agribusiness statistics on the production and financial activities of agricultural holdings in the North Caucasus.

3. Study Results

The sustainability of agricultural production structure development is characterized in addition to a high level of capitalization and profit, by the compliance with social and

corporate responsibility to the state, society, and shareholders.

For more than a quarter of a century, Russian agricultural holdings have been using a corporate governance system.

The analysis of the specialized literature suggests that there is still no unified definition of "corporate governance" term. The generalization of various theoretical approaches to the concept of "corporate governance" allows us to consider it as a system for agricultural holding management, in order to ensure sustainable economic development of enterprises observing the interests of stakeholders through the development and implementation of effective management decisions implemented in the dynamic growth of operational, financial and economic, social, environmental and other indicators of the agricultural holding activity [1,3,5].

Three corporate governance models are used in world practice: Anglo-American, Japanese and German. In principle, they differ only by the composition of participants in the corporate governance process.

Russia is characterized by its own special model of corporate governance, as a whole, combining the characteristic features of the abovementioned models. As a rule, agricultural holdings use three-level management structure (board, board of directors, general meeting of shareholders).

Among the main problem areas of corporate governance in Russian agricultural holdings are the low level of freely circulating shares, the low amount of paid dividends, the lack of diversification in sources of profit, etc.

Economic uncertainty and the difficult geopolitical environment hinder the processes of external borrowing and investment attraction. In these conditions, it is necessary to develop an effective corporate governance model promptly that would allow to obtain added value not only to some large shareholders, but to all ones.

In our work, the conceptual basis for studying the effectiveness of integrated structure development, we have used the main provisions of the new institutional theory. Such an approach, for example, unlike the neoclassical theory of firms, allows us to consider the

competitive environment in the form of a set of contracts, which gives great opportunities for new effective approach development to establish the patterns of various types and forms of integration.

The mechanisms for the formation of integrated corporate structures are the merger, acquisition and restructuring of the business.

In developed countries, any transaction conducted through a tender offer (purchase and sale) is called a "takeover".

To participate in the stock market, you must submit a certain number of shares of a particular company with prices and its validity period.

Acquisition is a type of tender offer, usually put forward by a stand-alone corporation for a controlling stake of ordinary voting shares of another company. These takeovers are both friendly and hostile [11].

In our work, we will consider the processes of mergers and acquisitions in a broad interpretation and will position them in the form of vertical integration within the format of new relationships between legal entities and other enterprises that go beyond market transactions.

The analysis of special literature allows us to summarize many existing areas of merger and acquisition theory development and highlight the most popular of them:

- The approaches of neoclassical theory, linking integration processes with emerging opportunities for the growth of allocative efficiency and creation the barriers to entry on the path of potential competitors;

- Institutional analysis approaches which allow to consider the creation of corporate structures in the context of transaction cost reduction;

- The approaches of the theory of dynamic comparative advantages, which allow to consider economic integration in the context of its possible adaptation to the stages of the life cycle of products and technologies;

- The approaches to the theory of corporate finance, which allow to analyze the impact of vertical integration on the efficiency of financial flows and the market value of an enterprise [5].

Under the conditions of Russian reality, during the analysis of vertical integration impact on economic

efficiency, the first two approaches are the most adapted.

Even more than half a century ago, the supporters of the neoclassical theory justified that the use of vertical integration gives the advantage of profit increase by "double premium" problem solution.

Indeed, in parallel with the seller total profit increase, consumer win increase, which (in the traditions of the Chicago school) allow us to substantiate the approach to vertical integration [7].

The use of various forms of combining the stages of the technological chain allows for the growth of profits of the vertical pyramid of sellers.

There are many approaches at which, in accordance with the classical theory, the negative effects of vertical integration are studied, including vertical contracts, on the dynamics of economic efficiency, usually due to existing barriers to entry. At the same time, this approach is somewhat limited, because it does not pose and does not consider the problem of authority delegation, believing that the participants in this process have access to the same information.

However, this limitation can be overcome by the theory of information asymmetry.

In institutional theory, transaction costs are considered as one of the key factors of integrated corporation development. At the same time, the minimization of transactional and transformational costs of the neoclassical type acts as a guideline for the substantiated scale of economic integration [6].

As can be seen from the abovementioned, the theory of transaction costs regarding the problems of transition economy admits an excessively free interpretation of specific assets, because for some reason there are no specific financial assets among them. And this despite the fact that in the business relations of banks and firms, bank loans granted are transformed into idiosyncratic or specific assets. As a rule, they are not mobile, for example, low liquidity of overdue debts, etc., which limits the possibilities of transaction cost theory during the study of interaction factors between bank and industry capital.

When they analyze the activities of a corporation based on the

principles that are different from those legally enshrined in property rights, the problem of the national economy industrial complex disorganization is especially acute. Disorganization occurs during the breakdown of established economic ties in the terms of imperfect market coordination mechanisms. There is some archaization of interaction forms and methods between business entities - it comes to in-kind settlements.

A separate topic is the use of the theory of agent relations between managers and employees during the analysis of integration in agro-industrial organizations. Involvement of bank representatives in the capital of the borrower is the factor of potential credit risk and the specificity of financial asset reduction [2,9,13].

Banks have a new quality - now they act both as a shareholder and as a creditor, which introduces an additional nuance in the relationship between a contractor and a guarantor. This is a very important circumstance, as it can be seen from Russian practice that shareholders quite often inflict a lot of damage on their own companies. This situation forces agro-industrialists to develop special partnerships with banks so that a corresponding decrease of transaction costs and the costs of borrowed capital will increase the losses from the transfer of controlling functions over financial flows to bankers.

All this forces us to seek actively some effective solutions in the distribution of property rights, taking into account the possible significant impacts of insiders.

As can be seen from the foregoing, the factor of property mergers and acquisitions is essential in transactional theory. The presence of a new quality - common ownership - is one of the guaranteed forms of contract execution.

Integrated corporate structures can be seen as a holistic system, any of which characterizes both internal relationships and contractual relations of partners in terms of increasing competition [12,14,16].

A conceptual approach to the problems of effective corporate governance development is based on modeling the sustainable economic development of an agricultural holding.

To study the level of corporate governance impact effectiveness on the sustainability of an agricultural holding

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development, we proposed an economic and mathematical model of linear regression using the least squares method with correction of observation heterogeneity [15].

As an object of research, we took a typical South Russian agricultural holding Niva. The sample size is 2013-2018. We used a number of quantitative indicators as dependent variables:

- the multiplier P/E, where

P is the market capitalization of a company; E is the net profit of the company.

ROAE - return on equity.

Tables 1 and 2 show the initial data for an economic-mathematical model development.

All this allowed us to analyze the effectiveness of the corporate management of the Niva agricultural holding.

Table 1. Initial data for economic-mathematical model development of P/E multiplier linear regression dependence on the coefficient of corporate governance efficiency

Period	**P/E**	**Corporate Governance Efficiency Ratio**
2013	7,2	99
2014	5,26	102
2015	6,18	97
2016	6,84	92
2017	7,15	95
2018	6,11	94

Table 2. Initial data for economic-static model development of POAE linear regression dependence on the coefficient of corporate governance efficiency

Period	**POAE**	**Corporate Governance Efficiency Ratio**
2013	18	99
2014	18	102

2015	21	94
2016	19	95
2017	16	97
2018	15	83

The growth of P/E multiplier suggests that the increase of corporate governance efficiency leads investors to positive evaluation of the Niva agricultural holding operational effectiveness. This also indicates the correlation of the P/E multiplier with the corporate governance efficiency coefficient.

When they compile an economic-mathematical model of linear regression of P/E multiplier dependence on the corporate governance efficiency coefficient, the condition for correction was established.

Such calculations allow us to establish the correlation between the financial indicators of sustainable development of the agricultural holding and the corporate governance performance indicator, which objectively confirms the need to improve the quality of corporate management in order to increase the sustainability of the agricultural holding development.

4. Conclusions and Offers

All business structures have their own “special” self-organization mechanism, operating in accordance with institutional agreements, that is, with a specific set of specific rules. One of the signs of perfect institutional orderliness is the presence of trust among all contract transaction partners [4].

In accordance with the new institutional theory, in the process of economic development, the optimal ownership structure is changing, but there is no way to formulate and establish property rights in a perfect way. This is associated with significant transaction costs necessary to ensure and protect the individual rights of owners.

Thus, a sustainable model of corporate governance is very important as a specific institutional agreement.

Firstly, the development of a national model of this type of governance cannot be considered in isolation from current globalization changes, from internationalization and

competition, the formation of new industries, etc.

Secondly, this is associated with the need to receive a standard set of formal market institutions that can provide not only economic, but also political support.

Thirdly, with the transplantation (import) of political and economic institutions (WTO, EBR, EU rules, etc.) of European and other corporate governance models that increase the transparency of companies, step up the fight against corruption, the introduction of coercive (legislatively introduced) norms takes place.

Conflict of Interest

The authors confirm the absence of a conflict of interest.

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THE USE OF MULTIVARIATE STATISTICAL ANALYSIS METHODS AS AN EFFECTIVE TOOL FOR INVESTMENT ATTRACTIVENESS OF AGRICULTURAL ENTITY MODELING AND FORECASTING

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Abstract: In the terms of sanctions and the need to strengthen the import substitution policy, the issues of effective investment attraction in the agrarian-oriented republics of the North Caucasus are especially relevant. Due to the underinvestment of the agro-industrial complex in these depressed republics, diversified enterprises of the agro-industrial complex sectors generated a large amount of physically and morally worn-out equipment, economic entities of the industry are not able to function efficiently and develop properly, which ultimately does not allow them to produce competitive products ...

Undoubtedly, we need new practical recommendations and directions to improve the management of investment attractiveness to mobilize various sources of investment.

There are many methods for assessing the rating attractiveness of enterprises. But all of them have a common drawback - rating evaluations are usually given simultaneously for the entire data set, which, in general, significantly complicates and even excludes the possibility of an objective assessment of

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the investment attractiveness for an economic entity not previously included in the list of enterprises under study [3,5,7].

Another significant drawback is the lack of validity for the selected indicators of the final rating.

The abovementioned and other things allow us to talk about the need to develop a methodology that is not only free from such shortcomings, but also allows us to give a reasonable assessment of enterprise investment attractiveness. This approach requires the formation of the basic econometric models of investment attractiveness for diversified agricultural enterprises. And in our opinion, this is the most promising way to solve a given problem. It should be remembered that the need to take into account the peculiarities of investment attractiveness creation for diversified enterprises of one or related sectors of the agro-industrial complex makes us focus on the basic models.

Keywords: economic crisis, sanctions, increasing competition, agro-indistrial complex, modeling and forecasting, investment attractiveness, management.

1. Introduction

From the presence of many different types of models, we want to dwell on econometric models that are statistical in nature.

Econometrics is the science that involves the empirical derivation of economic laws; it uses the method of observation to establish dependencies for economic relationships [3].

In general, it can be noted that the totality of statistical techniques and methods used for this purpose constitute econometrics.

Through the use of econometrics, it is possible to study and explore all kinds of econometric models, during which an analyst (econometrician) not only analyzes and forms econometric models, but also, based on economic theory and (or) empirical data, estimates unknown quantities (parameters) in these models, predicts their accuracy, develops practical recommendations on the current economic policy.

Most modern development models are characterized by a common goal of the next deep structural crisis consequence elimination that the

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domestic agricultural economy is undergoing, and through the use of a real mechanism of innovative process activation in the agricultural sector, it allows to overcome the situation of low investment attractiveness of agricultural entities. And this is natural, because only effective innovative activity is able to create the necessary basis quickly to build a new technological structure in the industry and thereby increase the potential for economic growth of the national economy [2,9,11].

Indeed, it is impossible to achieve the appropriate level of innovativeness of a competitive business in modern realities, without involving third-party innovative resources. On the other hand, the borrower is always exposed to credit risk in the form of the possibility of improper fulfillment of his obligations. In such cases, to assess the investment attractiveness of a particular borrower, the system of assessment indicators is used (the purpose of loan, its amount, the borrower's reputation, the financial situation of his business, etc.). It is clear that subjectivity can appear during assessment, which must be neutralized ...

Numerous methods have been developed to evaluate investment projects, including simple accounting rate of return method; payback calculation method; NPV; IRR and others.

The integrated use of these and other similar methods allows a sound analysis of investment projects, to establish specific project characteristics and its inherent features, etc., which, ultimately, allows you to evaluate the final results of business objectively.

The market, acting as an original mechanism, distributes investment resources itself, changes the correlation existing between budgetary and extra-budgetary sources of capital investments, increases the share of banking and other investments provided for use in agricultural enterprises, and also allocated for sustainable development of rural social infrastructure.

2. Study Methods

The theoretical and methodological basis of the study was the scientific work of foreign and Russian researchers on the problems of the theory and practice development

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concerning evaluation and management of the investment attractiveness of diversified enterprises, the theory of investment analysis, the economic potential and the risks of agricultural enterprise evaluation and diagnosing.

In the course of the study, they used such scientific methods as comparison, system, statistical and economic analysis, generalization and groupings, etc.

3. Study Results

There are many models in the specialized literature that can be used to study various aspects of economic life, such as the Cobb-Douglas production function, the consumption function (it shows the relationship between food costs and the personal income of the consumer (Engel function); the models of the exponential time trend of spending on food and other models [3,8,12].

One of the most important factors during a model development is their complexity (due to the large number of features and the complexity of the mathematical form), or their simplicity.

There are many answers and solutions to these questions. So, in [8], the problem under consideration is positioned as the function of consumption:

$$I_nC = \beta_0 + \beta_1 I_nY + \beta_2 I_nP, \quad (1)$$

where C is the consumption of a specific food product per capita during the reporting year;

Y - real income per capita during the reporting year;

P - the price index for this product, adjusted for the general index of the cost of living;

$\beta_0, \beta_1, \beta_2$ – the constants that must be estimated by observation data.

It should be noted that the abovementioned equation (1) describes the general consumer behavior due to the acquisition of a given food product, taking into account the price level of the product and the real product per capita. The law will be established when the coefficients of equation (1) β_0, β_1, β_2 are known. In this case, the analyst needs to make an assessment of these coefficients by conducting a suitable set of observations.

Let us turn to the description of the types of econometric models, with the help of which it will be possible to

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predict the value of the dependent variable in the future.

Three main classes of models are used in the analysis and forecasting.

1. Time Series Models.

They consist of simple models:

- trend: $y(t) = T(t) + E_t$, (2)

where $T(t)$ – the time trend of a given parametric form; E_t is a random component;

- seasonality: $y(t) = S(t) + E_t$, (3)

where $S(t)$ – the seasonal component;

- trend and seasonality:

$y(t) = T(t) + S(t) + E_t$ (additive) (4)

$y(t) = T(t) \times S(t) + E_t$ (multiplicative) (5)

Time series models consist of more complex models (such as adaptive forecasting, autoregression, moving average, etc.). Characteristic of these models is the fact that the behavior of the time series is described using the previous values. It is advisable to use such models during ticket sale prediction for various vehicles, the demand study for seasonal goods, short-term forecast of interest rates, etc.

1. In regressive models with one equation, the dependent variable can be expressed by the following function:

$y = f(x,\beta) = f(x_1,x_{2,\dots}x_k, \beta_1,\beta_{2\ ,\dots,}\ \beta_k)$, (6)

where $x_1,x_{2,\dots}x_k$ are independent (combining) variables;

$\beta_1,\beta_{2\ ,\dots,}\ \beta_k$ – the parameters determined from observations (empirical data).

The form of the function $f(x, \beta)$ determines linear (by parameters) and nonlinear models. The latest types of models are used more often than linear ones. So, for example, the models of type (6) should be used in the development of initial econometric models of investment attractiveness of economic entities of the regional agro-industrial complex (the so-called spatial models).

The spatial econometric models of type (6) are developed using multiple linear regression analysis. The economic variables are established by establishing the impact of a group of explanatory factors. The influence of the main factors xi can be determined through the following model:

$Y = \beta_0 + \beta_1 x_1 + \beta_2 x_2 + \dots + \beta_m x_m + E$ (7)

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The parameters of the model (7) β1 can be estimated using the least squares method. At that, the main goal of multiple regression is to build a model with a large number of factors, taking into account the influence of each factor both individually and in combination. The factors themselves, which are in multiple regression, must meet a number of requirements, including quantitative measurability, uncorrelated nature, the lack of functional relationship.

In practice, due to the complexity, the possibilities of the regression model for factor accounting are not fully used.

The selection of factors occurs with the help of qualitative economic analysis. Moreover, based on the fact that the theory of analysis does not allow us to establish a quantitative relationship between the studied features and the inclusion of some factor in a model, this procedure takes place in two stages.

At the first stage, factors are selected, at the second t is determined - the statistics for the regression parameters based on the matrix of correlation indicators.

The use of intercorrelation coefficients allows to get rid of duplicating factors in the model. Two variables are usually clearly collinear if the inter-correlation coefficient is ≥ 0.7. Variables duplicate each other with obvious collinearity of factors. Thus it is necessary to remove one of the factors from the regression equation - the factor that has the least relation with others is left. This is a distinctive feature of regression as a method - it explores the total influence of factors when they are independent of each other.

One should also note the role of factorial and cluster analysis, which are multidimensional statistical analysis, through which you can derive the final results on a wider range of objects (general population).

Multidimensionality is manifested in the fact that a combined analysis of all the factors that form the process under study is carried out simultaneously. The use of factor analysis allows you to “compress” the matrix of features into the matrix with the least number of variables, moreover, with the same information base as in the original matrix. The model of factor analysis itself is based on the hypothesis that takes the studied variables for the indirect manifestation of a small number

of hidden factors (the principal component method) [1,5,7].

Cluster analysis allows you to provide the following:

- formation of typology (classification);

- the study of the necessary conceptual schemes for object grouping;

- hypothesis development (based on structural data);

- hypothesis testing, etc.

When they choose a specific cluster solution, it is necessary to determine the number of clusters - the groups of elements that have one characteristic trait (common property). But here one rather complicated problem arises - there is still no mathematically reasoned method that would allow us to establish the number of clusters reasonably, which are the fundamental component of the cluster structure. Under these conditions, the analyst has only one thing - to use a priori attitudes and own assumptions. It is also advisable to conduct a visual analysis of the dendrogram; the comparative analysis of the results of clustering, the visual assessment of merger coefficient function dependence graphs on the number of clusters [4,6,10].

Thus, investment attractiveness should be considered as a multidimensional process. Hence, it is expedient to perform the processes of its modeling and forecasting for diversified agricultural enterprises using multivariate statistical analysis methods consisting of multiple linear regression, discriminant, cluster and factor analyzes.

4. Conclusions and Offers

1. The analysis of the problems performed during the study of investment attractiveness management at agricultural enterprises in the depressed republics of the North Caucasus made it possible to establish the absence of a strategic planning system and a strategy for competitiveness provision on the vast majority of business entities of the industry. At that, they observe information closure of agricultural enterprises, increased physical and moral depreciation of equipment, inadequate storage and logistics infrastructure for the movement of food products, etc.

The presence of these and other similar problems makes the agricultural enterprises of the depressed republics of the North Caucasus uncompetitive and unattractive to potential investors.

2. Under these conditions, it is advisable to develop a “proprietary” investment attractiveness management algorithm for each household, based on its capabilities and existing economic potential, on a marketing study of the economic entity competitiveness. Such an approach will allow to develop reasonable measures to find a potential investor and form a real package of proposals taking into account the mutual expectations of both the enterprise and the investor.

3. The complexity of taking into account the characteristics of investment attractiveness development for economic entities of the agro-industrial complex makes us talk about basic models. We justifiably believe that multidimensional statistical analysis methods can be used as an effective tool for modeling and forecasting the investment attractiveness of agricultural enterprises (including such methods as correlation-regression, discriminant, factorial and cluster one).

Conflict of interests

The authors confirm the absence of a conflict of interest.

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EDUCATING THE VERBAL SEMANTICS IN THE CONTEXT OF ACTANTIAL DISTRIBUTION

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Abstract: This study is based on the theory of methods of verbal action (MVA), presented in the works by O.M. Sokolov. Prefixed Russian verbs are considered as part of a functional approach to language analysis. The authors prove that the verb prefixes in the Russian language should be considered as separate linguistic elements, which provide the characteristics of the subject or object actant.

Keywords: verbal prefixes, methods of verbal action, prefixal verbs, verbal-centric theory, actantial distribution of the semantics of the Russian verb.

1. Introduction

Phenomena of polysemy, antonymy, synonymy, paronymy, etc. are typical for the vocabulary of any language. These processes are often based on the presence of certain specific morphemes in the word, and the various implicit values contained in the word are also determined by the semantics of morphemes, which, like the word in general, can show the properties of ambiguity, synonymy, etc. This circumstance is predetermined by the multicomponent semantic structure of the morpheme itself, as well as by the morpheme's ability to perform various functions. Since the semantics of the verb is distinguished by its special capacity and complexity, its study is of particular interest at any level. At the same time, the study of the verb is more important at the level of both the integral unit and affixes, the meanings of which are superimposed on the values of root morphemes and lead to profound changes in the semantics of the verb.

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From this perspective, prefixes are especially important, since they emphasize the polysemy of the verb. Therefore, it is not surprising that prefixes have been the object of close study by many scientists for a long time.

2. A functional approach to the study of morphology

The semantic structure of the word is multicomponent and its formation is determined by the interaction of various morphemes being a part of its composition. In this regard, the importance of the functional approach to the study of morphology, which differs favorably from traditional views in that it allows considering morphological categories in motion, while descriptive morphology focuses on the study of paradigms with a distinctive grammatical character, increases greatly.

3. Discussion

Previously, the verbal prefixes were studied in various aspects. To date, the lexical meanings of both whole prefix groups and the meaning of individual prefixes have been comprehensively described, the relationship between verb semantics and the compatibility of prefixes, the influence of various aspectual characteristics on it, for example, transitivity/non-transitivity, etc. have been studied. These and other directions are presented in the works by B.N. Golovin [5], N.B. Lebedeva [7] *et al.* They particularly focused on the problem of classification of prefixal verbs in relation to the method of verbal action. The discussion resulted in two views on the solution to the problem: semantic and morphological-semantic. One of the first semantic approaches to the problem of methods of verbal action (MVA) was proposed by Iu.S. Maslov [8]. The basis of the theory of Iu.S. Maslov is the ratio of verbs to the “telicity" and “atelicity" of the action. Moreover, any verbs, both telic and atelic, refer to some mode of action. The category of verbs, denoting a particular way of a verb action, includes not only morpheme-characterized verbs but also another that manifest themselves under special conditions. Further development of this direction, according to Iu.S. Maslov, should be oriented to a more in-depth study of the MVA, the selection and study of new variants [8]. Such

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scientists as A.V. Bondarko [4], M.A. Sheliakin [10], and some others chose this path in their works. Based on the ideas of Iu.S. Maslov, M.A. Sheliakin examines in detail the role of prefix and prefix-suffix formations in the expression of a particular MVA. M.A. Sheliakin totally shares the idea of Iu.S. Maslov that the concept of MVA covers all the verb vocabulary without exception. The author pays special attention to the lexical-semantic category of telicity and atelicity that forms the foundation of the MVA. Thus, all verbs are divided into two large classes: telic and atelic verbs. M.A. Sheliakin [10], in this case, makes a point of the special role of prefixes in the formation of both telic and atelic verbs. For example, considering the formation of new verbs with the help of lexical prefixes, he distinguishes 2 groups: 1) telic verbs, formed from atelic verbs, when there is a semantic transformation of the verb under the influence of the prefix; 2) verbs formed from telic initial verbs and expressing the direction of action on the final result or goal, which differ from the final result or goal of the actions of the active verbs.

M.A. Sheliakin emphasizes further that, although all telic verbs are associated with the achievement of a result, nevertheless the expressed effectiveness has qualitatively different shades, which makes it possible to combine the verbs into different groups based on the variety of such shades. Thus, all prefixes are classified based on their role in the expression of a particular mode of action. Each basic mode of action contains a greater number of different variants, which in turn can break up into smaller ones. Since the enumeration of all the methods of action would take too much space, we can provide just a few examples. For example, the effective mode of action has two options: of the general result, and both of them are not final but contain additional special cases. Thus, variants of the generally effective MVA are resultative-non-processual verbs with the prefix *«о»-, «об»– «по»–, «вы!»–, «под»–, «за»–* and some others, for example, *опомниться, образовать, оробеть, осиротеть, поскользнуться, вывихнуть, заблудиться, задолжать*, etc. Further, the author names the resultative-totive verbs used with the prefixes *«в»–, «вы»–*

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, *«при»–, «на»–*, for example, *включать/включить, выключать/выключить, приходить/прийти, наскакивать/наскочить*; resultative-process verbs that attach the prefixes *«раз»–, «в»–, «у»–, «под»–*, for example, *будить/ разбудить, вспоминать/вспомнить, добиваться/добиться, убеждать/убедить, подкарауливать/подкараулить, подглядывать/ подглядеть*; resultative-pantive verbs with the prefixes *«по»–, «за»–. «вы»*, for example, *стареть/постареть, вянуть/завянуть, расти/вырасти, красить/покрасить, белить/побелить*; terminative-local verbs with the prefix «до»–, for example, добежать до дома, доехать до Москвы; and resultative-annihilating verbs used with the prefixes *«от»–, «обез»–, «де»–, «дис»–*, for example, *закупорить-откупорить, закрыть-открыть, обезоружить, дезорганизовать, дисквалифицировать.* It seems that these examples indicate that the teachings by Iu.S. Maslov, and in particular, A.V. Bondarko, M.A. Sheliakin, significantly developed the concept of the MVA.

The second direction can be characterized as morphological-semantic. Proponents of this approach do not consider the MVA as a semantic phenomenon and relate negatively to the idea that it covers the entire verb vocabulary. This direction is associated with the names of A.A. Shakhmatov, V.V. Vinogradov, P.S. Kuznetsov, N.S. Avilova and other researchers.

According to one of the most consistent representatives of this direction - N.S. Avilova, the most corresponding point of view to the linguistic reality is that in accordance with which “methods of action are necessarily expressed by external formal features that modify the meaning of a simple verb. When it comes to MVA, we are talking about the way the meaning of the action, called the primary prefixless verb, is displaced, shifted, modified. This modification of the action, called the prefixless verb, occurs with the help of a certain formant or formants” [3, p. 264]. N.S. Avilova believes that all types of MVA can be combined into more groups, each of which has its own distinctive features. The author notes that

they may differ from each other in the following main parameters:

1) clarification of the nature of the course of action in time;

2) quantitative and temporal characteristic of the action;

3) clarification of the nature of the result achieved by the action.

All these meanings, as the author emphasizes, are necessarily expressed formally, by attaching one or another affix to the verb. Based on these criteria, we can say that the first group of the MVA covers temporary methods of action. The author identifies such options: substantive, restrictive, long-restrictive, and finite. The first is followed by the second group, which covers quantitative-temporal MVA. The group contains two subgroups: in the first, action is specified from the point of view of its momentary or multiple commission, and the second subgroup presents the verbs expressing the action as unlimitedly long, multiply repeated.

Here the author identifies numerous variants: multiple, intermittently soft, long-soft, long-distributive, etc.

The third group contains specially resultative methods of action, which include all verbs expressing special nuances of effectiveness. Here are, in turn, such variants as terminative, integrated, intensely resultative, etc.

O.M. Sokolov assumes a very special position on the problems of MVA, telicity, and atelicity of the verb action, and other related issues. According to O.M. Sokolov, an important disadvantage of the existing classifications of Russian verbal prefixes is that they do not fully consider the multicomponent nature of their structure and, primarily, the interaction of phase nature and telicity in the semantics of prefixes [11].

If we confine ourselves to the statement of the fact that the prefix in the perfective verbs performs the function of designating the implemented telicity, the question remains about the nature of the meaning of the limit. In many cases, this value is attempted to be associated with performance and thus determine the invariant value of the perfective verb. O.M. Sokolov notes that performance does not cover all possible cases of limiting, because there are inceptive, restrictive, and other meanings that cannot be fully identified with the category of performance. The author

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believes that “with the existing ideas about the semantic structure of the Russian verb, the meaning of the implemented (actual) telicity cannot be interpreted otherwise than as limiting the process on its tense axis either at its beginning or at its end. Consequently, these "boundaries of action are phased in nature, since the result means, in essence, the end of the action”. Since the implemented limit is closely related to a specific phase of the action, and the deep nature of the limit has a phase character, therefore, as O.M. Sokolov emphasizes, “there is no such limit of a verbal action that would be out-of-phase and timeless” [12, p. 84-85].

The result which means the achievement of an action by the subject, or a change in the state of the object, linked to the completeness of the action in time, or a new qualitative state serves as a trigger for a new process expressed by a verb.

Varieties of phase limits are not limited only to the designation of the beginning and end of the action. O.M. Sokolov notes that a special type of phase limit should include telicity, i.e. such a phase that limits the action in time, not leading to exhaustion. The special type of limits also includes those cases where both phases, initial and final, coalesce, eliminating any idea of the length of the gap between the niches. To determine the phase limit of a particular verb and prefix, we should compare the correlating perfective and the imperfective verbs, since the systematization of the MVA and the function of the prefixes, in this case, is based on the ratio of the long process (imperfective verb) to its phase boundary (perfective verb). As a result, we can establish several types of such relationships:

1) inceptive-process,

expressing the relation of the beginning of the action to its process. In this case, the perfective verb indicates the initial phase of the process, and the imperfective verb indicates the process itself. If the verb has a prefix, in this case, the prefix itself serves as an indicator of the initial phase. This type of relationship is realized with the help of the prefixes *«за»-, «по»-, «раз»-* *(загрохотать – грохотать, разволноваться – волноваться, поехать – ехать).*

2) process-effective, expressing the relation of the process to the result. In

this case, the perfective verb expresses the final phase of the process, while the imperfective verb denotes the process itself. The prefix in the prefixed perfective verbs indicates the final phase of the action (*курить-докурить, толстеть-потолстеть, работать-наработать).*

3) process-telic, reflecting the relationship between the process and its time limit, while the action is not completed. In this case, the prefix expresses a non-durable phase, which means repetitive actions (*ходить-сходить туда и обратно, сидеть-посидеть).*

4) single-serial, expressing the ratio of a single instantaneous action to a repeating action. The perfective verb of the form in a situation denotes a single instant action, and the imperfective verb denotes a repetitive action (*толкать-толкнуть, дергать-дернуть)* [11].

Based on the fact that the semantic constant in perfective verbs is a phase seme, these relations can be used as the basis for the semantic classification of the MVA, taking into account both the multicomponent semantic structure of the verbal word and the semantic variation of the verbal affixes. At the same time, along with the phase meanings, the semantics of the verb may contain additional quantitative, qualitative, and spatial meanings, and the multicomponent semantics and functionality of the prefix is that the prefix has a phase constant, which in some cases coincides with the lexical meaning of the prefix, and has additional lexical meanings: resultative (simultaneously with the phase function of finality), quantitative and quantitatively effective, also capable of performing the function of the indicator of the final phase, which at the same time can indicate the entry of the subject in a new qualitative state.

Subject to the ability of prefixes to combine different values and perform different functions, O.M. Sokolov offers his own classification scheme for the prefix semantics.

1. Prefixes whose lexical meanings correspond to phase functions: *поехать, потянуться, закричать, возгордиться, отслужить, отбарабанить, отмолчаться* etc.

2. Prefixes with effective values, whose meaning of the result is associated with the meaning of completeness (*продолбить, сделать,*

перепилить, созреть, расседлать, etc.). This also includes varieties, when the meaning of the result is complicated by other lexical meanings (quantitative, local, etc.). For example: *исстегать, захлестать, затормошить, приехать, забежать, перебить и т.п.*

3. Prefixes with independent resultative meanings (the meaning of the result can be combined with the quantitative and local semes), performing the function of the initial phase indicator. a) generally resultative meanings: *надуться на кого-либо, насупиться, вскипеть, встревожиться, взбунтоваться,* b) local meanings: *протечь (о крыше), выехать (в час дня),* c) intensive meanings: *раскудахтаться, разбушеваться, размечтаться т.п., устоять, удержаться, усидеть на месте,* etc.

4. Prefixes without stable lexical meanings (usually referred to as “purely aspectual"): a) with the meaning and function of the effective completion of the process *(сделать, смастерить, помрачнеть,* etc.); b) with the meaning and function of one-act: *сбегать в магазин, сфотографировать, скосить глаз, сморозить глупость, пошевелить бровью, пожать руку, потребовать ответа*, etc.; c) functionally dependent prefixes can serve as indicators of the initial phase of the verb-expressed process. For example: спрятать (прятать взгляд, улыбку), показаться (каззаться), запомнить (на всю жизнь), узнать (новости) etc. [11], [12].

Such an approach to the classification of prefixes makes it possible, when studying the semantics of Russian verbs, to take into account an aggregate of signs united by a one-time invariant, rather than one sign only. However, these observations are important not only for the analysis of the problems of the MVA and the systematization of verbal prefixes but also relate to the verbal centric theory and the problem of the actual distribution of the semantics of the Russian verb. In terms of the verbal centric theory, the components of the verb semantics determine the case functions of the actants, the deep cases. Analyzing the question of how to determine the true meaning of a verbal suffix, O.M. Sokolov [12] emphasizes that a typical feature of the verbal suffixes is their seminal diversity,

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polyfunctionality, syncretism. Like prefixes, suffixes are capable of combining various meanings that reflect the main categorical features of a word as parts of speech. To find out the independent meaning of a verbal suffix, we should compare it with verbs that have other suffixes, with the identity of motivators. For example, when comparing the semantics of a motivating name and a verb motivator, we can find out that the verbal suffix conveys the meaning of duration and procedurality. However, this observation does not help to properly understand the difference between suffixes - -«нича»- and -«е»-. This question still stays unclarified even when comparing different-root verbs with these suffixes. Therefore, the only correct way to establish the eigenvalue of the suffix should be a comparison of verbs identical in the composition of motivators but different in their suffixes. If the presence of various suffixes in a word gives rise to regular semantic differences, then the differential semantic features appear to refer to the corresponding suffixes. The used method of matching single-root verbs with different suffixes allows detecting two types of relations between verbs: paronymic and synonymous. O.M. Sokolov [11] considers each of these types but especially pays attention to the paronymic type of relations. This is explained by the fact that, if the fundamentals are identical, then semantic differences between verbs can be caused by semantic differences in suffixes. Verbs come to paronymic relations most regularly, contrasting by suffixes *-«е»-/ -«и»-, -«ова»- (-«ствова»-)/-«е»-, -«ствова»-/-«и»-*. For example: *хмелеть-хмелить, веселеть-веселить, белеть-белить, чернеть-чернить, криветь-кривить, мудрствовать-мудреть, умствовать-умнеть, пьянствовать-пьянеть, злобствовать-злобить, бодрствовать-бодрить.*

One should always remember that when paronymic relations arise, semantic differences in verbs can be dictated not only by suffixes, but also by factors such as alternation in roots and some others. Comparing correlative pairs of verbs, O.M. Sokolov [11] concludes that the actual semantic features of the "primary" verbal suffixes are the meanings of activity-passivity, causativeness-non-causativeness, telicity-atelicity. At the same time,

opposition in the line of activity-passivity, causativeness-non-causativeness is clearly observed when comparing the verbs ending in *–еть* (passivity) and *–ить* (activity). For example.: *веселеть* (passivity) – *веселить* (activity), грубеть (passivity) – *грубить* (activity). Difference on grounds of telicity is clearly observed when comparing the verbs ending in *–еть* (passivity) and *–ить* (activity). for example: *веселеть* (passivity) – *веселить* (activity), *грубеть* (passivity) – *грубить* (activity). Differences on the basis of telicity-atelicity are observed when comparing verbs ending in –«ствова»- and -«еть»-. For example: *пьянствовать* (atelic) – *пьянеть* (telic), etc. Analysis of verbs that enter into synonymous relations significantly complements the previous observations. Such relations are found in the verbs, opposed by the suffixes *-«и»-/-«нича»-*, *-«ствова»-/-«ирова»-*, *-«ова»-/-«ирова»-*, *-«и»-/-«а»-*, *-«е»-/-«а»-*. For example: *безобразить – безобразничать, экономить – экономничать, проказить – проказничать, малярить – малярничать, гостить – гостевать, царить – царствовать, мудрить – мудрствовать, паразитствовать – паразитировать, цементовать – цементировать, ломить – ломать, родить – рожать, месить – мешать, холодеть – холодать, худеть-худать, видеть- видать,* etc.

4. Conclusion

Despite the suffix differences, a common feature that unites all synonymous verbs is that they all signify active actions that characterize the behavior of a person or object. Synonymous oppositions are made with the help of telic and atelic verbs. However, with an identical morphemic composition of opposing parts, differing from each other only by suffixes, synonymy relations can arise only if common signs of suffixing morphemes are signs of activity-passivity, telicity, or atelicity.

Careful examination of paronymic and synonymous pairs of verbs makes it possible to conclude that there are suffixes in the language that can fix such features of the verb process as activity or passivity.

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ANALYSIS OF THE RESULTS OF CADASTRAL EVALUATION OF BUILDINGS, PREMISES, CONSTRUCTION IN TRANSPORT TECHNOLOGY

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Abstract: This article is devoted to the study of the results of the cadastral valuation of buildings, premises, construction in progress and parking lots, which was carried out in 2018 in the Krasnodar Territory [7]. The shortcomings of the structure of the presentation of the approved results of the cadastral assessment were identified and analyzed, a new form of entering and sorting data was proposed to simplify the work with them.

Keywords: cadastral valuation, analysis, capital construction projects.

1. Introduction

Cadastral valuation, as a process of determining the cadastral value, with the transition to the latter as a tax base, has received particular attention of scientists and researchers [11]. Currently, there are many methods and algorithms for calculating the cadastral value for each type of real estate object, whether it is a land plot or an object of incomplete construction, and each approach is designed for the maximum approximation between the cadastral and market value, since it is precisely the market indicators that act as measure of the adequacy of the production of cadastral valuation [17].

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2. Carrying Out The Cadastral Assessment Of Real Estate Objects In 2018 In The Territory Of Krasnodar Territory

Based on Order No. 2197 of the Department of Property Relations of the Krasnodar Territory (DIO KK) in 2018, the following real estate properties were evaluated in the region [4]:

- buildings';
- rooms';
- parking - places;
- the objects of the incomplete building;
- land sections from the composition of the earth of forest and aqueous stocks.

In the course of cadastral valuation in total were evaluated:

- buildings, cars, objects of incomplete construction objects 2812065;
- land plots from the forest fund - 10986;
- land plots from the water fund - 877.

The list of the above objects was compiled by the Rosreestr Directorate for the Krasnodar Territory and transferred to the cadastral valuation department of DIO KK.

The results of the cadastral valuation of buildings, premises, parking lots, objects of unauthorized construction were approved by Order No. 2368 of the Department of Property Relations of the Krasnodar Territory (DIO KK) and are presented in the form of Appendix 1 (see. 1).

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ПРИЛОЖЕНИЕ № 1

УТВЕРЖДЕНА
приказом департамента
имущественных отношений
Краснодарского края
от 01.11.2018 № 2368

1

КАДАСТРОВАЯ СТОИМОСТЬ
зданий, помещений, объектов незавершенного строительства, машино-мест на территории Краснодарского края

2

№ п/п	Кадастровый номер объекта недвижимости	Кадастровая стоимость объекта недвижимости, руб.
1	2	3
1	23:00:0000000:609	4383861,95
2	23:00:0000000:750	33544746,24
3	23:00:0000000:857	299919,18
4	23:00:0000000:858	14188,35
5	23:00:0000000:863	118055,35
6	23:00:0000000:864	4953,37
7	23:00:0000000:865	387188,53
8	23:00:0000000:866	340957,07
9	23:00:0000000:867	238587,39
10	23:00:0000000:868	410304,27
11	23:00:0000000:869	225378,40
12	23:00:0000000:873	1654398,13
13	23:00:0000000:875	6560688,39
14	23:00:0000000:944	20920490,64
15	23:00:0000000:958	591668,16
16	23:00:0000000:977	945767,81
17	23:00:0000000:1060	2441289,14
18	23:00:0000000:1074	6324,59
19	23:00:0000000:1083	35727520,95
20	23:00:0000000:1095	4825653,75
21	23:00:0000000:1150	3817115,23
22	23:00:0000000:1162	1080846,98
23	23:00:0000000:1169	524913,68
24	23:00:0000000:1170	1332892,78
25	23:00:0000000:1188	230457,08
26	23:01:0000000:137	204955,29
27	23:01:0000000:155	349648,48

3

4

1 — Appendix № 1 Approved by the order of the Department of property relations of Krasnodar region from 01.11.2018 № 2368

2 — Cadastral value of buildings, premises, construction in progress, Parking spaces in the Krasnodar territory

3 — Cadastral number of the property

4 — Cadastral value of the property, RUB

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Fig. l. The element of Appendix 1 to Order No. 2368 DIO KK

3. Main Disadvantages Of The Form Of Submission Of Information On The Results Of The Cadastral Evaluation

Based on the presentation of information on the results of the cadastral valuation, we can draw the following conclusions:

- lack of information on the type of real estate object (building, premises, construction in progress, car place) - data restriction solely by cadastral number and cadastral value;
- lack of information about the property belonging to the district (urban district) of the Krasnodar Territory [15];
- A lack of information about the location of the property (address, landmark) [9].
- the format of paged data (pdf) complicates the process of third-party processing of estimated cadastral values.

4. Proposals For Improving The Form Of Presenting The Results Of The Cadastral Assessment

The abovementioned features of the initial information and a huge number of objects (2,812,065) make it impossible to conduct an adequate analysis of buildings, premises, construction in progress and parking spaces and to calculate specific indicators for each type of object with a view to further comparison with average market indicators [12]. In this regard, a proposal is made for structuring data in the form of table 1.

Table 1. Proposed Presentation Form for Approved Cadastral Valuation Results

Item No.	Cadastral number of the object	Entity legal address	Area, sq.m.	Cadastral value, rubles:
Abinsky district				
Buildings				
1	23: 01: 0000000: 194	Krasnodar Territory, Abinsky	866.1	13313602.59

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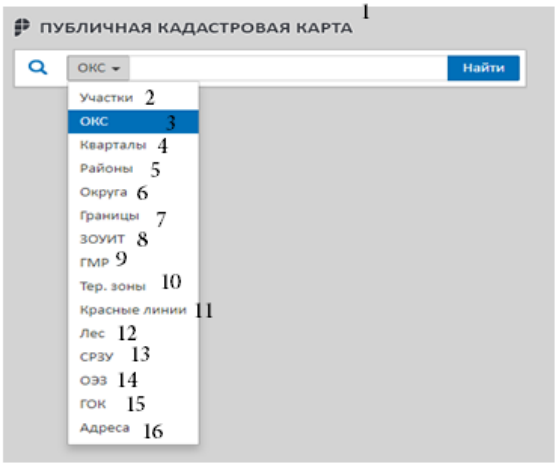
Item No.	Cadastral number of the object	Entity legal address	Area, sq.m.	Cadastral value, rubles:
		District, 95 km. Highways Krasnodar - Novorossiysk 1500 m to the left, plot No. 1		
2	23: 01: 0000000: 258	Krasnodar Territory, Abinsky district, st.ts. Kholmskaya, st. Shkolnaya, 7 5	62.3	957.669.37
…	…	…	…	…
Premises				
…	…	…	…	…
the objects of the incomplete building;				
…	…	…	…	…
parking - places;				
…	…	…	…	…

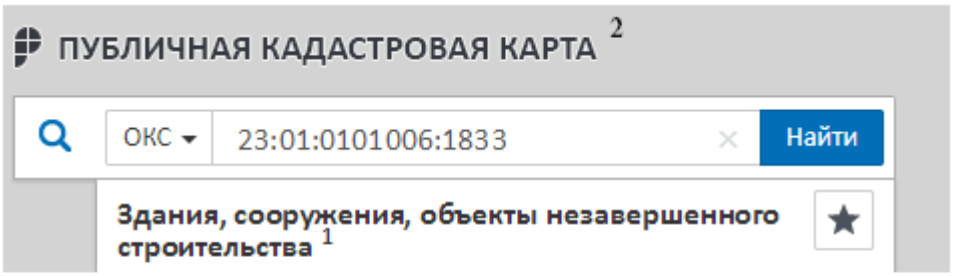
It is worth noting that the information resource of the Rosreestr (Public Cadastral Map) makes it possible to identify exclusively capital construction objects and land plots (see Fig. 2).



1 - Public cadastral map
2 – Parcels
3 - Capital construction projects
4 – Quarters
5 – Districts
6 – Regions
7 – Boundary
8 - Areas with special conditions of use of the territory
9 - Bounds on the minimum distances of pipelines
10 - Territorial zones
11 - Red lines
12 - Borders of forest areas and forest parks
13 - The scheme of location of land
14 - Special economic zone
15 - Geodetic basis of the cadaster
16 - Addresses

Fig. 2. Fragment of the PAC

In accordance with paragraph 10 of Article 1 of the Town Planning Code of the Russian Federation, capital construction objects (ACS) include buildings, structures, structures, construction in progress [3]. This list is also used in the PAC (see Fig. 3).



1 – Buildings, structures, construction in progress
2 - Public cadastral map

Fig. 3. Fragment of the PAC

In this regard, it is noted that it is impossible to obtain information in the public domain regarding such real estate objects as premises and car spaces (see the example in Figure 4). Given the fact that Order No. 2368 does not contain any information except for the cadastral number and cadastral value, the

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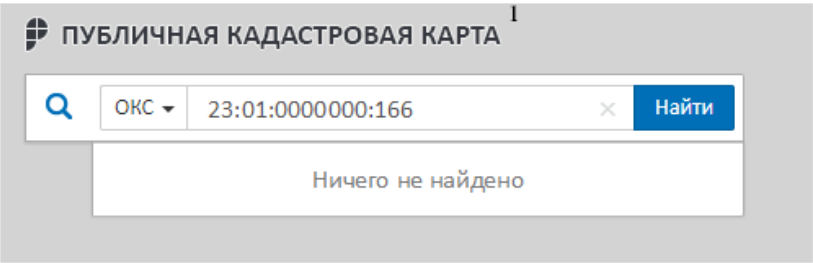
researcher, for analysis, is faced with the need to order a separate extract from the Unified State Register of Real Estate (paid for individuals) for each object from the number of premises and machine - places [6].



1 - Public cadastral map

Fig. 4. Fragment of the PAC

4. Summary

It is worth noting that, when eliminating the above-mentioned shortcomings, the possibilities arise for producing a mass analysis of the results of the cadastral valuation for the adequacy of its implementation compared to the average market indicators, developing new improved approaches and methods for the cadastral valuation process [14, 16].

5. Conclusion

In general, the importance of a thorough analysis of the results of cadastral valuation is explained primarily by the fact that it is the analysis that allows to identify errors and deficiencies inherent in the methodology for calculating the cadastral value, and due to this, take them into account as adjustments when improving existing approaches to determining cadastral value or the development of qualitatively new methods [5].

It is obvious that a high level of analysis quality can be guaranteed if a number of basic criteria are met for the studied cadastral valuation data: the sufficiency and reliability of the data, as well as the observance of the necessary form of information presentation depending on the type of real estate object, goals and depth of analysis [1, 2]. Nevertheless, a logical question arises: why, in principle, improve the methodology for calculating the cadastral value? As mentioned earlier,

the cadastral value is a taxable base, and they are interested in the correctness of its calculation as authorities (property tax is one of the main revenue items of the state budget - and an underestimated cadastral value generates a shortage of funds, and therefore, a decrease in state financing of such spheres of society such as health care, education, culture, etc.), as well as citizens who pay these funds in favor of state structures (overpriced astro value leads to an increase in the tax burden, general discontent and the number of disputes against the results of cadastral valuation, including in court) [8,10,13].

Conflict of Interests

The author confirms that the materials presented do not contain a conflict of interest.

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MODERN SYSTEM OF TAXATION OF REAL ESTATE OBJECTS

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Abstract: Taxation has long been an integral part of the functioning of the state, and if earlier the so-called “taxes” were used exclusively for the ruling elite and the bureaucratic apparatus, today taxes, forming the state budget revenue item, are subsequently redistributed to support programs various spheres of society, be it medicine, education, science, etc. The article is devoted to the study of the modern system of taxation of real estate, in particular, the specific features of real estate as objects of taxation, the main types of property taxes, regulatory legal acts in the field of taxation, as well as the advantages and disadvantages of the tax structure of the Russian Federation.

Keywords: taxes, tax system, proportional system, real estate, the base rate.

1. Introduction

Taxation as a means of generating the main income of the state is an integral part of the functioning of any country, and, speaking of a particular tax structure, the term "taxation system" is used, which is understood as a certain set of relations and relations arising between the state and citizens (taxpayers) in about the size of accrual and payment of taxes [4]. Due to the construction of the tax system, there is a further redistribution of withdrawn funds both for the needs and maintenance of the administrative apparatus and power structures, and for the development of

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the industrial and agricultural sectors, medicine, science, education, culture and other integral parts of a "normally" functioning state [19]. Based on this, it becomes obvious that the well-being and stable development of the country will largely depend on the flexibility and rationality of building a tax system [3].

2. Specific Features Of Real Estate And Taxes Related To Them

From the theory of taxation, it is known that real estate taxes occupy a special place among taxes, as the most stable source of their revenue in the state budget. Researchers in the field of tax systems identify a number of specific features inherent in immovable objects, in particular [16-18]:

- immobility, that is, the impossibility of moving an object without harming its shape or structure (immobility, fixed location) [1];
- preservation by an object of its natural - material form throughout its entire existence;
- the need to register material rights (use, possession, disposal) for such objects, as well as the registration of some of them with state cadastral records.

It is due to such "special" features of real estate that taxes associated with it are always characterized as:

- direct, that is, levied directly from income or, in this case, from the value of the property of the taxpayer;
- theoretically defined as real taxes;
- levied according to the proportional system, characterized by the presence of a constant fixed rate.

As the main taxes on real estate, possessing all of the above characteristics, in our country there are property tax on individuals, property tax on organizations and land tax [14, 15].

3. Value Of Tax Rates For Components Of Real Estate Tax

Returning directly to the systems of taxation, it is worthwhile to note that as the legislative basis for their formation come out the tax and civil codes of the Russian Federation, and also other normatively – lawful reports of federal and regional levels, including the

separate decision of the subjects of the Russian Federation. The Civil Code gives a general idea of real estate, its features, and also legislates a list of objects that can be attributed to it (article 130 of the Civil Code of the Russian Federation). The Tax Code of the Russian Federation acts as the main legal act on the construction of the tax structure, according to which the following basic tax rates are established for all previously listed types of real estate taxes [2]:

- or property taxes of organizations-the base rate is set by the subjects of the Russian Federation and may not exceed 2% in respect of objects with cadastral value, and 2.2 % - in respect of other objects (article 380 of the tax code);
- for taxes on property of physical persons (article 406 of the tax code) - the base rate established by the constituent entities of the Russian Federation and cannot exceed 0.1 % (apartments, houses, unfinished construction sites, garages, Parking lots, etc.), 2% (objects determined in the tax code cadastral value exceeding 300 million rubles) and 0.5% (other subjects of taxation) [7];
- or land tax (article 394 of the tax code) - the base rate is also set by the subjects of the Russian Federation and may not exceed 0.3 % (agricultural land, housing land, personal subsidiary, horticulture, horticulture, etc.) and 1.5% (another land) [5].

4. Dynamics Of Change Of The Amount Of Taxes On Property (Including Real Estate Objects) Entering The Consolidated Budget Of The Russian Federation

Property tax statistics are publicly available on the website of the Federal Tax Service of the Russian Federation. So, based on the information presented in the form of a report on the accrual and receipt of taxes, fees, insurance premiums and other obligatory payments to the budget system of the Russian Federation in form 1 - NM for the period from 2015 - 2019, table 1 is constructed.

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Table 1. Information on the composition and value of property tax accrued to the consolidated budget of the Russian Federation in the period from 2015 - 2019.

	For 2015 (as of 01/01/2016)	For the year 2016 (as of 01/01/2017)	For 2017 (as of 01/01/2018)	For the year 2018 (as of 01/01/2019)	For 2017 (as of 01/01/2018)
Corporate property tax	714 693 398	772 783 890	859,705,540	994 838 467	68 346 275
Share, %	65.0	65.0	66.7	68.7	75.3
Individual property tax:	31 949 092	47 886 590	56952491	69515270	180545
Share, %	2.9	4.0	4.4	4.8	0.2
Land tax	194 703 556	194 137 672	198 866 377	198 559 533	17 132 096
Share, %	17.7	16.3	15.4	13.7	18.9
Transport tax	156777842	173554921	172513538	182337565	4928223
Share, %	14.3	14.6	13.4	12.6	5.4
Gambling Tax	642509	846597	997820	1975878	151434
Share, %	0.1	0.1	0.1	0.1	0.2
Total (property taxes)	1098766397	1189209670	1289035766	1447226713	90738573

Based on table 1, a graph of the change in the value of the tax on property and its components in the period from 2015 to 2018 is built.

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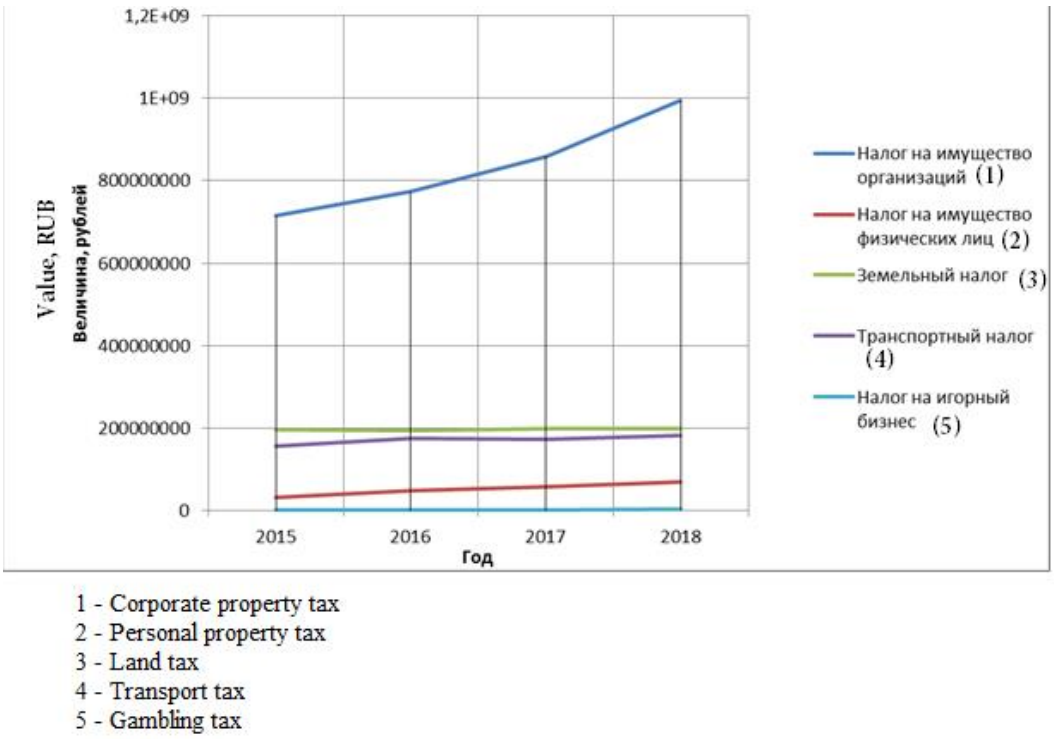

Fig. 1. Based on table 1, a graph of the change in the value of the tax on property and its components in the period from 2015 to 2018 is built.

Based on Table 1 and Figure 1, an increase in the property tax and its components (corporate property tax, personal property tax, land tax, transport tax, and gambling tax) becomes evident - which indicates an increase in the tax burden on the population.

5. Summary

It is obvious that the tax system of the Russian Federation (including real estate taxes) is not perfect, and has both many advantages and a number of disadvantages highlighted by various researchers and analysts in the field of tax sphere, and often what some experts consider the “plus” of taxation, is perceived by others as a significant “minus”, and thus, certain contradictions arise [20, 21].

As mentioned earlier, taxes in the Russian Federation are levied on the principle of proportionality and are based on a base rate. Proponents of the proportional system refer to the constant nature of rates, which facilitates their calculation, and the formation of equality of all citizens before the state, regardless

of their standard of living and income. In particular, there are cases when many well-known representatives of other states preferred to obtain Russian citizenship and pay taxes in accordance with the proportional system of our country, since the progressive taxation operating in their states (Europe, etc.) imposed a more substantial tax burden on them than to other segments of the population [6].

Opponents of the proportional system, on the contrary, argue that such a system, not taking into account the income level of each stratum of society, on the contrary, strengthens social stratification, charging “too much” from the poor and “too few” from the rich. The situation, in their opinion, is also aggravated by the fact that taxes in the Russian Federation are levied for the sole purpose of eliminating the state budget deficit. This leads to an increase in rates every year and an increase in the amount of unpaid taxes, the bankruptcy of certain organizations and attempts to circumvent the need to pay them illegally and due to loopholes in tax legislation. Manufacturers often resort to shifting the tax burden on buyers by increasing prices, which leads to the predominance of indirect taxes over direct taxes and the formation of inflated prices for certain types of products.

6. Conclusion

The solution of problems associated with imperfections in the tax system can be carried out in various ways highlighted by individual experts, such as, for example, the formation of additional preferential conditions for the poor; reduction of tax rates to alleviate the tax burden of individual organizations, in particular small and medium-sized businesses, and social strata; the formation of a "transparent" and flexible tax structure [8-10, 12, 13].

Conflict of Interests

The author confirms that the materials presented do not contain a conflict of interest.

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EDUCATING THE ASPECTS OF THE METAPHORICAL IMAGE OF A PERSON IN THE RUSSIAN WITH IN LITREATURE

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Abstract: The originality of the author's individual metaphor in the Russian prose during the first half of the XX century was researched in the article. The specific of the metaphorical description of the inner world of a person and his social existence were considered in the works of I. A. Bunin, V. V. Nabokov, M. M. Prishvin, I. S. Shmelev.

Keywords: a literary text, the Russian prose of the XX century, a metaphor, the metaphorical image, meaning increase.

1. Introduction

In modern humanitarian science, a metaphor is considered not only as an ornamental decoration, obligatory for a literary text, but also as the most important means of the world and a person description and author conceptualisation: "this is not just an artistic means or a feature of style, it is a special paradigm of thinking" [8, p. 56]. Metaphorization plays a special role in the creative understanding of being, possessing tremendous potential in the "record" of the semantics of words and its figurative-semantic increment. The metaphor, being the most important element of works of fiction, actualizes distant and unobvious associative connections in the reader's mind, allows for many individual interpretations [1, p. 6] and conveys the author's vision of reality, acting as the means of imaginative representation of the writer's worldview system.

2. Problem formulation

One of the main directions in a literary text study, in our opinion, is the analysis of the metaphorical system presented in it. Let us analyze the features of the individual author's metaphor, which allows one to consider

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the known through the already known and to interpret the known well at first glance through non-traditional comparisons, in the prose texts of the 20th century classics: I.A. Bunin, V.V. Nabokov, M.M. Prishvin, I. S. Shmelyov.

3. Main Part

In Russian prose of the first half of the 20th century, the model of metaphorical transfer of physical characteristics of material objects → the state of the human inner world has high productivity. In accordance with it, sensory phenomena are interpreted by referring to such external characteristics of objects as shape, size, structure, density, temperature, color, smell, etc. Symbolic binary oppositions are expressed in the metaphorical units presented below that express stereotypical ideas about the various properties of objective realities that are especially significant in the process of human interaction with the surrounding world.

1. Warm / hot - cold: He remained cold [3, V. 2, p. 197]; The one who has good nerves will win. What about our brother? At first, how hotly we take, and then into the bushes, well, we are tired of him, they say [2, V. 4, p. 476]; The chill of vigorous life-giving pride [3, V. 3, p. 60].

2. Sweet - bitter: The secret that was beating sweetly in her strived outside ... [7, V. 5, p. 78]; In order to preserve the memory of this hour better, I find a bitter joy to write about it in a book which is so often in front of my eyes [2, V. 5, p. 171].

3. Light - dark: A word lives, burns, glows in every soul [5, V. 7, p. 333]; She ... didn’t answer right away that she was happy and loved him very much, but their happiness was “dark”, and she does not dare to look at the light of God, she is very ashamed [7, V. 5, p. 3].

4. Clear - vague: He looked at her confusedly: she was so simple, clear, affectionate, and trusting [7, V. 5, p. 29]; With a vague, revengeful thought [3, V. 2, p. 9]; With vague sadness [Ibid., p. 287].

5. Pure - dirty: She remained the same, attracting by the purity emanating from her and this indefinable femininity [7, V. 5, p. 280]; It is dirty to invent [2, V. 2, p. 231].

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6. Light - heavy: I fell to her, and it became easy for me, as if she had forgiven [7, V. 5, p. 53]; He avoided even the slightest separation [2, V. 5, p. 76].

7. Sharp/prickly - blunt: I looked at him calmly and stupidly [2, V. 5, p. 90]; All his <Martyn — A. Ch.> feelings were sharpened [3, V. 2, p. 280]; The joy is sharp and prickly [5, V. 1, p. 594].

8. Soft - hard: The father Nicephorus had soft, thoughtful eyes [7, V. 5, p. 258]; ... This external improvement is a complete trifle, of course, in comparison with an internal one, similar to installing a lever that raises a stagnant past to re-evaluate it in the light of the future. Without this firm place, the writer is simply a chatterbox without mind [5, V. 4, p. 428].

A peculiar modification of this metaphorical model can be considered such a model as the change in the physical characteristics of objects → the changes that occur in the inner world of a person. The internal form of most of these metaphorical words reflects the associations between various changes in objects that occur spontaneously or under the influence of external factors, and the emergence and development of a person's emotional reactions: He was not drunk, but he could not be called sober either. Apparently, his thirst passed away, but everything in him was twisted, shaken by a hurricane, thoughts wandered, searched for their homes and found ruins [3, V. 2, p. 289]; When I arrived in Baturino, my mother even threw up her hands, seeing my thinness and the expression of tired eyes [2, V. 5, p. 90].

The metaphor is actively involved in the processes of text generation, forming the composition, the ideological content, and the style of works. The use of metaphorical nominations leads to the diversity of meanings, allows to connect the author’s intention and national-cultural traditions. So, in order to characterize the polysyllabic inner world of a man, the use of “fiery” vocabulary is traditional for Slavic culture. “Both soul and life, and private manifestations of life: hunger, thirst, desire, love, sadness, joy, anger were presented to the people and depicted in language as fire” [8, p. 9]. Russian prose of the first half of the 20th century offers a whole series of metaphorical words - the nominations of

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fire, processes and products associated with it - which reflect the national and cultural originality of human states, feelings and thought description: Martyn saw the lights running in her eyes [3, V. 3, p. 189]; Fire of the soul [5, V. 8, p. 347]; She was in awe, flushed with shame, and lights were flashing in her eyes [7, V. 5, p. 48]; I ... burned with indignation [2, V. 5, p. 28]; The ruby intoxication of sin [3, V. 2, p. 174].

The semantics of the lexeme “fire” in Christian culture has a dual nature: it is considered both destructive and purifying power. In the works by Ivan Bunin, fire, as a rule, appears as a terrible force, the fire element carries death in itself, sows evil, giving rise to an apocalyptic perception of life in a person. This is especially pronounced, for example, in the story “Devouring Fire”, where the narrator details the cremation of the young heroine. The semantics of the image are expanded to the extreme due to metaphorical components that convey the state of a person experiencing fear of death and suffering from the sense of being transience. But in Mikhail Prishvin’s prose, the metaphorical image of fire has positive connotations characterizing the abstract concepts of the emotional, psychological and intellectual and spiritual life of a person: Woe, accumulating in one soul more and more, may flare up like hay on some beautiful day, and may burn with the fire of extraordinary joy [5, V. 4, p. 26]; Oh my God! What joy the old woman had from my words! And this was not the former joy, but pure folklore, or calm fire at the site of the past struggle [5, V. 8, p. 667]. Fire can also serve as the designation of the origins unifying people - self-sacrifice, love, kindness [6, p. 77]: There are people around me who have thrown all their best into a common fire, so that it burns for everyone, and what can I say if I covered my light with my palms and carry it and save it for a while when everything burns out, goes out, and it will be necessary to light a new fire on the earth [5, V. 5, p. 445].

The use of metaphorical models in Russian literature of the first half of the 20th century, in which the sensual manifestations of a person are interpreted by referring to the external and internal characteristics of objects, is conditioned by the specificity of the national-cultural context, the peculiarities of the Russian language

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consciousness and the personal picture of the author world. In the examples considered, the basis of semantic derivation logic is the transformation of figurative representations of feelings, emotions, and experiences in Russian culture. The writers emphasize such an important property of the human inner world as its effect on all aspects of human life: physiological, mental, private and social.

The following metaphorical vectors can be used to characterize figuratively the existence of a person in society: in a figurative sense, a person can move forward or retreat, find his own path or “go with the flow: "As a writer, it’s the most expensive thing for me - to feel the time, roll like a drop along a thread of time and not fall at the end" [5, V. 5, p. 437]. In the secondary meanings of a number of words, provided that they have a regular polysemy, the differential and associative features that are inherent in the word in its primary meaning are usually preserved (albeit in a slightly different form). This allows you to reproduce more accurately the specifics of the changes occurring with a person. For example, in the context discussed above, the semantic signs “speed”, “lightness”, “roundness” are very significant for a metaphorical word, creating an aesthetic sensation necessary for the author, establishing close ties with linguistic semantic traditions.

Social life, its most diverse spheres and manifestations in the Russian language picture of the world, have various geomorphic and biomorphic features. The social being of a person in the Russian prose of the first half of the 20th century is often described using the names of the earth surface and landscape: I look at the rye and see the field of new people ... I just really want to rise higher myself and witness the victory of our cause throughout the human field [5, V. 4, p. 371]; the names associated with the body of water or water flows: Pedestrians avoid the middle of the boulevard for some reason, preferring to flow along the windows [3, V. 2, p. 287]; In Monte Carlo, where the most selective society flocks during this period [2, V. 4, p. 54]; the names of the plant world: Humans are the leaves from the entire human tree [5, V. 7, p. 225].

Often, the metaphorical image of a person in the Russian literature of the first half of the 20th century is

associated with the acquisition of an evaluation function by the lexemes, dating back to Orthodox ideas, to gospel parables: I read today about the ways the sower sowed one seed on good ground, and the other on stony ground. Reading these words, while people were leaving us for the greatest war, I understood these people as seeds ... And now I have the following question: can I, like in the story about the sower, neglect the weed seeds? After all, then, as a chronicler, I will tear myself away from the truth of life if I do not say anything about weeds [5, V. 5, p. 173].

A multidimensional image of the world unfolds in the art space of Russian literature of the first half of the 20th century, revealing a complex system of relations between a man and nature, a man and society, a man and history, a man and language, a man and the Creator. The key means by which aesthetic and worldview problems are solved in the texts by I.A. Bunin, V.V. Nabokov, M.M. Prishvin, I.S. Shmelyov, is an individual author's metaphor in our opinion. It becomes a universal way of a person's image creation, realistic, often naturalistic and at the same time possessing a powerful mythological subtext and philosophical content. The semantics of metaphor in the works by I.A. Bunin, V.V. Nabokov, M.M. Prishvin, I.S. Shmelyov is based on national archetypes and normal constants, of course, but at the same time it finds a huge aesthetic and semantic resource to go beyond the logical and rational description of a person and mental traditions that have developed in Russian culture.

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SOCIOCULTURAL GAPS AND THE WAYS OF THEIR ELIMINATION DURING FOREIGN LANGUAGE STUDY

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Elena D. Chelakova[4]

Abstract: In order to take part in the intercultural communication of students, an idea of national traditions, cultural values, customs, and realities of the studied language country must be developed. Lacunae are the gaps in knowledge of the country and the people culture who speak the language being studied. When you work with lacunae, it is necessary to check the correct understanding of their meaning constantly, as well as introduce them into the active vocabulary of students.

Keywords: foreign language teaching, intercultural communication, lacunae, sociocultural context.

1. Introduction

Currently, a significant place is given to the training of intercultural communication in educational systems, which contributes to the successful interaction of representatives of various national cultures [1].

Communication problems arise as the result of a lack of understanding of their partner cultural features [2]. Without knowledge of the sociocultural background, the development of communicative competence will be difficult, since foreign language communication teaching is inextricably linked with sociocultural and regional knowledge, with the development of a “secondary linguistic personality”.

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The criteria of a developed secondary linguistic personality are usually mainly the ability to interact with the representatives of the culture of the language being studied, with the knowledge of lexical and grammatical material, syntax, the knowledge of the phonetic norms of the language, etc. S. Ter-Minasova says: “The need for restructuring of thinking, reshaping one’s own, familiar, native picture of the world according to a foreign, unusual model is one of the main difficulties in foreign language mastering” [3].

The following criterion is also important - the style of speech. If the phrase “Ее нет дома” is translated “She is not at home”, it will sound like “in Russian” and the native speaker will say “She is out”.

The next criterion is the mastering of behavioral patterns characteristic of a foreign language culture representatives. These include: facial expressions, gestures, etiquette of communication, everyday behavior, conditioned by traditions and customs. For example, the British have a tradition of drinking tea at five o’clock in the evening, other peoples do not have such a custom. Ignorance of the norms of behavior accepted in the recipient's country can create difficulties in communication.

The knowledge of the native speaker country characteristics of the language being studied has an impact on the motivational-personal sphere of the learner in the process of a secondary language personality development. This includes value orientations, motivational structure and personality traits [3].

The discrepancies in terms of language and culture among the participants in intercultural communication are usually called lacunae. Lacunae define national realities that are unknown to the native speaker of another language and culture.

2. Research Methods

In linguistics, the term "lacuna" was first introduced by Yu.S. Stepanov, who called them “spaces”, “white spots on the semantic map of the language” [4].

The methodological basis of this work is the study of Russian linguists who have dealt with socio-cultural issues: L.S. Barkhudarov, E.M. Vereshchagin, I.G. Kostomarov, R.A. Budagov, G.D. Gachev, Yu.S. Stepanov

and others. We are attracted by the definition of lacunae proposed by V.N. Komissarov, who calls lacunae "the designations of phenomena specific to a given culture, which are the product of the cumulative function of the language and can be considered as the containers of background knowledge, i.e. the knowledge in the minds of speakers" [5].

Language lacunae are usually divided into absolute and relative. Absolute lacunae are the words that have no equivalent in the form of a word in another language, for example, it is a day, peer, birthday, boiling water for English, and grandparents, siblings for Russian. Relative lacunae include the words that are used in special cases - these are the Russian words: longing, soul, fate [6].

Domestic scholars A.A. Makhonin, M.A. Sternin subdivide interlanguage lacunae into the groups: nominative, generalizing, and concretizing [7].

Nominative lacunae appear if there is no corresponding definition in the language (fortnight – two weeks). Generalizing lacunae arise if the language does not have the appropriate generalization according to various criteria: (by action: eye-opener – something that causes a lot of surprise; according to assessment). Concretizing lacunae appear if the language does not have an appropriate concretization by a certain attribute: (by the manner of behavior: nosyparker – a person sticking his nose everywhere; by some reason: cross-purpose – confusion based on mutual misunderstanding).

There are also other definitions that designate the concept of "lacuna", namely: ethno-eidems, linguistic cultural rhemes, ethnolinguistic cultural rhemes.

3. Main Part

In the process of teaching a foreign language, it is important to consider how the elimination of lacunae occurs. Two main methods are offered: filling and compensation. Filling is the explanation of any definition using the translation-description, explanatory translation [8].

Compensation is used when it is necessary to overcome the national barrier in communication between the representatives of two cultures. In this case, the translation of the value is transmitted using the "analog" or calque. They often use such methods of lacuna

elimination as transcription (the transmission at the level of phonemes) or transliteration (the transmission at the level of graphemes), which are accompanied by descriptive translation. Transcription and transliteration convey the sound and graphic appearance of a word and do not provide text volume increase [9].

Calquing - the translation of a compound word which is used when a translated unit has components (skyscraper - небоскреб, braindrain - утечка мозгов). Among the compound lacunae there are the phrases that cannot be translated verbatim, as this will lead to inaccuracies: redtape is not a “red ribbon”, but bureaucracy [10].

Analog is a ready-made approximate equivalent of lacuna. The English word drugstore is translated into Russian as a pharmacy, but it is also important to know the background information, that is, this is the place where you can have a snack and buy not only pharmacy products.

Using an explanatory translation, as the method of sociocultural lacuna elimination, it is possible to determine its lack - it leads to a text expansion. For example, the explanation of the lacunae can take several lines: townhouse - a residential building within the city, usually of two floors, the walls of which are adjacent to such houses, and a continuous line of buildings is formed.

Students have to deal with different types of lacunae: linguistic, ethnographic, cultural, behavioral and others.

Analyzing the teaching materials in English, we conclude that the number of lacunae in the educational material varies depending on the stage of training.

The number of gaps in the textbooks of the initial stage of training is small. The purpose of lacunae at this stage is to increase the motivation to a foreign language learning, since they carry sociocultural information that is interesting for students.

At further stages of language learning in authentic texts, there is a large number of language expressions that are used in the situations of natural communication, phraseological units, set phrases and, of course, various lacunae. At these stages, it is important that students understand the national-cultural

and national-mental characteristics of the language being studied.

Let's consider the difference between the lacunae and foreign language material unknown for students [11].

The method of working with gaps begins with highlighting a gap in a text. If students do not indicate a gap, they may not fully understand the proposed text. First of all, a teacher must initially and carefully study the training text in order to identify gaps.

The following are the stages of working with gaps: the stage of language unit semantization, the stage of speech skill development; the stage of speech skill improvement and development.

When you work with gaps according to the methodology of a foreign language teaching, the main link is semantization. Then the formation of speech skills and their development takes place.

Students can offer the following exercises to enhance the use of sociocultural vocabulary in speech. The following exercises are effective at the sentence level and over-phrasal unity:

1. Explain the following words: Killjoy, Fogy, Shagrag, Pighead, Gasbag.

2. Here are the nicknames of several states. Explain the implicit meaning of the nickname.

1) The Pilgrim State

2) The Land of Milk and Honey

3) Midway, U.S.A.

4) The Border State

5) The Grand Canyon State

6) The El Dorado State

1. Massachusetts was named “The Pilgrim State” because of the Pilgrims settlement in Massachusetts and the establishment of the Plymouth Colony. The Pilgrims set up a government in Massachusetts with the “Mayflower Compact”. In 1621, the first Thanksgiving was held.

2. California is called “The Land of Milk and Honey” as in a land of opportunity, with reference to “Promised Land” in the Bible.

3. Kansas is called “Midway, U.S.A.” because it is located close to the middle of the contiguous 48 states.

4. The nickname “The Border State” was given to Maine because its northern border is with Canada

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5. The popular nickname for Arizona "The Grand Canyon State" references the incomparable Grand Canyon in the northern part of the state, one of the world's natural wonders.

6. The first nickname for California was "The El Dorado State". This nickname was used for California after gold was discovered there in 1848.

2. All the words have been defined by an American student. But he was watching TV at that moment and accidentally made 4 mistakes. Read the definitions and find mistakes.

Potluck – a party to which every family has to bring own special dish to share it with the others;

Buck – a 25 cent coin;

Grace (to say grace) – most American families do that before starting dinner. It is like saying thank you to God for the food given;

Nuts (to go nuts, to be nuts about something) – crazy;

S'mores – any shoes for sport or walking;

Sandwich Man –a guy who likes sandwiches very much.

Storytime – a children's section in a large bookstore. It is an area with toys, building blocks where kids can play while their parents rummage through the books on the shelves;

Open House –one that is open because the owners forgot to close and lock the door.

Buck–1 dollar; S'mores – sweet sandwiches with warmed-up marshmallows and waffles; Sandwich Man– a person, who carriesan advertising. Open House –it is a time when an institution is open to the public.

In order to intensify the use of non-equivalent and background vocabulary the following game is effective: "More words." During the game, students are divided into two teams. It is assumed that team members name as many words as possible on the topic being studied. The team that names the most words wins.

During the game "The Most Interesting Story", you also need to organize two teams and each team makes a story using the vocabulary that they could remember and all the material covered. The team that makes the most interesting story and uses the most vocabulary wins.

The next game is «Do you believe or not»

T: Now I'm going to read some statements and you must tell me if they are true or false.

Do you believe that…

+… the English are individuals.

-… the Irish have a strong sense of being different from others (British).

-… the Scots are mainly Anglo-Saxon in origin (the English).

-… the Welsh have a strong sense of national identity (the Scots).

+… the Welsh pride themselves on being the true Britons.

It is important to teach students the tactics of group communication for a teacher. Pupils should be able to speak logically, coherently and productively. It is important to introduce communicative speech stamps into the speech so that students can express their opinion (As for me ..., In my opinion ...); consent and disagreement (I think the same, I agree with you, That's true, No, I can't say ..., I'm not sure ..., I'm afraid you're wrong); conclusion (On the whole ..., In general ...).

4. Results and Discussion

Analyzing the test work on improving the lexical skill of high school students using the method of filling in sociocultural gaps, at MAOU "Secondary School No. 24 with UIOP", Stary Oskol, in which 28 people took part, we concluded the following:

High school students have the need to acquire knowledge and information about the culture, customs and traditions of the country of the language being studied. To do this, one should study new vocabulary and improve already familiar one. As follows from our study, the methods described by us for filling in sociocultural gaps, as well as speech exercises, which are the productive means for the studied non-equivalent and background vocabulary assimilation, serve this purpose. At the first stage of the experiment, the test was conducted that allowed us to determine the level of sociocultural competence development among high school students.

For half a year of work, training lessons were held using the method of filling in sociocultural gaps, which made it possible to determine the levels of students learning new vocabulary, the ability to use it in speech during the developing experiment.

At the end of the experimental work, the second test was conducted to

identify the level of lexical skill development among high school students. The obtained and processed data showed that the high level of the lexical skill development after carrying out experimental work increased by 25.1%, the average level of knowledge increased by 18.3%, there were no students with a low level on a given topic.

5. Conclusions

Thus, we can conclude that the work done to improve the lexical skill of high school students during the filling in of sociocultural gaps has increased their level of vocabulary on a given topic. It is important to note that participation in the communication process requires something more, namely the possession of equivalent and background vocabulary, the use of various speech cliches and colloquial forms. Mastering a foreign language is inextricably linked with mastering a new vocabulary, which must be improved, for example, by filling in sociocultural gaps, as described in this paper. Using this technique helps to improve the lexical skill.

Summing up, it should be emphasized that it is important to semantize lacuna correctly and control the correctness of its understanding. Besides, the studied equivalent units should be introduced into student speech. The absence of a foreign language equivalent of a lacuna implies a thorough working out of the lacunae and a sufficient amount of time to develop the sense of language and linguistic intuition of students.

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GENETIC APPROACHES TO THE STATE CATEGORY

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Abstract: The article analyzes various functional paradigms of the state, which will help to reveal the essential, organic aspect of a state-organized society existence. A state of any historical type implements itself in activity and, therefore, has a functional basis in which the unchanging is embodied that is inherent in it at all stages of evolution. Universal functions implement the essential characteristics of a state as an institutional expression of activities aimed at "common affair" solution. A functionally organized state embodies a certain type of activity that satisfies the need for self-preservation and purposeful organization. Therefore, the functional approach to the study of the state phenomenon allows us to reveal the most important properties belonging to all states, at any evolution stage in which the social purpose of the state as such and, ultimately, its objective (essential) and subjective meaning is manifested.

Keywords: Functions of the State, Evolution of the State, Statehood, Political Society, Historical forms of the State, Essence and legal nature of the State, State purpose.

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1. Introduction

Defining the functions of the state, G. Jellinek distinguishes "material" functions as "the main directions of state activity" and "formal" ones, i.e. "the functions of certain groups of authorities." The former is considered by it as the state functions, which are "conditioned ... by the fact that the activities of the state are aimed at its goal achievement". From this point of view, the functions of the state are the means of state certain goal achievement. At the same time G. Jellinek sought to separate the functions of the state from the content of his activities and reduce them only to external and formal manifestations of power. He believed that "a specific content of the state activities can always be determined only empirically, and moreover only for an individual state at the moment of its existence." Therefore, in his opinion, "all attempts to give an exhaustive picture of state power by simply enumerating its functions in terms of their content" are certainly unscientific [1].

The functions of an object are an external manifestation of its properties, modes of behavior in a particular system of relations. Therefore, the knowledge of functions is a prerequisite for knowing the main and determining in the state, revealing its social meaning, what it represents itself, in contrast to other social phenomena, in other words, its essence.

Secondly, the importance of the issue concerning state functions is conditioned by the fact that the functions determine its structure, i.e. the ways, the patterns of organization of elements of the state as a complex social system. The structure of any system (biological, technical or social one) is determined by its functions.

Let's pay attention to the fact that the content of the concept of "state function" can be revealed through the following judgments:

- it is a scientific abstraction, through which a unified state activity is divided into species. They differ by the nature of an object, an immediate goal, the forces, the material and technical means, the methods and, as a consequence, by the activity product;

- State functions are not fundamentally the activities that are unique to the state. Along with the state, similar activities can be carried out by

non-governmental organizations. Thus, all the links in the political system of society are based on similar and, finally, general functions. This phenomenon can be called a functional monism in the organization of public life;

- The specifics of the state functions consists in the fact that it gives them a universally binding character as an organ of political power;

- State functions are characterized by relative constancy. At the same time, it goes without saying that different social and political tasks can be solved within the same function and the same set. The features of functions are determined by the needs of political domination of a given class or a social group in a given historical epoch;

- The state realizes its social purpose through functions;

- The states of different historical types have similar functions from the organizational and the technical point of view (but not identical). Such a similarity in the functions of states which is opposite to the essence of states is an objective prerequisite for both their limited mutually beneficial cooperation (there is a partial temporary coincidence of some goals) and the confrontation between them (the bases of struggle are developed);

- The functions of the state include not only those activities that directly serve its social purpose, but also those that perform this role indirectly;

- The concept of function is not related either to the degree of development, the scale or "specific gravity" of a particular activity, nor to the availability of an appropriate specialized link in a state apparatus, it is sufficient for the very fact that such activity is performed by the state;

- Each function of the state should be considered as an element of a single system of functions, outside the system the concept of function has no real meaning [2].

It should be noted that there are significant differences in literature concerning the approaches to the definition of state function concept. And the point here is not only and not so much that the semantic translation of the Latin word "functio" was taken as the basis of some theoretical research, while ignoring the methodological and philosophical interpretation of it.

Rather, the variety of definitions of the state function concept

is largely conditioned by the expansion and the deepening of the methodological basis of state theory on the basis of the greater use of private research methods. This can be traced, for example, via the evolution of the philosophical interpretation of the very concept of function. So, at the turn of the 60-70-ies of the twentieth century, a function was understood as "the mode of behavior inherent in an object and contributing to the preservation of this object or the system existence into which it enters" [3]. On this basis, L.I. Kask wrote: "The function of an object is an external manifestation of its properties, the ways of its behavior in a certain system of relations" [4]. And in the late 80-ies you can find another interpretation of this concept: "Function is the ratio of two (group) of objects, in which the change of one of them is accompanied by the change in the other. The function can be considered from the point of view of the consequences (favorable, unfavorable - dysfunctional or neutral - non-functional), caused by the change of one parameter in other parameters of an object (functionality), or from the point of view of individual parts interconnection within the framework of some whole (functioning)" [5]. In the first, earlier definition, the emphasis is on the external manifestation of object properties, the "mode" of its behavior, in the second, later one - on the "relation" between the objects, i.e. the essential aspect of the function is emphasized.

Thus, the functions of the state can be defined as the main directions of its activities in the management of society, including the mechanism of state influence on the development of social processes, in which its essence and social purpose is expressed.

2. Methods and Materials

A fundamental tradition in dealing with the stated problems is in the British school of functionalism. Not accidentally, its prominent representatives - B. Malinovsky, A. Radcliffe-Brown, E. Evans-Prichard - were at the root of political anthropology. In 1940, three books were published, which gave the analysis of the political systems and the institutions of power of archaic African societies. This is the collection of "African political systems" edited by M. Fortes and E. Evans-Pritchard and two books of the latter - "The Political Organization of

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Anglo-Egyptian Sudan entities" and "Nueres. The description of life support and political institution methods of one of the Nilotic peoples".

B. Malinovsky formulated his postulate or the initial principle of the functional approach in the following way: "in any type of civilization, any custom, material object, idea and beliefs perform a certain vital function, solve a certain task, represent a necessary part inside the acting whole" [6].

For A. Radcliffe-Brown functional analysis meant, first of all, the definition of a place and the role of this phenomenon in social structure functioning. "Only when we understand culture as a functioning system," the scientist wrote, "we can foresee the results of any deliberate or an unintentional influence that it exerts on it" [7].

In the process of cultural and anthropological research, the concept of "function" has received two main meanings. The first indicates the role that a certain element of culture performs with respect to the whole, and the second one characterizes the relationship between the parts and the components of culture. The following functions were the subject of the analysis: substantial or supporting function; adaptive function; the function of tradition, religious belief, ritual, and the history of people preservation and replication; the symbolic-sign function of culture; the communicative function of culture; the regulatory function contains the institutional forms of conflict resolution; compensatory function.

We should not forget about the influence of early or classic British functionalism on American sociologists and political scientists - T. Parson, R. Merton, D. Easton, G. Almond, and others who in the second half of the 20th century were engaged in the study of political processes and the mechanisms of power in post-traditional and industrial societies. In the late 70's - early 80's, the initiative in the development of the functionalist paradigm of social theory passed to the German researchers Yu. Habermas and N. Luman.

American researchers tried to overcome the extremes and the shortcomings that were, in their opinion, peculiar to early functionalism in the process of their theory development. Thus, Merton, analyzing the mistakes of his predecessors, identifies three

questionable provisions, in his opinion: 1) the postulate of functional unity (standardized social activities or the elements of culture are functional for the entire social or cultural system); 2) the postulate of the universal functionalism of social life (all these social and cultural elements fulfill social functions); 3) the postulate of functional necessity (indispensability), (performing functions of a phenomenon or the objects that are necessary for the life of society) [8].

Merton essentially changes the functional approach and offers its codification of concepts and problems or the paradigm of functional analysis in sociology.

As for the first postulate of functional unity, then, according to Merton, it is relatively acceptable for some pre-literate societies. In fact, societies represent different integration degrees (including political one). The difference in the degree of their homogeneity (political and legal regime, for example) can make the shifting of conclusions from one to another very risky. Here, the specification of the socio-political unit that is served by a given social function is required, since this or that phenomenon may not function for the whole system, but only for its part.

The consideration of the second postulate of universal functionalism led Merton to the conclusion that it is necessary to develop a method to determine the net balance-sheet result of particular social phenomenon consequences.

3. Main Part

One and the same social phenomenon can be functional in one respect, and dysfunctional in another, so it is important for a functionalist analyst to talk about a functional balance. Let's not forget that for Merton the functions are those observable consequences that contribute to the adaptation of a serviced unit or a system. Dysfunctions are those observed effects that reduce adaptation. Non-functional phenomena are those whose consequences are indifferent.

Merton's idea of a "pure balance of the totality of consequences" is of interest for us, since it can help explain the nature of one level of political evolution change to another. If the net balance of the existing socio-political structure turns out to be definitely dysfunctional, then there is a powerful

pressure that seeks to change this structure. Upon a certain critical point reaching, this pressure will inevitably lead to more or less predetermined directions of socio-political changes.

It turns out that a dysfunctional method of analysis can reveal not only the bases of socio-political stability, but also the potential sources of political change. When these changes go beyond a certain critical point, which can be difficult to determine, a new social system emerges.

The very concept of "historically developed forms," according to the sociologist, suggests that social structures, as a rule, undergo distinct changes. Researchers are left to detect those pressures that produce the changes of various types.

Considering the necessity postulate critically, Merton formulates the concept of functional alternatives (functional equivalents or substitutes). In this regard, the problem of phenomenon variability range arises. This range introduces some mobility into a frozen picture of the existing and inevitable. The interdependence of social structure elements limits the choice of alternatives and the possibility of changes. This limiting effect of the structure is called the structural context. For Merton, the main question at this point of reflection is the following one: "To what extent does this structural context limit the range of phenomenon variation in which they can meet functional requirement effectively?" [8]. The knowledge of the structural context allows to foresee the most probable directions of social changes. Thus, functional analysis in Merton's theory is closely related to another approach - structural analysis. Both aspects are united by a common research concept and allow to emphasize the study of dynamics, the changes in social and cultural systems.

The concept of "explicit" and "latent" functions has a definite methodological potential. Explicit functions are referred to the objective and deliberate consequences of a social action. They contribute to the regulation or the adaptation of the system. Latent functions belong to the category of unintended objective consequences, which were not the part of an intention and were not realized. An analytical distinction between these concepts was introduced in order to exclude the confusion of the conscious motivation of

social behavior or subjective relations (interests, goals) with its objective but not realized functional consequences. In both cases, we are talking about the consequences that have an objective character, i.e. existing or manifesting independently of the consciousness and the intentions of separately acting individuals.

In the evaluation of the system action functionality two "functional system problems" - the problem of "distribution" (tasks, resources, value objects, etc.) and the problem of "integration" (possible coordination of different parts of the system) play a specifying role. The functions are divided into "mechanisms" - the processes that stabilize the system of action, and the "trends" - the processes that disrupt the equilibrium of a system and lead to changes. These two fundamental principles make the basis of T. Parson's structurally functional theory of social systems.

The social system is one of the aspects of an entirely concrete social action system structuring. T. Parsons defines it as a system formed by the states and the processes of social interaction between acting subjects whose properties are not derived from the properties of acting subjects. Its minimal element is not an individual, but a bundle of "status-role", where the status expresses a "positional aspect" and the role expresses a "procedural aspect".

The problem Parsons seeks to solve is to explain the functional differentiation of the action subsystems. The main subject of his analysis are the processes that ensure the preservation and the survival of all subsystems of action and the system as a whole. These processes are vital for a system preservation and reproduction as an integrity. He considers them as functional imperatives or functional requirements.

Any system is necessary, it must satisfy four functional conditions: adaptation, goal-setting, integration and latency (in the English-language version, AGIL - according to the first letters of the concepts adaptation-goal-integration-latency). Therefore, four subsystems with corresponding functions are formed in the system: adaptation of the system to its environment (adaptation); the definition of the hierarchy of goals to be achieved, and the mobilization of the resources

necessary for this (goal-setting); the provision of the whole system through the internal coordination of its elements (integration); the maintenance of equilibrium and the reproduction of system samples (latency).

The scheme of this "four-function paradigm" is used for the analysis of other systems, for example, the social one, which will appear in this form: the function of adaptation in the social system is implemented by the subsystem of the economy, the function of maintaining the sample - the subsystem of socialization, the goal-setting function is implemented by a political subsystem presupposing the possibility of behavior individual compulsory control, the function of integration - the subsystem of social control, carried out to control the behavior of individuals because of their voluntary loyalty to those groups to which they belong.

The complex of social sciences, including political science, explores the social system, both in the microdynamic interactions processes, and in the macrodynamic processes of structural and functional differentiation and integration from different aspects.

T. Parsons names some social systems as societies. Society is a type of social system that has the highest degree of self-sufficiency relative to its environment, including other social systems. Self-sufficiency in relation to the environment means not closure, but the stability of mutual exchange with the environment and the ability of the system to control this interchange in the interests of its functioning. Society, as a system that achieves the highest level of self-sufficiency in relation to the environment, is a societal community. Self-sufficiency presupposes such a level of social structuring, which means the state-formal organization itself.

The self-sufficiency of society or the state, according to Parsons, is the function of a balanced combination of control mechanism balanced combination over the society relations with the five environments (the highest reality, cultural systems, personality systems, behavioral organisms and physical-organic environment), as well as of its own internal integration degree [9].

This is nothing more than a functionally organized society or a functionally organized state. The

political structures of such a society organize collective actions, both on a broad social basis, and on a narrow one, territorially or functionally limited. At a high level of political evolution requires the differentiation of the adult population status by two parameters. The first parameter determines the levels of responsibility for the coordination of collective actions and establishes the institutions of leadership and authority. The second one is with the level of competence, knowledge, etc. and gives more power to professionals. Moreover, Parsons adds the following: "the isolation of a political system from the matrix of the societal community implies the institutionalization of high statuses in both these contexts" [9]. Let us note in this regard the following methodological aspect of the author's reasoning, in order not to appear in the Parsons' "categorical trap". The concept of "political system" includes (in the light of the political science tradition) the state as its main structural element. If we attach the "social community" to the status of a state-formed society or a state, then in our interpretation (but not in the scholar's reasoning) we find a simple tautology. Parsons represents each unit of the system of action by changing the level of the correlation system as an independent system and analyzes any aspect of this unit in the categories of four-function paradigm. For him, categories mean a necessary set of analytical dimensions, without which it is impossible to study the "system of action", but they (the categories) do not have an ontological meaning [10]. Let us not forget that Parsons' use of the concept of function sometimes acts as an "analytic aspect of the system of action".

There is a certain political and legal regime in the societal community in which the coercive mechanism plays a significant role. An autonomous legal system develops, which is an important indicator of the societal community differentiation. This is explained by the need for an authoritative interpretation of institutionalized regulatory prescriptions. The political-legal regime supports the normative order, and also monitors the behavior within the boundaries of a certain territory. Consequently, the management function includes the responsibility for the territorial unity maintaining of the regulatory order in a state. This functional imperative has two aspects:

internal and external one. Internal aspect concerns the conditions of general norm imposing for the performance of necessary functions by various elements of society. External aspect is aimed at destructive interference prevention from outside. The extreme means of a destructive effect prevention is the use of physical force. According to Parsons, the control of the organized use of physical force provided by the unity of management institutions is one of the basic functional needs of the state. Thus, the primary need of a state-formed society is to harmonize the activities of its citizens with regulatory requirements. In other words, the primary functional need of the state is to maintain a uniform regulatory order throughout the territory. The state should have an adequate control over motivational obligations and over the economic and technological complex.

Among the most important structural components of society - values, norms, collective organizations, roles - Parsons attached a special importance to the last component. Adaptation is the primary function of the role in the social system. And among the processes of evolutionary change, the most important from the perspective is the process of adaptive capability enhancement. The indicator of adaptive capabilities is primarily differentiation - the process in which an element, a subsystem, or a set of them is eventually divided into several elements or systems that differ both by the structure and by the functional role within a new system. Each newly separated subsystem should be more adapted to implement its primary function in comparison with the previous form and the previous level of its implementation (function). Parsons calls this process "an adaptive improvement." The processes of differentiation influence the integration of the system directly. Integration is associated with the need to coordinate the actions of a new set of structural elements, and hence functions. Thus, at the appropriate level of professional specialization (in the field of production), a system of power appears that is no longer determined by kinship. An adaptive improvement requires that new specialized abilities do not repeat, do not reproduce the functions of the previous (diffuse) structures. By diffusion we mean an actor's orientation on an object as a whole, and not on the

specific elements of this whole. The process of adaptive opportunity strengthening involves the generalization of values (manifested in the expansion of universal cultural pattern scope that are not specific to most social groups) and the increase of actor membership volume performing the roles in social systems (inclusion).

Social development is understood by T. Parsons as a logical evolution of social systems in the direction of adaptation and self-sufficiency increase. On this path, the subsystems that signify a qualitatively new state of the social system appear successively in any social system. The evolution of these systems is carried out from primitive societies through an intermediate stage to modern societies. The main divider, the marker in the evolutionary stages within its classification is the change in the code of regulatory structures. During the transition from an intermediate to a modern society this is the institutionalization of codes of a regulatory order, the core of which is the system of law.

Let's pay attention to the fact that in the New time the coordinating function / activity of the state took a certain institutional form. S.I. Hessen in his work "The Rule of Law and Socialism" quotes P. Cole's opinion that the coordinating organization has not so much administrative, organizational, managerial or legislative as judicial character. That is, the primacy of judicial practice, which has survived to the present day (with its characteristic adversarial nature), is developed in the establishment of a state-coordinated law and order.

Hessen also notes that a functionally organized state "definitely empowers each functional association to solve all those matters that relate to its function, without any interference in its normative operations by any extraneous body" [11]. He formulates the concept of functional federalism. Within the framework of functional federalism, the state undergoes functional diversification and is defined as "the coordinating organization of society, and its function (state) is ... to represent the completeness of interconnected activities in a functionally separated society" [11].

An interesting interpretation of the further development of functional

federalism is provided by V.S. Nersesyants. According to him this development led to the fact that not only and not so much legal proceedings, but also other axiological functions began to structure the institutional field of statehood [12]. The content of functions remains unchanged at various stages of state and society development.

Let's note that the Parsonsian characteristic of a functionally-organized state with the use of function differentiation principle corresponds with the functional-method structure by N.S. Rozov. His position is determined by the fact that in the historical process each new phase of society political organization development is not only a more effective way of old function performance, but certainly the emergence of many new functions and the discovery of new opportunities for the development of other structural components of the state. This means a significant update not only and not so much of the private ways of social structure and social institution function performance, but rather an update of the system of functions itself. Both the conceptualization of the functional system of the state and the moment of transition record from one regime (collectively defining one or another historical type of state) to another one by N.S. Rozov are important for us. He notes that "regimes as coherent aggregates of routine processes are conceptualized through the systems of social functions (defining regularity) and social methods (human, social, cultural and material basis of regular routine processes)" [13]. The rise to a new stage in the space of some dominating factor (there are ten of them) is accompanied by clear signs of a significant qualitative change in functionality and greater efficiency. If this happens for all ten factors, then we are dealing with an appropriate regime complex and the class of functional systems. The appearance of a qualitatively new system of functions means the change in the political-legal regime complex. Completing the consideration of the posed issue, it should be noted that in one of his recent studies V.E. Chirkin drew attention to the fact that "the exercise of the state functions is public administration, understood in the broad sense of these words as the diverse activity of all state authorities, including the parliament, the court, other

authorities, and not only the managerial administration" [14].

4. Conclusions

So, the analysis of various functionalist paradigms will help to reveal an essential, organic aspect of a state-organized society existence. In such a society, functions carry out the homeostatic interconnection of social elements (roles, cultural patterns, norms, regimes, institutions, etc.) between themselves and the whole, as well as a concrete process of adaptation or adaptability as the factor determining the direction and the degree of state development advancement.

The analysis of only one sphere of socio-historical reality will clearly be insufficient. Technologies, production relations, culture and other spheres have a causal and a functional connection with political processes and need to be taken into account.

A functionally organized state embodies a certain type of activity that satisfies the need for self-preservation and purposeful organization. The change in the system of social functions (in the case of exceeding the critical values of basic functions) leads to the modification or the emergence of a new political and a legal regime. Political-legal regimes are conceptualized thereby through the systems of social functions. A certain political and legal regime sets a corresponding historical type of state in its basis.

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MAIN AREAS OF IMPROVEMENT IN LOSSES ACCOUNTING AND COST CALCULATION IN AGRICULTURAL PRODUCTION

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Abstract: The article argues for the application of product cost calculation by the "direct-costing" model as an improvement in the management accounting system in agricultural enterprises. The authors categorized the costs of agricultural production based on its relation to the production output into variable, semi-variable and fixed costs. The methodology of transfer pricing has also been developed, as a tool for assessing the effectiveness and determining the final result (profit and loss) of each responsibility center. A gradual construction of cost accounting, output and financial results has been suggested. Therefore, in order to implement the accounting system proposed in the article and to increase its controlling functions, the authors developed an analytical accounting register or a production report form, where financial results should be identified at the production stage and at the level of the organizational units. The article is not only scientific, but also practice-oriented, thus the outcomes will be useful not only for students, graduate students and teachers of economic

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subjects, but also for practicing accountants and managers.

Keywords: "direct-costing" method, management accounting, cost accounting, marginal profit, agriculture, responsibility center.

1. Introduction

Under the conditions of market economy, the new methodological guidelines for accounting should be developed in Russian agricultural organizations in an effort to meet international accounting standards. Compared to other industries, agricultural production has some peculiarities that affect accounting, planning and costing processes [6].

The financial results of agricultural production significantly depend on the sustainable use of material, labor and financial resources [1]. Therefore, the scientifically based organization of accounting and production process accounting based on the management model of "costs - volume - results" is of great importance. In our opinion, the accounting must address better the information needs of operational and strategic production management, as well as the requirements of internal control.

The methods of cost accounting should also meet the requirements of economic analysis and determine the patterns of change in costs, output, and financial results of the organization and its divisions.

2. Methods

The studies of Russian and foreign scientists on the theory and methodology of financial and management accounting, analysis and control; legislative and normative acts regulating the costs accounting and calculation in agricultural production became the methodological and theoretical basis for our work. The following methods were used during our study: basic accounting methods; analysis, synthesis, abstract-logical, monographic, methods of systematization and generalization of research results.

3. Results

3.1 Organization of financial responsibility centers in agricultural enterprises

At present, Russian agricultural enterprises commonly use only the per-order method of all existing cost accounting methods. This method meets the requirements of centralized planning, which characterized the totalitarian command economy. In the market economy conditions, agricultural organizations received complete independence in productive activities and full responsibility for their productivity (works, services). Therefore, these organizations develop a system of economic methods of production management, which requires the creation of an appropriate, reliable and adequate information base.

This implies the increased use of cost accounting methods, i.e. application of more progressive methods, such as process, phase-by-phase and standard costing methods. At the same time, each organization must take into account the qualification level of their accounting staff and technical equipment at their disposal.

Not only agricultural crops (groups of crops), farm animals (groups of animals), but also technological processes, redistribution and production phases should become accounting objects when using these methods of production accounting.

The effectiveness of production accounting can be significantly increased if the proposed accounting methods are used in combination with the standard costing method. Costs accounting is now multidimensional, but we can distinguish two main approaches in its development. The first approach is aimed at improving the costing and control of costs for each separate type of finished products (works, services). It is characterized by the classification of all costs into direct and indirect costs, and the practical implementation of this approach is targeted at full cost calculation.

The second approach implies the improvement of administrative decision-making, its compliance with changes in market conditions and other external factors. The relevant accounting system emphasizes costs dependence on changes in the volume and structure of the finished products, which gives relevance to the classification of costs into direct and indirect. If the first approach is product-oriented, the second one is market-oriented. The first approach is based on the traditional

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system of manufacturing accounting, the second approach is based on the "direct-costing" system. One of the advantages of the marginal costing is its flexibility and ease of use in case of short-term settlements typical for enterprises vulnerable to the risks posed by market fluctuations. The above-mentioned system of calculation will allow to generate the most essential information for administrative and management personnel with the purpose of adoption of a specific decision [2].

In order to increase the efficiency of agricultural production, improve the financial performance of agricultural organizations, a restructuring of economic entities and the creation of financial responsibility centers: cost centers; revenue centers; centers of investment, - would be needed [5].

These centers can operate effectively based on the principles of self-control, self-financing, self-government, and self-support [3, P.27]. Therefore, there is an objective need for a wider use of economic methods of management and decentralization of some of its functions, including management accounting for the "cost-output-benefit" model (Figure 1.).

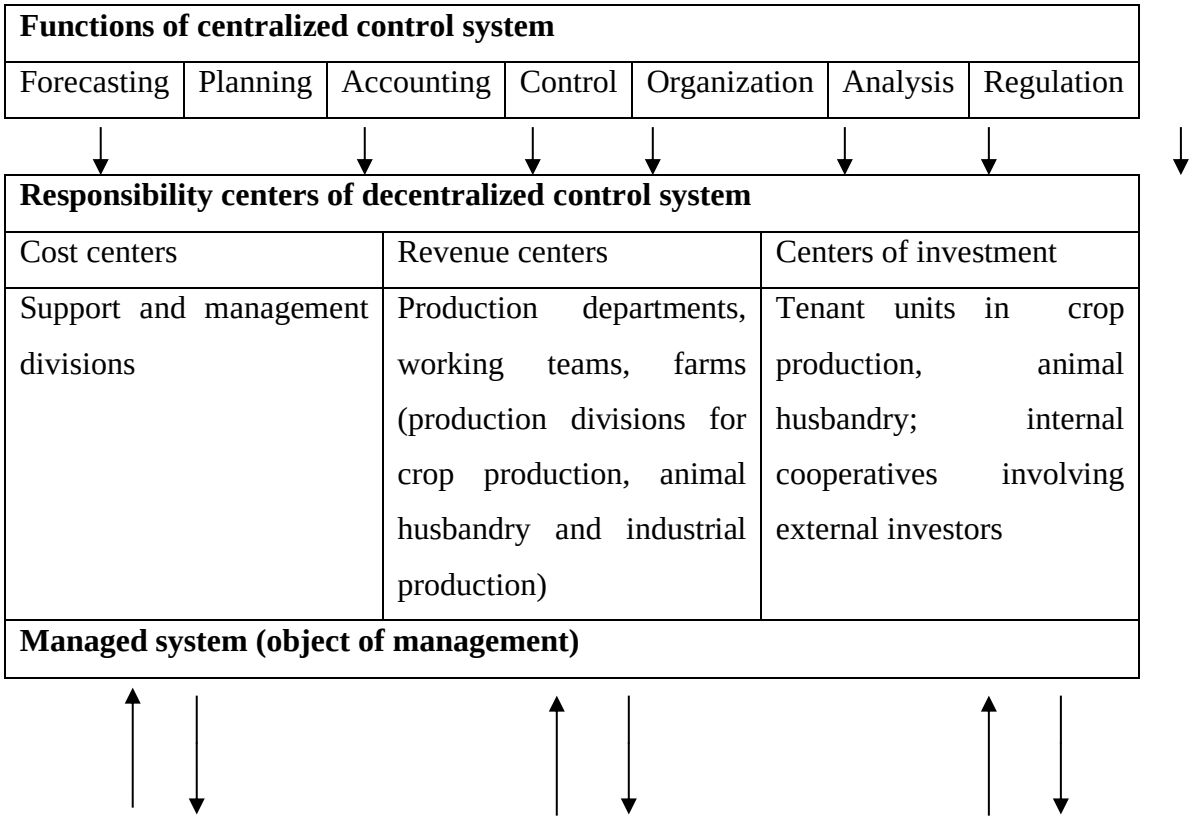

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Fig. 1. Model of the responsibility centers organization, management accounting, control and analysis of their activities under the "cost-output-benefit" scheme

⟶ - forward linkage — — → - backward linkage

Practical implementation of this model allows to take into account, analyze and control the production volume, its cost and financial results directly by units (responsibility centers) in an operative manner. To do this, it is necessary to change the system of the production management cost accounting, the methods of economic valuation of different products (works, services) of the responsibility centers and assessing their performance.

3.2. Classification of cost accounting in management and financial accounting

One of the most important aspects of improving cost accounting is the correct classification of costs by items in management accounting and by elements in financial accounting.

In order to optimize the management costs accounting and evaluation of the financial results of the responsibility centers, the costs of agricultural organizations must be grouped depending on the production output into variable, semi-variable and fixed costs. Besides, methodology should be developed for transfer pricing as a tool for assessing the effectiveness of activities and determining the final result (profit and loss) of each responsibility center [8, P.30].

At the same time, the transfer price should be higher than the variable (department) production costs and below the market selling price:

$$P_t = P_p \times (Svsv / 100), \quad (1)$$

where P_t is the transfer price of 1 centner (hundred kilograms) of product in RUR;

Svsv is the share of variable and semi-variable costs in the cost structure for 1 centner (hundred kilograms) of product in RUR;

Pp is the market price of 1 centner (hundred kilograms) of product in RUR.

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In this case, we propose to maintain management (production) cost accounting of responsibility centers by cost items categorized by the following areas (see Table 1).

Table 1. Cost accounting items and elements by responsibility centers and across the organization

№	**Elements and items of cost accounting**	**In financial accounting**	**In management accounting**
1.	Compensation of employees including:	+	-
	a) regular staff remuneration	-	+
	b) contract labor expense	-	+
	c) wages in kind	-	+
2.	Crop and animal protection agents	+	+
3.	Feed and fertilizers	+	+
4.	Raw materials for industrial production	+	+
5.	Works and services, including:	+	-
	a) fleet vehicles	-	+
	b) agricultural equipment and tractor park	-	+
	c) animal-drawn transport	-	+
	d) water supply	-	+
	e) gas supply	-	+
	f) heat- and cold supply	-	+
6.	Maintenance of fixed assets including:	+	-
	a) repair and maintenance cost	-	+
	b) depreciation, rent and lease payments	-	+
7.	Other expenses	+	+
8.	Farm, working team or department expenses	+	+
9.	Sectorwide expenses	+	-
10.	General expenses	+	-
11.	Insurance payments and financial costs	+	-

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12.	Sales expenditures	+	-

«+»- accounted for; «-»- not accounted for

The cost items in lines 1 to 9 form a working team (department, farm) cost. The composition of this type of cost includes variable, semi-variable and fixed costs. This classification of cost accounting allows to promptly control expenses, to determine factors and magnitude of their impact on the marginal profit and revenue of a structural unit.

Thus, the margin profit of a responsibility center is found as follows:

$$MPf = GPf - VCf - SVCf \quad (2)$$

The revenue of a unit is calculated using the following formula:

$$П\phi = MPf – FCfb, \quad (3)$$

where MPf - is the real marginal revenue of a unit in RUR;

GPf - is global production of a unit at transfer prices, RUR;

VCf and SVCf – variable and semi-variable actual costs of a unit, respectivey, RUR.;

FCfb - fixed costs.

The above aspects of cost accounting and methodology for calculating transfer prices, allow to monitor and analyze the costs, marginal revenue and profit of unit in relation to the production budget of this responsibility center.

4. Results

Systematization of indicators of the enterprise's business operations is required to ensure the operational management and control of economic activities. Such data could be found in the accounts of an enterprise. Currently, all the production accounts provide for a two-tier structure: control accounts; sub-account. In accordance with the Methodological Recommendations of the Ministry of Agriculture of the Russian Federation (2003), enterprises and organizations have also analytical accounts, and keep accounting records of costs and outcome of agricultural products, constituting the third stage in the structure of accounts. The volume of information was the basic criterion for this structure. However, the three-step structure of production (operating) accounts for the purposes of accounting in agricultural production is not enough.

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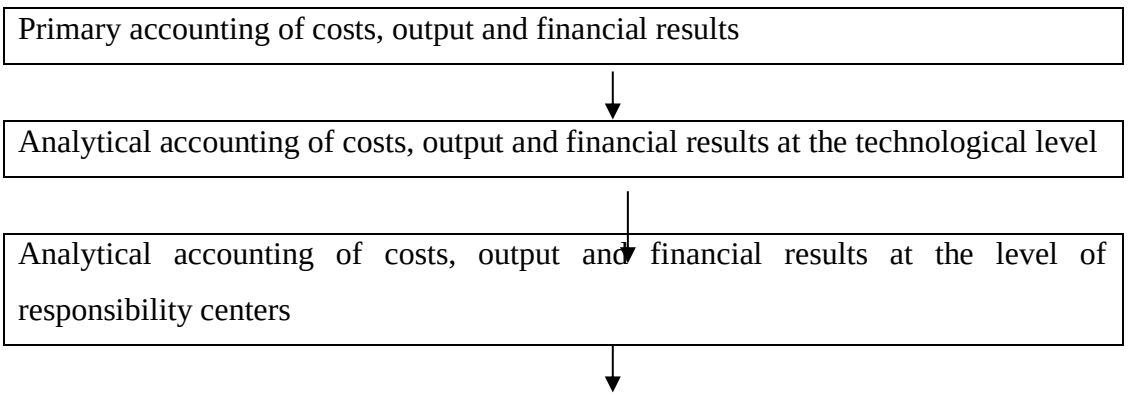
Agricultural production is multisectoral and sub-sectoral in nature [3].

Each of these sectors has a number of sub-sectors, are singled out as independent industries (fodder production, vegetable growing, sheep breeding, pig production, etc.) in specialized farms.

Therefore, to get detailed information for the purpose of monitoring costs and managing the efficiency of production of various sectors and sub-sectors, as well as to classify correctly the above information on analytical accounts, there is an objective need for ranking accounts within the corresponding sub-account, and for distinguishing internal sub-accounts of both second and third order. At the same time, every account will have an eight-digit code. For example, the account "Main Production" will have a code of 20 01 02 03. The first two digits denote a synthetic account (of the first order), the second two digits - the subaccount (second order), the third ones - the semi-sub-account (the third order), the fourth ones - the analytical account (fourth order).

At the same time, the information of account 20 and its sub-accounts will be used in financial accounting, and the information of semi-subaccounts and analytical accounts of this synthetic account will be used in management accounting of production costs for decision-making purposes.

Similarly, the structure of accounts 43 "Finished products", 90 "Sales" and others can be built. At the same time, accounting of costs, output and financial results in the agricultural production management system is carried out according to a pyramidal (multi-step) scheme (Figure 2).



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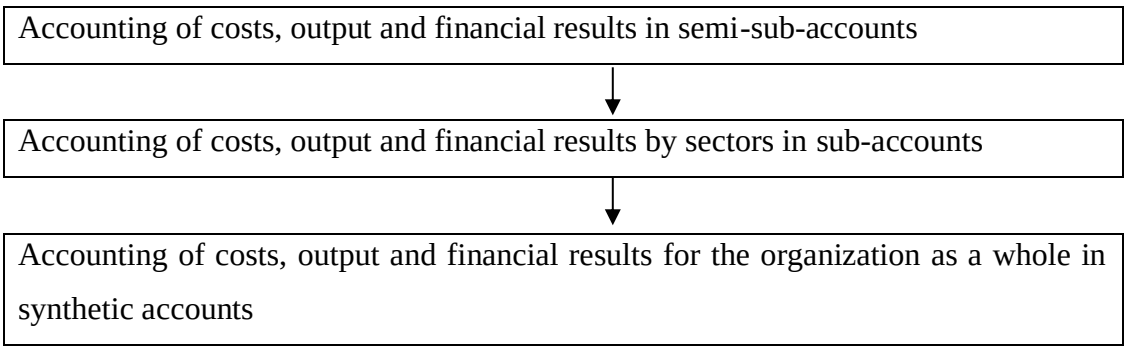

Fig. 2. Stepwise construction of cost, output and financial results accounting

The above scheme of the stepwise accounting of costs, output and financial results during its practical implementation will significantly increase the analytical and control functions of accounting, the communicability of its information in the system of production and financial management of the organization [4].

In order to implement this accounting system and improve its controlling functions, it is also necessary to develop an analytical accounting register or a production report form, where financial results should be identified at the production stage and at the level of the organizational units (Table 2).

Table 2. Fragment of the production report of a self-supporting unit

1. Production costs (sales expenditures) by objects of accounting (debit of account 20 or account 90)

	Cost items	Objects of cost accounting, thousand rubles.									Total actual expenditure, thousand rubles.		Corresponding account
		A			B			Etc.			Since the start of the year	During the period under review	
		standard	variance (+;-)	actl	standard	variance (+;-)	actl	standard	variance (+;-)	actl			
1	2	3	4	5	6	7	8	9			10	11	12
1.	labor	12	+1	13	25	-2	23	-	-	-	56	49	70
2.	depreciation	6	-	6	6	-	6	-	-	-	35	18	02

3.	Etc..												

2. Output or sale of products and their cost (credit of account 20 or debit of account 90)

	Product	**Product quantity, hundred kilograms**			**Production cost, rubles.**			**Corresponding account**
		standard	**variance (+;-)**	**actl**	**standard**	**variance (+;-)**	**actl**	
1	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**
1.	Potatoes	1270	+120	1390	4500	+300	4800	43
2.	Field vegetables	200	-7	193	7000	-20	6980	43
3.	Etc.							

3. Analysis of cost recovery and financial results of a unit

	Indicator	**Product**								
		A			**B**			**C**		
		standard	**variance (+;-)**	**actl**	**standard**	**variance (+;-)**	**actl**	**standard**	**vaiance (+;-)**	**actl**
1	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**
1.	Global production, thousand rubles.	1300	+178	1478	678	-75	603	67	-9	58
2.	Marginal revenue, thousand rubles.	780	-80	700	670	+100	770	100	-	100
3.	Profit, thousand rubles.	520	198	778	78	-25	-167	-33	-9	158

Thus, the financial cost accounting based on this scheme should hold records of cost elements, and the management cost accounting - for cost items [8].

5. Conclusion

Our study on the organization of modern cost accounting and production cost calculating in Russian agricultural enterprises have revealed a number of problems. The complex market processes imply the complexity of an individual producer's orientation

and affect the fluctuations in the volume of production and sales, on the one hand, and the increase of fixed costs share, on the other hand, have a significant effect on production cost, and thus, on the profits [7, 9, 10]. Therefore, the rapid reforms of domestic methods of calculating the cost of agricultural products.

Valuable management information obtained as a result of applying the method of calculating agricultural products on the basis of "direct-costing" model will facilitate the rapid recording, control and analysis of the agricultural production costs.

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POLITICAL INSTITUTE OF THE STATE IN THE CONTEXT OF THE HISTORICAL AND TYPOLOGICAL ANALYSIS

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Abstract: Article is devoted to problems of structuring state created history taking into account variety social, political, forms, various speed of a political genesis. Problems of allocation of development stages of the political organizations (statehood) taking into account uncertainty of the general units of the analysis, terms and concepts of rather various paradigms of structuring and a periodization of history are considered. It is shown that the decisive force causing transformation of all other public sectors is growth, distribution and deduction of a dominant position of the most effective in the conditions of this period of a political regime.

Keywords: typological analysis, potestarny structures, historicism, Kondratiyev's paradigm, political regime.

1. Introduction

Today many ways of the description of evolutionary typology of the state organization are offered, there are alternative versions. And business even not in forming of the tough evolutionary scheme and in the

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admission of some variability which after all is set by certain logic of education and development of political institutes.

The problem of historical typology of the state certainly deserves the detailed analysis and our further researches will be devoted to it. Let's consider some ideas and the approaches which are put forward by modern scientists here, having concentrated on the main eras and stages of historical process, in relation to its so important aspect as history of the state and other potestarny structures.

2. Historical Analysis of Techniques and Models

Consideration of the historical past in terms of chronology and stadial development has more than centuries-old tradition. Still Plato in "Laws" began discussion of a variety of political institutes with the lowest steps of the social organization.

2.1 "Process", "phases" or "stages"

The theory of stages or phases does not remain unnoticed by critics, the brightest of whom are K. Popper and R. Nisbet [1, 2].

Johan Gudsblom in work about which the speech will go below, noted that the tradition of creation of phase models (from Plato and Aristotle to Marx and Spencer) sparks criticism for the following reasons: first, they lack historical concreteness, so, and checkability; secondly, they mix fact and standard statements; thirdly, they proceed from a concept of inevitability and teleology. The last decades were added to them two more points: fourthly, they are not able to explain transition from one stage to another and, fifthly, they actively open experience of Western Europe and North America, i.e. are "Europe-centered" [3].

It is possible to agree with Y.Gudsblom's opinion on what stadial models have along with advantages and certain shortcomings. At the exit, owing to small empirical representation, they can be not verified. Creation of the general schemes of social evolution was carried out quite often at the expense of chronological accuracy.

Lack of initial spatial limitation is among advantages. One of the essential metamorphoses which happened in recent years to stadial models is a pre-stress from "phases" and

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"stages" on "processes". It allowed removing claims of critics of the theory of stages in points of insolvency in an explanation of transitional states between stages and "Eurocentrism".

The concept "process" began to form a basis for development of a concept of "phases" or "stages". "Process" is considered as the sequence of changes which assume transformation something from one phase in another. That is each "stage" or "phase" is transition in progress. It consists of small processes and is, eventually, a part of big processes. At the same time process does not exclude distinction of stages in social development.

2.2 Formational and stadial approach

One of theoretical predecessors of modern tipology of structuring history is formational and stadial approach. This approach - one of serious attempts to create the comprehensive natural-historical theory. Her authors were K. Marx and F. Engels.

Direct material vital circumstances were recognized as the only and unconditional reality. The main postulate is expressed in a formula: "the way of production of material life causes social, political and spiritual processes of life in general" [4].

Primacy and certainty of production of goods of life leads to creation of a certain dependence of a political superstructure on economic basis: "In social production of the life people enter in certain, necessary, from their will not the dependent relations - relations of production which correspond to a certain step of development of their material productive forces. Set of these relations of production makes economic structure of society, real basis on which the legal and political superstructure towers and to which there correspond certain forms of public consciousness" [4]. Thereby it is emphasized that the state, policy, political institutes are caused by economy. Despite separate signs that it is capable to make the return impact on economy the Marxism isolates the main thing: intrinsic dependence of political institutes on economy is observed, the logic of development of the state forms is defined by dynamics of productive forces, way of production and relations of production.

"Productive forces … form fundamentals of all history" [4]. This

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history includes three consecutive steps of world development: primary, or archaic; secondary, or economic, and tertiary, or communistic [4]. The Marxist idea about steps of development of productive forces became key in conceptualization of a concept of a public formation which was expressed in typological fixing and registration as stages of world development. The Marxism assumes accurate distinction of the formations connected with type of productive forces, the interformational and intraformational stages connected with ways of production, and also smaller stages not only connected with types of relations of production, but also including also aspects of the organization of work, the production technology, distribution, etc. [18].

2.3 Theory of cycles

Marx and Engels's numerous followers, owing to any circumstances, including the wrong translation of Marx in Lenin work "That it "friends of the people" and how they are at war against social democrats"?, the expression "an era of an economic public formation" which turned into "eras in the history of economic formations of society" promoted emergence of a so-called five-stage. The Marxist interpretation of a political genesis was extremely hardy and found reflection in numerous neo - and post-Marxist researches. Formational stadial the concept of cycles of N. D. Kondratyev is genetically close to approach of Marxism. Socioeconomic structures, stages and development stages of human society are easily implanted into cyclic fundamentals of history.

The structure of kondratyevsky cycles (duration of a cycle makes 40-60 years) consists of two parts or waves: upward wave and wave bearish. The upward wave is the period of long prevalence of a high economic environment in world economy. The bearish wave is the period of long prevalence of a low economic environment.

Long waves of Kondratyev allow considering not only cycles of a world environment, but also manifestation of the technological, economic, political, social shifts happening within such wave or a cycle.

One of experts in the field of kondratyevsky waves G. van Rhum designated a thematic row from social

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life which can be investigated in this paradigm: social stratification, social mobility, revolutions and reformism, development and distribution of various ideologies - from liberalism to fascism, changes in religious views, democratic changes, etc [5].

Within a kondratyevsky paradigm waves of the most various frequency - are considered from 3-5 to 1000 years [6], for certain regions temporary distances of their action (André Gounder Franck, Barry Gills, George William Modelski) are allocated; political dynamics is described [7]. André Gounder Franck in collaborations with Barry Gills reveal kondratyevsky cycles of rise and recession during era of the Middle Ages and Antiquity that definitely structures world history, establishing the extent of world system in five thousand years against vallerstaynovsky five hundred years of the European system.

Driving force of development of world system is the accumulation of the surplus value or the capital connected with change of hegemony and various combinations of the market and the power.

Frank and Gills besides an economic environment consider rises and expansions of empires, establishment of communications between them, activation of exchange or disintegration of empires and worldsystem communications.

Other expert in the field of social evolution of the analysis of world systems and long geopolitical cycles J. Modelski in own way structures the scheme of world history. Evolution is divided into four main stages: variation, cooperation, selection and reinforcement. Transitions from one stage (era) to another are explained by exhaustion of innovative impulses which dominated during a former era, and preparation of new products of innovations.

So, innovative transition from the first era (for 3200 - 1200 BC) to the second (1200 BC - 1000 AD) was connected with formation of multiple cultures and was characterized by distribution of city-states, small number of large empires, etc.

Rather original approach to a periodization of historical development of society was shown by Johan Gudsblom in the work "History of

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mankind and long-term social processes: to synthesis of chronology and phazeology" [3]. In its research strategy main "catalysts" are allocated (control over fire; an agrarization and industrialization) as some kind of ecological transformations which become dominating at this or that stage of development. Then four consecutive stages are built:

1. A stage, when there is no society with control over fire, either agriculture, or the machine industry, or X (X are understood as conditional human achievement - statehood, writing, religious institutes, etc.).
2. The stage when some societies exercise control over fire, but any have neither agriculture, nor the machine industry, nor X.
3. The stage when, at least, in some societies there is a control over fire and agriculture, but in one is not present either the machine industry, or X.
4. A stage when, at least, in some societies there is a control over fire, agriculture and the machine industry, but one has X.

If we X fill with such epoch-making innovation as "the state (in the sequence from less developed and simple to more difficult and developed types of the political organization), then we will receive effective tools for comparison and coordinating of the most various periodization.

The simple four-stage criterion is entered. For example, for transition from communal autonomy to the state we will take such innovation, (X): 1) one social community has no this achievement; 2) the chiefdom is available for one social community; 3) the chiefdom is available for some social communities; 4) the chiefdom is available for all social communities.

This life cycle of stages with the advent of the fifth step when some social community is not required such form of public organization as a chiefdom any more comes to the end. It is replaced with other innovation: a specific form of the political organization - the traditional state. The traditional state enters own life cycle. Other types of the state forms can undergo such expansion.

3. Main Part Typology as Method

At the review of various stadial attempts of structuring models it is impossible to ignore the large phenomenon of domestic science - the

book of the orientalist I. M. Dyakonov of "A way of history" [19]. The author offered the stadial model of history including eight phases: primitive, primitive-communal, early antiquity, imperial antiquity, Middle Ages, stable and absolutist post-Middle Ages, capitalist and post-capitalist.

The scientist in the periodization makes a start from basic Marxist positions and it notes: "From the point of view of causativity the theory of social and economic formations planned by Marx more than hundred years ago (in 1859) and in the deformed look formulated by Stalin in 1938 has advantage. According to this theory, productive forces, i.e. technology in combination with her producers as public category, develop until the relations of production existing in society match the need of their development" [19]. Considers deacons that at the end of the XX century the Marxist theory of historical process reflecting realities of the 19th century "became hopelessly outdated". He tries to consider new factors, namely: technological level and condition of social and psychological processes. That new relations of production were established, it is necessary, in his opinion, "introduction of essentially new technologies, in particular production technologies of weapon" [8, 19].

Transition from one type of managing to another and - from one system of the social attitudes towards another has to be followed further by change of social values. Independent significance is attached to a role of military equipment and military science in general. It is important from the point of view of belonging of the military organization to political structure in general.

Thus, technological level and a condition of social and psychological processes is criterion of "change of the principle of the social relations" or character of a state system. These factors cause change of rises and declines both within this or that phase, and between them.

Only in the third dyakonovsky phase (early antiquity) the control system of society is institutionalized, receives the constant conventional structure, enforcement machinery, and turns into the state.

Phase transition to communal antiquity crowned a chiefdom (the

second phase of communal primitiveness). The state educations typologically belong to communal antiquity (the third phase).

During each separate period of history societies of different phases of development, and within one phase - different societies coexist. It demonstrates that during each separate period of history societies of different phases of development coexist, but within a uniform phase different societies have approximately equal opportunities (equal share) and efficiency of the political legal regimes. M. V. Ilyin wrote about similar gaps and disagreements between generations of the political systems creating difficulties in interaction of chronopolitical occurring at different times, but calendar modern political systems [9].

It is interesting that the worldsystem typology, offered by Hristofer Chase-Dunn and Thomas Hall in the aspect interesting us in many respects is conformable Dyakonov's periodization. By comparison of two approaches it is detectable that the third dyakonovsky phase (early antiquity) corresponds to primary state worldsystem where Mesopotamia, Egypt, the valley of Indus, the valley of Ganges, China, pre-Columbus Mexico and Peru enter. The fourth phase - a phase of imperial antiquity - to primary empires to which the autonomous states united as a result of a gain (Akkad, Egypt of an ancient kingdom, Magadkh, Zhou, Teotihuacan, Uari), and partly multicenter, consisting of empires, to the states and peripheral regions (The Middle East, India, China, a mezoempire of Peru) [10].

The fifth phase, medieval, partially covers multicenter imperial worldsystem and commercialized, founded on the state in which important aspects of marketability are developed. Let's note that as criterion of worldsystem distinction "the way of accumulation" is taken. Also the 6, 7 and 8 phases are corresponded.

For Chase-Dunn and Hall in the analysis of historical development the problem of emergence and development of a chiefdom (chiefdom) and the state from less hierarchical structures founded on relationship of societies was extremely important. They made an attempt to designate in a periodization importance of intersocietal processes and structures (worldsystem) in a grid of

coordinates "a kernel - a periodization" [10].

Essential aspect of conceptualization worldsystem - identification of consequences of various types of interactions on a long distance, for local societal structures. It is interesting what the key indicator allowing to carry out domination of a kernel where the equipment of the power is most developed is, as well as for Dyakonov, the specialized military organization, the back and supply, strategy and arms, and also the organizational equipment for management of the remote provinces and withdrawal of a tribute and taxes [10].

On an own question: "what similarity and distinction between the sequence of processes of political centralization and decentralization in different worldsystem types?" authors answer with the formulation of a hypothesis. It consists that, first, when in the centralized empires the equipment of the power was improved, peripheral regions lagged behind in the development, and, secondly, peripheral regions acquire much quicker social and technological features of regions of a kernel as soon as trade on a long distance becomes more intensive and based on the commodity relation [10].

Thus, Chase-Dunn and Hall specify conditions and the nature of influence of societies, leaders (kernel) on other societies (peripheries) within a worldsystem [10].

The uniting moment of the considered typology is consent concerning coexistence of the state educations and development stages during the same historical period of time. At the same time formation of the states represents an accurate watershed in development of society. The state is the politically structured society with specialized institutes, including military and bureaucratic, performing functions of management and control.

State registered society differs from society of the previous stage - a difficult chiefdom (chiefdom) - degree of development of the specialized control functions which are not based on relationship.

The concept of "political evolution" is taken from works of the Dutch researcher, famous specialist in problems of an evolutionism H.J. M. Klassen. Klassen on the basis of a multiple line evolutionism tried to

explain cyclic development and those cases when at different stages of evolution similar political structures appear again. Evolution is carried out as process of structural reorganization in time. Emergence of this or that form, structure which qualitatively differ from the previous form [11, 12]. He noted that the similar political organizations (the state or chiefdom) unexpectedly appear in the most different regions of the world and in various evolutionary streams.

In search of the solution of this paradox Klassen addresses Julian X's idea. The steward who long before him tried to explain appearance of patrilocal group in a number of the societies which are not connected among themselves. The Steward explained emergence of not similar socio-political structures with presence of similar cultural forms at these groups. The thought of Klassen and his coauthor Osten that for maintenance of the law and an order, preservations of territorial integrity of the country, etc. are required such organizational structures which are quickly enough forced to find effective and functionally successful solutions attracts attention. Here the reasonable functional argument moves forward [11, 12]. Each political organization passes severe tests for efficiency and owing to this circumstance there are few functionally suitable institutes. Klassen considers that evolutionary changes are result of complex interaction of a number of factors, namely: economic, ideological, demographic and sociopolitical.

The structure, the periodization offered by the Novosibirsk researcher N. S. Rozov considerably does not differ from the academic tradition of studying of a political genesis, but is rather innovative and requires to itself due consideration. Rozov sets a task of improvement and restructuring a conceptual framework in an explanation and understanding of history. On the basis of the enough extensive philosophical and methodological researches [13-15], (Development and approbation of a method of theoretical history, 2001) it formulates set of requirements to a periodization of history and according to a political genesis: the principle of a substantiality (the periodization has to correspond to the main characteristics determining by the qualities setting specifics and stability of various parts of historical and political reality and also with the

strongest factors (the reasons, driving forces, patterns) of historical change in these parts directly; the principle of temporary comparability (division of the periods of history on the basis of conceptually homogeneous and comparable criteria); the principle of spatial comparability (the accounting of a real-life variety of historical forms, obvious distinction in the speed of historical changes); the principle of comparability of paradigms (the conceptual structure of a periodization has to be comparable to key categories of the most developed and productive macro historical paradigms); principle of flexible traditionalism.

Across Rozov, the substantional criterion of a periodization consists in change of the main types of variety of the modes. The social mode, for example, includes regular military, political, economic, moral and legal and other interactions. Character of an era is set by the strongest dominating modes, and it in an obvious or implicit look is present at many attempts of structuring history of mankind, starting with Hegel and Marx. The author understands as the dominating modes "their higher efficiency in the wide limits which developed at present conditions, and this efficiency is shown in steady distribution through replacement and assimilation of the competing modes" [16]. Rozov enters the concept "type attractor" which is defined in structural terms as the regime complex steady within a certain variety of conditions.

In the conceptual design offered by the Pink major link the scheme of change of domination of the new modes and regime complexes is (types - attractors). Criteria of allocation of factors of domination are set by communication of growth of value of a political regime upon transition of society and state from one phase in another.

Let's note that noticeable impact on allocation of factors of domination was exerted by works of the American political anthropologist R. Karneyro who for identification of the political leader marked out 14 categories. From them the category "political organization" serves as the defining criterion of efficiency of the modes.

So, relying on the ideas of stages of political evolution of the Steward, Classen, Karneyro's development, the general structure of

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history of Gellner, I. M. Dyakonov and others, Rozov offers the ideally typical scheme including six phases of development of society from which four are state issued. The third phase - "society of early statehood"; the 4th - "society of mature statehood"; the 5th - "society of through statehood" and the 6th - "sensitive society" (the developed capitalism with liberal and corporate and state versions). Here the main state educations on this or that phase of development of society are fixed. The level of political evolution (a factor of universal value) is inherent in each type attractor or a regime complex. Development of political structures and institutes defines other factors of domination which are grouped in factors of geopolitical, geocultural and geoeconomic domination.

For this research allocation of factors of domination, or indicative criteria which are correlated with the ideas of a number of scientists of phases and development of societies, of essence of transitions considered above from one phases to others, and also about the domination reasons is represented to the most urgent.

In the ideal and typical construction society, across Rozov, represents set of human groups with unity of structures of the power, moral and/or legal rules, and unity of an order of exchange and distribution, unity of language or languages of social interaction [17].

But such criteria answer the developed statehood form, in particular, to the national state. Considering that aspect that the basic modes are political and legal and economic, we can define the state registered society as set of human groups with unity of structures of the power, rules of law and the general unity of an order, exchange and distribution.

Whatever different ways formation of statehood at people of the world went, we will find everywhere the installed system of the power (political regime) which regulates rules of interaction between people (the legal and moral regime), an order of exchange of material benefits and services and their distributions (economic regime). Common language (the cultural mode) is necessary for communication and social interaction.

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And the first statehood on the earth which arose in the Ancient East (in Egypt, Babylon), differing in the special regularities caused by specifics Egyptian, Babylon and others modern it civilizations [20, 21], and to the Antique states of Ancient Greece and Ancient Rome - an example of the statehood which arose, developed, reached civilization height and reached a deadlock within this culture - Ancient Greek and ancient Roman, and only it inherent lines, and to all other state forms the unity of the basic social and cultural modes is inherent in the feudal states which are characterized by the. If the unity of the basic modes is broken off - it is possible to speak about similar society in terms of "the falling states" or "the failed states" (failing states). Modern experts counted forty one states which can be referred to category of the falling or failed states. The vector of development of all these states shows their swift social, economic, political and intellectual degradation. Quite often the board just leads to extinction of the own people (Rwanda, Somalia other). One of parameters of similar educations - inability of the leaders of these countries to provide elementary human rights in the territories.

4. Conclusions

Problems of structuring state issued history are exclusively difficult, first of all, because of existence of a huge variety of social, political, state forms, various speed of a political genesis. Allocation of development stages of the political organizations (statehood) is complicated by uncertainty of the general units of the analysis, terms and concepts of rather various paradigms of structuring and a periodization of history.

The analysis of evolution of society through changes of combinations of distinguishable structural signs in which this society differs from previous is carried out in the real work taking into account the separate ideas of concepts of structuring history of the Steward, Klassen, Karneyro's developments, structure of history of Gellner, the general conceptual approach of Rozov. Though conceptual schemes of the called authors do not propose the final decisions of problems of a periodization of the historical and state process, but represent an important step on the way of

knowledge of communication of internal structures (social processes and regularities) and external structures (division into time historical spans). It is obvious that consideration and classification of the political organizations (state) in many respects reflect values of qualifiers.

Consideration of various points of view on structuring state issued history showed importance of a question of basic criterion of distinction of the periods. Fixation of transition of society to another demands allocation of the main criterion or a factor from one phase of the state development - the level of political development which, in our opinion, is universal on the value.

The essence of any historical period disclosing a change source, the decisive force causing transformation of all other public sectors is growth, distribution and deduction of a dominant position of the most effective in the conditions of this period of a political regime.

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STATE LEGAL CONCEPTS XIX - EARLY XX CENTURIES. IN MODERN SCIENTIFIC DISCOURSE

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Abstract: The paper examines the problem of searching for an effective methodology for identifying, systematizing and analyzing state legal concepts of Russian political scientists of the 19th and early 20th centuries. Despite the available studies to date on individual state-legal concepts in the Russian Empire, their comprehensive research, general theoretical analysis and systematization is required, what is possible only if there is a proven methodological basis. The aim of the work is to present the stages and results of the authors' approach to the identification, systematization and evaluation of state-legal concepts in Russia in the 19th and early 20th centuries, which can be used as a basis for conducting similar studies in relation to other sectoral legal exercises. The paper substantiates the algorithm for obtaining systematic knowledge about the entire complex of state-legal concepts of the designated period showing the features of dissertational

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and monographic studies, the specifics of work with articles in the periodical legal press. The issues on the effectiveness of state-legal exercises are separately touched upon and a mechanism for using the forms of scientific knowledge obtained in the past is proposed to determine the novelty and relevance of the studies conducted today.

Keywords: state-legal concepts, state law science, thesis, monograph, scientific paper, a form of scientific knowledge, the Russian Empire.

1. Introduction

To date, a unified point of view has emerged in the humanitarian research field about the importance and relevance of analyzing the legal concepts of the past for building an effective regulatory system in the present. While studying the problems of the history of awarding academic degrees in the Russian Empire for quite some time, we found the lack of systematic scientific knowledge of the branch legal concepts of pre-revolutionary Russia (civil law, criminal law, church law, financial law, state law, administrative law, concepts of international law) and the poorly developed methodological methods for developing the latter.

Of course, such conclusions do not imply a complete lack of research in this area. Thus, the first (and quite successful) attempts to present a systematic construction of the history of sectoral concepts can be found in the works of A. V. Gorozhanin [1], N. M. Zolotukhin [2], N. Ya. Kuprits [3], V. E. Lob [4], S. D. Makiev [5], A. Yu. Mordovtsev [6], Yu. N. Ovsyannikov [7]. A significant contribution to the development of the history of legal concepts was made by V. G. Grafsky [8, 9], and a number of qualification papers relating to the concepts of individual thinkers [10, 11, 12]. At the same time, it is obvious that further comprehension of the historical theoretical and legal heritage is required and its use in the legal policy of a modern state integrated into the global information system.

2. Materials and Methods

It should be noted that no one has succeeded in summarizing all the existing domestic legal concepts to the general logical and methodological system, distributing them at key stages in the development of scientific thought (or

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singling out only the pre-revolutionary and Soviet period), and perhaps no such goal was set. On the one hand, such a task seems impossible because of the huge volume of concepts, theories, concepts, etc. within each branch of legal science, and then, indeed, their identification, systematization and analysis can take decades. On the other hand, the existence of a reliable and proven methodological framework capable to lead a researcher to creating a general picture of Russian legal concepts could significantly facilitate the fulfillment of this difficult task, however, this problem is only now in the stage of actualization.

Given these difficulties, we decided to start small and identify, systematize and analyze the state-legal concepts of Russia developed in the 19th and early 20th centuries, thereby attempting to solve the problem of finding an effective methodology for the search and analysis of legal concepts in all branches of the legal science for the entire period of its development. Next, we will present the results of the search for an updated methodology to systematize and analyze state-legal concepts of Russia in the 19th and early 20th centuries (using methods of interpreting legal texts and formal-logical tools).

It should be noted that successful attempts to analyze individual state legal exercises were made in the Russian jurisprudence (E.E. Nikitina [13], Yu.L. Shulzhenko [14,15], etc.), and not only for the pre-revolutionary, but also the Soviet period [16]. The same direction is quite successfully developing in Western jurisprudence, albeit in a broader sense [17, 18, 19, 20, 21, 22]. At the same time, works on systematization of all state-legal concepts (dissertational, monographic, published in periodicals) of the pre-revolutionary period were not carried out.

In order to fill this gap, at the first stage master and doctoral dissertations on state law (total 130) defended at law faculties of Russian imperial universities were identified with the use of reference books (primarily the works of G.G. Krichevsky and A.N. Yakushev [23,24]). The analysis of the subject matter and content of these works showed the presence of a large number of studies that are not relevant to modern constitutional law

science within the number of dissertations defended according to the "State Law" "category of sciences". About a third of all defended dissertations were subject to general theoretical, historical legal, philosophical and legal questions.

3. Main Part

The presence of elements that are not peculiar to the subject matter among the defended dissertations was the result of the inconsistency of state policy in the field of attestation of scientific personnel and the position of the scientific community at the second half of the XIX century. At that time, some prominent representatives of historical and legal science persistently and patiently called for the introduction of a scientific specialty (the "category of sciences") "The History of Russian Law" for the award of master's and doctoral degrees, but did not wait until 1917, when the former state system of awarding academic degrees has ceased to exist.

Nevertheless, the thesises on state law and the concepts contained in them were identified and bibliographically described, and the next stage was their classification. At this stage, we faced the need to create a classifier for the science of pre-revolutionary state law that would reflect the system (composition) of the relevant branch of scientific knowledge in the pre-October period. The reason was the positions of political scientists of the Russian Empire, most of which included in the public law science the elements which are alien to it today (the theory of government, and sections of the general theory of law sometimes). The creation of a suitable classifier was complicated by a subjective assessment of the need to include certain sections and subsections into it, therefore the views of leading scientists on the structure of the state law science were analyzed (V.M. Gessen, A.D. Gradovsky, V.V. Ivanovskiy, F. F. Kokoshkin, N.M. Korkunov, N.I. Lazarevskiy, A.V. Romanovich-Slavatinskiy), and a classifier consisting of sections "General theory of government", "Theory of constitutional law", "General part of Russian state law", "The special part of the Russian state law". As a result, it became possible to identify priority and poorly developed areas of state legal and juridical research dissertations. For example, most of the

works were defended on the history of formation and development of state power in Russia and development of political thought. Works on the methodology of science and the legal status of the individual are distinguished among the works on general legal, historical legal and philosophical issues, as well as the so-called "pure" state-legal theses.

Further, it was necessary to systematize the state-legal concepts presented in monographs and papers, also taking into account their correlation with the sections of the classifier of the state law scienc. Here, however, a methodological problem also arose: it was not clear which of the monographs and (to a greater extent) papers are to be considered as external expressions of concepts, what is to be meant as such forms of scientific thought expression. Obviously, the attempt to cover all articles, essays, notes published in the periodical legal press, and also reports on the conduct of events that in one way or another are correlated with the field of the state law science, will not lead to any reasonable result: it would be physically difficult and perhaps completely meaningless. The situation was also hampered by the absence in the Russian legal science of a unified approach to understanding the concept in terms of the form of external expression of a scientific legal thought, its essential and content characteristics.

As a result, V.S. Nersesyants's approach was taken as a basis, who believed that the concepts should be understood as "various forms of theoretical expression and fixation of historically emerging and evolving knowledge, those theoretical concepts, ideas, positions and constructions in which the historical process on deepening the cognition of political and legal phenomena obtains its concentrated logical and conceptual expression" [25, p. 1]. Moreover, a concept often understood in the domestic scientific or encyclopaedic literature as a doctrine, has a fundamental character and "provides a corresponding functional purpose" [26, p. 8]; it can be perceived in the special legal sense as "doctrinal texts of recognized legal experts that contain specific rules of behavior that are the source of the norms of law" [26, p. 34].

In order to classify various scientific works as state legal concepts,

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we have thus chosen a "boundary" interpretation that views a concept as a scientific text of a recognized specialist in the field of law, containing specific conclusions and solutions to legal problems, and which can serve as a source in the law-making process. This understanding allows us to methodologically correctly use the works of Russian political scientists, that were expressed in the form of monographs and scientific papers. An obligatory condition for the latter should be the criteria of scientific, fundamental, systemic and logical completeness [27, p. 23].

The next step in solution of the problem posed at the beginning of this paper was to analyze the content and results of state-legal concepts presented by prerevolutionary political scientists in monographs and scientific articles. In regard to the first, unexpected results were obtained, namely: in comparison with dissertations, the number of published monographs on state-legal problems is much lower. We did not include educational literature within the scope of the object of study, which, by the way, was available in large numbers and in varieties by the second half of the nineteenth century, and by the beginning of the 20th century its number only increased due to the peculiarities of writing such publications, because they were aimed at students of higher educational institutions, and not on legislators and scientists. Despite this, we found about thirty monographs, the subject of which were exclusively questions of the state law sciences (without taking into account, as it was in the case with dissertations, works on the history of Russian and foreign law, the general theory of law, and the philosophical problems of jurisprudence in general). In general, there were two or three monographs at most on average for each section of the prerevolutionary state and law science. The only exception was a section on local government and self-government bodies, where seven works have been published (A.I. Vasilchikov, A.A. Golovachev, G.A. Dashkevich, S.S. Zak, A.G. Mikhailovskiy, A. O. Nemirovskiy, M.I. Sveshnikov).

In our opinion, the noted features of the monographic development of the state law science in the nineteenth century and, in part, at the beginning of the 20th century (non-systematic and fragmentary studies)

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were due to the very beginning of the development of domestic jurisprudence. At the same time, pre-revolutionary political scientists of the period under review noted this feature repeatedly calling for an increase in the number and quality of research undertaken. Perhaps the great Russian political scientist A. D. Gradovsky expressed about this most vividly in his review on M. Gorchakov's work "The Monastic Order" of 1868: "Our legal literature is slowly enriched. A year, two or even three separate one work from another. Moreover, this growth is, so to speak, artificial. Legal books are written in our country not in the name of any urgent social needs, but for obtaining an academic degree. Recently, only awakened public consciousness has too little influence on the development of academic legal literature, especially on issues of state law. The choice of the topic, the way of presentation, the nature of an essay, and all this is for the time being given exclusively to the more or less casual discretion of the author. Those deserve more respect who know how to choose a question that is interesting not for some dyed-in-the-wool scientists, and describe it in a language that is understandable not for some "priests of science". [28, p. 88].

Turning from monographs to scientific articles, we note that such work with such forms of expression of state-legal concepts led to higher quantitative results: more than fifty papers of pre-revolutionary political scientists were selected and systematized according to the above criteria (scientific, fundamental, systematic and logical completeness). Chronological and thematic analysis of papers containing state-legal concepts testifies that the most significant publications of Russian political scientists timed to the state scale events or anniversaries, as the publications of 1874, devoted to the 10th anniversary of Zemstvo reforms. It also demonstrates a significant increase in the number of papers to the turn of the XIX - XX centuries. On the other hand, in the period 1915-1917 the authors showed minimal publication activity. Perhaps this fact is explained by the general pre-revolutionary situation in the country, when most scientists were keen on describing current state events [29; 30; 31].

As for the directions of state-legal studies reflected in the papers, most

often the political scientists turned to the development of problems of self-government, the concept of the law, the nature of a state, the foundations of the state structure.

4. Conclusions

These are the stages of the work that we have already done to identify, systematize and analyze state-legal concepts expressed by prerevolutionary scientists in dissertational and monographic studies, as well as periodical publications. At the same time, in spite of the fact that it is still necessary to conduct their comparative analysis, it is already possible to sum up certain results.

Firstly, the main result of the described stages in the development of state-legal exercises is the testing of a methodology for identifying, systematizing and analyzing the content and assessing their place and role in the system of domestic legal knowledge. It seems reasonable in this regard to use in the future the experience of developing state-legal pre-revolutionary concepts in the field of other branch legal sciences of not only pre-revolutionary, but also the Soviet period.

Secondly, in the course of the work, priority and poorly developed areas of state-legal research were identified. This, in turn, could increase the effectiveness of carrying out modern dissertation research both within the theory and history of law and state, the history of the concepts on law and state, in the field of constitutional law, constitutional litigation, and municipal law. Obtaining systematic knowledge of the state-legal concepts of the pre-revolutionary, Soviet and post-Soviet periods will help to avoid excessive research, and focus on the undeveloped sections of science.

Thirdly, the analysis of the entire volume of state-legal concepts presented in science will make it possible to obtain information about the forms of scientific knowledge (theories, concepts, objective laws, terms, scientific ideas, hypotheses, etc.) received by national political scientists in their work. Collected and arranged in a common database, such forms can provide the basis for legislative regulation in developing criteria for determining the relevance, scientific character and "effectiveness" of dissertation research in the modern Russian Federation. If you

pay attention to the Regulations on the awarding of academic degrees valid today, approved by the RF Government Decree No. 842 of 24 September, 2013 (as amended on 28 August, 2017) "On the procedure for awarding academic degrees", then regarding the criteria that the thesis must meet for a competition of academic degrees, clause 10 of the normative act establishes a rule that the thesis should contain new scientific results and provisions. The solutions proposed by the author of the dissertation should be argued and evaluated in comparison with other known solutions [32]. There are no other criteria and, in fact, Russia does not regulate what exactly is considered a scientific achievement, scientifically grounded solutions and developments, what is the procedure for determining which results are new and which are not. At the same time, if we are talking about the need to determine the novelty of the scientific result obtained in the thesis for the degree of candidate or doctor of sciences (for example, legal), then the scientific result proposed by the author should be compared with the previous results obtained earlier for this specialty, institute, or narrow area of knowledge. This procedure is carried out today, as a rule, by official opponents and is reflected in a written review of the thesis.

If to understand scientific results as the forms of scientific knowledge (theoretical or empirical) presented in provisions to a thesis (theories, concepts, regularities, concepts, scientific ideas, hypotheses, etc.), then given the number of annually defended dissertations in any branch of legal science, opponent or another person who estimates the novelty of the results obtained by the author, must study and comprehend the vast amount of scientific information of the pre-revolutionary, Soviet and post-Soviet period. It is almost impossible, even considering the technical capabilities that are available today. The consequence of this is often a subjective evaluation by the opponent of the result proposed in the dissertation, declaring it to be new and relevant or not having such characteristics.

In our opinion, this base of scientific knowledge forms obtained in legal concepts on branch legal science, about the necessity (and, most importantly, the real possibility) of creation of which was discussed above,

will help to exclude such a (subjective) evaluation in determining the novelty of the result. It will allow you to compare the results obtained today with the previous ones (received by scientists earlier) and determine their novelty, originality and relevance.

Using the above methodology of working with legal concepts (in our case, state-legal ones), it seems that it opens the possibility to use the potential of scientific knowledge presented in dissertations, monographs and papers of Russian scientists for the benefit of modern jurisprudence.

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THE TRAUMATIC CONFRONTATION WITH IDEOLOGY AND THE REAL IN E.L. DOCTOROW'S *WELCOME TO HARD TIMES*: A ŽIŽEKIAN STUDY

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Abstract: Social reality in its essence is political, and any exploration of it needs a political performance. Concerning the issue, literature, by and large, has gained a political function through history. It has been an efficient political device to represent the role and the impact of ideology on the way of living and identity of people. E. L. Doctorow's novels in general, and his *Welcome To Hard Times* in particular approve of the author's interest in the ideological constitution of American society and the inevitable confrontation of the people with the intrusion of the Real [a Žižekian term] and the regressive work of ideology. In the light of Žižekian perception of the word, ideology is a form of socio-political philosophy in which practical elements are as prominent and decisive as theoretical ones. To him, ideology is a set of ideas licensing social actions and allocating subjects predetermined Symbolic Orders within the context of elusive reality. It gives them a social mandate, and a specific identity to deal with the worldly affairs. However, in Doctorow's *Welcome to Hard Times* we come to a community of figures, marginal though, who take a rebellion action against ideology to alter the given identity employing their [personal] acts. The present study aims at exploring this reformative attempt on part of the people involved in ideological restrictions.

Keywords: The Real, Symbolic Order, Ideology, Subject, Social reality

1. Introduction

Edgar Lawrence Doctorow (1931-2015, New York City) is one of the most accomplished and eminent

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authors of the 20th century. He has written eight novels (*Welcome to Hard Times* the first one in the sequence) all the result of his vast amount of westerns he read after his military service. His works are particularly admirable for their synthesis of fiction and history (Lawrence, 1998).

No need to say, applying psychoanalytic study on E.L. Doctorow's novels bears benefit since it reveals the unconscious aspect of utterance out through the analysis of characters, relations, and situations. Mostly, psychoanalysts work on the matter of identity and the way of its construction in their studies of one's character. They state that constructionism asserts the process of understanding oneself, others, and reality which are presented in the contextual network of Doctorow's novels, especially in *Welcome to Hard Times*. Such a view supports the idea that human beings if not constructing new things, but are transforming reality. Though sounds noticeable, this idea misses the crucial point that the depiction of the world we read of in the novel is the representative of a real ideological system in which distinct discourses are involved. So testing a methodology that covers the psychological and political elements all together seems essential. Concerning the point, the present study is to apply Slavio Žižek's dynamic and complex theories. It intends to offer a comprehensive approach that helps the readers to perceive how ideological factors and Psychological responses are decisive in the identity formation of man. Moreover, the notion and the functionality of ideology in Doctorow's novel, *Welcome to Hard Times* will be examined to reveal first the mechanism of dominant ideology on [the] characters' way of behaving and then the practicable act they do against such ideological dictates.

As John D. Jost states: "ideology is the most elusive concept in the whole of social science" (2009, 308). Jost's words imply the fact that 'ideology' in its essential ambiguity signifies different meanings. In this regard, Ryan states that ideology is "a body of ideas that licenses, enables, and directs social action" (2010, 40). It also applies to "mistaken cognition that prevents people from seeing reality" as it is (41). In other sense, ideology appears as a set of "ruling ideas forced into a

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position of centrality by ruling social groups" to reinforce their power (Jost, 2009).

2. Žižekian concept of ideology

ŽIŽEK's contribution in defining 'ideology' is derived from Marx's slogan "they do not know it, but they are doing it". Here, the point is a kind of simplicity or ignorance of the reality in which we live. On the one hand there is reality, but on the other hand is our distorted understanding of it. In this sense, ideology is that distortion, that twisting of our perception of reality that we follow every day though we know sufficiently of its incorrectness. As Žižek states, following the German theorist Peter Sloterdijk (b. 1947), "we are cynical subjects".

As cynical subjects well enough, we know that what is presented of reality is not correct, yet we welcome that falsehood and do not reject it. Modifying Marx's formula for ideology, Sloterdijk proposes a cynical variation of it __ "they know very well what they are doing, but still, they are doing it" (29). For Žižek, trying an act, that one that continues in spite of knowing its falsity, constitutes "the ideological illusion" (67). The ideological mystification, as Žižek argues, does not lie in the 'knowing' but in 'the doing'; it lies on the side of misperceiving the reality of its actual situation.

Ideology, put it differently, primarily is related to the 'doing' rather than the 'knowing'. In fact, the illusion or distorted perception of reality is indexed in the situation, and it is the very illusion that structures ideology. Žižek's elaboration on Slotrerdijk's formula reads in this way: "They know that, in their activity, they are following an illusion, but still, they are doing it" (67). In other words, we are ideologies in practice.

Perhaps the most innovative contribution of Žižek in the formulation of ideology is this very implicit assertion that our beliefs or convictions are not what we feel/think but instead what we do. Put it another way, our most intimate/internal sensation is just *materialized* in our social activity. This materialization of activities is, argues Žižek, the same to how Tibetan prayer needs work:

You write a prayer on a paper, put the rolled paper into a wheel, and turn it automatically,

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without thinking. In this way, the wheel itself is praying for me, instead of me- or more precisely, I myself am, praying through the medium of the wheel. The beauty of it all is that in my psychological inferiority I can think about whatever I want, I can yield to the most dirty and obscene fantasies, and it does not matter, because-to use a good old Stalinist expression-whatever I am thinking, objectively I am praying (1995, 31-2).

3. Ideology and the Matter of Subjectivity in Doctorow's Welcome to Hard Times

Back to Doctorow's novel, in *Welcome to Hard Times*, we read of the conductive dictates of the prominent discourse of the American ideology which sets in motion the moping mass of people who come to West searching a so-called better life which is basically codified under the name of the American dream (Bertens, 2001).

When I came West with the wagon, I was a young man with expectations of something, I don't know what. I tar-painted my name on a big rock by Missouri trailside. But in time, my expectations wore away with the weather, like my name had from that rock, and I learned it was enough to stay alive.

The people, forming a spectrum of different nationalities (English, Chinese, Russian), sexes, and races, are all in a rush to practice the doctrinal rituals of Capitalism; of course, in the shadow of the illusory liberalism. A community of emigrants imagine themselves as free individuals on the way to look for a trade in the vast vacant of harsh West. For instance, such an attempt is to be done even though it turns to be frustrating to Zar and his stock in trade, the whores.

So what shall I do know? All morning I search for a trail to mining camp! You did not tell me there was none; you said nothing. And now I have women who should be on their back, and they are on neck. Four days have I lost! (45)

Staying with Žižek, by subscribing to the rituals of the ideology in action; that is, to go after wealth and treasure, the quester in West believe in 'no' thing before knowing what they do, and in this way, they convert to its doctrinal principles. What happens in continuation is that they follow to

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respond to and support all the ideological state apparatuses; first to set up towns here and there and then they run business, banks, bars, families and whatsoever. The illusion of what the citizens are engaged in and the disillusionment of the very illusion that they believe before believing, as Žižek asserts, are comprehensibly reflected in Blue's words, while he is talking about himself and Mr. Maple.

I couldn't understand his feelings. A man doesn't go West for nothing. He'd been traveling four or five weeks, by train, by steamer, by stage, thinking all the while to find his brother when he got there. And probably to make life (76).

I kept thinking; I was traveling to no purpose. What good was this to that woman and that boy? What could I hope to do for them? Only a fool would call anywhere in this land a place and everywhere else a journey to it (66).

Like the other novels, in *Welcome to Hard Times* besides picturing the submissiveness of the people to the current socio-political discourse, Doctorow leaves room for the marginal figures to practice their defiance against the centralized ideology the big Other or, in terms of Žižekian psychoanalyses, as a gesture of reviving their subjectivity. One of these marginal characters, interestingly of the female sex, is a woman by the name of Molly who nearly from the beginning up until the end of the novel manages to take actions to reject the dominant Symbolic Order. To pinpoint her personality, as a distinct individual, it needs to see what subjectivity/self means to Žižek.

Žižek's *The Ticklish Subject* begins with his assertion that "a spectre is haunting Western academic…, the spectre of the Cartesian subject" (Žižek, 1999). Against the post-structuralist perception of subject, as Derrida puts it, "merely a function of language" (Derrida 1973) a symbolic machine which is destined to speak the discourse of the big Other, Žižek's reading of the *Cogito* is more matched with Descarte's method. In Žižek's terminology, we can transform from beings immersed in nature (objectivity) to beings supported by culture (subjectivity). For Žižek, the connecting chain between these two poles is the Cartesian doubt. His definition of the doubt reads: "a withdrawal into self" (Myers, 2003). As Žižek states, this total withdrawal is one

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of madness, representing the madness of Hegel's 'night of the world':

> This night, the inner of the nature, that existed here_pure self_in phantasmagorical representations, is night all around it, in which here shoots a bloody head_ there another writes ghastly apparition, suddenly here before it, and just so disappears. One catches sight of this night when one looks human beings in the eye_ into a night that becomes awful (quoted in Žižek, 1998, 258).

Another way put, it is only when the world is experienced as a loss or absolute negativity that it becomes necessary to constitute a symbolic universe. Drawing on Žižekian *Cogito*, the subject is not a substantial I but a void, an empty point of negativity and emptiness that makes the transition from objectivity to subjectivity.

Within the circular shape of the novel, beginning with and ending in fight and destruction, everything and everyone is understood based on the role he/she takes in the Symbolic Order of the forming society. Everything in its symbolic function seems to be in harmony and coherence with the chain of signification. The course of events goes on peacefully up until the traumatic event happens: the premature, unexpected arrival of the Bad Man from Bodie that suddenly breaks through the town (Doctorow,1960).

Given that our knowledge of the world is mediated by language, that we never know anything directly, just through [the] symbols, then the Real is any aspect of life which is left unknown, which escapes and "resists symbolization" (Myers, 2003, 25). Lacan understands the Real as 'absolute beings' or 'being-in-itself'. As such, the Real is opposed to the imaginary and the symbolic, since it is "beyond the realm of appearance and images"; it is "an indivisible brute materiality that exists prior to the symbolization" (Homer, 2005, 82). The other point concerning the Real is that, whatever it is, it is associated with the concept of trauma. For Lacan, trauma is Real insofar as "it remains unsymbolizable and is a permanent dislocation at the very heart of the subject.

As aforementioned, the coming of the Bad Man is considered, concerning the notion of Real, as a traumatic presence to all dwellers in Hard Times, especially to Molly who

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pictures one of the victimized subjects. Through the narrative, Doctorow expresses some unsymbolizable features of the Real/Bad Man (Wolfreys et al, 2006).

[Blue] I guess Florence had never seen, a man so big (WHT 2).

Jack Millay told me later he followed the boy across the street to fill Fee in on the details—little Jimmy might not have made it clear that the customer was a Bad Man from Bodie (3).

The Bad Man was celebrating the new day riding bareback and forth from one end of the street to the other (9).

The Bad Man drank Avery's liquor like water and every time he poured for us too.

He was a younger man than I expected, and he had the eyes of a crazy horse. Right then my hand began to move, and I meant for it to go for my gun. But it went instead for the glass on the bar; I felt at that moment that I wanted to please him, I was almost glad to drink (17).

[Molly] Oh, sure! Christ that Bad Man's the only man in town! (75)

From a different angle, the Real/big Other appears to be the fullness of things that the Symbolic Order goes to work on, chopping it up to pieces, yet it remains there; the Real is left over when the Symbolic has finished. In other words, the Real/big Other comes after the symbolization. Likewise the ignored presence of the Bad Man, either before or after the establishment of civility in Hard Times, can be regarded as the unsymbolized ever-presence of the Real on part of the subjects/ the citizens. The frequency of the Bad Man's visits to town and his annihilating roaming the West mirror up his indivisible precedency and his traumatic effect. In fact, whatever happens, it occurs within the ever-lasting presence/intrusion of the Bad Man.

The psychological trauma refers to the events, like the train crashes, that affect and disturb the people either involved in or present or watching the disasters. The most common form of such trauma is either physical or sexual abuse. In *Welcome To Hard Times*, the Bad Man's unwanted presence is along with both physical and sexual violence. It includes not only men but women, not only one individual but all townspeople. As a psychical event that disturbs the smooth running of the Symbolic signification, trauma "arises from the

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confrontation between an external stimulus", name it a stranger who receives no name, no land, no thing, and "the subject's inability to understand and master these excitations" (Homer, 2005, 83).

"You're alright, Molly", I said

But when she walked up to the doors, the stiletto slipped out of her sleeve and clattered on the porch. I kicked it aside before the Bad Man might see it and I pushed Molly through the doors and stepped in behind. Then I saw what made her drop the knife, Florence bent over the upstairs railing, bare, with her arms dangling and her red hair falling down between them.

Drawing from Homer's exploration of the Real as "a kind of ubiquitous undifferentiated mass from which we as individual subjects must distinguish ourselves through the process of symbolization" , getting away from it through reforming a new Symbolic identification seems essential to [the] reformation of one's subjectivity or self.

Keeping a gap between the Real and the Symbolic, for Žižek, enables the subject to experience the crucial transition from a state of nature/object to that of culture/ subjectivity. The indispensible inclusion of the Bad Man as a microcosmic representative of the ruling ideology, something that precedes thought and language, works as a driving force pushing the characters either to a submissive obedient Symbolic role or toward a reformative subjectivization. Molly is one of the rarities who decides to take an intermediate state in her relation with the big Other/Bad Man. She undertakes the Hegelian madness, 'night of the world'. Molly introduces herself as a missing link, or a "vanishing mediator" between the two states. She tries [the] transition first by escaping from the Real, to be able to construct a substitute for it to redefine her 'identity'. Her madness depicts a precondition for her sanity as a civilized subject. From the very beginning, she manages to get free, stand away, or even be spiteful to the Bad Man. Molly's paradoxical antagonistic yearning for the Bad Man is understood as her distinct stratagem to redefine her 'subjectivity' with the Real.

It was a celebration. Avery, Jack Millay and I stood at the bar while the man poured for us. Molly sat at one of the tables staring up at Flo with her

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Knuckles in her mouth. She sat looking away from him.

"Blue"! Molly screamed. She was trying to put tables and chairs between them and the Bad Man was laughing and tossing the furniture aside. Molly was struggling and pulling, or I'm sure he would have killed me.

In this reading, the self is what Žižek defines as "the center of narrative gravity (1998, 261), what fills in the void of the subject, and while the subject stays unchanging, the self is open to constant revision.

The non-restrictive joyful ruins the Bad Man brings about if we see him as the voice of the unbeknown ideology, is regarded as the return of the superego. In the permissive society wherein he satisfied his needs and desires, a society continually responding and even inviting to sexual enjoyment, it cannot be right anymore to consider sexual pleasure as something being prohibited. According to Žižek, in this social context, "sensual gratification has been elevated to the status of an official ideology". Put it another way, all people are expected to indulge themselves in enjoyment; they are required to live less and less with law and more and more with superego (Houdson, 2008).

Being located, argues Lacan, in the Symbolic Order, the superego keeps a close but ambiguous relation to the law. As the law is founded upon "the prohibition of incest" (Lacan, 1992) that which it seeks to exclude, the desire to break and transgress the law is the very precondition for the existence of the law itself. "The superego is the imperative of jouissance—Enjoy!" (Lacan, 1998). It is both the law/oedipal father and its agent of destruction/the primal father. These two fathers are involved in the novel. While Blue takes the role of the public law, which is suppressive in its work, the father who transmits the code of law to his people even his child– Jimmy, the Bad Man pictures the primal father, the figure of the absolute father who aggregates to himself the women and wealth by excluding his sons or rivals. He is the dark side of the law that in his nature is cruel and licentious. As Žižek puts, he emerges at the point where the law fails, and at this point of failure, the law is compelled "to search for support in an illegal enjoyment".

[Blue] I said trying to control my voice.

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What do you say to working in Isaac's store? It will be good for you. You're going to work regular hours. You're going to learn reading and writing. You're going to grow up proper with this town and the day will come" (WHT 162).

I pulled him [Jimmy] down. "What kind of mama's boy are you! Listen to me: I said the day is coming when no man from Bodie will ride in, but he will wither and dry up to dust. You hear me? I'm going to see you grow up with your mind, I'm going to see you settle just like this town, you are going to be a proper man and_Jimmy listens to me" (Ryan, 2010).

In relation to what mentioned above, while the law is the renunciation of enjoyment reflected in telling what we cannot do, the superego commands us to enjoy what we can do. Staying with Žižek, the superego "marks a point at which permitted enjoyment, freedom-to-enjoy, is reversed into an obligation to 'enjoy' " (Žižek, 1991, 237). And when enjoyment becomes obligatory, it is no longer fun. Doctorow's novel pictures the same idea having the Bad Man get through the town killing, drinking, and having sex, quite disrespecting the common law which is newly established. In this interpretation, the Bad Man is the caricaturized representative of disturbing radical exercise of the ordered official pleasure. The way he treats his desire for pleasure hypnotizes so many other people to do the same, that is, they follow him as a model. Now "enjoyment is not an immediate, spontaneous state but is sustained by the superego imperative" (Žižek, 1997, 173). Nearly every man is compelled to adopt a miniaturized version of the Bad Man; that is, he/ she has to follow the same ideological belief from which no escape is thinkable.

And with all that misery in such small space, I thought for one second to get up and get out of there and ride away fast. But I could no more do that than Fee and Flo and the others could get up from their graves─ the Bad Man had fixed us all in the spot, and he had fixed me by leaving me alive (Žižek, 1994).

The other impact of the superego to 'enjoy!' is to make its subjects indifferent and unable to enjoy what they are forced to do. Apparent evidence of such neutrality is perceptible in Molly. Being a professional whore, making a living with prostituting herself to the tradition of the saloon and the bar-

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goers, after the compulsory sex with the Bad Man, she not only becomes for a while indifferent to the profession but feels disgusting it also.

I stepped inside to see if Molly was awake. Slits and speckles of light lay across the floor, and one strip of light fell on her open eyes. She looked bad. Her face was so thin I could see how the bones and blue veins went under her skin. The food beside her was untouched. I didn't know what to say to her. I didn't know what she would say to me (WHT 33).

But I looked at her and saw what a sweet smile it was, full of hate, and I felt as if I had been swiped to the ground by the paw of a big cat (34)

The woman in John Bear's shack was no longer Molly; what had happened in Avery's saloon could never be undone (34).

"Don't you touch me?" Molly screamed. "Whores! Keep away from me!"(41)

To the dismay of the Bad Man, and the freedom he propagates, Molly adopts a transgressing attitude towards life which is manifested in her sobriety, aloofness and pride about Blue, and she takes a sadomasochistic position to the Bad Man as the only way left to pleasure under the injunctions of the superego.

Molly, all streaked with tears and dirt, looked up at Jimmy as if seeing him for the first time.

I was wishing she could look at me that way (43).

It was to plague me for a long time that I couldn't tell what she would answer, or I might find a moment's favor in her eyes. She didn't say anything till I began to wonder if she'd heard me (60).

Within the elemental feature of the Real/big Other, resisting symbolization, sets the notion of its disintegration. What Žižek means is that the big Other has always been dead in the sense that it never existed in the first place as a material thing. For Žižek, all it ever was is just symbolic or fictional order, another way put, we are all "engaged in a minimum of idealization, disavowing the brute fact of the Real in favor of another symbolic world behind it" . As human beings, we have to engage in the loop of symbolization and help it move on to forget the abyss of the Real though factually we know that it is nothing more than a kind of fib or lie. If there is a loophole to get rid of the

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ceaseless course of symbolization, it is through an 'act'.

An 'act' signifies, in Žižekian terminology, the re-birth of the subject. It means a perfect rejection of the present Symbolic Order and mandate/role assumed by the subject. As Žižek states:

The act differs from an active intervention /action. In that it radically transforms its bearer/ agent: the act is not simply something I 'accomplish'_ after and act, I am literally 'not the same as before'. In this sense, the subject undergoes the act (passes through it) rather than accomplishes it: in it, the subject is annihilated and subsequently reborn (or not), i.e., the act involves a kind of temporary eclipse, aphanisis of the subject.

Accordingly, it is attempting madness to withdraw from the world, risking not only any possible return but any other point to back to. Therefore, 'act' is putting oneself in danger to commit a Symbolic suicide (Raja et al, 2007).

The inconsolable death-wish Molly wishes on the Bad Man on the one hand, and on the other hand, Blue's unrequited love, loving Molly due to her enigmatic way of behavior that through the course of events makes a submissive man of him draws them both, Molly and Blue, toward their suicidal act at the end of the novel.

That was the idea I –Blue– held on to like my life, it moved me to action, it was a clear simple thought and I took it over from Jenks, becoming the fool he'd been, lifting the fool's hat from his dead body to fit on myself, becoming Molly's final fool, as I am now.

After shooting the Bad Man down and clubbing him to be insensible, Blue carries him home half dead, drops him on the table. Then both Molly and Blue fulfill their own gesture of avenge on the Bad Man, the man of their dream. Molly, quite excited, jabs him, the great insulter with her stiletto as a way of retaliating his insults till she grabs him in arms to initiate a unity. Blue, on his part, shoots them, Molly and the Bad Man, dead to be no more eclipsed with their Symbolic mandate. Though Molly and Blue's gestures are different in form, the effect is identical since it helps them both to reinvent a new symbolic identification with the Real / the Bad Man. Molly steps toward a negating union in her symbolic embrace with the Bad Man, to be killed and so protect the dignity of her own

'self' as a 'woman' within the existing Symbolic (of patriarchy) and the mandate of the corresponding ideology. Blue's final hysteric gesture, to shoot the Bad Man, aligns with killing off Molly, the one who is the dearest and most wanting to him; this action, in one sense, enables Blue both to massacre the rival and the woman he holds the dearest. This act, as Žižek argues, "far from amounting to a case of impotent aggressivity turned against oneself, rather changes the co-ordinates of the situation in which the subject finds himself (2000, 150). In one sense, by doing the murder, Blue escapes from the engulfment of the Other, name it either the Bad Man, his rival, or his dearest loved one, Molly.

"All right, Molly? Is it alright now? Is this what you wanted?" But she didn't hear me. She stood as far away as she could and watched me drop him on the table. (WHT 203) Back she jumped and then forward into another place, and he [the Bad Man] tried to writhe away from the point. "Eh?" says Moly. "Eh?" as if to say remember me? Remember your Molly? "Eh?" does this make you remember, or this, or this! –almost dancing with the grace of retribution.

It was the moment Turner's arms had closed around Molly as if in an embrace. My hand was over the Muzzle of the gun, but the blast killed them both. (205)

4. Conclusion

If the order of the Real considered, in Žižekian psychoanalysis, as those areas of life which cannot be known, and if the Symbolic, as Lacan claims, in its function "introduces a cut into the Real" (Myers, 2003, 25), the terms are initially bound with each other. The counterbalance of this intimacy as much as concerned to the notion of [the] subject means the disappearance of [the] subject. Put it differently, the lack of discrepancy between what everything is and what everything means equates the end of the signifying chain. E. L. Doctorow's novel, *Welcome to Hard Times*, depicts this fundamental mutual bound in the context of the relationship between the involved characters and domineering discourses. The interconnection of the discourses, the voice of ideology with its marginal subjects, reflects the Žižekian contention that what makes us human or more precisely, the thing that makes us

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'subject' is the very signifying chain and the decision we make in regard to our mutual relation with the Real or its effects named ideology. Monitoring the destiny of the people in Hard Times who defined themselves in their connection to the Real as automaton, unthinkable obeying subjects to the doctrinal rituals of the Symbolic Order, it is evident that it brought them to nothing except the vanishing of the 'self'. The leading cause of this premature death/ extinction from social interaction is their complete submission to the Symbolic, and ignoring the ever intrusion of what lies out of it, the Real. The ever-presence of the Real, represented by traumatic intrusion of the Bad Man, makes some people, few if not all, to decide on their reaction against it. The point is deciding how to cope with this unwanted, but the undeniable presence of the Bad Man they find the occasion of being reappeared as a subject. This reflects Žižek's perception of subject, that "it exists at the interface or on the borders between the Symbolic and the Real".

Adapting the formulas of both Marx and Sloterdijik, on the concept of ideology, Žižek sums up the cynical attitude as "they know very well what they are doing, following an illusion, but they are doing it" (Žižek, 1995, p.29). In this sense, our belief in ideology is staged in advance of our acknowledging that belief in belief machines. Therefore, as we think we have assumed a position of truth from which to denounce the lie of ideology, we find ourselves back in a doctrinal ideology again mainly because truth belongs to the Real that always remains unsymbolized. Moreover, ideology in its effects conceals the failed symbolization of the antagonism of class struggle in the Real. Accordingly, Molly's deep-seated sense of hatred and her intention to stand away from Blue, a man who is perceived as the man of family or the so-called Mayer in the novel, manifests her knowledge on the illusory guise of reality in the form of a peaceful, coherent and integrated society. Such a society for certain is imposed on every man by means of Žižekian belief machines whether named state, family or whatsoever in *Welcome To Hard Times* (Žižek, 2000: 2001, 2002, 2005, 2006, 2014).

Žižek's solution to get loose of neutrality of our being and the blinding impact of the dominant ideology is to be able to subject it to critique. To him, the

problem with contemporary politics is that it is non-political, that it considers the present capitalist structure of society as natural. Staying with Žižek's idea, the first step to reconstruct the reality/ Symbolic Order is to critique the naturalness of the present state, an attempt which associates reinvention of one's subjectivity with [in] ideology. If we behold the first compulsory confrontation of Molly with the Bad Man that ends in her bodily and physical belittlement, as her recognition unveiling the beguiling function of the ideology which hides the failure of the current Symbolic Order, her second deliberate approach to the Bad man (who symbolizes both the unbeknown, unsymbolizable Real, and the spectre of ideology) can be interpreted as her individual attempt to keep the project of ideological critique alive. Put it differently, it is a gesture on part of Molly to take a passage through a political suicidal act to reject what there is – capitalism – to open up a space in which her subject is more entrapped in their paranoid fears and servility pleasures.

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CIVIL LIABILITY IN CYBERSPACE

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Abstract: With the advent of cyberspace and the increase in the number of users, the growing trend has led people to a path that has changed their interactions and lifestyles. There may also be restrictions on this route, or people may, in their own right or by any other person, commit acts outside the terms and conditions of using this space. As a result, they are also liable for their actions as compensation for civil liability arising out of an unusual act. This study examines the concept of cyberspace and the dangers that exist in this space, as well as the civil liability for violating the rights, terms and conditions of its use by its target audience.

Keywords: Responsibility, Cyberspace, Civil Responsibility.

1. Introduction

The rapid growth of information and communication technology has created an emerging context as a cyberspace that has taken humans out of their normal lives and led them to a new world of interaction, sharing and ... And it has also affected ordinary human life. As Manuel Castells puts it, new information technologies are connecting the worlds of the world in global networks, and computer communications are forming a set of virtual societies, resulting in the transformation of all human material and spiritual structures and processes [1]. Indeed, as societies benefit from information and communication technologies and play a role in communication and interaction between people and the exchange of information and community access to this process, social change will accelerate and

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intensify. Thus, to say that a solid link between information and communication technologies and the formation of social life has been established is not an exaggerated concept [2]. Although new technology is defined by technical and instrumental aspects, the social science approach to this phenomenon is focused on its contexts, functions, effects, and results. Dennis McQuilley believes that we do not need to be a technology algebra to believe that a technology embodiment of a device can have a profound effect on the content and reception of what is relevant to its possible communications and effects.

2. Defining Cyberspace

Literally in different cyber cultures it means virtual and intangible, it is a virtual and intangible environment in the space of international networks (these networks are connected through information highways like internet) where all information about the relationships of people, cultures, nations, Countries and everything in the physical world (in the form of text, images, audio, documents) exist in a digital space and are usable and accessible to users and through the computer, its components and international networks are interconnected [4].

3. The Concept of Cyberspace

One of the fundamental rights of individuals is the right to have such information and to communicate with others. People in their lives have to have a series of private, public and family relationships, the nature of these relationships is typically that one is not concealed and aware of it. In principle, it is a disaster, but everyone has 100% private issues that require precision, secrecy and non-disclosure, non-disclosure of privacy and personal information in the community has become a right, and people are obliged to observe it, to enter life. Private individuals are morally offended and legally responsible in every way [5]. Nowadays, the advancement of information technology has created a situation that has raised the issue of personal and information security more than ever before; computer and information technology knowledge does not only threaten the information or family images of individuals but may also be defective. Other issues advocated by the legislature are also used, for

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example, to defame the usual flow of societies, and to motivate them to humiliate others by crushing their cultural value [6] under Article 31 of the Insulting Press Law, not only in personal relationships. It is not, but rather The press and mass media also express a degenerate culture, thus exposing and exposing others' weaknesses from other things that are used in the dignity of individuals and can be done through computers and Internet networking systems, in All of this use of information technology and the Internet will result in violating the values advocated by the legislature, but what is the cyber or virtual environment and how does it facilitate the commission of such crimes? Many definitions of the virtual environment have been presented and expressed so far Some of these definitions have limited the concept of virtual environment and others have developed it; one of these definitions applies to cyber-electronic information and can be done through computers and Internet networking systems, all of which use knowledge Information technology and the Internet will lead to violations of the values advocated by the legislature, but what is the cyber or virtual environment and how does it facilitate the commission of these crimes? Many definitions of the virtual environment have been presented and expressed so far. Some of these definitions limit the concept of the virtual environment and others have been introduced. One of these definitions refers to the cyber environment that is transmitted over the Internet, while others have attempted to differentiate cyber environment from Virtual and network topics, and from their point of view, is the virtual environment of a set of data stored on a computer and connected to each other via the Internet [7]. While the network or the net has its own definition, the Internet is a vast collection of computers available on computer networks around the world that connect to each other via information lines and exchange information using specific protocols. Many computers on the Internet store a lot of information and a large amount of information is stored on the Internet. Information on the Internet is stored in a variety of ways and can therefore be transmitted in a variety of ways. Webpages are one of the specific ways of storing and presenting information across multiple ways of

storing and presenting information on the Internet. [8]

4. History of Cyber Crime

In the mid-1980s, with the advent of international networks and satellite communications, the third generation of cybercrime, known as cybercrime or cybercrime, emerged. As such, cybercrime can be considered a complement to cybercrime, especially as third-generation cybercrime, often known as cybercrime, often occurs through this global network. [4] Cyberspace as a set of human interactions through computers and new communication technologies, regardless of "time" and "space," was used by William Gibson, a science fiction author in the 1984 book Neuronser. He sees cyberspace as a graphical representation of data from computer systems. Gibson's concept was, perhaps, somewhat closer to artificial intelligence and robotics than what is now known as "cyberspace". [9] This notion of early clarity gradually became the object of philosophical discourse in the cyber domain, and it was not long before the cyber domain was examined not as a laboratory or practical domain, but as an independent world itself. [10]

It is true that by expanding the use of the new concept of "cyber", whatever comes before or before the word "cyber" somehow expresses the relationship between human and computer. At the same time, different approaches to cyberspace cannot be denied. The concept of cyberspace refers to the fictional space of virtual reality and the Internet through which human beings enter the cyberspace. Without technology, cyber space would be meaningless. Now, cyberspace is being compared to science fiction. This is a kind of nowhere where multiple identities can be found [11]. In fact, the Internet is the gateway to cyberspace, with features such as the amount and type of access, guidance, information activity, growth and trust [12].

Technological approach to cyberspace deals with components such as hardware, software, data quality and quantity, and network interaction. Whereas the psychological approach focuses on the boundary between reality and imagination, such as mental space, human and computer behavioral patterns, imagination, identity and

personality [13]. The sociological perspective on cyberspace is also important because of its focus on online communities, cyber social networks and the social effects of human-computer interaction. However, this does not include all approaches. Behzad Doran has spoken of the fundamental attention in fields such as anthropology, social psychology, communication science and information science [14]. Given the differences in approaches to cyberspace, David Bell knows the definition of this complex category. While referring to various types of interpretations of cyberspace, he cites Michael Benedict's description of cyberspace, which is important:

"Cyberspace: A New World" is a parallel world created and maintained by the world's telecommunications lines and computers. A world in which the global flow of knowledge, mysteries, measurements, indicators, hobbies, and other human agency forms. So far, it has never been seen on the ground that spectacular things, voices and presence flourish in a vast electronic light. Therefore, the dreams of the past cannot be ignored, far from the realities of cyberspace. The perspective of David Bell's story focuses on a multidimensional expression of cyberspace. By designing several scenarios, he seeks to make his words clear: "The definition of cyberspace is complex." [10] These scenarios are as follows:

1. Cyberspace as a retelling of the history of technologies and computers, their evolution (in hardware and software), and their role in shaping cyberspace.

2. Cyberspace, meaning the role of the Internet, its evolution, and its mechanisms and tools in providing users access to the new space of interaction and commerce in all dimensions.

3. Cyberspace as a virtual reality capable of simulating "entities" and promising an interactive and immersive environment.

4. Cyberspace, meaning the close relationship between technology and the political, economic and social variables that form the basis of capitalist society. This interpretation of cyberspace deals with ownership, information management, control, access, wealth and democracy.

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5. Cyberspace as a space for work and entrepreneurship, not just "free expression and accumulation of wealth".

6. Cyberspace, as a reflection of the role of cyberpunk in the development and evolution of symbolic space. Bell's attempt to elaborate on the concept of cyberspace, in light of his narrative of cyberspace at the end, raises the question, "What is cyberspace?" Perhaps the "complexity" he refers to has prevented him.

Doran quoted by Whittel offers a three-part definition of cyberspace that he considers "relatively comprehensive and barrier". [14] Accordingly cyber space:

1. The psycho-imaginary space in which thoughts are attracted to dreamlike illusions (inspired by William Gibson);

2. The conceptual world of networked interactions between individuals and their spiritual creations and everything associated with [these] networks and interactions;

3. It is a state of thought shared by people in communication and through digital representations of language and sensory experience. People who are separated in time and place but connected by networks of physical means of access.

Cyberspace is not just a simple "highway of information", but a phenomenon that is part of social life and intertwined. Although the obvious differences between cyberspace and outer reality cannot be denied, the link between symbols and their elements and the interplay of personal and social lives can also be ignored. In oral culture, listeners can see the speaker. With printed texts readers can imagine the author (even if he used a pseudonym). On television and radio, audiences see the picture or hear the sound. But in cyberspace, the identity of what is seen on the page is not always as imagined. [11]

From a psychology perspective, Suler (2005) looks at the link between mental activity and cyberspace and considers the beginnings of these dreamy adventures from the moment of "clicking" and communicating with cyber entities and believes that to understand and become more familiar with this "experience" Visual »From the psychology point of view, sleep, dreams, and dreams should be considered. He believes that he has drawn the

boundaries between conscious and unconscious realities and can tell us something about the meaning of "reality". Dreamlike modes that can only exist in dreams and mental imagery occur more widely in cyberspace because users can transcend the laws governing physical space. With just a simple click on a door, they can move from place to place in cyberspace, without the need for legs or wheels to rotate, or any evidence of individual movement. Sociology scholars study theories of group morphology and actor-network theory, interpersonal, social relationships, and social construction of cyberspace. Anthropologists also look at the phenomenon of cyberspace by emphasizing cultural aspects and the study of human behavior as the product of interactions within the cultural system.

5. Meaning of Responsibility

It is responsible for the name of the slab, the weight of the prohibition, its weight and the question of its origin. In vocabulary, responsibility has come to mean being accountable to human beings, and is often defined as the concept of duty and what one is responsible for. As in the modern Arabic culture, responsibility has come to mean responsibly and responsibly. Some others have considered one of the responsible meanings to be someone who is liable for damages so that if he does not act, he will be held accountable and held accountable for being responsible. The late Dehkhoda has pledged the sense of responsibility and the obligation and the sense of responsibility.

6. The Concept of Civil Liability

In the Islamic Penal Code adopted in December 1991 by the Legal and Judicial Commission of the Islamic Consultative Assembly, which has also been approved by the Guardian Council, the legislator has acted in compliance with Article 171 of the Constitution of the Islamic Republic of Iran in the Fourth Amendment, entitled "Judicial Responsibility". While describing the penal provisions, for the first time in Article 58 of the said law, the subject has been foreseen and accepted as follows: "Whenever a person is found guilty of material or moral harm in the case or in the execution of a judgment in the case or in the execution of a

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judgment, the guilty is liable in accordance with Islamic standards and otherwise compensated by the State for moral damage. If the judge's fault or mistake causes him to lose his reputation, then his reputation must be restored. "

As can be seen, the question of the judge's error in determining the case or in the judgment in a particular case has been considered by the legislator and the provision of the sentence in the penal code is one of the innovations of the authors of the Islamic Penal Code. But to fulfill the judge's responsibility for compensation, the judge's mistake has been applied to his fault, and that is the basis of the government's liability for damages and restitution of the loss caused by the judge's fault or error.

This article first deals with the fundamental concepts (civil liability, jurisprudence). It then examines the judge's civil liability for judges' judgments and how the judge's compensation for error and error is compensated in three ways:

The word responsibility is used in the sense: "Guarantee, Guarantee, Obligation and Exemption" and in the legal term it refers to the compulsory or voluntary obligation of one person to another (whether financial or non-financial) which has two parts: one is criminal liability, and another financial or civil liability. [11]

7. Definition of Civil Liability

Civil liability is the obligation of one person to compensate for the damage done to another. Civil liability arises when a person is harmed or harmed by another person without legal authorization, no matter the act that caused the crime or the crime.

In any case where the person is obliged to compensate another, it is stated that the person has civil liability and is a guarantor. There has long been this rational and rational rule that "anyone who loses to another must make good the compensation, unless the harm is not otherwise prescribed by law or the harm inflicted on the person does not appear to be inappropriate."

This rule is similar to that in jurisprudence “Whoever destroys the money of others, he has a guarantor.” Or the meaning of the poem:

هركسي مالي كند از كسي تلف

هست ضامن از براي آن طرف

Civil liability as a guarantee of civil rights plays an important and important role in the demand and enjoyment of the rights of individuals and as a result of the regulation of social and legal relations without losing its real and objective concept of civil responsibility and the intellectual and mental aspect of itself. It also takes what actually makes the right potentially viable and gives it tangible to right holders the rules and regulations in the legal system of states, including the country, that are incorporated into the framework of the various laws**.**

8. Basis of Responsibility

The basis of civil liability in private law has a special place, as civil liability professor Boris Stock argues: "It is no exaggeration to say, the basis of civil liability is the most important issue in private law." "If there is a truly controversial issue in private law, it is the basis of civil liability," says Phillip Luterno. The key question is what can justify the responsibility that is imposed on one person? ”Various theories have been put forward by jurists in response to this question. According to some jurists, "There is no question that one is solely responsible for one's own actions, but there has always been debate as to how far this responsibility should be extended. Is it the responsibility of the person just to cause harm to another, and only the causal relationship between his / her work and the loss must be ascertained? '

Other jurists also argue that the basis of civil liability seeks to answer the question of what reason, and the rationale, should cause the harmful act to compensate others? Has the self-harmed person who suffered direct harm no more deserve to suffer the loss than the other? Some argue that "the basis of civil liability answers the question of what kind of ethical and philosophical considerations make a person socially responsible for another."

These words can guide us to understand the concept of the concept in understanding the concept of the concept of civil responsibility. In the definition of the basis of civil liability, it can be said that "there is a reason for us to introduce Frederick as responsible for damages" in other words "the basis of the principles is the legal reasons justifying the exercise of civil liability". Since the first views on the principles of civil liability (fault-

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based) in French law by the Duma in the seventeenth century, the foundations of civil liability have undergone many changes.

After separating civil liability from criminal responsibility, the theory of guilt based on moral teachings sought to justify civil liability based on ethical rules. The inadequacy of this theory has led to the concept of guilt being devoid of its ethical foundations and taking on a social and customary meaning. The emergence of the doctrine of penal law also influenced civil liability law rather than criminal law, and led to the emergence of risk theory. The result of this transformation was the responsibility of individuals for the damage caused by the objects under their protection. Complex theories, such as the theories of risk created, the risk of profit and unconventional work, have also tried to adopt a middle-ground solution by combining theories of guilt and risk. The emergence of new theories such as "guaranteeing the right" and "welfare and good" also shows the inefficiencies of the theories presented.

The inability of these theories to justify the basis of civil liability as well as the variety of sources of liability in legal systems has led some jurists, such as Prosser and Keaton, to abandon the search for a single basis and to hold the view that in every rule of civil liability and in any There is a specific basis for the legal text. In their view, the multiplicity of "sources of guarantee" leads to the multiplicity of "fundamentals of guarantee" and that "every legal system seeks to provide different means of compensation and does not adhere to a single order." These jurists have overlooked the fundamental point that the basis, the commonality between sources of responsibility, or in other words, is the cause of responsibility, and therefore, whenever the nature of responsibility is the same in different sources, all of these sources must follow the same basis. Civil liability means compensation is a unique nature that must also have a unified basis. The basis of liability is the reason for it and the basis cannot be multiple unless the liability has multiple reductions. So if none of the foundations of civil liability can justify all the rules and sources of liability, it does not mean that there is no single basis in civil liability, but rather that these theories do

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not conform to the true basis of civil liability.

9. Resources for Civil Liability

1. Sources of responsibility in jurisprudence

By examining the fundamentals of civil liability in jurisprudence, we conclude that there are several rules in jurisprudence that are used as the primary proof of warranty, in some of which fault is essential to the fulfillment of responsibility and in others there is no need for fault.

According to the rule of loss, the element of fault and the intentional condition of liability for the damage is not known and it will be liable for damages if one loses another. Whether intentionally or not to waste. However, there must be a relationship between the steward's act and the loss of customary causality in order to realize civil responsibility. If a person is thrown into a financial meltdown by an explosion, though he has been killed, it is difficult to hold him accountable for the lack of attribution.

Depending on the rule of thumb, the person provides a wasted introduction and actually does something that wouldn't happen if it wasn't. Of course, action is a verb, or a verb, leaving a positive face like throwing a stone at a pedestrian and sliding and breaking a pedestrian. The negative verb is the current crack that causes damage to the none. Whether it comes from a contract or from legal duties that all these types of cases are subject to. The difference between loss and reverence is that the positive verb always leads to loss in the affirmative, and in the affirmation, the loss is mediated by another, and with the abandonment of the verb, the loss is assumed. Discipline creates a responsibility that is customary, aggressive, and fair. So, contrary to what was said in the waste, blame is one of the pillars of responsibility. According to the rule of pride, if the perpetrator commits an act that causes another to deceive and inflicts harm on another, the deceiver is the guarantor. What is important in discussing the caveat of pride is the proud ignorance of the cave's unrealistic promise. There is a dispute about the necessity of knowing the truth and the intention to deceive the proud in jurisprudence. It seems to be a guarantee when one knows the truth but does not

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intend to deceive another when his actions in the custom cause harm to another. If he does not know the truth, some believe that pride will still come about because this person's act has made the other proud and his ignorance will not destroy the causal relationship. Others, however, regard pride as a means of teaching and do not refer to pride in ignorance. Moderating these views, it should be said that if the fault is attributed to the cave, the pride will be realized even though he did not intend to deceive and ignore. But when a fault cannot be attributed to him, it cannot be realized, whether it is ignorance or the world. The blame criterion is also an unusual act of the person, which is a kind of blame.

One of the factors in Stimman's liability is that Amin is not responsible for inflicting damages on the borrower. But if he commits a crime, the trait of the lender will be destroyed and henceforth guaranteed. There is no need for Amin to have the intention to commit rape, and the blame criterion is a type, not a personal one.

From what has been said about the principles of responsibility in jurisprudence, it seems that civil liability in jurisprudence does not have a unified basis;

2. Sources of responsibility in case law

In Iran's rights law, not all responsibility is based on fault. The earliest rules on civil liability relate to loss and dignity. A waste of material from 328 to 330 BC. It has been collected and the mere causal relationship between the verb and the deceitful person is sufficient to carry out the responsibility and does not need to be blamed. Decoration in Articles 331 to 335 BC Articles 334 and 333 can be deduced from the necessity of guilt because the owner's liability for damages resulting from the destruction of a wall or factory is subject to his negligence and Article 334 also relates to the owner or owner of the animal. It has been the owner's fault in keeping the animal.

Civil law regarding the cause and steward community holds the basic rule responsible for stewarding unless it is ethical and justified by reasoning that the act's documents are reasonably close and not the unlikely cause it is known. There is no doubt that the steward is closer than the cause. In the old law, punishment was also provided, but after

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the adoption of the Islamic Penal Code in 2013, Article 526 made it responsible for the fact that the crime is documented to him and, as long as the crime is documented to all agents, the steward and the They are the guarantors, and if the perpetrator's behavior is different, then they are each responsible for the extent of their behavior. The article states: "When two or more factors, some influencing the stewardship and some favoring the commission of the crime, the factor which is the documented crime is the guarantor, and if the documentary crime is all the factors, the same is the guarantor unless the perpetrator's behavior is affected. It would appear that the legislator in Article 332 of the Civil Code has put forward a general rule because most of the time the steward is a noble cause and that does not prevent such a documentary being lost. He was responsible for the verb and because it had a more effective role.

Article I of the Civil Liability Act considers liability based on the fault of the investigator. That is to say, the damage to another must be a deliberate or negligent consequence. Article 1 of the Compulsory Insurance Act provides for civil liability of owners of motor vehicles, all owners of motor vehicles responsible for compensation for the physical and financial damage caused to motor vehicles by third parties. Which is an exception to the provision of a civil liability law. The legislature has created a fault-free liability for land-based motor vehicle owners to guarantee compensation for and damages caused by driving a car. By examining jurisprudence and case law, we conclude that the Iranian legislature did not seek to repeal the civil liability law, and that the compulsory insurance law and the social concept of fault also indicate that the legislator did not intend to place the fault on the sole basis of civil liability.

3. Principles of Responsibility in the Kamnella Legal System

In the nineteenth century, the courts of common law tried to convert the law of error of the Low of Torts into the law of the Low of tort, one of which was to expand and strengthen the territory of negligence or guilt and to turn it into a general principle of liability.

The common law does not lay down a single principle of liability, just as fault-based liability is not accepted in all cases, nor is liability replaced by fault-free liability. It seems that in the

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case of negligence and negligence in Kamenla, the basis of responsibility lies on the fault and in certain cases, including the maintenance of dangerous objects or actions requiring special expertise, liability is accepted without fault. Ignorance and neglect in the law of the common sense is to refrain from doing what a normal human being would have done in those circumstances, as well as doing something that a normal human being would not have done in that situation, and it is almost equivalent to writing a fault. Except for not deliberate fault.

In claims of negligence, the defendant must first prove that the respondent has made a commitment to the claimant that the offender has violated the obligation to exercise reasonable care.

There was a rule in this regard called the proximity principle that was applied when there was a commitment to care. That is, individuals must take reasonable care to prevent the current verb or quitting that they reasonably anticipate will harm others. As to who's next in line, I have to keep in mind those who are so close and direct as those affected by me and need to take reasonable care of them. In this rule, sufficient communication and customary sequence between the parties is essential. And we mean immediate and immediate relationships in which one is affected by the act of blame. Therefore, in each case, predictability, sequencing and rationality are the prerequisites for care assignment. Consequently, in the Kamenla system, responsibility may be based on intentional, negligent, negligent, or absolute responsibility. In these three types of responsibility, responsibility arises from deliberate deliberate negligence.

11. How to Split Responsibility

In the event of multiple devices contributing to the damage, multiple theories have been expressed, each of which has followers and is applicable to existing legal systems. In the event that the fault involved contributes to the loss incident along with the fault factor, the issue of division and distribution of damages arises as follows:

1- Division of responsibility based on the degree of guilt: Division of responsibility on the basis of the degree of guilt is accepted in many legal systems and is highly accepted and even

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applies to Article 165 of the Iranian Maritime Law of 1343. This criterion also applies to maritime accidents in French law and is enshrined in the Law of July 5, 1934 and July 5, 1967, France. According to this criterion, the liability of each toy is determined on the basis of the degree of fault, and if the fault cannot be determined, the damage is divided into equality.

Egypt's new Civil Code also states in Articles 169 and 216 that if the number of officials is multiplied, responsibility is divided according to the degree of blame of the officials and the number of persons is ignored unless the severity of the blame is equal so that the damages are equal. The authorities are divided. The judicial system in Egypt is moving in this direction as well.

2- Division of liability by degree of influence: It has long been the case that in British law, the enactment of the 1945 Amended Blame Amendment Act gave the court the power to reduce compensation in terms of the extent of its harmful participation in causing harm. However, courts have adopted different approaches to the division of liability between loss and loss; some have chosen solutions based on the degree of impact, and some have advocated a degree of blame sharing.

It is worth noting that the most damaging rules have been raised in driving lawsuits, in particular not wearing seat belts or wearing a helmet and riding in a car where the driver is drunk:

In a lawsuit against Forumer and others against a bailiff who had not secured his seat belt, the accident occurred and the driver was thrown into the windshield and injured his head and chest. In the lawsuit, the appellate court did not consider the loss and the blame loss after the petitioners were sued, but the appellate court distinguished between the cause of the accident or the negligence and the loss, and thereby reduced the claim for damages by up to 25%. According to Judge Denning, the plaintiff's negligence aggravated the injury by failing to wear a seat belt and failing to pay 25% of the damage due to the common fault and neglecting to act as a normal person.

According to Judge Denning, three situations should be distinguished: 1- If the seat belt does not have an impact on the damages, the damages fault will not play a role in reducing the damages;

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That is, 15% of the damages must be reduced and the claimant will not be entitled to 15%; 3. If the belt closure prevents damage, 25% will be reduced and the claimant will not be entitled to receive it. Therefore, in such cases, the injured party should be held responsible for up to 25% and deprived of 25% damages; thus, the judge bases his sentence on the fact that "everyone knows or should know" that they should wear their seat belts when sitting in the car. , Except in exceptional cases, such as obese or pregnant women. In O'Connell's lawsuit against the motorcycle-ridden Jackson in the head-on accident, the driver was severely injured, but the court reduced the plaintiffs' claim by 15 percent.

In the Owens lawsuit against Bremel, they went to their car to drink a drink, spent the whole evening drinking and drinking more than usual, and at the same time headed home and flashed lights in the car. Demands that the seat belt was not fastened had serious injuries, but there was no evidence that the seat belt did not contribute to the increase or exacerbation of injuries. However, the court deprived Juan of 20% of the damage because he knew he was driving with a drunk driver, and in fact, because both the victim and the other were involved in the damage.

In other cases where a drunken driver gets into a car where the driver is drunk, the courts have awarded damages for the blame, but that does not mean that in other cases, the courts have not invoked the blame and it is just a case of the rule being unique to Murat. In another lawsuit, the injured party has violated the teachings given and has suffered damages because the courts have denied the injured party a common fault.

Although Indian law does not enforce a law such as the United Kingdom on damages for wrongdoing, courts have ruled in fairness and fairness in practice. For example: A passenger who gets on a bus and stands on the stairs of the bus If the driver gets braked and the passenger dies when he or she gets off the bus, the deceased survivors of the common fault cannot claim full compensation.

Finally, the division of responsibility in Iranian law is also accepted in terms of the degree of impact in Article 14, paragraph 2, of the Civil Liability Act, which provides: “In

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Article 112, whenever a person is aggrieved, he or she shall be liable for damages in that respect. Each of them will determine how each of the parties will intervene. "

3- Division of responsibility to equality: This criterion of division in Iranian law is more favorable and has a legal and historical background. Article 365 of the Islamic Penal Code states: "Whenever several persons cause injury or damage to one another, they shall be equally liable for damages." The Supreme Court, in its unity of practice, has considered the mere citation of damages to the wrongdoer as sufficient, ignoring the effect of the parties' fault in the loss, while the lower courts held that the award of damages was equal to the " There should be no fault and the conviction documentary is merely a reference to the damage done to both." Therefore, the court procedure today ignores the extent of the perpetrator's guilt and fault, and considers only the customary citation of damages surrounding the case, and does not disclose the merits of referring to an expert. The unanimous decision of the Supreme Court of the Republic of Iran No. 717, dated 26/2/1390, provides as follows: "In accordance with Article 337 of the Islamic Penal Code, whenever two or more public vehicles result in the killing or abduction of their passengers." Each driver's liability will be equally - to the extent possible - at fault."

Finally, according to Article 528 of the Islamic Penal Code, 1/22/1392: "Whenever two or more ground, water or air vehicles collide, their driver or occupants are killed or injured, each of them shall be liable in half. Atonement for opposing drivers and passengers is both vehicles and if three vehicles collide each of the drivers is responsible for one third of atonement for opposing drivers and passengers of all three vehicles and so is calculated on more vehicles and when one of them is calculated. The parties are to blame so that he can be documented, only he is the guarantor. "However, Article 528 of the Islamic Penal Code had been drafted in a different way, with the current Guardian Council order. According to Article 532 of the Bill: "Whenever a passenger or passenger is killed or injured in a collision with two terrestrial, water or air vehicles, each of them shall be liable for half of the driver's liability if the impact

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is attributed to both drivers and the effect is equal or unknown." And the passengers are both vehicles, and if three vehicles collide, each driver is responsible for one-third of the opposite drivers and the occupants of all three vehicles, so it is calculated on more vehicles, and if one party is to blame. Only when he is dealt with will he be the guarantor.

Note - If the impact of the parties to the collision is different, with expert recognition each will have the same degree of impact. "

Thus, in the Islamic Penal Code, the principle of equality of responsibility only applied where the parties were equally involved in the damages or the extent of the impact was unknown, otherwise based on the extent to which the parties were at fault or around the claim for damages. Prior to the adoption of the new Islamic Penal Code and the unanimity of the previous procedure, the effect of the fault was in some courts and, as noted in Note 528 of the Bill, the effect of the fault on the occurrence of the damage was known to the expert. However, the unity of procedure law and the new Islamic Penal Code have established the principle of equality, which is rooted in jurisprudence, and is known to be equally sponsored if several share in the damage the validity of this view is discussed below.

12. Civil Liability in Cyberspace

Responsibility, both criminal and civil, requires that the responsible person be held accountable, either because of the fault or because of the loss, the respondent is either the community or the victim, and whose purpose is either to deter or punish the responsible person or to revert damaged situation. In the old legal systems, however, the aforementioned cases and purposes were not separated and the punishment of the person responsible was both a deterrent and a compensation. [12] And the common past is only the turning point of the concepts of civil and criminal liability, since the late eighteenth century most criminal and civil liability legal systems have been separated in terms of both rules and purposes and principles, for example the most important basis for creating liability. Criminal protection of collective rights, in Kamnella, is said to be the criminal responsibility for the

relationship between the individual and the king. [21] While civil liability rights aim at protecting individuals against damages that may be brought to bear on other people's actions in social relations, in addition to being a source of liability, the law is a criminal offense and not any harmful act. Recognition, while not criminal in analogy, and the principle of the legality of punishments guarantees the protection of individual rights against governments, but in the civil liability of the judge, there is no need for a legal basis for any liability. [22] In addition, its scope of responsibility varies, with some of the offenses not being accompanied by civil liability because they do not result in severe penalties, so the existence and conduct of civil liability is not in the sense of being and committing a crime.

13. Conclusion

Given the advancement of technology and the ever increasing use of ICTs, it is imperative to note that the failure of IT providers to prove the responsibility of ICT providers must be considered. Because civil liability arises from the infliction of damage or damage to the audience, and certainly must be the loss or damage of the conduct of the executor in the field, not as a result of acts which did not have any will. In the Iranian legal system, the responsibility of ICT providers is to blame. ICT providers can also prevent the loss and damage of clients by using the facilities available to them and the training they receive. In some cases, it is also the case that the hosts (and individuals and third parties), at the suggestion of the audience, store and use the information when needed and that the provider may be liable in the event of loss or damage.

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IMPORTANCE OF SOCIAL NETWORKS AND WORD OF MOUTH ADVERTISING IN COMMERCE

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Alireza Moa'tameni[3]

Abstract: In today's world where individuals are always affected by information bombardment, they need reliable people to give them the right information to choose the goods they need, so they can get the best deal in the shortest time, and these people are known as thought leaders. Social networking has created a huge transformation in business and Internet marketing. In fact, with the growing use of social networking, business and marketing through this mass media has given fresh impetus to the industry and has made its customers loyal with new tools, because these networks are in fact a powerful tool for organizations aimed at reaching target audiences. The role of electronic word of mouth eWOM is increasing on social networks and sites these days. eWOM can increase the popularity of a firm or company. Customers refer to the views of old or current customers before purchasing the goods, which affects the decision making process. The need for today is to understand the awareness and perspectives presented by present studies, and the early steps associated with the exploitation of the vast potential of eWOM are prone to play a key role in this regard. In order to design a marketing strategy effectively, marketing managers should consider, in addition to the proper use of the WOM's they should consider the type of the strategy too, it is suggested that companies take more customers to gain higher profits and achieve winning results to create eWOM Positive attempts.

Keywords: social networks, word of mouth advertising, brand, marketing.

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1. Introduction

Propaganda is the most powerful tool in knowing a company, product, service or thought and vision. The scope of propaganda is remarkable. If advertisements are constructive, they can create an impression in the audience, even interest them in some way, or at least to accept and recognize the product and its trade name [61]. Meanwhile, although the Internet has provided media for advertising efficiency, individuals are seeking to maximize their investment in this category [62]. With the expanding mobile devices and e-commerce has gone beyond the Internet and has been featured on mobile phones. Proponents can easily access a large number of users and communicate with them at a low cost [63]. In the last few years, mobile phone technology has grown rapidly, so new and advanced generations of mobile phones (smartphones) have emerged. As a result, the use of all features of the media, the provision of personalized advertisements, the provision of timely ad placement, and timely delivery of services to the user are provided and the productivity of advertising messages has increased. Mobile advertising has a lot of persistence, they are not immediately distracted from the viewer's eyes, and their response rate is higher than that of the computer or television. The above items show a high potential for mobile advertising [64].

Considering the increasing expansion of virtual networks, it seems that one of the most effective strategies to increase customer purchases is corporate penetration and advertising in these spaces. Therefore, in recent years, word of mouth marketing, and especially electronic word of mouth marketing is of particular importance in survival. Companies are looking to attract loyal customers. Word of mouth marketing is a communication about the goods and services of people who do not appear to be affiliated with a company that produces goods or services. These communications may be face-to-face conversations, either by telephone, email, mobile phone or by other communication channels. In an environment where trust in organizations and advertisements has been reduced, word of mouth communication is a way to achieve a competitive advantage. Influence on the opinions of other people for the organizations offering goods and

services has significant benefits [2]. With the advent of the Internet, it was possible to reach more audiences for companies. In the mid-1990s, advertisements on the Internet as pop-ups of websites or banner advertisements became a good way of marketing. This form of marketing became known as e-marketing. In addition, after the expansion of virtual networks, another kind of e-marketing was created, called electronic word of mouth Marketing. It often seems that increasing sales of a product or service is only due to the company's successful advertising. However, in fact, the main driver is to sell people's opinions about the vendor company. Individuals tend to talk to each other about their experiences, and by exchanging positive or negative recommendations about a particular product or service, they risk their purchases to the lowest possible level and choose the best and most suitable option [16].

In the last decade, small dual social media has been integrated into marketing communications that allows organizations to communicate with their consumers [49]. Cyberspace has provided new tools for marketers to improve the efficiency and effectiveness of marketing communications and represented new approaches to customer acquisition and retention. One aspect of cyberspace is the on-line intra personal interactions [55]. The influences and interactions between individuals in online environments are influential on customer evaluations and decisions about the purchase of a product or brand. Word of mouth advertising involves a variety of media forms and types of websites that have the most access to online opinion and opinion polls [60]. Word of mouth advertising is defined as the practice of exchanging marketing information among consumers, and plays a critical role in changing attitudes and behavior towards products and services [47]. Because word of mouth advertising is produced and transmitted by a more reliable source of information about the product and the brands compared to the corporate promotional messages [65], consumers often seek information based on which they decide to buy, rely on it. The emergence of Internet-based media has facilitated the development of word of mouth advertising, which is a word of mouth publication. Social networking sites are

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an ideal tool for word of mouth advertising, and consumers freely create and distribute brand-related information in social networks, including friends from classmates and other affiliates. More than 70% of online users between the ages of 18 and 29 are using social networks, in which Facebook with 73% is of the most popular social networks, according to a recent report from the Pew Internet and American Life Project. Following are MySpace with 48% and LinkedIn with 14% in the next levels. Social networking ads allow consumers to engage in certain types of social transactions by commenting, liking, or sharing their communications on social networks. Through these interactions, consumers voluntarily display their brand preferences alongside their personal information, such as name and image that can trigger word of mouth communications. Understanding the mechanism of word of mouth marketing on social networks can help to improve our knowledge of word of mouth advertising prospects and provide insight and valuable insight into the Internet advertising strategy.

2 The Impact of Social Networks on Trade

The most important thing that has arisen after the development of social networks in the world is the subject of social networking, termed social commerce. Social commerce benefits from both business and customer perspectives. Social commerce has a social-based structure that each business center or any client is a node of the network. The structural and relational characteristics of social networks affect the interactions between customers, increase the level of participation, and ultimately lead to an increased interest in the consumption of goods [66]. In today's market, social networks have begun moving fast to serve businesses. Their social networks and their growing influence among different users around the world have made them an ideal tool for advertising and e-commerce. Small and large organizations have entered social networks and are trying to slowly discover its benefits. They have used Twitter and has been created their fan page on Facebook. Organizations now feel that social networks are a means to trade and they will have to get on the wave. Large companies such as Dell,

Microsoft and HP effectively used social networking in business marketing and dedicated founding to this subject, and have been teach a large number of their employees in this regard. The benefits of virtual social networking include:

1. Rapid and free dissemination of news and information, increased analytical strength and strengthening critical morale
2. Increase the speed of the education process and create a night-time communication between the teacher and the student
3. Increase trust, sincerity and integrity in cyberspace
4. Represent the possibility of expressing ideas freely and familiarity to the ideas, thoughts and tastes of others
5. Promotional and content functionality

In the world of electronic marketing, new business models have been introduced and new trends are emerging. One of the latest trends is the social networking websites that attract not only a large number of users and visitors, but also a place for online advertising for companies and companies [58]. These days, customers dramatically change their behavior in line with the technology and the global economic environment. They get a lot of information, they know about the products, they get familiar with the products, and they lose their confidence in advertising. Custom prefer custom products and services and change their shopping channels; therefore, businesses need to refine or even change their advertising strategies to cope with changes, facts, and behaviors of their customers (in order to survive).

Nowadays, the prevalence of e-commerce and online businesses has made the economic aspect of virtual social networking an important part. Companies, organizations, and small business owners can trade through virtual social networking sites. In addition to the corporate communication that is created in the context of specialized social networks and involves huge economic benefits to the parties, from a commercial perspective, any user of virtual social networks can be considered a potential customer. Data about user behavior in the network and their interactions and interests can be an important source of information for companies, organizations and governments. Hence, the discovery of

the massive interests of users of the network and the placement of products and services of their intended sight is of particular importance to the manufacturers of products and services. Virtual social networking managers also use various models to distribute huge amounts of advertising among users through the cost and availability of information related to the services and products of companies. This information can be extracted from two sources of profiles and the content of user interactions. Almost all social networking websites use promotional income models, subscription fees, and pay links. However, the source of the main revenue is the online social network advertising and payroll link. The right to contribute has lower share in their income [58]. The benefits of marketing with social networks include:

- Almost all types of society can be found on these networks.
- Your popularity in these networks affects the ranking of your website in search engines.
- You can respond to user questions and communicate with them.
- By publishing an image, video, or content, you can get thousands of fans for you.
- Activity on these networks will allow many people to see your product links on their profile.

Disadvantages of marketing with social networks include:

- There are many social networks that each have their own features.
- For effective marketing in these networks, you need to spend at least an hour per day.
- Users in these networks have different ideas and do not share anything.
- Most of the stuff you share on this network is not being studied.
- For specialized activities, your audience rarely goes to their profiles on these networks [1].

3 Marketing of Social Media and its Influence on Business:

Social network marketing is generating website traffic or highlighting an issue through social networks. This method is an attempt to attract a mass audience for more profit at small scales. Social networking programs usually focus on content creation efforts that can

draw audiences' attention on platforms and encourage readers to share it among social networks. The process of using social media to boost business success describes work and profits in four levels as follows [24]:

1. Developing new marketing strategies.
2. Monitoring and managing social networking activities.
3. Evaluation period of results.
4. Modify the procedures if necessary.

Social media marketing in many ways has a significant impact on business, which include:

Effective way to reach audiences: Obtain an ideal and robust way of interacting and communicating with building a community with the help of information and valuable content in the social networking platforms.

Creating a Famous Society (Affective Branding): The advocates of this approach improve business through online and offline online interaction.

Fans without difficulty: Through the addition of attractive and customizable links on company's website, it is possible for clients to attract numerous fanfare social media sites effortlessly.

Video sharing: Custom films in all media are among the most popular parts of the site that are shared as a message and used in companies as a unique, intuitive application.

Facebook Marketing Power: Facebook's evolutionary experience in business pages is a sign of corporate leadership.

Online promotion: Use the power of social media marketing to promote the mission of the company through online management and business introduction. Involve and engage customers' emotions through sharing photos, events, and company news.

Communicate with other professionals: Use more specific links to create a better introduction and engage potential people [41].

Feyz et al. concluded that increasing the tendency to use online social networks, which is itself a function of group criteria, subjective criterion, and social cognition, can lead to improved brand equity in the market [5]. Jalilian and Mejani after analyzing the structure of social networks and the

advantages and disadvantages of marketing in each of them, according to their characteristics, came to the conclusion that marketing through social networks is one of the new ways in which the growth of systems information and communication has been opened up to the organization and the companies [3]. Keshtgari and Khajehpour in an empirical study of mobile advertising acceptance stimuli concluded that three characteristics of entertainment, information and message validity have a positive effect and have a negative effect on the tendency towards mobile advertising and incentives for customers to be attractive [6]. Parnu & Manzano (2013) In order to discover the key factors in adverting mobile advertising to adolescents, have represented the main factor as the attitude toward this advertisement and introduces other factors such as entertainment, harassment and utility with the mediating role of attitude toward advertising.

Mansour, with the aim of determining the factors influencing the intention of consumers to accept mobile advertising in Sudan, concluded that the value of advertising and the attitude toward advertising generally had a positive effect on the attitude and tendency to use mobile advertising [50]. Hadija et al. finds that the ignorance of advertising on social networking sites amongst the students, which according to the authors of one of the main users of virtual networks, concluded that users not only don't hate mobile advertising necessarily, even don't easily understand them [29]. In the study of Brettel and Spiker, the effectiveness of internet advertising was studied with respect to cultural differences, which showed that culture has a strong influence on how to understand and process internet advertising [13]. San and et al. examined the differences in attitudes of women and men toward the evaluation of internet advertising. The result of the study showed that awareness could lead to a more positive attitude towards men than women, and that entertainment could have more positive attitude for women than for men [67]. Lai and Hsu also found that the ability to interact with online advertising with male attitudes has positive and negative relationship with women's attitudes toward gender-based advertising on online advertising in Taiwan [45]. Reviewing the factors

influencing the attitude towards mobile advertising, Bonn et al. (2010), stated that the content of the message, the personalization of the message, interactivity, and the attitude toward advertising generally affect the attitude to mobile advertising. Amen in a similar study, identified that the recognition of trust, utility and perceived value, the ease of use and control as effective factors [8].

4 Word of mouth advertising

In an environment where trust in organizations and advertising has diminished, oral communication is a way to achieve competitive advantage. Affecting the opinions of other people for the organizations offering goods and services has significant benefits [2]. word of mouth advertising refers to interpersonal communication among consumers about their own evaluations and experiences from a company or product [37]. Research has shown that word of mouth advertising communication is more effective than communication through other sources, such as the advice of important newspapers or advertisements, since it is provided with credible comparative information [36]. Positive and negative word of mouth advertising are also effective in buying a brand or product by consumers [25]. In a recent study by Mahajan and et al, word of mouth advertising could have an impact on product evaluation [56]. Guardian and et al, also concluded that word of mouth advertising not only affects the perceived value of the company's products, but also affects their loyalty [4]. Marketing through word of mouth advertising is more prestigious than other marketing techniques, as only 14% of people are trusted by what they see or hear in commercials. It is even more plausible that 90 percent of people trust their family, friends or colleagues who approve a product or service because they know that there is no benefit to them [2].

5 Electronical word-of-mouth communication (eWOM)

eWOM is a new form of word-of-mouth marketing done by the Internet, electronic devices and social networks. eWOM is the exchange of product and service information among people who send messages in the virtual world. Given the technological advances Buttle, believes that in the age of electronics, it

is not necessary to consider word-of-mouth communication, as face-to-face, verbally, or directly communication [9]. Word-of-mouth advertising is defined as all informal communications of consumers through Internet-based technology in relation to the use or characteristics of certain goods or services or their vendors [55]. Compared to traditional costly and timely marketing methods, new methods such as word-of-mouth marketing in shorter time and with less capital will yield marvelous results [57]. For online customers, word-of-mouth advertisements are the primary source of product information because they provide new and targeted information [48]. Electronical word-of-mouth marketing in a variety of ways, including rumored marketing of news and entertainment, viral marketing (publishing messages, especially via email), community marketing (community-based creation and support such as forums), fan clubs and user groups, generating of the product (placing the product appropriately for the influential people at the right time), penetration marketing (Finding influential individuals and communities with brand blogging (creating and participating in the blog through valuable information) is conducted eWOM is different in its aspects with its traditional counterpart:

1. eWOM messages have metaphorical names.
2. Different customers can receive the same message and access it anytime from anywhere.
3. eWOM is more meaningful than its traditional counterpart. Electronic commerce offers different products and services than traditional commerce. Because choices of products available on the Internet are available to customers, eWOM is important in empowering customers to make purchasing decisions.

Hadija argued that customer's recommendations for successful social commerce are needed and this requires customer confidence in the social community environment. Successful social commerce relies on eWOM by empowering users to express their own ideas based on their experiences. Because the recipients of the information understand that the senders do not profit from this advertisement, they are more likely to accept their comments, and the

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discussion is quite logical. When product information is permissive and transparent, the purchasing decision process can be facilitated. eWOM introduces attractive and unknown products to consumers, and they are advised that they should not buy a product or persuade the consumer to make purchases [48]. Successful use of social media as an eWOM tool, reliance on understanding the social exchange behavior of customers and their motivation has two main characteristics: capacity and volume of information. The capacity of information, the nature and quality of the content and the volume of information is its quantity. By increasing this quantity and quality, they are the social capital and useful resources that are available through the communication network. With the advent of insights on how to use social networking as a means of creating social capital, one can understand the main stimulates of eWOM. The typology of the word-of-mouth advertising media is given in Table 1.

Table 1. Typology of communication channels of word-of-mouth propagation (Rademarehr, Reza Dolatabadi, Shali-Kar, 2011).

Type of channel	**Level of interaction**	**Realm of communication**
e-mails	Asynchronous	One by one & one to several
Instant messaging	Simultaneous	One by one
Websites, product reviews, and other sites	Asynchronous	One to several & several
Chat rooms	Simultaneous	One to several

Multiple blogs and virtual communities	Asynchronous	Several
Newsgroups like the Google News group	Simultaneous	One to several & several

E-word-of-mouth advertising varies from one aspect to another with word-of-mouth advertisements. First, e-word-of-mouth propaganda has an unparalleled scalability and speed. Second, contrary to word-of-mouth advertising, oral-to-mouth communication is more sustainable and accessible. Most of the text information provided on the Internet is archived and can therefore be made available for an unlimited period of time. E- word-of-mouth communication is more than traditional word-of-mouth commercials. Researchers can easily retrieve a large number of e- word-of-mouth messages and analyze the features of these messages, such as the number of emotional words used, the status of messages, the style of messages, and the like. The final key difference is that in the word-of-mouth advertising, the sender and message credentials are known to the receiver [18].

6 Reviews at eWOM

The eWOM's most important information is about the quality of the good you are looking for. Such information can be obtained in two ways: reviews and rankings. The ranking is a number about the overall product portfolio, and a more detailed explanation of the position of the product. Customers generate good information about the product using their personal knowledge and experience [22]. The most important aspect of an overview is its content. In order for effective information to be provided, the review must be accurate and not inconsistent. One of the things measuring a text is its sensibility. Which is judged by the way of writing, and how easily the text is readily understood by the reader. Readily of a text is the reflection of the social status, level of education and hierarchy of the author. Reviews that are smarter are more reliable because they are more reliable.

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Whatever the comment is more accurate and understandable, it can better transfer it to others. Another aspect of reappraisal is ranking, which is a brief overview of customer expectations. Readers can quickly recognize the author's attitude and desire based on the ranking [26].

7 EWOM impact on consumers

word-of-mouth communication can be positive or negative. Positive word-of-mouth communication includes good advice from people about products, services or brands to others, but oral communication is a form of consumer complaints behavior that includes recommendations. Negative people are involved with products and services and brands [20]. An important point is that the benefits of word-of-mouth communication can help company growth, if this type of communication is positive, in other words, people can share their experiences and positive thoughts with others. But when the consumer experience is negative or the product and service fails to meet customer expectations, the company will face irrecoverable losses [31].

8 The role of trust in the purchasing decision

Earlier marketing research has shown that eWOM emphasizes consumer confidence in this company and its products. The trust of a company and its products can be increased by eWOMs released by former consumers. Ex-Consumers give feedback and even a ranking of behavior and performance in the relationship between suppliers and customers. Potential customers decide to trust the company. Other research suggests that even eWOMs on the vendor page in electronic commercials have an important impact on e-commerce pricing, and in general, eWOM can directly affect the purchasing decision. According to research conducted when potential customers realize that there is a wide range of positive eWOMs for goods sold, a positive expectation of the quality of the product or customer service is emerging. This creates a positive customer confidence in order to buy from the company. Therefore, customer confidence in a product where eWOM exists will increase the intent to buy. On the other hand, if the customer realizes that a large volume of negative eWOM is

available for a sold product, a negative expectation is created that, as a result of the customer's trust in the company and its product, and ultimately the intention to buy, is reduced [31].

9 The importance of eWOM in customer's decision

With the increasing importance of word-of-mouth advertising, customer behavior in this type of advertising is more beneficial for managers, especially market professionals [38]. word-of-mouth advertising can be positive or negative and use a wide range of resources. It has generally been proven that this large amount of information affects consumer behavior [12]. Other studies have shown that word-of-mouth advertising can be a significant force for consumer loyalty and purchasing decision-making [54]. Sencal and Nantel (2004) also showed that online product recommendations are effective on online consumer choices. By facilitating the expansion of consumer views and facilitating access to such views, various websites have had a major impact on consumer purchasing decisions [59]. Also, this type of advertising has a significant impact on consumer purchasing behavior and eventually market success [52]. Another study showed that word-of-mouth advertising is one of the most effective factors affecting the brand's mental image and intends to offer brands in consumer markets [36].

Today's customers are educating and aware of their rights in various product related issues, and we also assume that they are perfect from the market. They know which products are known in the market and what are the benefits of buying a product or brand. Electronic advertising (eWOM) is a new form of advertising in the form of a blog to share their opinions and ideas and communicate with others. In recent years, social media has provided a new platform for eWOM that enables network users to connect with existing networks. People can now share their ideas and experiences about products or services with their friends and audience on social media. This eWOM ease of durability is more reliable. In addition, today's talk of social media in the middle of a brand affects consumer shopping. Social media, in addition to giving consumers a chance to chat, makes the

leader to create a set of specifications for a branded product or service.

People can share their comments, text files, images and videos. Enriching visual content will make eWOM more attractive. In addition, social media facilitates the release of eWOM across a wide range of people, and users share their thoughts by re-uploading the content they agree to. That's why consumers are increasingly coming to social media to get information about brands [51].

10 EWOM Management

Unique features and the Internet environment require a new look at the online eWOM dynamics and new strategies for managing them, and these strategies can be classified into two categories: information and revenue generation. From an information perspective, there should be procedures that allow marketers to provide online discussion and feedback. One of the less important issues is the need to manage eWOM for revenue generation [43]. Encouraging or stimulating good eWOM should increase business activity. Users will erase unwanted emails, and most will only see trusted sources of emails. Therefore, marketers must adopt strategies that will motivate users to open, accept email providers' offerings and transfer them to others. Marketers can persuade recipients with emotional stimulation, including elements of surprise, humor, or motivation to convey their messages (eWOM) [51]. In some industries, such as tourism, there is a good chance to succeed by creating "buzz" through the effective use of their email [68]. The management of eWOM is complex because in online social networks, customers act as collaborators. By reading content, people may conclude and comment on individuals that this can have a positive or negative effect on the reputation and attractiveness of individuals on social networking sites [51]. Vendors play an important role in managing eWOMs, as they can take alternative ways to present comments and options to help customers get the most easily-needed information. For example, the Amazon website wants customers to express their opinions in real names to increase the quality of eWOM content. Also, Amazon has a search engine that separates critical comments from preferred comments and arranges comments in a timely manner.

With such a system, customers can instantly access information [48].

11 The Importance of eWOM in Business

The variety of products and services has increased the power of people's choice. The confidence of consumers is decreasing and their vigilance is increasing rapidly. People today tend to be less engaged in commercial advertisements, and more are looking to see what others are saying about the products and services we offer them. In other words, we do not tell people what to buy; they refer to other customers' opinions and views for their decisions. Therefore, it should be said that the marketing world is experiencing a new situation and it is in the future to become more transformative. This is the case because many companies around the world have been focusing on mouth-to-mouth discussions to promote their products and services. One of the most cost-effective and credible marketing methods suitable for this space is Word-of-mouth marketing [35].

12 The effect of viral marketing and word-of-mouth advertising on brand equity

In the new era, that is the age of corporate integration and globalization, the value of trademarks is a key factor determining the company's value and stock market value. If a brand has a high value, the company can reduce its marketing costs because of its existence, because customers are loyal to it, as well as increase its product range because buyers are trusted and this factor can defend the company's products from the competitive products. According to Gill et al., the value of a brand name is the value adding a brand name to the product. The special value of Egyptian perception is the all-important advantage of a brand as compared to other competing brands [28].

The importance of brand is expressed in a sentence; real value is not within the product or service. Rather, this value is in the real and potential customers' minds, and it is the brand that brings real value into the minds of customers. According to the definition of Lassar, the value of a brand name is the prioritization of a consumer from a brand as compared with other brand names in a

product class [46]. The important reasons for this reputation are the strategic and important role of brand equity in managing decisions and creating competitive advantages for organizations and their customers [10]. The importance of brand equity is due to the company's interest in creating a strong brand in order to achieve the appropriate competitive advantage and differentiate their products. David Aaker in 1991 argued that brand equity boosts the effectiveness of marketing programs and customer loyalty to the brand, reduces the costs and expenses of marketing activities, and creates a platform for its growth and development through brand development [69].

A lot of research has been done on brand issues [40]. Branding and promotion of brand status are among the tasks of the firm's marketing domain. Viral marketing, one of the new ways of promoting entrepreneurship [44], can be a response to the ongoing search for marketing designers to find innovative ways. According to global population statistics in 2009, nearly 27 percent of the world's population (about 1.8 billion) is an Internet user [17]. Studies have shown that online social marketing tools have grown to be unprecedented [14]. According to the company's research report, 82 percent of privately owned companies have used viral marketing or word-of-mouth marketing [27]. Many users are directly or indirectly linked to online communities. In general, the Internet and information technology has not only provided customers with an opportunity to share their views on products and services, but also has become one of the main tools and channels of partner marketing [17]. Given this unpredictable potential, it seems that with the benefit of viral marketing, brand equity can be positively impacted [42].

Since 1989, for the first time, the term "viral marketing" has been used in one of the computer magazines [42], so far, a lot of research has been done on this subject [17]. In some studies, viral marketing has also been known as verbal electronic advertising [19, 33, 39]. The main source of viral marketing is word-of-mouth communication. Oral communication is an important source for customers [2], and has an important role in shaping consumer behavior and attitudes [70]. Thus, viral marketing refers to a process in which the

company's corporate message is sent through a customer to its colleagues, acquaintances, relatives and friends, and this process continues to the extent that the message is like a virus between a large numbers of potential customers. Moreover, it quickly creates a huge wave [7]. Travv (2004) also defines viral marketing as any comment about corporate products or services that is widely available through the Internet [17]. However, rapid growth can be achieved [19, 33, 39, 42]; Informal Communication between Customers [17, 30, 33], and doing it on the Internet [17, 71], among the common items in the definitions.

The main purpose of viral marketing is the use of person-to-person communications versus customer relationships to expand information about a product or product that results in rapid, widespread and more efficient market acceptance [33]. Users with the benefit of viral marketing as one of the most attractive levers for brand promotion can send electronic content via email, social networking, discussion forums, personal blogs, SMS, forums, multimedia messages and bulletins, send them to others [23, 34]. While users may not know the person who wrote the article for the first time, or there is no motive, background, and intention to see it, but after reading the message, they will join the large amount of news senders and participate in increasing the visitors [23]. Various advantages have been mentioned for viral marketing; these benefits can be categorized in four phases, rapid expansion, customer-to-customer transfer, and reach to accounts. Thus, the cost is very low [72], the increase in the percentage of customer response returns, the trust that is being made by the social networking advice [57], increasing the percentage of return pass, reducing the cost of purchasing risk, the rapid adoption of low cost of the market, more impact than other advertisements [57], and the rapid and exponential spread of the message [73], are the advantages of viral marketing [57].

Along with all of the aforementioned benefits, viral marketing brings with it risks and challenges. One of the biggest risks associated with viral marketing is the inaccuracy of advertising programs and the speed of the spread of messages. Viral marketing affiliation with customers to transmit

messages and, ultimately, the lack of ethical standards are also other viral marketing risks [57]. Regarding the mechanism of viral marketing impact on the type of customer's purchasing, it should be noted that the exchange of information and dialogues between customers does not only affect customer decisions and their purchasing decisions but also shapes customer expectations. Moreover, their behavior before buying them, and affect the understanding of the products after the purchase and use of the products. Even some studies have concluded that verbal propaganda is more influential among consumers than print advertisements and media types or telephone advertisements [14]. The success of viral marketing depends on two factors: the message and the sender [34]. Among factors that encourage customers to deliberately or unconsciously promote word-of-mouth marketing are brands satisfaction or dissatisfaction [27], a commitment to a particular company, the duration of a relationship with a particular company [32]. Newness of goods or service and Curiosity [15, 33].

Chan and Ngai after studying more than 92 articles, presented a conceptual model for viral marketing based on a systematic approach. This framework explains that the concept of viral marketing input, processing, and output. These are blocks of a comprehensive framework that illustrates the preconditions, processes, and outcomes of the viral marketing process [17]. Davis and Khazanchi introduced the dimensions of viral marketing for volume, gravity, message characteristics, and characteristics of the respondent. According to marketing studies, they showed that viral marketing affects cognitive conditions such as awareness, attitude, expectation, understanding, intent and behavior of customers [21]. Dobele et al. pointed to the effect of viral marketing on brand awarenessn [23]. Phil and Cruz [19], and Chan and Ngai [17], confirmed the effect of viral marketing on customer loyalty. On the other hand, kirby and Madseren also pointed to the effect viral marketing and online marketing can have on brand promotion [42]. Thomas et al., by examining the effects of a particular kind of word-of-mouth e-commerce, Customer Knowledge Technical Exchange, came to the conclusion that the exchange of customer-specific

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technical knowledge to the customer constituted customer perceptions of the value of the product and the likelihood of product recommendation affect others, but it does not affect customer purchasing purposes [56]. Another research showed that consumer online or consumer reviews of a product would undermine brand equity [11]. word-of-mouth propaganda is largely taken into account with three goals by companies, whose realization maintains and gains brand equity. 1. Increases sales of existing products or new products introduced through a cost-effective means of obtaining and retaining customers; 2. Improving customer satisfaction; 3. Achieving ideas for new product development from those customers provide suggestions for new products [53].

13 **Conclusion**

Social networking has revolutionized business and Internet marketing. Emails are now out of date for people who are not known. In fact, with the growing use of social networking, business and marketing through this mass media, the industry has given fresh impetus to the industry and has made its customers loyal with new tools, because these networks are in fact a powerful tool for organizations that are aimed at reaching target audiences. At all times and all new frontiers, the social network marketing process - albeit with the advantages and disadvantages - extends the workload. Proper business management leads to prosperity and lack of attention to it. Right now, it is safe to say that social networks face new challenges that require effective marketing and the power of structured and strategy-oriented techniques to become an integral part of full-fledged marketing initiatives. Service companies realize that they also need to move more to attract customers, which means that social networks must move with the flow of technology. This technology develops social networks and the lack of use of that technology will lead to backwardness. In today's world where individuals are always affected by information bombardment, the marketers need reliable people to give them the right information to choose the goods they need, so they can get the best deal in the shortest time, and the people will believe. The role of mouth eWOM e-words in social networks and sites is

increasing day by day. Customers refer to the views of old or current customers before purchasing the goods, which affects the decision making process. There are not many problems that can be encountered with specific customers in relation to electronic products, but there is no proper plan to deal with the problems that have a widespread imprint or corporate brand. Customers raise issues and problems on websites and social networks or official websites of companies, which makes it a threat to the company and loses new customers as well as current customers. (eWOM) is widely distorting the image of the company, and the opposite is also possible, so companies should be more careful about eWOM. Internet-based eWOMs that migrate through social networking sites have become a determinant factor in the return on investment. The need for today is to understand the awareness and perspectives presented by present studies, and the early steps associated with the exploitation of the vast potential of eWOM are prone to play a key role in this regard. The value of WOM as well as the verbal statements of individuals is increasing day by day in global markets. eWOM can increase the popularity of a firm or company. The impact of the Internet in this connection is enormous, since information can be expedited at any time and at any place with the help of the Internet; in order to design a marketing strategy effectively, marketing managers should consider the proper use of the WOM type of strategy, it is suggested that companies try to attract more customers to achieve higher profits and achieve winning results by creating positive eWOMs.

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THE MODEL OF CHALLENGES OF SMART CONTRACT BASED ON BLOCKCHAIN TECHNOLOGY AND DISTRIBUTED LEDGER USING META-SYNTHESIS RESEARCH METHOD

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Abstract: Many believe that smart contract can provide an innovative solution to some of the real-world problems. Thus, it is expected that blockchain-based smart contracts can dramatically increase economic efficiency and productivity in financial, banking and capital markets.

In fact, smart contracts are a powerful novel tool for major changes in the financial, legal and contractual systems of the future, which will change the business model, create efficiency and added value, reduce legal disputes and increase the speed and transparency of financial transactions.

Another innovative solution of smart contracts is their wide application in the internet of objects (IoT). For example, smart contract can be used to track goods in smart transport system, or it can be applied in future smart cars without a driver in order to pay for gasoline when fueling or pay for the insurance in the case of an accident automatically and immediately.

Due to the widespread applications of smart contract in e-government, supply chain, intellectual property creation, patient electronic records, electronic voting, electronic insurance, smart transport and so on, its importance is clearly identified. Therefore, considering the emergence of smart contracts and given the scattered studies in this field, an attempt has been made to present a

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comprehensive and systematic model of the challenges of smart contract based on blockchain technology and the distributed ledger by the systematic review of previous studies (papers published in internationally accredited journals and theses reviewed between 2016 and 2019), using a meta-synthesis qualitative research method and Sandelowski and Barroso's (2006) seven-step model.

Keywords: Smart Contract Barriers, Small Contract Challenges, Limitations of Blockchain-Based Smart Contract, Smart Contract Problems, Smart Contract and Blockchain and General Ledger.

1. Introduction

Decentralized systems face major problems, including scalability and privacy as well as multi-identity issues. Nowadays, experts are trying to design decentralized protocols like blockchain that are scalable and optimized in addition to being resistant against attacks. Analysis of such protocols requires extensive knowledge in areas such as distributed systems, cryptography, game theory, and information theory concepts. The transfer of power from closed, unclear mechanisms to people and the society is one of the most important concepts in the new world. In this regard, blockchain technology can facilitate the move toward a more uniform and equal society.

The vast scope of blockchain technology applications, including smart contracts, goes back to its basic concept of a fully transparent, publicly accessible, secure, decentralized database without the need to trust a third party or central entity.

Smart contract eliminates the supervisory interface and thus reduces costs. Other benefits include the automatic payment of contract fees and its transparent as well as decentralized nature. However, despite the benefits and considerable applications of smart contracts, they face a variety of challenges in practice, since they are new emerging technologies. Thus, this study aims at presenting a systematic and comprehensive model of challenges of smart contract based on the blockchain technology and distributed ledger, using a meta-synthesis qualitative research

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method and Sandelowski and Barroso's (2006) seven-step model.

2. Literature

2.1. Smart Contract

The term smart contract was first coined by computer and cryptography scientist, Nick Szabo, in 1994. He outlined the general principles, but there was no adequate space and infrastructure at that time for the realization of his ideas. With the advent of blockchain technology, the idea of smart contracts became operational. As the world's first decentralized digital currency, Bitcoin was the foundation of some kind of contract in the blockcahin, but the Bitcoin protocol was only designed to create a private currency and could not fulfill all the needs and processes. Ethereum platform made smart contracts possible for most projects, taking a new step toward globalization.

Smart contracts are the digitalized model of traditional contracts, and can be defined as blockchain-based computer software whose contents in the "source code" are automatically executed and cannot be modified by the parties because of storage in the blockchain. In fact, smart contract is a tool through which trading is possible transparently and without conflict or the need to intermediary services, money, assets, stocks, or anything valuable.

2.2. Blockchain

Given that the smart contract is incorporated in blockchain, blockchain can be called a distributed database of documents or a general ledger of "all digital events or transactions" jointly executed by its constituents. Each transaction is recorded in the general ledger by the agreement of the majority of system components. Information once entered into the system, will never be removed. In fact, blockchain can be considered as a data storage structure based on chains of interrelated data blocks that are collectively generated, retrieved and maintained by the nodes participating in the system. Changes to each block will cause invalidity of the following blocks. Each new block is prepared and added to the chain from the new data generated in the system in a competitive mechanism by one of the participants. New blocks are accessible and verifiable by other people

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participating in the system. If a block contains a storage error, it is detected by other nodes in the network and is not registered in the main chain. As long as more than 50% of the network nodes agree on the current chain, the chain will be valid. Due to the chain structure and each block's close association with its previous blocks, changing the data agreed upon by the majority of the network requires enormous computational power which cannot be supplied and in turn, makes the system resistant to cyber-attacks.

Smart contracts have lower legal and transaction costs than traditional contracts, since the consumer relates directly to the centralized currency exchange.

Ethereum is currently the most advanced smart contract platform. This blockchain protocol has been designed to solve the fundamental constraints of Bitcoin in programming. Ethereum aimed primarily at storing and executing smart contracts. It supports the full Turing feature, allowing for advanced and customized contracts. In theory, full Turing means the capability of being used to solve any computational problem. Ethereum is prominent because, unlike Bitcoin, it is aimed not only at creating a crypto-currency, but also acts as an alternative protocol for creating decentralized applications.

The smart contract code stored in blockchain on the Ethereum platform is first called, verified, and then executed on the Ethereum virtual machine, after satisfying the usual contract terms (Figure 1).

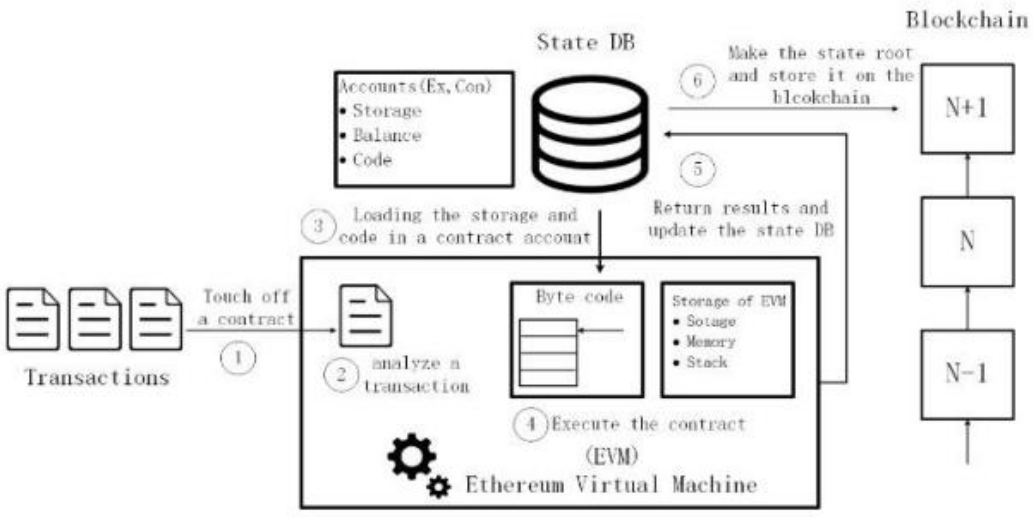

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Figure 1. Execution of Smart contract in Ethereum platform and interaction with blockchain technology

With the growing need for data flows to blockchain followed by smart contracts, discussions and innovations around Oracle have formed. Oracles are data sources of external systems that import critical information into the blockchains. Smart contracts need these data to run. In fact, oracle is authentic information outside of the system, used to execute smart contracts. Oracles retrieve and verify data from external sources through web APIs and market data sections for blockchains and smart contracts. The data required by smart contracts include information such as prices, weather, and so on.

As shown in Figure 2, financial transactions and events are represented as input and output in smart contract, where oracle is used if the input is from external credible sources. In addition, the output of the smart contract is stored in the smart contract blockchain or can be used as another smart contract input.

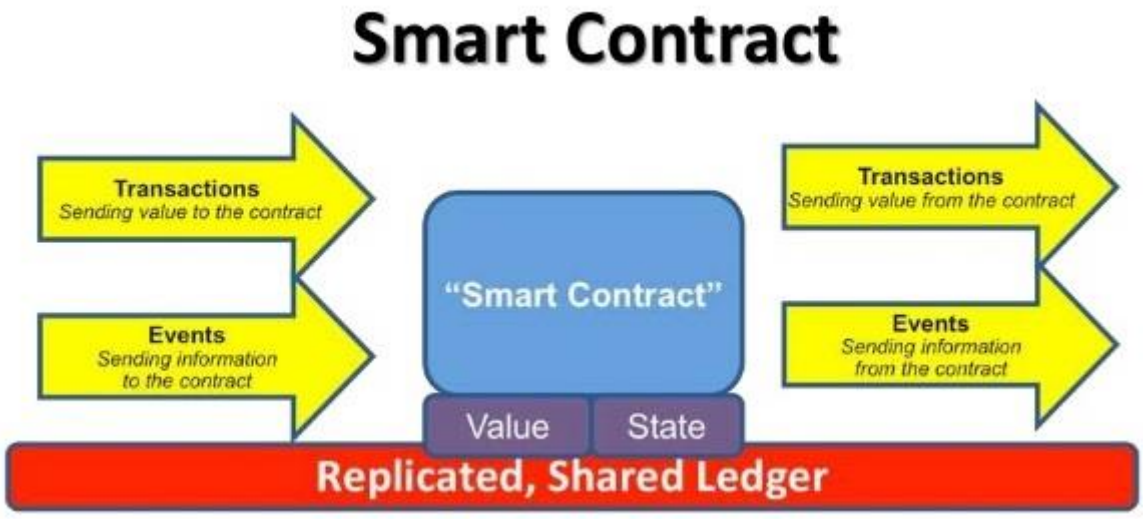


Figure 2. Smart Contract

Considering the numerous legal, civil, technical, and organizational challenges to implementing smart contracts and given the scattered studies in this field, it is imperative to have a comprehensive and systematic approach to identifying and classifying the challenges of small contracts based on

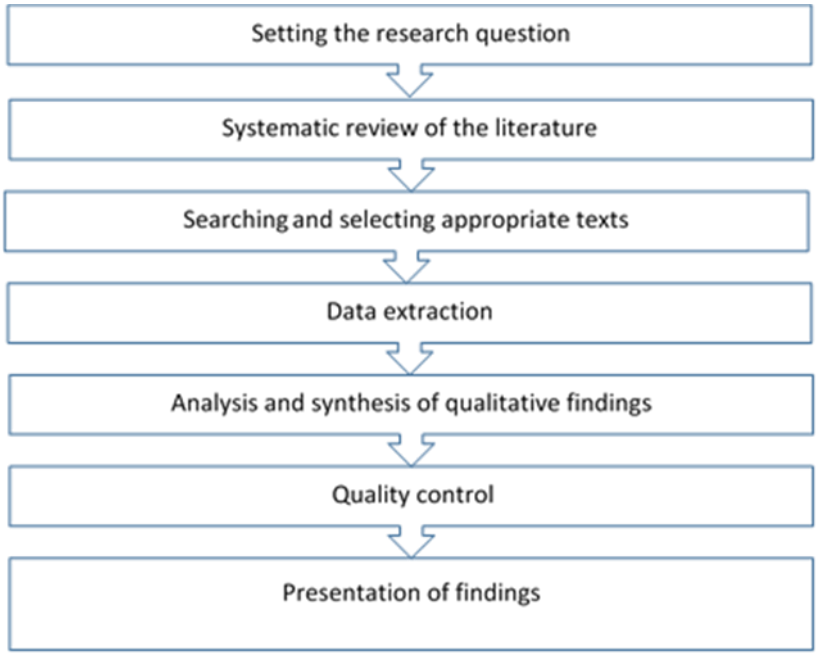
blockchain technology and the distributed ledger in order to provide a systematic and holistic model. Therefore, the present study has provided this model based on the Sandelowski and Barroso's (2006) seven-step model in addition to introducing the meta-synthesis qualitative method.

3. Research Methodology

The research method of this study is qualitative and a kind of meta-study called meta-synthesis. In the application of meta-synthesis to identify factors influencing the challenges of smart contract based on blockchain technology and the general ledger, similar to meta-analysis, it is used to integrate multiple studies and generate comprehensive and interpretive findings. Since most of the articles in the field of study are qualitative without quantitative data, the meta-synthesis method has been used as a suitable method to obtain a comprehensive combination of this topic based on the translation of limited qualitative studies. As stated, meta-synthesis is a type of secondary study, with the aim of structured review of qualitative studies, focusing on the qualitative findings derived from related and similar studies. On the other hand, meta-synthesis is not an integrated review of the associated qualitative literature and does not necessarily involve much of the related literature on the topic. Also, it is not an extract from the interpretations of similar studies, but rather an integration of the interpretation of the main findings of the studies selected to create comprehensive and interpretative findings [17], indicating a deep understanding of the researcher [18]. That is, instead of providing a comprehensive summary of the findings, it creates an interpretive combination of them. Meta-synthesis explores new and fundamental metaphors and themes by providing a systematic approach to researchers by combining various qualitative research, thereby expanding current knowledge and providing a holistic and comprehensive view. Meta-synthesis requires that the researchers show a more comprehensive representation of the phenomenon under investigation [17]. In this research, the seven-step method of Sandelowski and Barroso, summarized in Table 1, has been used.

Moreover, each step has been discussed in detail in the following sub-sections [19]:

Table 1. Sandelowski and Barroso's (2006) seven-step model



3.1. The First Step: Setting the Research Question

Various parameters were used to set the research question, such as the population under study, the method and time of the study. The following question was explored in the present research:

1. Identification and grouping of smart contract challenges to provide the model of challenges of smart contract based on blochchain and the general ledger

The study population consisted of articles published in internationally accredited journals and theses that were reviewed between 2016 and 2019. Selection was performed by purposeful sampling and census based on inclusion and exclusion criteria.

It is worth noting that the last 4 years (from 2016 to 2019) were considered for the selection of the articles in order to collect the most up-to-date scientific results in the field under study.

3.2. The Second Step: Systematic Review of the Literature

At this step, the researcher focused on the systematic search based on internationally accredited scientific journal articles and theses reviewed between 2016 and 2019 to select the relevant keywords. The related articles were investigated using the keywords of Smart Contract Barriers- Smart Contract Challenges – Smart Contract Limitation on Blockchain Technology- Smart Contract Problem – Smart Contract and Blockchain and Distributed Ledger Technologies in data bases of OATD (Open Access Theses and Dissertations), Proquest, Science Direct, Springer, Scopus, Civilica, SID, IRANDOC, ISC, Emerald, IEEE, as well as Google scholar specialized database.

3.3. The Third Step: Searching and Selecting Appropriate Texts

In this step, the researcher removed a number of articles in each review, which would not be considered in the meta-synthesis. Articles were evaluated based on inclusion and exclusion criteria (study parameters) and according to Table 2. The inclusion criteria for this study were the followings:

1. Articles published in internationally accredited journals and theses reviewed between 2016 and 2019;
2. Articles related to the title and research question as well as articles published with valid scientific research methods;
3. Articles approved by expert referees and published in journals confirmed by the ministries.

Exclusion criteria for this study included the followings:

1. Articles irrelevant to the title and research question as well as articles published with invalid scientific research methods;
2. Articles lacking the necessary scientific quality and published in invalid journals;
3. Articles with similar titles and objectives.

Based on the inclusion and exclusion criteria (study parameters) and according to Table2, 32 articles were eventually left from the initial 119 articles found for data extraction.

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Table 2. Steps taken to investigate the articles found

The first step: Review of the titles		
119 articles found	38 articles removed	81 articles left
The first step: Review of the abstracts		
81 articles found	36 articles removed	55 articles left
The first step: Review of the results		
55 articles found	13 articles removed	42 articles left
The first step: Review of the content		
42 articles found	10 articles removed	32 articles left

Once the articles have been reviewed to fit the study parameters, the methodological quality of the studies should be then evaluated. This step aims at removing articles whose findings are not reliable; therefore, articles which should be included are also likely to be removed. Critical Appraisal Skills Program (CASP) is used for early investigations of qualitative studies. CASP is a tool commonly used for evaluation through 10 questions, and helps the researchers determine the accuracy, reliability, and importance of qualitative research studies. These questions focus on the following items: 1. Research objectives; 2. The logic of the method; 3. Research design; 4. Sampling method; 5. Data collection; 6. Reflectiveness (including the relationship among the researcher and participants); 7. Ethical considerations; 8. Accuracy of data analysis; 9. Clear and transparent statement of the findings; and 10. Research value. At this point, the researcher gives each of these questions a quantitative score, and then creates a form. So it is possible to review the collection of articles and observe the evaluation results. The scores given to each article are then summed and the articles with scores lower than 21 are easily removed based on CASP 50-point Rubric: scores of 41-50 are excellent, 31-40 very good, 21-30 good, 11-20 poor, and 0-10 very poor. According to scores given to each article, the minimum mean score was respectively 18 and 19 and the maximum was 45; as a result, during the CASP evaluation process, two articles

were removed from the 32 remained articles and finally, a total number of 30 articles were left for data analysis.

3.4. The Fourth Step: Data Extraction

Across the meta-synthesis, the researcher repeatedly reviewed the selected and finalized articles in order to gain insights into the individual content in which the original studies were conducted. In the present study, the information of the articles has been categorized as follows: The reference to each article, including article code, article name, author's name, year of publication, and type of research was recorded.

Table 3. Information on selected and finalized articles

No.	Article's Title	Author	Year of Publication	Journal or COnference
1	Security, Performance, and Applications of Smart Contracts: A Systematic Survey	SARA ROUHANI AND RALPH DETERS	2019	IEEE
2	DLT/BLOCKCHAIN ARCHITECTURE AND REFERENCE FRAMEWORK	Claudio Lima, Ph.D. Blockchain Engineering Council – BEC, Co-Founder IEEE DLT/Blockchain Standards, Vice-Chair, Chair	2018	IEEE
3	An Overview of Blockchain Technology: Architecture, Consensus, and Future Trends	Zibin Zheng1, Shaoan Xie1, Hongning Dai2, Xiangping Chen4, and Huaimin Wang3	2017	IEEE 6th Internationa l Congress
4	An Overview of Smart Contract: Architecture,	Shuai Wang1,2, Yong Yuan*1,3	2018	IEEE,Intelli gent

	Applications, and Future Trends	(Corresponding author, Senior Member, IEEE), Xiao Wang1,3, Juanjuan Li1,3,Rui Qin1,3, Fei-Yue Wang1,3,4(Fellow, IEEE)		Vehicles Symposium
5	The Use of Smart Contracts and Challenges	YINING HU,MADHUSANKA LIYANAGE,	2018	publishing on arxiv
6	A Vademecum on Blockchain Technologies: When,Which and How	Marianna Belotti, Nikola Božić, Guy Pujolle, Stefano Secci	2019	SUBMISSION TO IEEE COMMUNICATIONS SURVEYS AND TUTORIALS 1
7	Blockchain-based Smart Contracts - Applications and Challenges	Madhusanka Liyanage- Ahsan Manzoor- Kanchana Thilakarathna- Guillaume Jourjon	2019	researchgate
8	BLOCKCHAIN-BASED SMART CONTRACTS : A SYSTEMATIC MAPPING STUDY	Maher Alharby1,2 and Aad van Moorsel1	2017	researchgate
9	Bitcoin: Vulnerabilities and Attacks	Richa Kaushal	2016	Imperial Journal of Interdisciplinary

				Research (IJIR)
10	Towards Global Asset Management in Blockchain Systems	Victor Zakhary, Mohammad Javad Amiri ,Sujaya Maiyya	2019	publishing on arxiv
11	A Strongly typed DSL for Smart Legal Contracts	Jerome Simeon,Kartik Chandra	2018	clause
12	A Scalable Security Analysis Framework for Smart Contracts	Lexi Brent,Anton Jurisevic,Michael Kong-others	2018	publishing on arxiv
13	Music Copyright Management on Blockchain: Is it legally viable?	Sadia Sharmin	2018	uppsala university-Master's Thesis
14	Overview of Blockchain and Possible Use Cases in the Thai Payment System	Yupawadee Srisukvattananan	2016	THE MIT SLOAN SCHOOL OF MANAGEMENT IN PARTIAL
15	Blockchain 2.0, smart contracts and challenges	Martin von Haller Grønbæk	2016	The SCL Magazine
16	Blockchain-oriented Software Engineering: Challenges and New Directions	Simone Porru,Andrea Pinna,others	2017	researchgate
17	Blockchain and Building Information Modeling (BIM): Review and	Nawari O. Nawari * and Shriraam Ravindran	2019	mdpi

	Applications in Post-Disaster Recovery			
18	A Survey of Blockchain Security Issues and Challenges	Iuon-Chang Lin and Tzu-Chun Liao 2	2017	International Journal of Network Security
19	THREE ESSAYS ON AUDIT TECHNOLOGY: AUDIT 4.0 , BLOCKCHAIN, AND AUDIT APP	JUN DAI	2017	The State University of New Jersey - degree Doctor of Philosophy
20	Blockchain challenges and opportunities: a survey	International Journal of Web and Grid Services	2018	International Journal of Web and Grid Services
21	Software Engineering Research for Blockchain-Based Systems	Dr Mark Staples	2018	csiro
22	Smart contract legal policy considerations	Mohsen Sadeghi, Mehdi Nasser	2018	Journal of Public Policy Research
23	Smart Contracts and Distributed Ledger – A Legal Perspective	Whitepaper	2017	ISDA
24	A Platform for Confidentiality-	Raymond Cheng Fan Zhang	2019	publishing on arxiv

	Preserving, Trustworthy, and Performant Smart Contracts	Jernej Kos Warren He Nicholas Hynes Noah Johnson		
25	Smart Contracts for Machine-to-Machine Communication: Possibilities and Limitations	Yuichi Hanada,Luke Hsiao,Philip Levis	2019	publishing on arxiv
26	Securify: Practical Security Analysis of Smart Contracts	Petar Tsankov,Andrei Dan,Dana Drachsler-Cohen	2018	publishing on arxiv
27	The Blockchain Model of Cryptography and Privacy-Preserving Smart Contracts	Ahmed Kosba∗ , Andrew Miller∗ , Elaine Shi , Zikai Wen , Charalampos Papamanthou	2016	2016 IEEE Symposium on Security and Privacy
28	Scalable, private smart contracts	Harry Kalodner, Steven Goldfeder, Xiaoqi Chen, S. Matthew Weinberg, and Edward W. Felten, Princeton University	2018	27th USENIX Security Symposium
29	T HE LAW AND LEGALITY OF S MART C ONTRACTS	Max Raskin	2017	researchgate
30	ON SMART CONTRACTS AND ORGANISATIONAL PERFORMANCE: A	ZAHEER ALLAM	2018	review economy and business study

	REVIEW OF SMART CONTRACTS THROUGH THE BLOCKCHAIN TECHNOLOGY			

3.5. The Fifth Step: Analysis and Synthesis of the Qualitative Findings

Meta-synthesis aims at creating a new and integrated interpretation of the findings. This method is adopted to clarify concepts, patterns and results in refining existing states of knowledge and the emergence of operational models and theories [20]. Throughout the analysis, the researcher looks for themes that have emerged among the studies in the meta-synthesis. These cases are known as "thematic investigations". When the themes are identified, a categorization is formed after which similar and associated categories are placed in a theme which can best describe them. Themes provide the foundation for creating "explanations, models, and theories or assumptions" [19]. In the present study, all the factors extracted from the studies are considered as open codes. Then, the game codes that have a common concept or related task in a similar concept (axial code) are categorized by considering the concept of each of these codes. Eventually similar concepts create categories (domains) to form the research model. The open codes extracted from the final articles are presented in Table4 along with categorization of the concepts (axial code) and categories (domains).

Table 4. Results of analysis using meta-synthesis research method

Category (Domain)	**Concept (Axial Code)**	**Open Code**
Human	Standard Issues - Standardization	Lack of Standardization
	Laws Issues Legal, Public, and International Rules and Regulations	Obtain tax-Association with illegal activities-Identification of the parties-Governance and

		Regulation Compliance-Validation of digital signature in financial transactions-Digital Crime-The legality of digital currencies and the possibility of owning them
	Codifying Issues	Human error in contract code-Immutable-Complexity of programming languages--Difficulty of writing correct smart contracts-Inability to modify smart contracts-Lack of support to identify under-optimized smart contracts -inflexibility smart contract
	Education Issues	Lack of smart contract specialist-Learning- Lack of awareness of the smart contract-Awareness
Technology	Privacy Issues	Lack of transactional privacy-Lack of data feeds privacy-Lack of Privacy-Confidentiality
	Performance Issues	Sequential execution of smart contracts-Reduce latency, Increase throughput
	security issues	Smart Contract Vulnerabilities-reentrancy vulnerability-dependency vulnerability-Mishandled exception vulnerability-Lack of trustworthy data feeds Oracles-

		hack smart contract -Smart Contract Vulnerabilities-Consensus attacks -double spending attack-Selfish Mining-Transaction Ordering Dependence (TOD)-Timestamp Dependence-Risk of a 51% attack-Security concerns-
	Scalability Issues	storage optimization of blockchain-transaction per second-speed of execution-Lack of scalability
	Integration Issues	Lack of systems integration with smart contract structure-Oracles
Functional	Energy Issues	PoW- cost of mining-waste of electricity
	Cost Issues	Transaction costs-cost of transaction-GAS-Cost
	usability Issues	user interface-comfortable-Acceptance-reusable
Organization	Complexity of the Business ecosystem	Changing the business model--Complex organizational processes-Organizational Structure
	Culture Issues Organizational Culture	Lack of support for organization culture-Resistance to technology-Change culture-Employer's irrational expectations
	competition with traditional technology	traditional contract-contract-Manual contract

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3.6. The Sixth Step: Quality Control in Meta-Synthesis Method

The researchers considered the following procedures to maintain the quality of the study:

1. Throughout the research, it was tried to take steps by providing clear explanations for the options available in the research; 2. Researchers used both electronic and manual search strategies to find relevant articles; 3. Researchers applied the quality control methods used in original qualitative research studies; 4. Researchers used the CASP tool to evaluate meta-studies for synthesis of the main studies.

Validity and reliability of the designed model consisted of 4 categories (domains) and 15 axial codes (concepts). After completing the meta-synthesis methodology steps, the designed model was presented in focus group meetings with 5 experts. During these sessions, both two levels of the model were examined and no changes were made. In fact, new dimensions and components were not added or removed, indicating the validity of the designed model. Since in the model design process, the criteria of the previous models were considered as codes and considering the semantic similarities between the codes, they were merged and concepts were created. The kappa indicator was used to measure the reliability of the model. In this way, another person (from elites) attempted to classify the codes into concepts, without knowing how the codes and concepts had been merged by the researcher. Then the concepts presented by the researcher were compared with the concepts presented by this individual. Finally, the kappa indicator was calculated based on the number of similar and different concepts created. As can be seen in Table 5, the researcher created 15 concepts, while the other person from the elite created 12 concepts, of which 11 were common.

Table 5. Calculation of Kappa Coefficient to Measure Model Reliability

		Researcher's Opinion		
		Yes	No	Total
Another Person's Opinion	Yes	A=11	B=1	12

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	No	C=4	D=0	4
	Total	15	1	16

$$Observed\ Agreements = \frac{A+D}{N}$$

$$= \frac{16}{24} = .68$$

$$Random\ Agreements$$

$$= \frac{A+B}{N} \times \frac{A+C}{N} \times \frac{C+D}{N} \times \frac{B+D}{N}$$

$$K = \frac{Observed\ Agreements - Random\ Agreements}{1 - Random\ Agreement}$$

Random Agreements= $\frac{12}{16} * \frac{15}{16} * \frac{4}{16} * \frac{1}{16}$=.01

K= $\frac{.68-.01}{1-..01} = .67$

As shown below, the value of the kappa indicator was calculated to be 0.67, which is in valid agreement level according to Table 6.

Table 6. Status of Kappa Indicator

Agreement Status	Kappa Indicator Numerical Value
Poor	Less than zero
Unimportant	0-0.2
Average	0.21-0.4
Suitable	0.41-0.6
Valid	0.61-0.8
Excellent	0.81-1

3.7. The Seventh Step: Presentation of Findings

At this step of the meta-synthesis approach, the findings from the previous steps are presented. The 30 articles selected by the researchers were carefully reviewed and the required information was identified based on the main purpose of this paper, which was to identify and group the challenges of the smart contract based on the blockchain technology and distributed ledger. The findings were categorized into 4 categories (domains) and 15 concepts (axial codes) after application of the expert opinions (5 professors of IT and

management), which is presented in Table 4.

Next page indicates the desired model in 4 categories (domains) and 15 concepts (axial codes) graphically.

Also, a summary of the model of challenges of smart contract based on the blockchain technology and distributed ledger is presented in Table7.

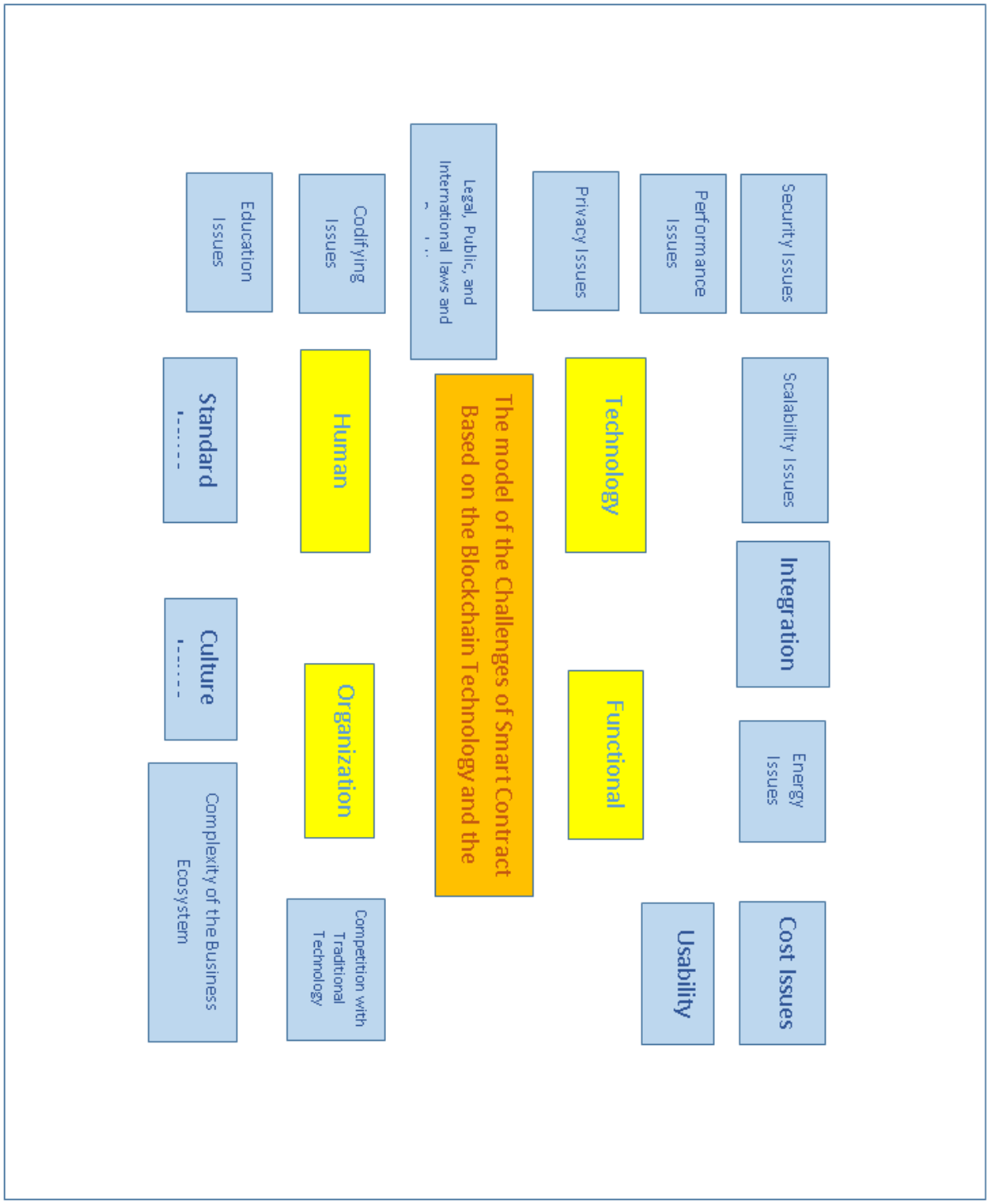

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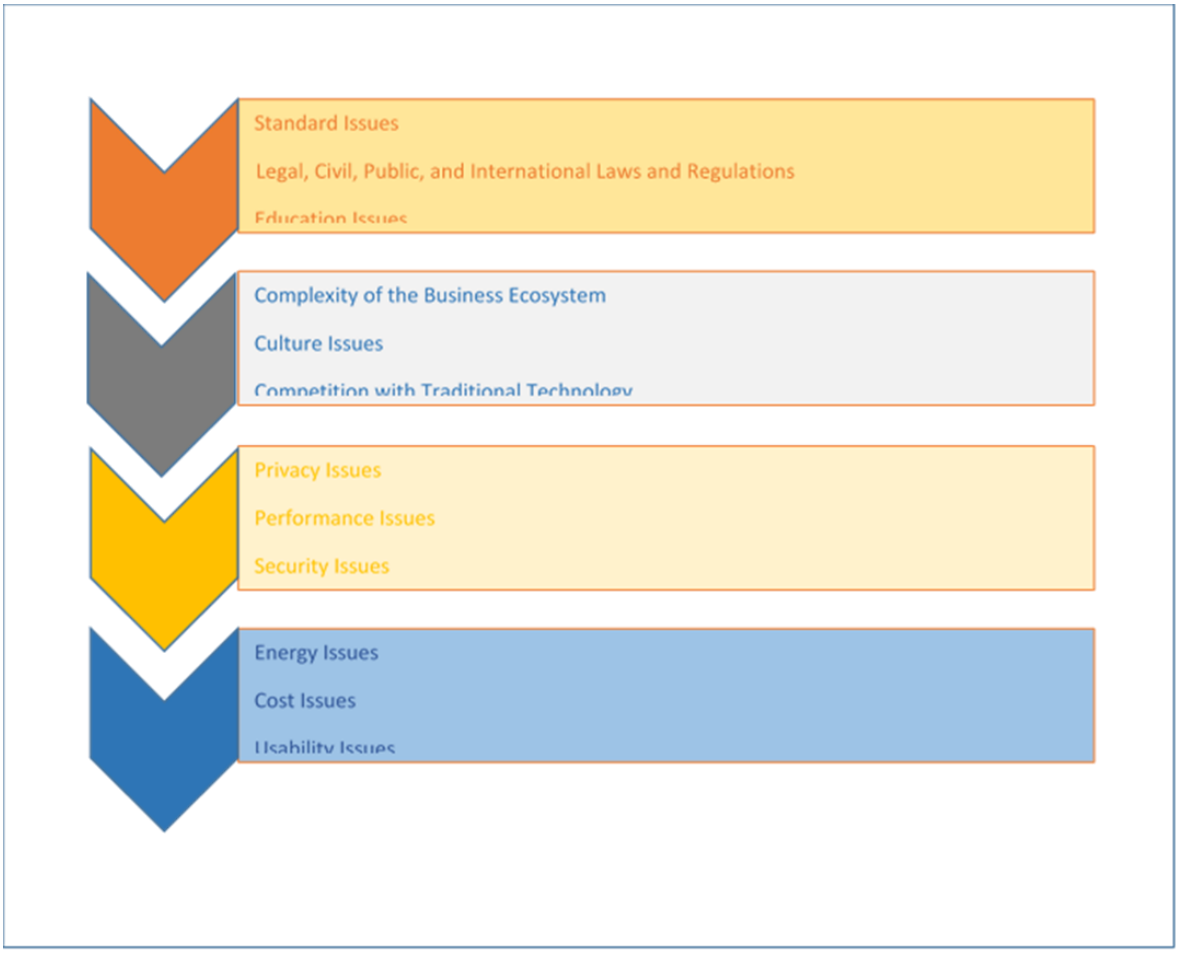
Table 7. Summary of the Model of the Challenges of Smart Contract Based on Blockchain Technology and Distributed Ledger



4. Conclusion

Meta-synthesis can lead to science generation through a systematic and novel method and also by careful investigation of the previous research. Given the growing future of blockchain applications such as smart contracts and the widespread use of smart contracts, it seems essential study the limitations and barriers to practical application of smart contracts and consequently provide solutions to deal with these challenges. In this regard, there is need for comprehensive and integrated research to systematically review past studies, provide interpretive perspectives and create new knowledge.

In this study, it gas been attempted to combine the qualitative findings of previous studies and different perspectives to present a comprehensive model on the challenges of smart

contracts on the blockchain platform and the distributed ledger. The study also has some limitations, most notably the lack of reliable sources and the limited number of experts in the field of smart contract.

It is recommended that at least technical, legal, educational and organizational infrastructures related to the implementation and realization of smart contracts should be set up as follows:

- Approving and assigning digital signatures to individuals and accepting its legal validity;
- Approving the laws associated with smart contract, domestic and international accreditation, and resolving legal conflicts;
- Registration of all documents and real estate in blockchain by state-approved cryptographic codes;
- Informing all members of the society about the legal process of the smart contract;
- Establishment of start – ups and knowledge-based companies related to smart contract to facilitate the creation and development of smart contract.

Based on the results of the study, the following suggestions are presented to other researchers:

- structural equation modeling to relate the identified categories;
- Using fator analysis to validate the model;
- Applicaion of fuzzy multi-criteria decision making methods to weigh and prioritize the identified factors;
- Using multi-criteria decision making methods to rank major factors;
- Using system dynamics modeling to analyze causes of factors in a systematic and fundamental manner and provide scenarios for solving it;

Using other meta-study methods to evaluate the results of research in this area.

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INTERNATIONAL ANTI-CORRUPTION LAW AND STANDARDS IN THE SOCIAL SPHERE

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Abstract: The study aims to show the scope and limits of administrative anti-corruption regulations, to detect the causes and factors leading to corruption in the social sphere and to identify the possibility of reinforcing administrative anti-corruption means, including in accordance with international standards. A dialectic approach to the examination of social phenomena made it possible to analyze the above issue in historical perspective and the comparative analysis was used to compare Russian anti-corruption legislature with international legal instruments and the anti-corruption laws in force in selected countries. The study defined administrative enforcement as a means of counteracting corruption in the social sphere, determined various administrative procedures adopted in anti-corruption mechanisms and highlighted a discrepancy between Russian anti-corruption legislature and international laws. For the first time in research on administrative law, the study focused on the adoption of administrative anti-corruption regulations in the social sphere in accordance with international legal standards.

Keywords: counteraction, corruption; social policies; health services.

Significance of Research

Traditionally, the public administration system uses methods such as persuasion and enforcement. Without starting a discussion on the functional and institutional aspects of these methods, let us focus on the potential of using administrative enforcement in anti-corruption strategies in the social sphere [1]. To reveal the gist of administrative anti-corruption actions, objective attention should be paid to the law enforcement institution in general, which is the basic category in relation to administrative enforcement [2].

In this regard, a number of ideas should be put forward as a basis for a research on administrative enforcement in the anti-corruption mechanism in general and in the social sphere, in

particular.

First, administrative enforcement is part of public enforcement implemented by anti-corruption actions.

Second, administrative enforcement measures are part of administrative anti-corruption legislations and, therefore, their effective implementation in the sphere under investigation depends largely on the quality of other administrative legislations.

Third, the classical approach to defining the content of administrative enforcement has not proved very efficient in combating corruption [3].

Fourth, the potential of administrative enforcement measures remains scarcely implemented, despite specific aspects of the fight against corruption [3].

Research Methodology

The present study adopted the system approach that addressed administrative anti-corruption law in the social sphere in terms of the identification of trends and interactions inherent in its structural elements and, on the other hand, of the focus of administrative anti-corruption measures on achieving the expected results.

The research also used the comparative law method (when analyzing the establishment of the administrative anti-corruption legal system in the social sphere in a number of countries), the formal study of documents and research studies on the topic under investigation. The method of formal logical analysis was needed to examine legislative and subsidiary acts regulating anti-corruption issues.

The research also draws on the structural and functional method and certain elements of the sociological, historical and axiological methods of research. The rationale for adopting the above-mentioned methods is the authors' effort to integrate the largest possible methodological framework offered by various sciences (philosophy, political and legal sciences as well as sociology) for the study of administrative anti-corruption issues in the social sphere.

The combined research methods used in the present study, first, identified the areas and scope of research and, second, provided an opportunity to fully assess the content of the issue concerned and to canvass a comprehensive understanding of administrative anti-corruption law in the social sphere.

A review of research studies indicates that our research topic is sufficiently well explored in terms of criminal law and criminology. In particular, S. V. Plokhov [4] and T. A. Balebanova [5] did their doctoral theses on this issue. Over many years in recent history, a number of administrative law researchers have investigated the administrative aspects of the fight against corruption. As an example, A. S. Dylkov [6], A. V. Kurakin [7], M. M. Polyakova [88], D. A. Povny [9] and A. A. Shevelevich [10], among others, conducted special research in this area.

Results

Issues relating to the progressive development of our society are particularly due to major deficiencies in institutional measures to combat corruption, especially in the social sphere. The quality of human life and people's financial and moral well-being eventually depend on whether the problem with street-level corruption is resolved or not. Today, it is still common practice that the government channels its major effort into fighting corruption in public and municipal services, whereas other spheres of public administration – especially those of decentralized nature in terms of legal regulation and administration – remain without proper protection against corruption. Due largely to this circumstance, corruption keeps growing in different areas of the social sphere.

As the Minister of Internal Affairs of the Russian Federation mentioned at the Meeting of the Anti-Corruption Council Presidium held on 15 March 2016, "…criminal intrusions mostly concern the sphere of procurement of goods, works and services for provisioning governmental and municipal needs, construction, motor road maintenance, public health services, education, science and culture" [11]. Corruption in the public and regional administration is heterogeneous and volatile. As an example, according to the data provided by Russian Procurator-General's Office, the total sum of bribes received was 2.3 billion rubles in 2016, one billion rubles more than in 2015.

33,000 corruption crimes were registered in 2016, down 1.4% from 2015. The average amount of the bribe was 425,000 rubles in 2016, up 1.4% from 2015. In 2016, a total of 12,000 corruption cases were brought to court and 13,000 people were convicted. Moreover, 2.5 billion rubles were voluntarily returned to the State in 2016

and measures were taken to recover the corruption-related property damage totaling 33 billion rubles [12].

Unfortunately, socially oriented priority national projects and programs have been undermined. As an example, increased funding for the Health Program has not improved the quality of medical services provided and health care shows the highest percentage of corruption. The diversion and misallocation of public funds remains the central problem with the implementation of the nation-wide Education Project almost in all the constituent entities of the Russian Federation. The program entitled *Accessible and Comfortable Accommodation for Russian Citizens* is not fully effective, due, among other things, to corruption. The situation regarding the implementation of another program, Reforms in the Housing and Communal Services Sector, is no better.

This situation suggests the need to identify new priorities regarding the implementation of public anti-corruption policies and the improvement of administrative anti-corruption law, taking into consideration current public relations in the social sphere.

Unlike other areas of public administration, the social sphere is specific in that it involves most citizens and both publicly funded and extra-budgetary social institutions and organizations provide social services, which – for objective reasons - often operate as economic competitors, i.e. health care centers, educational institutions and so on. The lion's part of public funding goes to the social sphere. As an example, in 2017, the following publicly-funded state programs were funded as follows: Development of Health Care (3 971 027.7 rubles); Development of Education for 2013-2020 (37 403.9 rubles); Social Support for Citizens (1 079.7 rubles). All public funding should be spent only to the targeted recipients.

The problem is that the main effort of the State is to combat corruption in government agencies and administrative bodies, which understandably do not provide social services. As a result, the social sphere remains without proper protection against corruption, which leads to the unlawful charging for otherwise free services in high social demand (health care, education, physical training and sports). In this regard, corruption pushes out, in a coherent and systematic manner,

citizens from the system of free social services resulting in the growth of social tension and in the diminishing trust in the central sphere of life, i.e. the country's social policy, on the part of citizens.

An issue of particular concern is the fact that there still is no official definition of the term "social sphere". Instead, there is a list of healthcare, educational and social activities involving legal personalities and individual entrepreneurs.

The No. 296 Order of the Government of the Russian Federation of 15 April 2015, entitled On Approval of the Social Support for Citizens State Program of the Russian Federation, mentions the following subprograms:

1) Social protection of certain categories of citizens;
2) Upgrading and promotion of social services for the population;
3) Enhancement of effective public support for socially oriented non-profit organizations;
4) Older generation;
5) Provision of conditions for the implementation of the Social Support for Citizens Stage Program of the Russian Federation.

Based on the above, the main beneficiaries of public social programs are not only legal and natural persons providing social services and support, but also the so-called unprotected citizens who suffer most from corruption in the social sphere. This is why corruption, along with other causes, leads to negative consequences such as increased and unsubstantiated spending by citizens and misallocated state funds, which should have been used to deal with socially important issues but, instead, have ended up in the pockets of officials. In our view, the recently established decentralized nature of social administration does not make it possible to build an effective administrative anti-corruption legal system. Accordingly, it is suggested that administrative anti-corruption law in the social sphere should be promoted in a fundamentally different way, considering its features and needs of law enforcement practices. Now, a number of primary tasks should be tackles to overcome corruption in the social sphere.

First, forms and methods of administrative anti-corruption regulations should be unified to the maximum in the social sphere at its various levels.

Second, specific features of public relations should be taken into

consideration, which are established in this or that segment of the administration and functioning of the social sphere.

The research shows that departmental anti-corruption plans do not sufficiently highlight measures taken to record the activities of various public and administrative anti-corruption bodies in performing these or those public functions. This reduces the law-enforcement capacity of these documents in anti-corruption actions and the effectiveness of administrative anti-corruption regulations. Meanwhile, a differentiated approach to dealing with corruption might help identify its distinctive features and find proper administrative legal ways to influence it.

It should be recognized that reducing corruption in the social sphere is impossible without imposing public and private law regulations in other sectors.

As of now, there is an acute need to carry out strict anti-corruption policies both in the public and private economic sectors. It is axiomatic that economic problems are at the basis of corruption, specifically in the social sphere. In this regard, addressing a wide range of economic issues may help reduce corruption both in the private and public social services sector.

The specific nature of the social sphere's functioning is related to its areas of activity and to the fact that administrative law regulates its basic relations. Accordingly, proper administrative anti-corruption measures introduced to the social sphere may make a positive contribution to resolving the issue under investigation. In terms of its institutional framework, administrative anti-corruption law should comprise components of various functional nature. As an example, the development of legal, organizational, informational and technological components is necessary to effectively combat corruption in the social sphere. Each of the above-mentioned aspects can be used, in their own way, to ensure the functioning of the anti-corruption mechanism in the social sphere.

Administrative anti-corruption law should combine both regulatory and protective anti-corruption means. Such an approach will reduce to a maximum corruption risks in the social sphere and the corresponding law enforcement activities. Of special importance in enhancing the effectiveness of administrative anti-corruption law is the removal of contradictions between the

regulatory and law enforcement practices in anti-corruption measures implemented in the social sphere.

The development of a comprehensive theoretical model of using administrative and legal arrangements to combat corruption in the social sphere will decrease social tension in Russia. Furthermore, more focus should be placed on national and international legal standards and related rules of international law. The removal of contradictions in the system of administrative anti-corruption law in the social sphere will help to determine the main elements of offences in this sphere, to differentiate them from contiguous acts and to counter offences in this sphere by filling gaps in administrative law and improving its practical applications. From this perspective, a comprehensive research on administrative anti-corruption law in the social sphere seems necessary and urgent.

Administrative anti-corruption regulations are mostly based on the related international legal standards. As an example, the Federal Law on Counteraction of Corruption of 25 December 2008 highlights that the State's cooperation with international organizations is one of the principles underlying anti-corruption measures (Art. 3, Para. 7).

Today, a system for the international legal cooperation between states has been established to combat corruption, which is a comprehensive mechanism for states to interact at universal, regional, sub-regional and bilateral levels. Corruption impairs the social activities of all members of the world community. The social sphere cannot flourish in a corrupted system, which leads to population reduction in this or that country and to the decrease of funds that the government has to allocate to working people and to the purchase of supplies (books, medicine, computers and so on). Corruption also leads to the misallocation of public funds provided for social services (schools, hospitals, roads, police and so on), hence the decreased quality of services. Favorable conditions are created for people with money and connections to amend laws and decisions taken by public authorities. Finally, corruption undermines the credibility of the government. The difficulty is that there are no international acts on corruption in the social sphere (at least, universally), which creates a need to introduce and

pass them.

Having ratified the United Nations Convention against Corruption, Russia did not subscribe to the provision concerning corruption crimes such as illicit enrichment and the responsibility of legal persons, which is a gap, in our view. The following documents deserve attention in terms of systematic administrative anti-corruption enforcement strategies in the social sphere:

- the Inter-American Convention against Corruption, signed by the Organization of American States on 29 March 1996 (given that all anti-corruption measures suggested by this convention are substantiated and preventive; and

- the Convention on Combating Bribery of Foreign Public Servants in International Business Transactions of the Organization for Economic Cooperation and Development (hereinafter OECD), adopted on 21 November 1997 and aiming at the criminalization of legal persons' corruption activities.

Attention should also be given to the project carried out by the OECD, The Integrity of Educational Systems (Intégrité des systèmes d'enseignement) [13], which seeks to provide assistance to States in their fight against corruption in the educational sector by analyzing the corruptogenic factors in the educational system.

The Program of Action against Corruption, adopted by the Committee of Ministers of the Council of Europe in 1996 [14], also requires thorough examination, as its Administrative Law Section (Unit 3) contains a number of terms related to the codes of conduct of officials. The Model Code of Conduct for Public Officials, which is an appendix to the Recommendations of the Committee of Ministers of the Council of Europe of 11 May 2000 No. R (2000), also addresses the issue relating to ethical rules and codes of behavior for public officials [15].

It would be desirable that Russia should join international movements, such as the World Health Organization's network for fighting corruption in the drug purchase sphere. It is also advisable that Russia analyze data obtained and take appropriate measures, based, for instance, on the data provided by the Report on the extent of Corruption in Education in 60 countries (including Russia), prepared by the UNESCO International Institute for Educational

Planning.

Although Russia is a member of the World Health Organization, it did not join the following serious international organizations combatting corruption in the healthcare sector, not even as an associated member: European Healthcare Fraud and Corruption Network (EHFCN), Center for Counter Fraud Services (CCFS) affiliated with the Portsmouth University (Great Britain), European Observatory on Health Systems and Policies and others.

For instance, the European Healthcare Fraud and Corruption Network adopted in 2005 the European Declaration on Healthcare Fraud and Corruption in Europe.

Unfortunately, there are no acts directly aimed at combatting corruption in the social sphere within the framework of the Eurasian Economic Community and the European Union.

To sum up, Russian legislation does not quite correspond (or does not correspond at all) to international anti-corruption regulations, which calls for thorough revision, given the gravity of this issue in Russia.

Specificities of countering corruption in the social sphere abroad. Until recently, the absence of special compositions of corruption delicts committed in the social sphere has been a common feature of corruption offences both in Russian and in many other countries. Countries such as Austria, Great Britain, Denmark, India, China, the USA, Switzerland and Finland have no legal definition of the notion of corruption, which is why the punishment for corruption is administered for specific lucrative acts on the basis of legally defined terms such as bribe, bribery, abuse of authority and so on.

Among corruption infringements are both corruption crimes *stricto sensu* and other infringements of law committed for lucrative purposes.

Foreign law highlights a number of corruption infringements committed, particularly, in the healthcare sector. These wrongful acts run counter to the notion of corruption, as defined by Russian legislation. As an example, distinctions are made between bribery in medical service delivery, procurement corruption, improper drug-marketing practices, undue reimbursement claims, etc. [16]. In our view, such definitions facilitate the classification of corruption infringements.

The United Kingdom of Great

Britain and Northern Ireland, in its Bribery Act of 8 April 2010, defines bribery as one person's agreement to receive "a financial or other advantage", which constitutes "an improper performance of a relevant function or activity" (Art. 1). Evidently, such a broad definition makes it impossible to determine the *corpus delicti* [17].

Among the main punishments in all countries are imprisonment and imposition of fine on the offender, which is logical in case of lucrative crimes, usually involving monetary rewards.

Almost in all States, corruption crimes are considered as serious wrongful acts.

The most difference between foreign law and Russian anti-corruption legislation is the criminal responsibility of legal persons for corruption crimes. The significance of legal persons' responsibility for corruption infringements committed in the social sphere could not be overemphasized, given that public administration does not have exclusive jurisdiction over the social sphere (healthcare and education), in contrast to the traditional areas administered by public authorities (law enforcement, administration of justice and provision of security).

Privately owned entities (educational organizations, hospitals and pharmaceutical companies) are active participants in the social sphere that provide social services similar to public organizations. As a result, legal persons (economic entities and non-commercial organizations) provide a wide variety of social services and, thus, can be considered as potentially inclined towards criminal activities in the sphere under investigation. Relevant circumstances point to the significance of strengthening their administrative responsibility for corruption infringements. In a number of foreign countries, a combination of criminal and administrative measures are taken to combat corruption. Besides, legal remedies against corruption are largely homogeneous, hence a high demand for them in both public and private areas of social service delivery [18].

Issues relating to the implementation of corruption-related international legal standards into Russian legislation. International legal anti-corruption standards in the social sphere are of great significance for the improvement of Russian legislation. However, not all relevant provisions of international legal acts are introduced to

Russian legislation on countering corruption, which has a certain negative impact on the quality of anti-corruption state policies. In recent years, Russian government authorities have taken significant steps in the fight against corruption: a relevant legal framework has been established, institutional changes have been made and measures have been taken to involve citizens in the prevention and suppression of corruption. At the same time, anti-corruption measures in a number of areas of social relations, require additional regulations, means and techniques [19].

By tradition, the social sphere remains one of the most corruptogenic ones, which is due to the insufficiency and incoherence of anti-corruption legislations, closed activities of social and other institutions, somewhat ineffective public and social oversight that is not always highly effective, inefficient preventive measures, greedy interest of the parties in maintaining corruption-related connections and more.

Among factors contributing to the growth of corruption in the social sphere are the subjects' confidence in marginal patterns of behavior (legal infantilization and nihilism), and this despite the fact that the State allocates significant funds to the social sphere.

The Federal Law No. 97-FZ of 4 May 2011 ("On the amendments to the Criminal Code of the Russian Federation and the Code of Administrative Offences of the Russian Federation on improved anti-corruption governance") has implemented international standards to Russian legislation by expanding the range of persons who could be prosecuted for receiving bribes. This law, however, has a significant omission, in our view: it lacks the definition and, most importantly, the legal applications of terms such as active bribery and passive briber, introduced in 1999 by the Criminal Law Convention on Corruption of the Council of Europe.

Another major gap is the absence of provisions for corruption in both the Code of Administrative Offences of the Russian Federation (CoAO RF) and the Criminal Code of the Russian Federation (CC RF). In our viewpoint, there is a real need to define and legislate on terms such as "corruption infringement" and "corruption crime", given that both the CoAO F and the CC RF contain only special provisions.

The international community considers confiscation of property as the

most serious means of combating corruption. The Criminal Law Convention on Corruption suggested that States should adopt legislative and other measures that may confer them the right to confiscate or exempt in other ways instruments of crimes and earnings from crime activities, recognized as such in accordance with the present Convention, or property of a value equivalent to that of such proceeds (Art. 19). In this regard, and considering Russian law enforcement practices, we deem it necessary to restore confiscation as a type of punishment.

In promoting anti-corruption regulations in the social sphere, it should be kept in mind that Article 1 of the Civil Law Convention on Corruption of the Council of Europe, adopted 4 November 1999, requires each party to provide in its domestic law for effective remedies for persons who have suffered damage as a result of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage. At the same time, the author points out, according to Article 5, the possible responsibility of the State as an entity that authorized the official (or other) person to act on its behalf. In Russia, however, there have been almost no cases where a citizen was granted reparation for material or moral harm incurred as a result of corruption acts. The real implementation of reparation mechanisms would make the authorities more attentive when appointing persons to managerial positions and would result in the legal competitive selection of officials [20].

The Convention of the Council of Europe suggests that members States criminalize deliberate acts related to corruption abuses or inaction aimed at concealing or misrepresenting information when preparing or using invoices or any other accounting document or report, which contains false or incomplete information, or when illegally omitting to make entries on accounting reports concerning payment transactions. The CC of RF features only a general rule on forgery (Article 292), and the examined practice reports lead to the conclusion that forgery concerned mainly sick lists and various official documents, whereas invoices, other accounting documents, reports and accounting records are not such. This situation seems to be a notable omission, given that the above-mentioned documents can be used to commit other, socially dangerous infringements. We

consider it necessary to add “accounting documents” and “accounting records” to the Article 292 of the CC of RF, which would increase responsibility for real forgeries in public office. As a reminder, a Consolidated Report on Russia was published 15 March 2013 as a supplement to the report on the implementation of recommendations by the Russian Federation. Unfortunately, this Report has not had any significant impact, which is clearly an omission [21].

Conclusion

If Russia ratifies the Civil Law Convention on Corruption of the Council of Europe, it will be possible to cooperate on civil actions against corruptions, in particular, in obtaining evidence abroad, in establishing jurisdiction, recognizing and respecting foreign judicial decisions and court fees. The provisions of the United Nation Convention against Corruption (Article 13), adopted by the United Nations General Assembly on 31 October 2003 by Resolution 58/4, stipulates that each member State will take measures to actively involve the civil society in the prevention of and fight against corruption. The following measures are aimed to increase such participation:

- improving transparency and involvement of the population into decision-making processes;
- providing the population with effective access to information;
- holding public-awareness events, which would foster public intolerance against corruption, and promoting educational programs, including school and university curricula;
- respecting, encouraging and protecting the freedom to seek, receive, publish and disseminate information concerning corruption.

Clearly, these measures to be taken by public authorities are rather general and need further specification in national legislation. In this regard, we consider it an urgent need to regulate in more detail the forms and methods of interaction between public authorities and civil society.

Discussion

Unlike previous research, this article developed a major conceptual framework for the promotion of administrative corruption regulations in the social sphere, based on international anti-corruption standards, as well as conditions and requirements necessary for the effectiveness of new legal

techniques, forms and methods in undertaking preventive measures to reduce corruption in the social sphere.

Another new provision concerns the definition of theoretical and law enforcement practices aimed at countering corruption in the social sphere. In structural terms, it should include the organizational, informational and law enforcement components. The present study proved that effective anti-corruption measures in the social sphere are possible only if all of the above components are combined, in which case they will provide an effective mechanism for the implementation of administrative anti-corruption actions in the social sphere.

The present study proved the need to extend administrative anti-corruption strategies to the entire social sphere and substantiated the fact that these strategies should not be limited to use only by public authorities in the social sphere. It was shown that, due to the regulatory and protective impact of administrative anti-corruption strategies, they should institutionally affect the entire social sphere, while taking into account, in functional terms, the performance of each of its segments. Equally revealing is the finding that an integral part of State social policy should be the fight against corruption in the social sphere and, consequently, in public programs for the promotion of these or those components of the social sphere. The consolidation of anti-corruption measures should follow their implementation.

The research novelty of the study consists in the proof that the content of the administrative anti-corruption regulations in the social sphere is based on legal remedies, the implementation of which should take into consideration their essence in terms of target, subject, industry, institution and function. The study provided a theoretical framework for the provision that general anti-corruption measures defined in legislative and relative acts do not take into account the specificity of corruption’s manifestations in the social sphere, which decreases their regulatory and protective potential. This said, the study proved the need to develop and adopt special regulations aimed at countering corruption in the social sphere using administrative and legal arrangements.

Recommendations on the Use of Research Findings

The obtained research findings make it possible to develop specific areas of public anti-corruption policy, as their primary objective is to improve administrative anti-corruption regulations in the social area, in general, and also in its most significant segments. The research provides an opportunity to expand the boundaries of anti-corruption legislation and to remove individual contradictions related to the implementation of this legislation in the social sphere. The obtained research findings reveal the theoretical and law enforcement regulations relative to anti-corruption measures taken in the social sphere, so they have a direct practical significance in terms of the following:

- development of suggestions on improving the legislative and departmental anti-corruption regulatory activity in the social sphere. As part of the study, amendments have been developed to the Federal Law of 25 December 2008 No. 273-FZ (On Countering Corruption), the Federal Law of 17 July 2009 No 172-FZ (On Anti-Corruption Regulation of Legal Acts and Draft Regulations) as well as the letter from Russia's Ministry of Labor of 13 November 2015 No 18-2/10/P-7073 (On the Criteria of Prosecution for Corruption Infringements);

- implementation of anti-corruption arrangements in the social sphere and identification of corruption-prone activities in the federal executive bodies exercising its functions in the social sphere;

- anti-corruption policies in terms of methodology and didactics. Specifically, the results of the study can form the basis of teaching various courses on anti-corruption strategies. Furthermore, the research findings can be used to elaborate the content of the Master Plan to Counter Corruption in Federal Executive Bodies Exercising Its Functions in the Social Sphere.

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RESEARCHING GEOGRAPHICAL NAMES IN THE WORKS OF NIZAMI GANJAVI

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Abstract: The article first analyzes the geographical names that are reflected in Hamsa by Nizami Ganjavi. As a result of the study of geographical names, a table was compiled - a map. This table covers 157 geographical names. It was revealed that most of these names (125) were given in Iskendernam. An analysis of these geographical names is evidence that the brilliant thinker Nizami deeply studied the ancient Greek and Arabic literature and the works of ancient geographers and was closely acquainted with the geographical appearance of the globe.

Keywords: Nizami Ganjavi, Azerbaijani poet, geographical names.

Introduction

Nizami, who was “a genius in the true sense of the word” (1, p. 62), “the highest mountain of human ideas”, “goddess of the artistic word”, “owner of encyclopedic intelligence” and the phenomenon of human perception at all times and artistic thinking stands at the highest point of view. " Geographical names are important in his poetry. It is no coincidence that some authors remind the famous writer Jules Verne because of the geographical coverage of the Earth (from the western coast of Europe to the Pacific Ocean; from the Nile River in Africa to the North Pole).

However, no specific studies have been conducted so far to delve deeper into the geographical names of the works of J. Vern in the 12th century, and so far no scientific works have been published. True, the authors who wrote "Comments" on the poetry of the poet (R. Aliyev, A. Jafar, M. Sultanov, H. Yusifli, H.R. Lutyurk, N. Arasli and others) On some geographical names in the "Hamsa". provided some valuable information and brief comments (Nizami, 1981). However, for some reason, the information provided by these authors did not go beyond the scope of “some geographical names” and

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"short comments". (Sh. Safarov, B.Hasanov, 2002, pp. 165 - 194). Thus, the authors collect many geographical objects mentioned in "Alexandria" (Zangibar, Afrana, Alexandria, Khorasan, Greek, Chur, Shaviran - Shabran, Babil, Geyruvan, Sanjab, Hari, Chach, Gannuk and others) provided information and tried to explain the meaning and origin of some geographical names. As follows from the title of the article, the authors chose only one poem of the poet ("Alexandria") as an object of research and investigated not only geographical names, but also a number of geographical and ethnographic problems (3, p. 67).

Our famous philosopher scientists made certain mistakes and inaccuracies in the interpretation of geographical names. For example, N. Arasli described Afran as "a city in Egypt" in his book "Historical, Religious - Legendary and Geographical Names" at the end of his book "Hamsa" (4, p. 60). However, Safarov and others do not justify this geographical name with the name of France (Nizami Ganjavi 1983b). Please note that the name "Afranan" is mentioned six times in "Alexandria" (4, p.40). The fact that this poem is referred to as separate countries along with Egypt and Afranka proves that the second (Afranka) is the city in the first (Egypt).

This is the name of Jerusalem, the city of Bethlehem. Maghrib means West. Andalusus is the name of a province in southwestern Spain, which is now called Cordoba. It is called "Arab Spain". It is known that Spain and France (Afranan) are neighboring countries. All of the above examples confirm that Afrana is not a "city" in Egypt, but the name of modern France in medieval Eastern literature, including the "Hamsa" of Nizami.

Professor Roger Aliyev, in his commentary on the Seven Wonders, identifies Mount Kudi in the famous "Flood of Noah" from Mount Ararat: "According to legend, Noah's ark came out of the flood in Kudi (now Ararat)." p. 334). While the mountains of Judy and Agri (Ararat) are separate geographical features, the first (Kudi) is located near the border between Turkey and Iraq, and the second is on the border with Armenia. As for the legend, according to some sources, Noah's ark belongs to Judy, and for others - to the dam on Mount Agri. Unfortunately, the outstanding regulator prof. Khalil Yusifli compares Mount Judy to Mount Pain in his commentary on the new edition of his

poem Khosrov and Shirin. This confusion in the spelling of geographical names is due to the fact that, in our opinion, various verses included in hamsa are translated by different authors.

In view of the foregoing, we decided to conduct a special study of the geographical names contained in hamsa. As a result of our research, we developed a map - “Geographical names in Nizami Hamsa”. This “card-to-card” is one of the first initiatives in this area. We believe that it is advisable to bring this “desktop card” to readers in general, given that future researchers will benefit from this. Table. Names on the map are based on chronological sequence.

Eloglu, who wrote from Armenia, Abyssinia, China and the Romans, is not only one word, but the tip of the pen, in fact, the tip of the pen will not break! "(I would say the tip of the canine)!" (4, p.12).

Apparently, T. Azerturk did not read “Hamsa” at the end (he himself admits this in his article and justifies himself by the fact that Nizami’s style is “monotonous”); perhaps it was read that the brilliant poet used the word “Azerbaijan” in his verses “Khosrov and Shirin” and “Alexandria”, because he knew the “Scriptures” that he wanted to learn now. As for Ganja, the poet repeatedly wrote about his hometown in all his verses, except for Leili and Majnun (6, p. 62). The authors of the article “Song of Ganja in the works of Nizami” emphasize the poet’s strong commitment to his hometown: “Nizami Ganjavi’s hometown is a warm embodiment of his hometown and his people.”

Azerturk claims that he studied the ancient "scriptures" about Azerbaijan, although he could not read the "hamsa", at least if he read the scientific works written by prominent orientalists about the Nizami, meaningless words that we mentioned above. will not. For example, the famous orientalist

There is such a legend that the first name of this ancient city is Bun - snow. Iskander left "in the dark", leaving his armor and troops in the cave, then built a city on the cave called Bui - snow, and he gradually became Bulgarian. Snow is the bottom of the cave ”(4, p. 30).

He writes about the Egyptian city of Alexandria: “They called the city“ Alexander built ”,“ Alexandria ”(9. p.11).

In Hamsa, the genius of Nizami, who carefully studied geographical literature and maps of ancient and

medieval times, is not just a list of geographical names, but very briefly about the characteristic features and distinguishing features of their objects (country, region, city, mountains, river, sea etc.). but provides valuable information. Let's look at a few examples. Gilian, one of the oldest and most famous provinces of Iran, is widely known about some geographical features (relief, climate, vegetation, etc.). However, not everyone knows that Gilan is famous for his horse breed.

In our opinion, the name of the Bartaz settlement in the Zangilan region is also associated with this Turkish tribe.

We consider it expedient to keep up with short notes, as numerous sources have enough information about the Kipchak steppe, Kipchaks, their origin from Turkic origin. The first homeland of the Kipchaks, considered the ancient Turkic peoples, is the Cheyenne valley northwest of the Altai mountains. In the VI - VII centuries, Kipchaks migrated to the basins of the Orkhon and Irtysh rivers, stretching from the foothills of the Tien Shan to the banks of the Volga and Danube rivers in the 9th and 9th centuries. These vast territories were called at that time “Dashti-Kipchak” (“Lake Kipchak”). In the IX-XI centuries, as part of the Turkic-speaking tribes in the South Caucasus, including Azerbaijan, the Kipchaks began their first raid on Russian lands and were the main inhabitants of these lands before the invasion of Batu Khan (1240).

Alan was one of the seven provinces of the Russian elite. In our opinion, this province was named after the tribes of Iranian tribes. The territory was inhabited in the first century AD around the Sea of Azov and the Caucasus. Some of them are great ancestors of Ossetians who migrated from Spain to Galia during the Great Migration of Peoples (IV - XII centuries) and whose territories were distributed between the two countries (Georgia and Russia) (6, p.34) plemena Severnoqo Caucasus, Moscow, 1962).

So, according to the genius poet Hams, in the Middle Ages Russian ales consisted of seven provinces. Of course, you can study and analyze only a few geographical names that we met in Hamsa in the volume of articles (about 160 of them). Therefore, it is necessary to study all the geographical names mentioned in Hamsa, especially those of the ancient (archaic) toponyms that we do not find on modern maps based on the "map-map" that we present here, and

have great scientific significance. ,

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SOCIAL MEDIA AS A NEW FORM OF MEDIA

Vugar Rahimzadeh Ganjali[1]

Abstract: The use of electronic media and social networks, whose evolving roles are felt in the context of political issues and military crises, has largely supplanted traditional media in recent years. Today, people through their computers with having access to the internet can physically influence other people. However, these people may also be very sensitive to the external influences themselves.Today, just about anyone with a social media account and an access to an incredibly large audience has the capacity to become a journalist, which might lead to the creation of a whole new form of media.In today's world, traditional means of news dissemination are undergoing displacement. Internet resources are largely exceeding even the circulation of the world's leading newspapers by the number of their users, also becoming an arena for information conflicts.

Keywords: Traditional media, social network, information, social media, internet, information conflict

Introduction

In this modern world, where global transformation and integration processes are taking place, we are facing a new stage in the development of civilization. There are emerging determinants and indicators of the new socio-economic formation that serve as a basis for the transformation of the industrial society, which is called the "information society". Information is also the key resource of the postindustrial society concept that is still relevant today. During the 20th century, the "information" phenomenon began to gain momentum as a key factor of development in many scientific fields. According to D. Bell, who was one of the founders of the concept of postindustrial society, information was defined as resource that was searched, processed and protected in the economy and society.

The rapid development of information and communication technologies, as well as the wider use of them in economy and in the life of the

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community, give us reason to believe that a new concept of development of society has emerged, which is called "information society".

The information society is a postindustrial development stage of civilization that characterizes the comprehensive informatization of society and replaces the post-industrial era. In this society, the role of information as a strategic resource increases with the development of electronic mass media devices that manipulate public and public opinion.

The role of the media in disseminating information, events taking place in the country and worldwide to the public is undeniable. The media, by playing both roles as an observer and participant in complex processes, provides information to the public. The functions of mass media, which are to inform, educate and entertain, are sufficient enough to prove their role in the development of society. The mass media provides the public with information in its his own unique way. In the modern world, mass media refers to radio, television, traditional media (newspapers, magazines) and the Internet. The media is the reflection of society and ICT is becoming a tool for communication between people, government agencies and society as a whole. As a reflection of our society, the media also plays a major role in the issues related to democracy, political processes, identity, as well as dealing with the problems of society and culture. In today's world, the mass media, which is often used for conveying propaganda and enlightenment messages, also plays an important role in the management of socio-political and socio-economic processes. In particular, traditional means of mass media, i.e. newspapers, magazines, etc., which maintain their special relevance in this area, play their part in shaping and managing public opinion.

The futuristic views of American sociologist A. Toffler on the establishment of the information society have not justified themselves today. Toffler argued that the media would face the process of becoming unpopular in the new society. He noted that with the advent of a new generation of media and ICT tools traditional media would lose its former role, especially losing its readership. The social media and social networks are one of the emerging realities in this regard.

Social media brings a host of benefits to an organization, so ensuring data protection and privacy requirements form part of the framework means these benefits can be realized safely and securely. The social media security governance should take into account certain challenges: staying abreast of the evolving regulations, terms and conditions of the social media channels you are using; managing social media data throughout is life-cycle from initiation through usage, storage, transfer, archiving and destruction; ensuring that sensitive and organizational or personal data is not exposed and using tools to monitor, evaluate and take care in sensitive situations. **[1]**

Social media allows us to reach people directly through existing and emerging platforms. Social media not only provides access to people around the clock, but it also poses threats to its users. **[2]** There are new risks arising almost every day and if there is a need for a better understanding of risks social media will have the necessary impact on their ability to respond to them. Therefore, the main strategy is to be careful about the resources available, and to control them.

Social networks are widespread tools of communication. Many people use the social networks for communication, often uploading pictures and videos without ever thinking about it, voluntarily posting extensive information about themselves. This can sometimes lead to such an addiction and dependency that people do not feel how they spend their time. Their lifestyle somehow depends on social networks, which often results in negative consequences. People with various problems (mental disorders, illness, criminal behavior, etc.), who do not present themselves and their intentions in social networks as they are, engage in "intentional" communication and lead them into a "trap" taking the advantage of other people's inexperience, their younger ages and the vacuum created in their mental world. In fact, unlike real relationships, these are illegal relationships which in some cases cause adolescents' suicides, resulting in joining a variety of criminals, blackmailing, young families' breaking up and causing destructive situations that seriously undermine the traditional pillars of family. There is no one who is responsible for the crime committed. Any social relations established in

accordance with law in geographical areas are regulated by law. However, social networks do not have any regulatory mechanisms because it only exists in the virtual space where there is yet no legislation.

It would be more reasonable to call it a "chat-mania", which is no less a serious problem than a drug addiction which is considered to be the most serious problem in the modern world. Because it is a chat that is happening in society as a whole and it is impossible to be treated in the geographical space where every citizen is present. Public should be alert to such negative trends. Therefore, the issues of private life and security in social networks, as well as effects of social media on individual and professional activities of a person should always be in the spotlight.

The breadth and impact of social networks have once again revealed a new perspective regarding the future development of this phenomenon. It turns out that social networks will continue to have a deeper impact on the life of society in all areas, the societies will obviously feel the positive and negative effects of this process. Therefore, a more thorough examination of the social networking phenomenon of the world is becoming the main focus of scientific researches today. **[3]**

If social networks were previously only communication tools for the majority of "consumers", in the modern era, it is not only a way to earn more money, but also an area for achieving specific economic, social and political issues especially for "advanced" users.

With a computer connected to the Internet, a person becomes a source of psychological influence on other people. However, he or she may also be very sensitive to the external influences themselves. Anyone who has a social media account and an access to an incredibly large audience has the capacity to become a journalist.

The founders of social network services might not have supposed beforehand how important their inventions would be in terms of controlling the world order. American psychologists S.Milgram and D.Travers can be considered the founders of social networks. According to their theory put forward in 1969, any two randomly selected individuals are connected by a total of length of the chain of six people. A Romanian psychiatrist Jacob Levi Moreno developed "sociogram" which was a graphic representation of social

links that a person has. Until then, the "social structure" or "social networking" phenomena were one of the misunderstood concepts. Moreno used the "sociogram" to identify social leaders and "outcasts", define asymmetry in selection of friendships and demonstrate an indirect chain of relationships. **[4]**

Over the years, "social network" that united people who have not known each other in a single information space, has also become a common fact of life. Founded in 2003, Friendster was the first modern, general social network, that followed by LinkedIn and MySpace in 2003, Facebook in 2004 and Twitter in 2006. The national versions of these social network platforms have also emerged in most countries later. Today, the traditional communication methods in information dissemination are undergoing displacement. Internet resources are largely exceeding even the circulation of the world's leading newspapers by the number of their users, also becoming an arena for information conflicts. **[5]**

Currently, social media has begun to partially substitute the traditional media in the process of obtaining information to build their own policies in power centers. For instance, The US Department of State spokesperson Victoria Nuland receives questions not straight from the media representatives but through Twitter from anyone around the world. The US Department of State has also created a special AskState account on Twitter for this purpose. All the questions addressed to Victoria Nuland are also being promptly translated on the State Department's Twitter page into 10 official languages - Arabic, Chinese, English, Persian, French, Hindi, Portuguese, Russian, Spanish and Urdu and sent to the social media network, and this is realized as part of a plan on expanding the US diplomacy. The US Department of State has identified the use of new technology as a major part of its foreign policy worldwide. The US Department of State has 193 different accounts on social media networks, of which 100 belong to its embassies in different countries.

Most people evaluate the long-term and short-term impacts of social media and acknowledge what it can achieve, how it is monitored, how its investment income is measured as well as the risks to be taken into account. In fact, the planning of social media activity in the future should reflect any strategic

elements of marketing and political communications. Setting goals and objectives in key areas; identification of audiences; accumulation of concepts; determination of resources; creation of principles; management and security; content creation; management of socio-political platforms; measurement and assessment of success; the creation of sustainable knowledge and assessment tools.

There are all grounds to assume that social networks will play a more active role in socio-political processes as a means of influencing society. The current dynamics of social network users' growth make us believe that these results are completely reasonable. Thus, at the end of 2013, the number of social media users increased by 19.2% worldwide and today the number exceeds 1.5 billion people. It should be noted that Facebook remains the largest social network in the world to surpass with 1 billion registered accounts.

The use of electronic media and social networks, whose evolving roles are felt in the context of political issues and military crises, has largely supplanted traditional media in recent years. Since information spread on social networks is similar to public perception, social networks have a profound impact on the media, and this pressing issue is of great concern for the world's leading media outlets. It is a logical conclusion, therefore, to believe that after a few years, social networks will completely alter the role and place of evaluation of traditional media.

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"A BALD MAN" OR KALOGHLAN

Durdana Tofig Aliyeva[1]

Abstract: Tale onomastic has a longer life than other specimens of folklore. Sometimes we come across a name in a tale, in one language in another folklore specimen, or in the folklore specimens belonging to different peoples. Naturally this is the case, which we observe in the tales of relative peoples. In the formulation of the names of characters, the character of narrator of the tale, the ethnic peculiarities of the people to whom the tale belongs, is of great importance, and all this, though does not influence on the general objective law of formulation of the tale, it may have its impact on the contents of it. One of the specific features of folklore tales of the Turkic peoples lies in the fact that they are not separately-taken work of art, but they are the constituent parts, composing one complex of folk-lore. Just within the borders of this complex the names are in action and easily transform from one piece of art, to another one. Consequently, we happen to see the unique lexical panorama of folk-lore specimens in the Turkic languages. We witness this case in the tales on "Kaloghlan", composing a greater complex. In the article, the position of anthroponymies entering the Turkic tales and proverbs "A Bald man" and "Kaloghlan", the stylistic possibilities, taking place within the text are explained.

Keywords: Turkic Languages of Oghuz group, folklore, a bald man, Kaloghlan, a tale, proverbs

Introduction

Poetonyms within a folk-lore text, its contents and form, instances of their usage, do not bear an occasional character, because a name here, stands in one line with the language and style of the work. Here, naming of the character depends on the plot-contents line, the idea of the theme and objective laws of genre peculiarities of the work. It also reflects the understanding of the people to whom the work of art belongs, in the way how those people feel with the events and facts

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described in the tale and their ability to express the peculiarities of world understanding as a whole, just that's why, the literary name which is expected to be the main element of literary structure, can express the covert meanings of the text and the idea of general contents.

One of the specific features of the folk-lore specimens of Turkic people (tale, anecdote, proverbs) is that they are not separately taken works, but they are the constituent parts of folk-lore specimens, composing one complex. Just within the borders of this complex the names are in operation and easily pass from one work into the other one. Consequently, the unique lexical panorama of folk-lore specimens of the people of Turkic language is formulated. We come across this case in the tales of "Kaloghlan" composing a great complex.

2. Position of "A Bold man" or "Kaloghlan" in the tales and proverbs in the Azerbaijani and Turkic Languages

"Kaloghlan" in the Azerbaijani language means "A bold man" or simply "a bald". He was given such a name, for the reason that he was bald by birth. In fact this is a nick name, but in the Turkic languages this character has not any other name than this. The presentation of this character in different Turkic tales is different as well. The type "Kaloghlan" belonging to the Turkic culture in different versions are known by such names as: Tashla Bala (Kazakh) Kechal (bald), Kechal Mahammad, Kechal Yeghen (Azerbaijan), Kecheloghlan (Kerkuk), Kelche Batir (Turkmen), Tazoghlan (Krimea), Tas, Tastarakay (Altay) etc. Among the Georgians the term "Kechal Gaz Chobany" (bald herdsman for goose) is used for the term "Kaloghlan". The fact that heroes which Germans name as "Grindkpf"/"Goldener" possess similarities to "Kaloghlan" (lier/falcificator Kaloghlan) draw our attention as well [Alangu 1968; 458-469].

Kaloghlan, who for his different peculiarities is the hero of a number of tales, is a young man having no one in life, but a widowed old mother. His mother takes all his care. But in some of the Turkic tales he possesses (two or three) brothers. In the tale version in which Kaloghlan has brothers, "Kaloghlan" is generally dealt with as well. The father admonishes his father to be patient with "Kosa". He says: "Adı Musa, boyu qısa, saqqalı kosa adamlarla bazarlıq etmə" (Don't have

anything in common with the person whose name is Musa, who is short in length (qısa) and whose beard is Kosa (sparse)). In some of the tales linked with Kaloghlan, Kaloghlan is described as a married man, even we chance to meet the versions of the tales in which Kaloghlan possesses three wives [Sakaoghlu 2002; 180]. In some tales after the death of the first wife, Kaloghlan marries a second wife, while in some other verisions of tales dealing with Kaloghlan it is mentioned that Kaloghlan in the end of tale marries padshah's daughter. Kaloghlan who views life in mocking smile, has too many enemies and at the head of his enemies stands "Kosa". In spite of his father's warnings Kaloghlan is in confrontation with Kosa, does business together with him and wins him by his own (Kosa's) weapon. In the tales Kosa is described as a person who is sly, jealous, merciless, insistent, smart, a person upholding his profits higher than anything, as a person doing evelty and getting pleasure from doing that. He is bigger than Kaloghlan, it is an obstacle liquidation of which is hard enough, but at the end of all tales he suffers punishment.

Kaloghlan Possesses other enemies as ogre, mermaid, padshah, verzier, retired warrior, stingy persons and others. Very often he wages fierce battles against them; sometimes using his wisdom, his thought and sometimes using some tricks wins victory. He never has mercy on those who have done evelty against himself and never leaves them without punishing them. "On the non-religeous man, nonconvincing man shall gain victory" (Dinsizin öhdəsindən inanmız gəlir).

Kaloghlan has some other persons to assist him to gain victory on his enemies. But those who assist him in his fight against enemies are not as many as his enemies are. Kaloghlan, who is able to solve his problems by using his wit, wisdom and who masterfully is able to use his chances, is sometimes helped by such animals as tiger, fish, bird, especially fire bird and by jins, mermaids and mysterious existences which have been presented to Kaloghlan by them.

We meet Kaloghlan not only in the Turkic tales, but also in the other forms of folk-lore such as saga, story, legend, folk plays, songs, narratives and in proverbs. For eg.: In Koroghlu Saga

Kaloghlan (or Kechal Hamza) who deceives Koroghlu by using tricks Kidnaps Girat (Koroghlu's horse) later on at the first chance, by returning the horse to Koroghlu, wins his love and respect.

But in the story of "Jalali bey and Mehmet Bey" Kaloghlan, who is in the position of shah's slave, by using his wisdom, acts as a person, who rescues Mehmet Bey from execution by hanging [Boratov 2003; 218]. In the story "Ashig Garib", a lier who has brought news on Ashuq Garib's death, but in the story "Tahir and Zohra" a rival who sometimes having won the love of heroes, sells them to shah, and sometimes he is a mediator bringing and carrying news between two lovers. Though a little, in some legends too we see the mentioning of Kaloghlan's name as well. In the legend named "Yupdun magharasi" (the cave of the native land) spread in the village of Orujgazi of Osmaniyye it is said that in the mentioned-above cave there is a pack of soup and together a stone there is a monument of Kaloghlan. Among the folk plays there is one play in which Kaloghlan mostly dances among the women [Elchin 1977; 51], A number of proverbs, the theme of which have been devoted to Kaloghlan and Kalla (head), draw our attention as to the form and contents.

In the Turkic tales we come across two types of Kaloghlan. The distinctive features of these types in the tales influence on carrying out different stylistic functions which one and the same name causes this issue:

I. An invented Kaloghlan: These characters neither as to physical nor as to other features possess Kaloghlan's features. They are heroes emerged from well-known families. They are obliged to hide their personalities, having left their places, native lands with the fear of threat, pursue, pressure, which craft etc. That's why they, are the persons, who having bought a sheep from a shepherd and having cut it and turning the wrong side, cover their heads with turned upside down leather caps. This form of head ware is the marker of Kaloghlan. Namely they have gained the name of Kaloghlan later on. Namely, name is simply invented. For e.g. Padshah's son in the image of Kaloghlan shows his deeds as Kaloghlan, and Gulsum Sultan agrees not to marry padshah's son but she agrees to marry such a poor, lonely Kaloghlan. But in the tale "A padshah from Khorasan" the youngest

boy of padshah comes to fight with Kosa in the image of Kaloghlan.

We see the resembling to Kaloghlan "False Kaloghlan" in the tale "Goldener" in Germany [Alangu 1968; 466]. It is interesting to know that, despite the fact that we come across the women likeness of Kaloghlan who have changed their garments in the German tales, nevertheless, we can't come across this parallel in the tales in the Turkic languages [Alangu 1968; 467]. But we can't agree to this, because among our tales we see our ladies in the garment of Kaloghlan, besides the men heroes [Turkmen 2009; 180]. For e.g. in the famous tale "Halvaçı gözəl" (Halva cooking beautiful girl) a girl having married a padshah's son, when goes to visit her family, in answer to ill intention of vizier having put on the garment of Kaloghlan leaves that place [Shimshek 2001; 231-235]. In the tale "Stepmother" (Analıq) by the pressure of the stepmother, the girl who is left misled in the forest having capped his head with Kaloghlan's headwear, in the image of Kaloghlan works as a goose herd for padshah and then the girl having assumed her original appearance marries padshah's son.

"Having the mask of Kaloghlan" shows itself in the saga and stories of other Turkic peoples. In Altay sagas the Turkic Khagan having masked himself as "Tastarakay" (bald man) inspectors the peoples on the Earth and in the layers of Sky, punishes those who give tortures to people, struggles against evil ghosts and saves the saint men [Ergun 2005; 79]. The parts of such type of sagas are the most interesting parts and the most satiric parts which describe adventures of the persons after their taking the mask of "Tastarakay". At the end of the tales of this group the hero which has masked himself as "Kaloghlan" having reached his aim, again resumes his former real personality. After all these investigations such a question arises. Why for the changing of the image the character of a bald man is chosen? May be to mask oneself and become unrecognized among the people is much easier. This is one side of the problem. But the second side of the problem lies in the fact that people have more faith and confidence in this character. Another interesting fact for us is that after changing their images, into the image of a bald man, they choose another new name for themselves. All the

characters which have changed their images are known as Kechal (a bald man) again. Here we can come to the conclusion that in the peoples' thinking culturological position is mush stronger and that's why the people who invent the tale do not think of changing the character of Kechal (the bald man).

II. The real Kaloghlan (Kalli Kaloghlan): This Kaloghlan in the tales remains unchanged from the beginning, up to the end of tales, Kaloghlan tales, having lost some of the mythological features, have protected their true nature which are more real Kaloghlan tales and are nearer to the conditions of our modern time. At the end of these tales irrespective of initial background or position win those who are worth the victory.

In spite of the fact that Tahir Alangu states that he comes across 15 types of Kaloghlan tales [Alangu 1968; 469] today, we can admit that they are more than that. But Ogel Bahaeddin admits the person with complete bald head as the gift of God and he substantiates this thesis in this way: "in the sagas and tales of Northern Turkic peoples in which foreign influence is less, the brave men when going to great competitions and battles, become bald together with their horses and themselves and in this way they gain divine strength" [Ogel 1976; 84]. As to the old Turkic thinking God has created all from nothing. There is nothing in God's abode, because God has no need for anything. The Turkic people which God has sent onto the Earth to regulate the world order have some marks denoting the place from where they have come. Baldness is one of the markers of these traces [Ergun 2005; 79]. That's why the peoples who wish to put the society in order, who wish to regulate them, change their image and become Kaloghlan / Tastarakay. Having realized their complete duties they again resume their former appearances. This situation is observed in Altay sagas as well [Ergun 2005; 78-84]. If we imagine that the sparseness or lack of hair is a defect then we may come to the conclusion that rescue from hair, namely baldness is a sign to saintness. This circumstance can be accepted as a feature, empurating the person from evilty and also a feature keeping the man far away from the worldly wishes (material wishes). In one word, baldness is the foreign manifestation of the purity of the heart. So, we may say

that "baldness is the gift of God and in order to be nearer to God, Men of Religion used to have their hair close-cropped" to the level of baldness. Such thoughts point to the association between the name and contents and in the tales, created by people, the salvator of the people, had to be nearer to God, the one loved by God. The hero of tales in the Turkic languages which is Kaloghlan, being a person with smiling face, depending on the circumstances manifest himself with both, positive and negative features. There exist both, the bad and the good Kaloghlans.

After all these analyses we may say that tales are the texts explaining senses and thoughts by the language of symbols. The sense hidden behind the symbols and thoughts are just the same for all peoples. Here each mentioned type, together with the name, events and thoughts having found their expressions, gain distinctive and rich meanings. In all the literary texts names turn to symbolic signs.

Kaloghlan, being the anecdote type of the Turkic people as a general type is Nasraddin Khoja, representing the people. Kaloghlan, being the ideal of the person longing for reaching the impossibility and known among the people with the difference between his wit and appearance, represented the people before the power (the shah), having accumulated the wit of Turkic men, their wisdom, successes, from trust for struggle, and purity in the best way, and also armed with the hopes and wishes of the people, gains successes in the fight against power and authority, using the elements of tale and his wit. In the anthroponomy of Kaloghlan, in the symbolic meaning, the wish to attain impossible, unreaching desires is still going on, in his person such people are being represented. He is the person who sees the mistakes in the society, he is the man having the ability to show the strange and unusual things taking place in the society. If we value the type of Kaloghlan from the view of personality, then we shall see in these tales a Turk who on one hand wishes to discover, on the other hand to conceal something.

In the tales with the participation of Kaloghlan, as the character himself the contents too, have been built up on the laws of contradictions. At the beginning of the tale a poor, orphan Kaloghlan, at the end of the tale appears as a quite different element. This by itself is stylistic-semantic

development of anthroponym. At the beginning of the text he seems to be a simple bald, ugly man, but at the end of the tale he acquires the name of a clever, distinguished person.

Let's consider concepts hidden behind each Kaloghlan anthroponym and presentation forms of Kaloghlan in the Turkic tales:

"In the ancient times, there lived one Kaloghlan in Anadolu. Who was this Kaloghlan, in fact he was one among us. He was mad, crazy but was full of love. Those, who thought him to be little, were little themselves. Kaloghlan one day was on the top of mountain Gaff, on the other day he was on the top of another mountain, or beside his mother or he used to live in the hearts of his close relatives. He passed through forests, flying over the valleys running on the mountains" – concept of love.

Kaloghlan with his sorrowful voice: "I am a strange Kaloghlan. My ass has no oats. What I owe is justice. I never love any lie", saying these words he had gone along long ways. – Concept of honesty.

"Once upon a time in ancient times there lived Kaloghlan. He used to live in the richest corner of our heart. Sometimes he used to live on the Mountain Gaff. Always from his mouth flowed honey and through inside him would come out light" – concept of wisdom.

"In one of the days in one country lived Kaloghlan. This Kaloghlan was left orphan both from his mother and father. He had nobody to support him. He tramped along markets, if he found something he would eat, if he didn't find anything, he wouldn't eat anything at all. He was a strange hot-tempered boy of God. Wherever he found a job, he would run there, whatever they gave him he would take. He was thankful to God, his soul stood higher than his body" – concept of poverty.

"Once upon a time. In due time there was a Kaloghlan. He used to do shepherding, tramped here and there, would look, after sheep and goats, would do jobs for this or that person" – concept of labor loving.

Once upon a time there lived a white-haired woman, advanced in years. She was said to be a woman with wisdom in her head and goodness in her heart. She lived all her remaining life together with

her only son. She would take care of her son with love to him and would call him as "the column of her house, the man of her soul" and would have firm trust for future. Her son was a child with a generous heart. He was brought up in dust and dirt, in the lap of poverty. His well off friends, having a look at him would twitch their lips "Isn't he Kaloghlan" they would say and pass him by. But Kaloghlan wouldn't feel hurt by this, and even he himself wouldn't hurt an ant" – concept of innocence.

As it is seen from the examples in all the tales Kaloghlan is a character with good will, the one who with one look enchanted everybody, had always smiling face, all the wealth he had was honesty, never loved telling lies. People in all the tales introduced him loving and petting him. In the tales on Kaloghlan, one of the interesting means is that in some tales he lives on the mountain Gaf, while in the other tales he lives in Anadolu.

But what's the thing causing our interest? The thing is that in all the Azerbaijani tales mountain Gaff is the place where ogres lived, where these ogres kidnapped the beautiful girls and kept them there. All the heroes turn their faces to this miraculous place, evince heroic deeds and gain kingdom. If it is so, what business has Kaloghlan to do there? Most supposingly, people thought it purposeful to locate their imaginary heroes who were described physically weak, but mentally strong, in the mountain of heroes. We must mark that in the tales on Kaloghlan description of places is very rich.

The places introduced in tales on Kaloghlan are: "A mountain highest of all, the name is Uludagh, on the foot of it there is an orchard, in the orchard there is a palace, on the side of it there is Akchay (name of a river). There is a girl in Akchay, beauty of beauties, her eyes would survey Kaloghlan and Kaloghlan deep in thought used to watch the beautiful girl and in in this way they would look at each other eye to eye, then propose to each other and would sit knee to knee. On their fingers silver rings, Kaloghlan with a dress of a bride would have it dressed, on her red face would cover green material. They would catch hand-in hand, red-dressed bride together with Kaloghlan loving heartily each other on the wings of white doves would start their way. They would pass through the mountains like blowing wind and from the valleys like speedy flowing flood and together with the tired

dove would light on a meadow. The white dove would fly away but Kaloghlan together with red-dressed bride would remain one to one".

We happen to meet the similar character of Kechal (the bald man) in the tales of Oghuz group, with the tales and sagas of Altay Turks. Here, he is known with the name of "Tastarakay" (Altay popular literature) Pervin Ergun, who touches upon this similarity, says that they have emerged from the same root [Ergun 2005; 321]. The scientist speaks of the fact that these characters-emerging from the people, being the protector of justice, changing their images, as the gift of God protect the people, punish the guilty persons and then again resume their former appearances and adds that these tales and sagas possess their branches and in the form of tales have reached up to our present day [Ergun 2005; 82].

G.G.Kiyekbayev [Kiyekbayev 2002] and F.G.Khisamitdinova [Khisamitdinova 2010] while speaking on Taz anthroponymies mention the existence of stocks by the same names. A part of this stock in the IX century have located in the West. To day in Bashgir Republic the population of the village with the same name are just the representatives of the same stock.

We must mention the fact that we come to meet the characters with the features of Kechal; not only in the tales of Turkic world, but also in the tales of the people of the world. In the whole Turkic world these are the names given to this character: Daz, Dazlak, Kavlak, Kechal, Tashsha, Tas, Tas-kul, Kecheli, Kechal, Taz Kechal, Kechal Yelgen, Kechel Mehmet, "Tas", "Tastarakay", "Tashza Bala", Kechal. Kechal Mahammad, Kechal Yegan, Kecheloghlan, Kelche Batir, Tazoghlan, Tas, Kaloghlan and so on. Seperately, among the Georgians "Kel Kafale Kaz chobani" means Kechal. The heroes which German name "Grindkopf" / "Goldener" have much resemblance to Kechal. But among these similarities we come across one distinctive element in the tales on Kechal. Thus, in the tales and sagas of Altay turks, Tastarakay is a khan, who having masked himself in the garment of Kechal, punishes those, who deceive and torture the people with the name of Taz (Daz), in the Azerbaijani tales Kechal lives in the mountain Gaff which is the location place of Ogres and peries (mermaids), but in the tales of Turkic

origin Kechal is in Anadolu, in Gagauz tales exists a negative character, being in confrontation with Kechal is Kosa. The distinctive elements of such type exist in all the Turkic tales and we think the Azerbaijani Kechal has more ancient history. Later on comes the Daz of Altay Turks. Why so? We think that the thesis that "Khalifes, Khans are the advocate of God" which is an element deriving from Islam and the fact that people present their created character as the salvator of God and giving him Khanate is just a stage after Islam was adopted. Kechal or Kaloghlan anthroponymies are also met not only in tales but they are met in proverbs which are folk-lore specimens of Turkish speaking people. As to the expression of anthroponymies, a group of proverbs have been created linked with customs and traditions. Mythologies, religious looks, holidays, legends and so on. For e.g. Kechal is created in accordance with Novruz bayram. The expressive power in the anthonyms of proverbs greatly differ from the others. Thus, on one hand these names being more used in one direction, (for e.g. linked with holiday) expressiveness in them weaken, but on the other hand behind these names stands a greater narrative, legend or assumption and the person using them is given ready-made information, around which the user has to act winding. The pragmatic power of such anthroponymies lies just in this. For e.g. when we speak of March 22, we remember Novruz bayram and people without depending on themselves mechanically prepare themselves for this day. Symbols of these days, the days of Novruz bayram are Kosa and Kechal. It is impossible that they should come on another day and just for this reason Kechal was said: "Did you wash your head, he answered I did the both – washed and combed my head; Kosa went to wear moustache, instead he lost his beard. Hearing such proverbs first of all we see its roots in Novruz bayram, moreover in the Turkic languages thousands of tales are linked with Kechal and Kosa, in none of which Novruz bayram is named.

We must mention that Kechal anthronym used in the proverbs of Turkic speaking countries does not act as the symbol of Novruz bayram. Many of them are generalized form of folk tales linked with Kechal. For e.g. Kechal is named Zulfali: until Kechal decorated himself wedding passed by Garaghaj (name of a

place); until Kechal decorated wedding passed by Karakash; Kechal did both-washed and combed his head. Despite the fact that Kechal carries a comb with himself, his head won't be hairy; If Kechal knows the remedy he would cure his head; if Kechal gets sour milk he would spread it on his own head etc. The influence of onomastic system of folk-lore tales of Turkic speaking peoples, in general, on the naming system of different other peoples is very strong. As to the thoughts of investigator studying the folk-lores of peoples belonging to different distinctive groups in different territories is the objective law of history. If we put in the words of V.G.Girmunski "Epic traditions of East and West are a branch of historical-cultural process [Jermunski, 1974; 7].

Conclusion

As it is obviously seen, folk-lore of Turkic peoples and tales in this respect are the special sphere of activity. In such texts words are coordinated both with real and imaginary truth, both with the literary language and with the language of the text. This coordination is of special importance. A proper name as one of the elements of work of literature and for the creation of the character as one of the main means plays a great role in the expression of different thoughts hidden in the literary work. Nevertheless the one creating this, may not understand it, because in the name which the people have given to their hero, sometimes there is a logical must which is not cognized by the hero himself till the end. In the folk-lore tales it is easier to do this, because these tales have no authors and at different periods of time in such texts dates of history leave their traces. The reader just following these periods of time makes his/her conclusion.

So, literary text must not be only nearer to life by the speech of the characters taking place in the tale, but also it must be observed in names in the tales as well.

If we consider folk-lore tales of peoples of the Turkic people as a whole, some features to be considered common for all of them, can be determined. Thus, poetonyms taking place in the Turkic tales show themselves as the bearers of encyclopedic meanings possessing deep colorings of meanings and deep meanings of the text, which are the one of the means for the creation of literary-character model of the literary work. Though the heroes of tales do not make complete similarity with

their own denotants (objects chosen to be named) for their real naming (Isgender, Mehemmed, Ayshe, Ali, Khoja Nesreddin, Kakeci Omer, Gocaq osman Agha) or imaginary names such as (Kuam, Taku, Tepegoz, Zumrudanka gusu, Guzbuz, Eshmanip etc.) using only one of these names is not conditioned only with the context of the text, sometimes this lies on the deep cultural-historical and mythological context. Thus, the narrator as if while narrating the events which he has assumed or which are observed in reality, and when seeing that it is possible to convince the listeners of the narrative, the narrator addresses to the real names (or more addresses to the names of historic personalities known by all) and when seeing that he is unable to make the listeners belive what he is speaking about, then the narrator addresses to the imaginary names.

So, the semantics of the proper name in the literary text can be understood both in the narrow or wider senses, because in the both cases the word reflecting the general panaroma of the text, expression and the word create invisiable mental coorelation between the word and expression and the name of the hero. Naturally this mental coorelation bases on the concrete language signs and as a result of this coorelation of all the words in the text are subjected to self-belonging manner of expressive loading. The anthroponymies in the folklore tales of Turkic speaking peoples possess general character, which does not only name the hero, but also characterizing the hero, serves to exagerate a certain feature of him. By this features the name going beyond the borders of its naming, conditionally achieves to turn into the indicator of a feature (For e.g. Kechal-Kaloghlan etc.). Saim Sakaoghly writes in this respect. Among the human heroes some describe self-belonging features, while the others describe extraordinary features [Sakaoghly 2011]. In conclusion, we may say that the richness of them and plot of Turkic tales influence on both the richness of the anthronymies in these tales and on the differentiation of their instances of their stylistic usage.

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CRIMINALISTIC FEATURES AND EXEMPLARY PARAMETERS OF DEFENSE SPEECH

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Abstract: Criminalistic features and exemplary parameters of defense speech are investigated in the article. In this research, in addition to large-scale scientific research in modern times it also speaks of the criminalization aspects of defense activities in parallel with the criminal-procedural aspects of defense activity which has been highlighted in separate scientific articles, as well as strategy, tactics and methodology of defense activity are explained and the various classifications (for example, colligation, coalition, group defense, etc.) of defense activity in the context of criminalistics situology (analysis of separate investigative conditions) are dealt on.We think it is expedient to provide as much information as possible in the context of this article.The works of prominent scholars who have studied the court of speech culture of different countries have been studied within the scope of this research.It is advisable to apply the experience of foreign countries to systematize issues related to tactics of defense speeches, and to create exemplary models. Among the countries that have developed the highest level of court culture, the United States should first of all be mentioned. The contemporary US legal system has genesis of the Anglo-Saxon law system, the role of the case law in court cases, the existence of an institution of judges, and other conditions contributed to the fact that judicial trials in this country's judiciary and particularly criminal prosecution have become an extremely important issue.During the speech defense mechanisms are the methods of behavior that the judge finds by following the behavior of the prisoner before him. Certain definitions have been created after such defense mechanisms have been investigated. Examples of the use of these mechanisms are based on information obtained from those individuals. Individual uses a variety of defense mechanisms, mainly one or two

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defense mechanisms. The most common types of them are investigated in the article.Since the defense mechanisms are habit-forming, it's not easy to get new forms of behavior. For this reason, many individuals need high-level support to build more effective behaviors. At this stage, it is useful to use the science-behavioral techniques. The usefulness of these methods can enhance the sense of success of the accused, and such issues are reflected in the article.

Keywords: defense speeches, criminalism, crime, judge, prosecutor, lawyer, law, defense mechanism, court, proceedings, defendant, case law

Introduction

The Criminalistics textbooks (1, 2, 8) published in Azerbaijan do not include the tactical and methodical issues of defense of public prosecution in the court, defense activity, as well as the tactical and methodical issues of defense activity in the court.

Nevertheless, the study of criminalistic literature shows that at present, the attention paid by the authors to the criminalistic aspects of defense activity is quite topical. For example, it is indicated in the investigation conducted by M.O.Bayev on "The tactic of professional defense against accusation in the criminal process of Russia" in 1998 that the tactic of professional defense against accusation was one of the sub-systems of general criminal tactics and that the professional defendant was the only one to ensure their effectiveness while performing separate investigations in the judicial investigation and therefore guide the provisions of the half-system (4, 9-12).

Similarly, V.V.Konin also points out in his investigation on "The tactic of the professional defense of the accused in the court of first instance," that the participation of the defendant in the pretrial proceedings is one of the factors determining the defense tactics in the court. In V.V.Konin's work, besides the defense tactics related to the actions carried out in the court investigation, an independent paragraph was devoted to the study of the tactical system of tactics, which can be used by the defendant in the court speeches (7, 148-157). Y.V.Bochkaryova deals on the relation to the investigation of specific crimes from defense tactics in his investigation work on the theme "Tactics of professional protection against accusation of crime against property crimes at the initial stage of investigation" and in this

sense identifies the concept of criminatory defense tactics and identifies the concepts of criminalistic defense methodology (5, 58-61).

Along with large-scale scientific research in modern times, in separate scientific articles, criminal-procedural aspects of defense activity, as well as criminalistic aspects are highlighted. As a general rule, the literature describes criminalistic issues such as strategy, tactics, and methodology of defense activity, and defines different categories of defense activities (eg, colligation, coalition, group defense, etc.) in terms of criminalistic situology (analysis of separate investigative circumstances (5, 415-418, 6, 570-572).

Prof. J.H.Movsumov noted that, as in the prosecutor's speech, the defendant's speech also covered the socio-political assessment of the criminal case, the analysis of its actual circumstances and its legal nature, the character of the defendant's personality, criminal and civil liability. Unlike the public prosecutor, the defendant is obliged to make an excellent analysis of all cases of defendant's defense of the rights and legitimate interests of the defendant and to bring all the evidence in favor of the defendant. To this end, the defendant summarizes the court investigation, analyzes the materials collected from the case, and provides evidence to deny the prosecution or to mitigate the defendant's position and to express his / her discretion with regard to other matters that the court must solve (3, 246).

The final part of the defense speech also has different content, depending on the direction of the defense. In the case where the defense speeches are fully admissible, it should be completed with the request for maximum improvement of the position of the accused, based on confessions and regret. For this purpose, the application of the circumstances which facilitate the punishment of the accused from the court, the application of the lighter and lower limits of the penalty envisaged in the criminal law referred to the accused, the appointment of a lighter sentence for the offender to a lighter sentence, and the accused shall be asked to give a conditional sentence. In cases where partial confessions are made, the defense counsel may also be asked in the above-mentioned cases, in which case the part of the charge is partially denied and the accused is asked to be acquitted. Finally, in the event of a complete denial of the guilt and the accusation, in the result part of defense

speech, the accused is justified. In the final part of defense speeches in all three directions, other proposals related to the final decision of the court may also be voiced.

It is advisable to apply the experience of foreign countries to systematize issues related to tactics of defense speeches, to create exemplary models. Among the countries that have developed the highest level of court culture, the United States should first of all be mentioned. The contemporary US legal system has genesis of the Anglo-Saxon law system, the role of the case law in court cases, the existence of an institution of judges, and other conditions contributed to the fact that judicial trials in this country's judiciary and particularly criminal prosecution have become an extremely important issue.

During the last century, the US Congress has adopted numerous laws that define the basic principles of law in many areas of federal law. Implementation of court rulings is based on the responsibility of the parties, not the courts. The Special Body under the Ministry of Justice controls the execution of sentences in prisons. These issues were widely analyzed in the works of prominent jurist scientists like F.Lourens, H. Kermit, F. Arntzen (10; 12; 23).

At public hearings, all proceedings before and after the process are recorded by the court secretariat in written or oral (in the form of a recording).

Court reports are important for recording the testimony of the accused and then listening to them. Acquaintance with the works of many American scholars who have investigated the gigantic volume of such records shows that there are specific features of defense speeches in US courts. The impact of the accused person's speech is very important. It is also important to note that the defendants' personal defenses are frequently encountered without the assistance of a lawyer. This is due to the fact that citizens are aware of the content and the nature of their rights and responsibilities, even at moderate levels.

Based on the analysis of literary texts learned on our part, it is possible to distinguish the following main styles of defense speeches: 1) Comprehensive speech; 2) Speech based on logical style; 3) Irregular expressions in speech; 4) Psychological impact; 5) Explanations associated with phenomenon ; 6) Proving the authenticity of expressions; 7) Mutual (interactive) style; 8) Mixed Expressive Speech.

We think it is expedient to provide as much information as possible in the context of this article.

1. Comprehensive speech

The criterion of conviction or the most important of these criteria, called "real or true criterion," is a comprehensive explanation (10, 34). The key issue here is that the accused person is in a detailed description of the event itself (11, 49). When explaining the circumstances of the case and providing other information, it is not only the result, but also the duty of witnesses to inform them of all the circumstances that are known to them and give them all the details of the case.

2. Speech based on logical style

Logical style or logic integrity is considered important in defense speech. The accused person's speech should be logical, as well as ideas and emotions must complete each other. For example, the accused should demonstrate a humanist person to be convincing when expressing his regrets, and should not be so cold when dealing with cruel details, but rather show that such details are horrified (12, 70).

3. Irregular Expressions in speech

At the court session, when the accused is inaccurate when crossing from one part of the incident to the other, his speech becomes tedious and turns into a set of irregular phrases. Logical structure should not be distorted when interpreting it from one part of the event to another or part of the event. Generally, speeches on nonconformist ideas are weakly effective (13, 31). The essence of the speech should be the style of speech based on common logic, interdependence, and convincing evidence.

4. Psychological impact style

It considers psychological impact in relevant cases of defense speech (14, 67), which is a commonly used style in American and European courts. (14, 67) . The appeal to emotions such as, fear, panic, regret, and so on. is the main line of this style. This technique can create a serious convincing effect when the tactics are selected correctly. Practice shows that lawyers or defendants who are skillfully using tactical-psychological techniques are able to change the course of their proceedings to their own benefit. It should also be noted that American courts are ahead of the courts of any country in the world for their freedom of expression. Citizens are usually the key of making sense of innocence

about the judiciary and the public. As regards the cases that are expected to be executed in American courts, there is a special psychological atmosphere in the court, which seriously affects both the defendant's speech and the emotional state of the jury. The statements of the American courts that are expected to be executed (or removed) from the death penalty and the accuser's sentence are often characterized by a deep trace in their memory.

It is also crucial that the testimonies of those who are accused of psycho-attitudes are useful in helping their speeches. This is considered to be valid under the psychological pressure of another person witnessed during the same incident. For example, survivors of car accidents that have resulted in death say that the driver who has been charged not guilty and accuses the deceased driver. Here, the witness testifies to his benefit in the case when he/she does not know one of the drivers. He saw that one of the cars was driven by breaking the rules at high speed before the accident. In the case of favor of the accused, the fact that is based on the testimony of the accused has a great impact on the formulation of the final opinion in the psychological effect of the accused or the judges.

5. Explanations associated with phenomenon

The phenomenon is abstract, with no clear explanation and, therefore, the lifestyle that everyone can have a unique idea about. For example, the accused person who committed a crime against the victim's immoral behavior is trying to justify the fact that this immoral behavior is a worse offense than his "normal" personality. M. Horvitz writes that the phenomenon in defense of the defendant's defense speech is not a realistic criterion for the expression of small children, as children usually need to explain phenomena (13, 110). By expressing his personal outlook on phenomena and his unique experiences, the defendant has the goal of overcoming the average statistical approach against himself, as well as creating a special attitude toward himself. Regardless of whether this is a sincere or a trick, this tactic will always have a serious effect when used skillfully.

6. Proving the authenticity of expressions

It is a serious matter to prove the authenticity of the statement in court practice (15, 111). Initially, the person who gives non-normal, surprising, de-

scriptive expressions should make a convincing statement that they are real. Otherwise, such expressions can turn against him. For example, a victim of sexual harassment exaggerated the incident and stated in the testimony that the accused had a cold weapon and was threatened with a cold gun. When this detail does not confirm its accuracy, it is doubtful that the accuser's claim is generally questionable and is in the interest of the accused.

7. Mutual (interactive) style

During interrogation (confrontation), the accused establishes a summary of the events in his speech based on special logic methods. The judge interrupts the accuser's testimony and issues questions to witnesses and lawyers, and the testimony of the accused turns into a multilateral dialogue (16, 16). In such cases it is important that the accused to be prepared and careful for the expected questions.

8. Mixed Expressive Speech

Sometimes the accused go to different destinations in their speeches and talk about different topics. This form is known to the practice of judging where expressions cannot easily be adapted and such statements are often objectively assessed. In the American and European courts, lawyers or defendants have raised questions to witnesses and use their practice of directing them to give testimony in their favor. One of the most difficult things in the practice of judging is to define the limitations of such situations. In most cases, such questions can cause the other party's objection, and the judge has to decide whether to accept or reject that objection.

Talking about the tactical aspects of the defense speech, it is also important to touch on the peculiarities of judicial culture in the Islamic East. Formation of court speech culture in Arabic-speaking civilization can be viewed as a cultural heritage that has passed through a multi-century historical development, which is a peculiar, world-wide development of the world's culture of speech, many aspects of learning for us. Our country is located in a unique geographical area, located at the intersection of West-East civilizations, synthesizing certain cultural features of both civilizations. Therefore, the development of the future cultural development of our country, including the development of court speech culture, should be based on the conceptual framework of the most progressive examples of both civilizations. As President of the Republic of Azerbaijan, Mr.

Ilham Aliyev has repeatedly stated, our country has been able to create an example of multiculturalism for the world. In order to go further in this area, we believe that these issues are important.

Within the framework of this research, the works of prominent scholars who have studied the judicial culture of Eastern countries have been studied. Here, we hope to give a subtotal of the content of those works and to contribute to the creation of a useful knowledge system for judicial practice.

It is not necessary to carry out an active defense during the execution of the criminal justice of the Islamic countries. The accused may also be silent on the grounds of the charge against which he/she is accused. Based on the right of deprivation of liberty, the principle of non-compulsion of the accused himself to be charged and incriminated to his active involvement (nemo-tenetur seismum accusare) is based. The right to silence is considered to be a passive right, but does not prevent the accused from actively participating in the judiciary. The right to freedom is not related only to the action of the accused person, but to all kinds of legal proceedings. The principle of freedom of the accused is based on this right. This situation can not be used against the accused if he uses the right to defend himself. Proof of any act of conviction is considered to be the responsibility of the prosecution (9, 21).

We must note that the accused is not active outside the investigation. The defendant's ability to exercise defense rights in the broader sense of the advocate, or alone, depends only on his rights. In practice, we see a lawyer in the broad sense as a real owner of defense. The lawyer's personal protective function is usually incomplete. In other words, except the investigation process, only the advocate is an active party in the court process as a defense party.

The right to use collective defense by a lawyer in criminal proceedings does not mean that the removal of individual protection is restricted by the right of the accused. In this case, individual and public (collective) defense is being implemented together. The individual defense is maintained by the accused and the public defense is detained by the lawyer. For this reason, it is not always possible to explain the representative connection between the accused and the lawyer in the court. As noted, the lawyer does not represent the accused, but supports the legal defense of the accused or helps him / her in the preparation of defense. How

the lawyer will fulfill these duties and what rights he was indicated in the Figh code.

Defending techniques during speech can help alleviate feelings such as stress, sin, conscience, and humiliation. This is more of an automated reaction, and in many cases it is unaware of himself/herself (18, 10).

In the course of the defense, defense mechanisms are the methods of behavior that the judge finds by following the behavior of the prisoner before him. After examining such defense mechanisms, the following terms were created. Examples of the use of these mechanisms are based on information obtained from those individuals. Individual uses a variety of defense mechanisms, one or two defense mechanisms. Their most common types are:

Denial: The accused avoids the responsibility of behaving in a way that creates public dissatisfaction and results in self-injury. Expressions like "I did not do", "It did not happen" and "They did not tell me" are quite common among individuals using the denial mechanism. The allegations of the individual can be contradictory to the words previously spoken or to the information available to the psychologist (21, 33).

Diversion: The accused accuses somebody or something weaker than himself / herself. A civil servant who is very little critical about the manager can not control his nervousness against his weaker colleague. The true roots of the behavior of an individual may arise from the words he speaks or from the psychologist's research (21, 30).

Imitate Others: The accused person admires a person or group and tries to repeat their attitudes. Individuals may be weaker in prestige, power, and glory. A person who is less self-affirming may be able to imitate the behavior of admired person or group (22, 65).

Abstract Concealment: The accused uses logical and analytical expressions, thereby tries to impress. The high level vocabulary used by the individual also covers technical and scientific concepts. In abstract concepts, abstract and intelligent words (21, 21) are not used in the abstract mechanism.

Reflection: The accused directs his feelings such as, anger, dubiousness, fear, frustration, and love to the judge and other individuals. The judges and other individuals do not show similar attributes and behaviors to his/her speech. Sometimes, in this case, the accused is angry and aggressive about the judge

(21, 21).

Logical appearance (rationalism): The accused does not accept responsibility for the difficulties he/she faces, and he / she accuses other people and situations. It's like trying to save himself. Individuals typically state their position in a convincing and appreciated form and resist the assessment of other disclosures. Individuals often complaining and being complaint of judges may be shown as an example to this situation (21, 22).

To react: The accused becomes very excited and extremely cautious when interpreting definitive and ethical judgments. Individuals, while complaining about others, are talking about their exemplary attitude. Particularly, he/she is based on purity, system and sex. The accused can act aggressively and make unacceptable statements of sexual nature. The rapid change in the cause of the individual's behavior can lead to the appearance of salient patterns of behavior (21, 22).

Decline: Any maturation in the actions of the accused is seen. He/she can say that he/she is more reliable and more perfect in his past life. It is possible to show many reasons, such as addiction, stubbornness, and attraction during the use of this defense mechanism. For example, an individual cries when he is talking about subjects covering social responsibilities or silent on a regular basis (21, 27).

Hiding Senses: Individuals do not want to discuss certain issues or difficult to remember those events. The judge may have previously received information about the circumstances of the person who spoke or did not report very little in the debate, and in particular the cases of shame, guilt, or fear. The accused may refuse to speak sensitive topics such as, sexual life, aggression, or parenthood.

Correction: The accused makes some movements related to the past behaviors that need to be changed or modified. In particular, the judge believes that the person reacts exaggeratedly in the result of any mistake.

The process of defense speech can be studied in three consecutive stages of the speech process:

a) The person accused of initiation or intercourse can feel the difference in defense responses;

b) During an integration, the second phase the accused understands why and how to use the defense mechanisms;

c) In the latter merger phase, the

accused is able to draw up a defense speech used to a more acceptable level.

In many cases, it is pointed out that a systematic sequence is necessary to formulate defensive speeches, from the point of view of unifying till awareness. Without disclosing thoughts and feelings, confronting the accused with his/her defense mechanisms increases his resistance and further enhances the usage of the defense mechanisms. To accuse the defense speech in aggressive forms is called a metaphorical "defamation of defense." This situation extends extremely the accused and increases his resistance. The stages of the psychological influence are achieved through the skillful manipulation of the rhetoric of defense applications (22, 105).

Contact stage

The objectives of this first stage are to define the defense tactics chosen by the accused and to support him/her when he/she reacts aggressively reactions. In defense speeches, the defense speeches that people use in their aggressive situations are widely used. The reason for this is the fact that the parties to the conflict are often non-professional lawyers, who usually conduct the conflict based on their personal life experience.

Emotions that can not be avoided are the main motives for guiding the defendant's speech. Therefore, the accuser’s lawyer must feel the emotions he/she has suffered. It is important to approach the person with sensitivity, to explain his/her feelings and to tell the court.

While lawyers may limit the use of objective tests, it is also possible to better understand and communicate with those who speak through such tests. Methods such as completing sentences, drawing pictures, recalling past memories are important in understanding the identity of the accused and understanding the defense mechanisms he/she uses. It should be taken into consideration that teenagers who use defense tactics without disclosing the circumstances of the case sometimes find it difficult to recall past memories.

In determining the defense tactics of the accused, it is important to pay attention to how he completes his sentences. In particular, it is possible easily to detect defense mechanisms called "logic" (20, 317).

These issues related to court speech tactics have been studied comprehensively by M.Hocson, C. Brown

(19,589; 17).

Merging stage

It is possible to pass through the merging stage of the defendant's speech only after a positive communication has been established. It is understood that they are fragile, they are discovered. The objectives of defense tactics are investigated and explained to him/her why and how to use these tactics.

The main issue at this stage is the confrontation that the judge implements. During the confrontation, the changes in the behavior of the accused are more focused. His/her words and behavior, as well as the discrepancies in his speech before and after, are disclosed by a lawyer-psychologist. It is also necessary to detect the wrongdoing of the accused, as well as the issues that he or she enters in silence (21, 8).

During the confrontation there should not be a prosecution tone, should be treated with understanding and kindness. The lawyer is trying to understand the purpose of the defense mechanisms used by the defendant in the courtroom, and may also provide explanations. Contradictions between past attempts of the accused and the present state are interpreted. When commented, the defendant should be given time to understand, and this process should be done professionally and in dignity.

Integration stage

The stage of integration is a stage in which sincere behaviors, more accurate and appropriate ideas and feelings are combined. Speaking at this stage pleases the discussion of changes in behavior. The denial used as a defense mechanism has now been regarded as a means of concealing truth and leading to individual defeat. At all stages of the consultation process, the judge's behavior should encourage the defendant and instill confidence in his / her free will. In the stage of integration, this encouragement intervention is particularly useful (21, 19).

However, since the defense mechanisms are habit-forming, new forms of behavior are not easy to achieve. For this reason, many individuals need high-level support to build more effective behaviors. At this stage, it is useful to use the science-behavioral techniques. The usefulness of these techniques can enhance the sense of success of the accused. Another method may be to behave in a more desirable way in the behavior that the ac-

cused wants to do. For example, an accused person using the denial mechanism takes responsibility for his/her behavior within a day or a week.

Another way is to avoid the use of this mechanism by seeing the moment when the prisoner will use the defense mechanism and also to record the number of such cases. This can be done within a certain period of time. The accused can enjoy these results and also control his/her behavior.

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SUMMARY

Criminalistic features and exemplary parameters of defense speech are investigated in the article.

In this research, in addition to large-scale scientific research in modern

times it also speaks of the criminalization aspects of defense activities in parallel with the criminal-procedural aspects of defense activity which has been highlighted in separate scientific articles, as well as strategy, tactics and methodology of defense activity are explained and the various classifications (for example, colligation, coalition, group defense, etc.) of defense activity in the context of criminalistics situology (analysis of separate investigative conditions) are dealt on.

We think it is expedient to provide as much information as possible in the context of this article.

The works of prominent scholars who have studied the court of speech culture of different countries have been studied within the scope of this research.

It is advisable to apply the experience of foreign countries to systematize issues related to tactics of defense speeches, and to create exemplary models. Among the countries that have developed the highest level of court culture, the United States should first of all be mentioned. The contemporary US legal system has genesis of the Anglo-Saxon law system, the role of the case law in court cases, the existence of an institution of judges, and other conditions contributed to the fact that judicial trials in this country's judiciary and particularly criminal prosecution have become an extremely important issue.

During the speech defense mechanisms are the methods of behavior that the judge finds by following the behavior of the prisoner before him. Certain definitions have been created after such defense mechanisms have been investigated. Examples of the use of these mechanisms are based on information obtained from those individuals. Individual uses a variety of defense mechanisms, mainly one or two defense mechanisms. The most common types of them are investigated in the article.

Since the defense mechanisms are habit-forming, it's not easy to get new forms of behavior. For this reason, many individuals need high-level support to build more effective behaviors. At this stage, it is useful to use the science-behavioral techniques. The usefulness of these methods can enhance the sense of success of the accused, and such issues are reflected in the article.

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KANGARS IN ANCIENT SOURCES AND THEIR TRACES IN NAKHCHIVAN

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Abstract: The place and role of kangars in the history is systemize investigated according to the ancient sources in the article. Kangars were the aborigen inhabitants in the territory of Nakhchivan Autonomous Republic from the middle of the III millennium B.C.. But in many investigations kangars were showed in the IX century B.C. and the III century of our era in these territories. Kangar turks whom the Azerbaijanian and Turkish scientists were investigated without refering to ancient chronicles are protoazerbaijanians. In this investigation by the scientific facts it is proved that the tribes of Kanq, Kanqyuy, Kanqur whose traces lived in the toponimic system of ancient Nakhchivan and general turkish area are kangars. The investigation of the sources connected with kangars were taken main actual problem. For this the author has recourse to "Oghuznama", Chine sources, "Avesta" and Sumerian written monuments. Result it is affirmed by scientific facts that the compenent which formed the "kanq" rooty place names in Nakhchivan toponimic system is a prototurk – Azerbaijan tribe name. The new investigation of "Oghuznama" by us proves that kangars are not a oghuz tribe, but also is a Azerbaijan tribe. With the historical facts it is affirmed that they were on the history stage in the IV millennium B.C. and in the III millennium B.C. they were spread out in Nakhchivan territories.

Keywords: Ethnooykonim, Kanq, Kanqyuy, Kanqli, Kangar, Avesta, Sumerian.

Introduction

Nakhchivan one of the inseparable part of Azerbaijan is one of the most ancient civilization centres of the world and it is riched the world

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history study with new scientific facts with its material-cultural examples. In the I century jew I.Flavi named Nakhchivan "the cradle of the mankind generation and the first civilization" in his information. According to his thoughts prophet Noah`s ship was landed in Nakhchivan (17, p.14). With its archaeological cultural examples Nakhchivan Autonomous Republic affirms that it is one the first dwellings of primary man in the world and the same time it was the motherland of ancient Azerbaijan tribes. The castle cities as the I and II Kultapa, Gilan, Oglanqala, Nahajir, Khoshkeshin, Gizil Vang, Abbasabad in the territory and kromlex graves in here are the historical facts which proves these truth (36, p. 17, 29, 37, 42, 60-61 and etc.).

More than 10 years the archaeological expeditions of America, France, Germany, England, Russia and etc. states have an activity in Nakhchivan. The scientific facts which they got proves that the sedentary life and city culture began to Nakhchivan in the VI millennium B.C. (33, p. 451-453). The same time many sources showed that the prototurks as as, turukki, kuti, lulubi, nakhar, shu, subar, koman, hurru, turdi and etc. were lived in these territories. We met these tribe names in Herodot`s, Plutarx`s, Strabon`s, Kvint Krutiy-Ruf`s and etc. information (48, I v., p. 192, 238, 515; 26, II 30). Strabon had writing that these tribes were the civil people in the South Caucasia in the VI millenium B.C. and they have an alphabet and rich poetry (47, XI, p. 137-138, X IV, p. 500-572). The comperative investigation of Gamigaya, Nuvadi, Dugar write signs in the territory with Tabriz, Shamakhi, Gobustan, Pirallahi, Altay write signs proves that this culture came from the same root thousands of years before (42, p. 113-122). K.Ptolomey deals with ancient history of Nakhchivan and remembered this name as "Naksuana" (23, p. 252, 254).

Kangar tribes is one of the tribes which were inhabeted in Nakhchivan territories in the middle of the III millenium B.C. These tribes were explained as Kanq tribes of oghuz turks, but never investigated as a various turk tribe. These tribes were widely spread out in Maku and Iravan khanate areas the ancient regions of Nakhchivan and had taken part the ethnogeny of the people. And the territories and history of kangar tribes how was investigated by historians?

R.Ozdak divides oghuz tirbes in two branch “Uch okhlar” (Three arrows), “Boz okhlar” (Grey arrows). Gayi, Bayat, Alkaravli, Karaavul, Yazir, Doyer, Dodurga, Yaparli, Avshar, Karkin, Baydilli, Kizik tribes are entered in Boz okhlar branch, Bayandir, Bechana, Chavuldur, Chabni, Salur, Eymur, Alayuntli, Uragir, Yigdir, Bugduz, Yiva, Kinig tribes are entered in Uch okhlar branch. In here it is concidered that Kinig tribes are kangars but there is no any other information about their history (41, p. 1).

In other sources Kayi, Bayat, Alkaevli, Karaevli, Yazır, Dogər, Dodurga, Yaparli, Afshar, Kizir, Baydilli, Garkhin tribes were entered into “Boz okh” branch and Bayandir, Pechene, Chavuldur, Chepni, Salur, Eymur, Alayuntlu, Yuregir, İgdir, Bugduz, İva, Kinik were entered into “Uch okh” branch and so they became 24 tribes (51).

In here Kiniks are also concidered kangar tribes but there is no any other information about the history and territories of these tribes.

Superficial thoughts are exist in Azerbaijan Soviet Encyclopaedia published during soviet period. In here it is showed that kangars came to our territories with pechenegs in the beginning of our era and they were inhabited in Nakhchivan territories in the V century of our era (2, p. 352). M.Valiyev without any sources have writting that ancient turk tribes came to Azerbaijan in 826-836 years for to destroyed the rebellion rising against Arabs.

He shows javanshirli, kayi, kangar, khalaj, turkman, jagatay and etc. tribes among the turks came from the banks of Amudarya river. In here kangars with the names of “kanqli”, “khanga” are considered the inheritor of pechenegs (35, p. 41). K.Smirnov showes that kangar tribes came to Nakhchivan in the XI century. He has been writing that they had inhabited in Garabag and Nakhchivan about one thousand years ago and their coming aim these lands was to help arabs to invade Transcaucasia (45, p. 10-18, 36). This thought also has not a completely scientific basis.

Chine sources belong to the II century B.C. have an important importance by the scientific aspect. In here in the North-West of Usun tribes is dealt with Kanqyuy (Kangar) state and it was emphasize that these tribes had

come here from the North-West of Kharazm. In those sources it is spoken about the archaeological findings belong to paleolith period in the island of little Kangar in the South-Eastern Asia and it was showed that those findings belong to the tribes who lived those lands (48, p. 87; 50, p. 445). The expression of "the culture of archaeological examples of paleolith period" belong to the VII millennium B.C. In this case Kangar turks may be the inheritor of the prototurks who formed this culture (-F.R.).

I. Aliyev who connects the first development period of ancient Azerbaijan culture with prototurks shows the tribes as subartu, lulu, guti, turuk, kuman, kangar, az, zangi, kassi, sak and etc. who were the aborigen inhabitans in these territories and concerning them to III-I centuries B.C. (1, p. 86). In academician I.Habibbayli`s writings kangars have showed together with bulgag, khazar, oghuz and etc. prototurks in Azerbaijan territories in the IX century B.C. The author notes that they were local tribes together with kangars in Manna, Midia, Atropaten states (25, p. 32-38).

We must note that G.Geybullayev`s investigations have a special importance connected with these problems. He has widely investigated the traveler`s and investigators` works connected with kangars as Strabon, K.Bagryanarodni, G.Moraving, Ibn Khordadbeh, S. Klyashtorni, L. Meliksetbekov, S.Alyarov, S. Yeremyan. According to the Georgia, Armenia, Syria, arab sources the author proves by scientific facts that kangars were spread out in the lands of Alban, Aral lake, Sirdarya, all Azerbaijan the same in Nakhchivan. In here it is showed that the tribes written as "kanqli", "kanqay", "kangar" and etc. are kangars and they had a state named Kanqyuy in the II century B.C. and in the V century the have inhabited in Caucasian as a branch of pechenegs (30, p. 102-103). According to the V century sources G.Geybullayev notes that "Kangar land" was exist in Qazakh region and kangars unity with pechenegs is specially emphasized. He notes that pecheneg and kangars came to territories between Iravan khanate and Georgia in the III-II centuries B.C. According to N.Q.Adons information

and ancient sources G.Geybullayev concerning the Kangar land on the border of Azerbaijan and Iberiya, Kangar names in Ararat valley to the V century (27, p. 24-29; 29, p. 97, 111-112). In his other book he deals with Garabag branch of kangars. He writes that Garabaglar village in Nakhchivan was formed from this name. The author writes that from the beginning of our era kangars were inhabited in Qazakh-Agstafa, between the border of Iberiya and ancient Azerbaijan and in Nakhchivan (28, p. 98-100; 31, p. 30-31). If we pay attention to these thoughts, in here the histories refutes each other and it shows that the information is not complete.

We meet information about kangars in T.Ahmadov`s works. He takes kangar tribes equal with kanqli ethnonim as in sources. According to Ch. Valikhanov`s and N.Zeydlits`s information he notes that they lived in our territories in the III century B.C.

In here the author shows that in the VII century some of kangar tribes interfere to pecheneg and khazars, the other part of them interfere to Mongols in the XII century, today ottomans lived in Middle Asia and Mongolia named as "Khangar" (11, p. 158).

In some sources kangars are considered gizilbash tribes (13, p. 12). The same thoughts is repeated in K.Sh.Shaniyazov`s works. In here the author deals with the unity of kangar and pecheneg and shows that the tribes of gipchag, isti, jalayir, uchokti, srgali, chankli are named as "Kangli". The author shows that their raid to west began the early period of our era, in I-IV centuries of our era they have inhabited in Kangar mountains of Caucasia (47, p. 39-40, 131).

Turkish author Zeki Togan shows Kangar tribes among the other turk tribes as Bulgars, Huns, Barsils, Khazars who moved to the South Caucasia and notes that this historical process was happened at the beginning of our era. Zeki Togan according to Syrian author abas Katina`s information shows that Bulgar tribes inhabited in the territories of Kars in 120th year B.C. (48, p. 98). In "Azerbaijan history" book which was published in 2007th year is written that there is a "Qavarn Kangarach" place name in Azerbaijan connected with Kangar tribes, there are much value information about Kangars

and their territories, but there is not a exact date (3, p. 175-176).

We meet some new facts in A. Mammadov`s "Kangars" book. In here it is showed that pechenegs established a state in the middle running of Sirdarya river in the middle of the I millennium B.C. This state lived till the IV century of our era and it has take its name from the ancient Kang castle which situated on the precipice bank of the river. The author called Sirdarya river as "Kangar" according to the arab authors belong to IX century and explains the word of "Kanq" as "a precipice and high bank of the river", "precipice rock".

He explains Kanq castle name according to "Avesta" a written monument belong to the VII century B.C. as Kanqha, an India epos "Mahabharata" belong to the IV century B.C. Kanqi, in Persian sources belong to the VI-X centuries as Kanqdez (the word dez means "castle"). A. Mammadov has written that this word repeated in Orkhon-Yenisey Turkish runic written monuments as Kanq, in Chine sources Kanqyuy. And he adopts the ancient turks who lived in Kanq state the latest centuries B.C. as "kangar" ethnonim. He writes that Kanq state was established by basien-pechenegs, the tribes who lived edge of the border of this state is called "kangar" (33, p. 5-7). By the way we must note that today persian and azerbaijanian people who lived in South Azerbaijan say that in arabian sources "Persian bay" is called as "Basra-Kangar bay". The azerbaijanian people who live in the territories of Tabriz, Urmiya, Turkanbur say that this bay is "Kangar bay" (personal observation-F.R.).

We meet interesting information in A.S.Amanjolov`s investigations. The author adopts the word "kengeres" as a tribe name used in Gultegin written monuments. And notes that "kengeres" toponim is belong to kangars. He writes that there was a kangar tribe name is arab sources belong to IX century. He adopts "kenger, kengir" root as tribe name, -es component as the archaic affix of the nominative case. He writes that the words Kangar river in the following running of the Sirdarya, Kengir river in the territory of modern Qazakhstan state, Sarikengir, Karakengir, Jazdikengir in Ulutau mountains came from kangar tribe name (5, p. 41).

If we compare all the authors` information we see that result of all investigations kangar tribes showed in

the composition of Pecheneg, Mongol, Hun, Khazar, Bulgar, Barsil, Gizilbash and etc. tribes and these information are inconsistent and it is not affirmed completely. There is no exact thought about from where their historical migration began and thoughts consist of general information. In here history of kangars changes between the II century B.C. and the V century of our era and there is no full information about their territories.

And in the origin truth who is kangars, how they exist in "Oguznama" ? No doubts F.Rashidaddin`s work "Oguznama" is the most reliable and main sources on this topic. During our comparisons on this epos some problems have seen clearly.

After Oghuz came to dominance he fought with his uncles and relatives, overcome them and wants to build a tent for to make a festival. He called the tribe who had come for to help him as "uygur" so "then coming". The other tribe who helped him for to defeat enemy, to take possession of enemy`s trouphies and make a cart (waggon) Oghuz called as Kanqli so "carters" (14, p.12-13). If we pay attention to these expressions taken from "Oghuznama" both tribes Uygur and Kanqli turks are represented as "the tribes who came for help him". Result we see that kangar tribes are other kins and the first carters who join to Oghuz and helped him during the battle. This historical information proves that kangars were exist on history stage before oghuzs and then they join to Oghuz tribe unity (F.R.). In here we must note a problem specially, for the first time "Oghuznama" was translated from Persian by L.A.Khetagurova, it was learnt as ethnic epos by following scientists as V.V.Radlov, V.V.Bartold, P.Pelyo, V.Bangdan and etc. In these investigations we meet many thoughts and facts refuting one another (Look at in detail: 6, t. II, I p. p. 63; 7, t. V, p. 473-486; 39, p. 21-28; 40, t. I, b. I, p. 140-143).

If all these facts prove that kangars are not oghuz tribes, and where is the motherland of these turks and which tribe they come from?

In B.A.Litvinski`s and S.G.Klyashtornu`s investigations it is showed that Kangar turks had their Kanqyuy state in the II century B.C. The authors shows that these tribes inhabited around the territories of Baykal lake, Amudarya and Sirdarya rivers. S.G.Klyashtorni pay attention to the

problem by ethimological explanation aspect and explains the word "kanqli" as "the people who lived on the bank of the river". And he shows some toponimic names Kanqkha, Kanq, Kanqu, Tarban-Kanqar for examples (24, p. 150,166, 169-171; 33, p. 46, 55, 134-146).

This ethymological explanation carries superficial characters. Because in ancient Turkish languages water/river names usually used as –"bu, bia" (27, p. 78). Nowdays we can see its archaic tracks in areal turk languages in the words of "bulud" (cloud), "bulag" (spring), "bulama" (milk). But in written chronicles Kangar tribe name used as "kangar", "kanqli", "kanqay", "kanqyu", "kinqir" and in these words we cannot see "bu, bia, biu" components. In this method of writing the word "kanq" consists of two components "kan" and "nq". In ancient turks "kan" means "khagan", "leader", "prince" and show a title. Tribe names were forming from God names according to the belief circle of ancient turks (-F.R.).

We see new scientific thought in B.Chidendambaev`s investigations. In here kangars shows in the composition of sakha (10, p. 44–45). In our investigations we showed that Shu turks is equal with saks-sakhas who were exist in "Shu-Saka" epos. This version proves that Shu-Saka-Kangar tribes union was exist in the III millenium B.C. (43, p. 336).

In Chine writing "Yuanshi" text Kanqli tribes used as "vanchzu" and was spoken that they are independent state and keraits are the ancestor of kangar tribes (21, s. 117; 47, p. 40). The sources and investigations shows that during the ancient period keraits together with nayman, uysun, kanqli, kipchag, argin, konurat, jalair were represented gazakh people and their language structure was appropriate with ancient Turkish languages in the III-I centuries B.C. (4, p. 36; 16, p. 41-44; 22, p. 39-47). The other sources affirms this thought. We also meet "Kanqli" tribe name in ancient turk-Azerbaijan written monument "Avesta" (12 p. 141). This fact comes across the VII century B.C. These scientific and historical facts are not an encounter. They are the tracks of Azerbaijan people, the same Nakhchivan people`s ancient history which stands far milleniums (-F.R.).

F.Agasioglu who has a value thoughts about ancient writings notes that in Accad writings connected with Subar history in the IV-II milenniums B.C. Mesopotamia was called Kiengir-

Kangar. The author proves that Ki-en-gi word has the same mean with "Kangar". He notes that sumerians were called themselves as "kangar, kangar man and the citizen of Kangar country" (8, p. 155).

In their investigations Y.Oguz and B.Tunjay according to O.Suleymanov, A.Javad, Y.Yusifov and etc. write that neighbour people called Kangar tribes as "kangar", "kingir". By the way of many scientific facts they showed that about more than 60 Sumerian words used the same in our language (38, p. 122, 131-137). If we pay attention to these facts at that time we can say Kangar tribes were exist on history stage in the III milennium B.C.

Let us note that kangars were showed as "Kanq" in "Oghuzname" and because of they make waggon they named so (14, p. 13).

Upstairs acdording to "Oghuzname" we note that both Uygur and Kanqli tribes were other tribes and their coming aim were to help Oghuz. No doubts this fact proves that Kanqli-Kangar tribes were on the history stage before Oghuz. They were not Oghuz. They join to Oghuz union after Oghuz tribes came to history stage (-F.R.). If Kangar tribes are the first waggon makers this fact proves that turk people has battle waggons before Greece, Assur, Hett and etc. states.

And what does the mean the word Kangar? In forming of prototurk names we see God names whom the ancient turks believed are present (41, p. 19).

In the "Yasht" chapter of ancient Azerbaijan people`s "Avesta" written epos belong to the VII century B.C. we meet Kanqkha God and Vara castle names. This name comes from Tura tribe and means "Kanq shelter". Vara temple was a shelter with 7 gold walls. It was exist as a toponim Kanqavar near Hamadan city - the capital of ancient Midia state Ekbatan. The word "var" is one of the component of Kanq+var. And it is remembered in Herodot`s writings (35, p. 619). The word "Kanqkha" consists of two component. The first component Kanq is a tribe name the other component "kha/ka"-"well-known" and Vara/bori means "wolf". All these words were formed from ancient turkish words (10, p. 118; 44, p. 607). These words Kanqkha Vara is explained with ancient turkish myth Wolf and means "Well-known wolf Kanq", but it is not go ago from the VII century B.C.

In ancient sumerian epos "Bilgamish" we meet an interesting and special scientific importance information. In the epos Anu or An is the head sky God, Enlil weather God, Enki knowlidge God, Ninmah (Ninhursag) mother God. The same Nanna Sin is Moon God, Utu (Uti Shamash) is Sun God, Ejem Kueen is richs God (queen), Innana (Ishtar) is love and abundance God. Ziggurta God name is lists but there is no any information about its mythical mean.

Weather God Enlil was born by the unity of Gods Anu (sky) the first maker of the place and Ki (Kin, earth). After joinin of Enlil and his mother Ki the God Ninnuha – High God was born (20, p. 80-83). In here Kin or Kinq is earth God. We noted upstairs that ancient turks were taking their names from God names. For this we think that Kangar tribe names formed from Kinq God name and "ar" –"hero, ar" word was joined it the next period. Let us note that the tribe names and our ancient words were monosyllabic in their first forming. We meet this variant in our prominent scientist T.Hajiyev`s investigations connected with the structure of sumerian language and many scientists consider that sumerian language is a turk language (9, p. 193).

T.Hajiyev is comparative analysis Sumerian turk language. Notes that there 24 vowels and consonants and (6 vowels 18 consonants) in this language. By the way of comparative analysis Sumerian language with our language by scientific facts he proves that both these languages belong to the same root (15, p. 21-24).

Ethnooykonims formed from Kangar tribe name in Nakhchivan territories prove the truthfullness of our thoughts.

The words Kanagir, Kanager, Kaynarli are gathered from the territory. In here there are some phonetic process as the substituted of voices as ə≈i, ə≈a, ə≈e. The ancient turkish word ar – "man, hero" and modern suffix –li added on the root (27, p. 82, 84) and result of these process this word means "heroes of Kanq God". In here the word Kankan consists of two components Kanq God name and –an suffix and means "belong to Kanq God", Jangur name formed from with substituted of voices c≈ch≈k and ur- "to build" verb and means "The built of the Kanq God", Kanuras word formed from as – "sense", "intellect" and ur- "to

build" verb (44, p. 306) and means " the built of the intelligent Kanq"

All the lexical and phonetic comparisons, ethymological explanations belong to the milleniums B.C. give a chance to get following scientific results:

1. Kangars were not the Kinig branch of oguzs, they were other prototurk tribes;
2. At the end of the IV millenium B.C. Kangar tribes were on the history stage and they were inhabited on the up running of Dajla and Farat rivers;
3. In the middle of the III millenium B.C. Kangar tribes began to spread towards the North, specially Chine and Caucasia;
4. Kangar tribes have formed from Sumerian God name according to the named method and traditions of ancient turks.

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THE SITUATION OF THE RIGHT TO ASSOCIATION IN POST-SOVIET COUNTRIES: EXPERIENCE IN THE REPUBLIC OF AZERBAIJAN AND THE RUSSIAN FEDERATION METHODOLOGY ANALYSE REALİZATİON FORMS OF THE RİGHT TO ASSOCİATİON İN THE AZERBAİJAN REPUBLİC AND RUSSİAN FEDERATİON

Dashqin Ganberov[1]

Introduction

In our modern world building and developing civil society idea is one of the top priorities for the countries that have chosen the path of democratic development. Formation of civil society is primarily related to the right of association or freedom of association. In accordance with international legal standards, the Constitution of the Republic of Azerbaijan has also comprised a number of constitutional (legal) foundations that are new to our country. Among such foundations political diversity, multi-party system have occupied one of the central positions. It is possible to say that the same situation is typical for all other post-Soviet countries, and in general, it is true for other world states, which are relatively new in the democratic development path. It is known that the international community recognizes the right of association as a right which belongs to fundamental human rights category. International instruments comprise quite multiple aspects of the right of association, which is due to its central position and role in the principal human rights system. Here, the issue is approached within the framework of different associations. The establishment and functioning of the most diverse public associations in the society is

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observed. Reflection of the different aspects of the right of association in various international instruments and conventions, in line with the nature of each of them, requires a more sensitive and serious approach to the problem. Thus, it would not be right to consider the existence of numerous international documents in which the separate aspects of the right of association have been expressed as a positive sign. However, it should be taken into account that such diversity often leads to uncertainty and contradictions. From this view point, conducting scientific research in the chosen research topic allows to find answers to practical questions along with many theoretical questions. It also makes certain recommendations. Thus, the more specific and precise reflection of the right of association within the framework of both national and international legislation can provide clearer and well-established ideas. For example, if we pay attention, we can see that in practice, the right to association has been expressed indirectly in Articles 18 and 20 of the Universal Declaration of Human Rights. Thus, Article 18 of the Declaration states: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." [7] This is a means of realizing other civil, economic, political and social rights (A/HRC/20/27, p.5, Article 12). To recognize that the rights to freedom of peaceful assembly and of association play a decisive role in the emergence and existence of effective democratic systems as they are a channel allowing for dialogue, pluralism, tolerance and broadmindedness, where minority or dissenting views or beliefs are respected (A/HRC/20/27, p.20, Article 84). [8] In Article 20 of the Universal Declaration of Human Rights, the right to association is defined more accurately and clearly. It is stated in paragraphs I and II of Article 20 of the Declaration: "Everyone has the

right to freedom of peaceful assembly and association. No one may be compelled to belong to an association." [7] Religious freedom has been reflected in the Convention on Human Rights and Fundamental Freedoms. While this is stipulated in Article 10 of the Convention, Article 11 provides that everyone has the right to freedom of peaceful assembly and to freedom of association with others. Also, according to the International Covenant on Civil and Political Rights adopted on 16 December 1966, everyone shall have the right to freedom of association with others. In general, our research has revealed that in the modern period, the right of association has been identified as a separate article in the constitutions of the most world countries. Such a situation is evident in the constitutions of European countries. For example, Article 9 of the Constitution of the Federal Republic of Germany states that all Germans have the right to form their own associations and societies. It should also be noted that, the same Article has a provision concerning the restriction of the right to association. Thus, the right of Germans to association is realized if such association does not contradict legislation and constitutional structure. Otherwise, it is forbidden to establish any unions or associations. [2] There are similar provisions in the constitutions of other European countries. In general, we have determined in our research that the right to association has been identified on the basis of not single, but several articles of international documents. The existence of common features in all of them appears as a result of research and analysis. From this point of view, the importance of scientific research in this direction is quite significant.

While analysing the current state and perspectives of the right to association in the Republic of Azerbaijan, of course, it is necessary to analyse the state of the civil society again. Thus, progress in securing the right to association is directly related to formation of

civil society. The establishment of civil society has been defined as an important aspect of development from the early years of Azerbaijan's independence. For Azerbaijan has demonstrated its commitment to selecting democratic development and tried to achieve all the necessary values for it. And an important element of a democratic society is the existence of civil society. There's no ground to speak about the existence of democratic values in the absence of civil society. Civil society serves, first and foremost, as an essential condition for the protection of social justice. For civil society is characterized by the emergence and activity of different public associations. Naturally, it is required to establish regulatory framework for ensuring the right of association as prerequisites for the establishment of such associations. At present, there is an inseparable connection between the development trends of the establishment and functioning of public associations, i.e., non-governmental organizations and provision of the right to association in the Republic of Azerbaijan. Active civil society building is going on in Azerbaijan. The central pillar of the civil society is the different public organizations established on the basis of the right to association.

Non - Governmental Organizations

The Law of the Republic of Azerbaijan on non-governmental organizations (public associations and foundations) [9], adopted on June 13, 2000, is the most comprehensive document in this regard. There are strong indications that the adopted law meets the relevant provisions of the international treaties and conventions. Thus, in Article 9, called "Founders of the non-governmental organizations", the right of association is applicable to all persons without any discrimination. The sub-paragraphs of the mentioned Article 9 are as follows:

9.1 Founders of public organizations can be legal entities (except for bodies of state power and institutions of local government) or physical persons

who have reached 18 years of age (and 16 years of age for youth public organizations).

9.1-1. Foreigners having permanent residence in the Republic of Azerbaijan and people having no citizenship may be the founders and legal representative of a non-governmental organization on the territory of the Republic of Azerbaijan.

9.2 Founders of public organizations have equal rights.[9]

The current Law also contains specific provisions to ensure operational efficiency in the establishment of NGOs. Here, both the specific actions of parties have been particularly formulated and the responsibilities of the Ministry of Justice which registers NGOs have been stipulated in details. In order to justify my idea, I would like to point out Article 15 and Article 16 of the mentioned Law. Article 15, called "The notice on establishment of a non-governmental organization" states:

15.1 Notice on establishment of a non-governmental organization implemented by the written reference to the applicable executive body not later than 30 days after acceptance of the law on establishment. Reference signed by the leaders of a non-governmental organization must include the protocol of association/incorporation.

15.2 On the day of obtaining the notice about establishment of a public union by the applicable executive body, the document confirming the receipt of the notice is handed or mailed to the representative of public union.

The mentioned in Article 16 of the "State registration of non-governmental organizations":

16.1 state registration of non-governmental organizations is implemented by the applicable executive body according to the law of Azerbaijan Republic on State Registration of legal entities in Azerbaijan Republic.

16.2 Non-governmental organization receives the status of a legal entity only after state registration.

16.3. If it is discovered that there are inconsistencies between the legislation and articles of association of non-governmental

organizations and branches or representations of foreign non-governmental organizations, respective executive authority body requires those organizations to adjust articles of association to the legislation.

16.4. Non-governmental organizations and branches or representations of foreign non-governmental organizations can apply for temporary suspension of their activities to relevant executive authority body.

The mentioned law also reflects the grounds for refusing the registration of NGOs. Article 17 of the law is dedicated to this issue. The Article titled "Refusal of State Registration" contains the following:

17.1 State registration is refused in case if there is a non-governmental organization with similar name; if submitted documents contradict the Constitution of Azerbaijan Republic, this and other laws of Azerbaijan Republic.

17.2 Decision on refusal in state registration containing the reasons for refusal, violation of regulations and articles of the law made upon submission of association documents is presented to the representative of a non-governmental organization in writing.

17.3 Refusal in state registration, after all deficiencies have been removed, cannot prevent repeated submission of documents for state registration.

17.4 Refusal in state registration of a non-governmental organization can be appealed to court.

I would also like to emphasize that the complaint from the administrative decision to the courts is free of any charge in the Republic of Azerbaijan.[11]

At present, the number of NGOs in Azerbaijan Republic with about 10 million (9 million 850.1 thousand) population [12] is more than 4,300 NGOs [13]. Certainly, this process requires certain coordination in the area we mentioned. Due to this necessity, the National NGO Forum of Azerbaijan (NNF) was established in Azerbaijan in 1999. In general, the development of the NGO sector has led to serious

quality changes in terms of ensuring the right to association. Additionally, we believe that it is necessary to pay close attention to the issue of a more comprehensive and accurate definition of the right to association in the national legislation. In some cases, bureaucratic obstacles are also encountered to realize the right of people to associate. For example, Article 15.2 of the Law on Non-Governmental Organizations (Public Associations and Funds) states that, " On a day of receipt of the notice, the relevant body of the executive power shall issue to the public association representative a document confirming the notice receipt, or shall send such document by mail." However, as a result of our observations and investigations, we have found that the requirements of the Law have been violated by the structures of the Ministry of Justice responsible for this issue (The Main Department for Registration and Notary). There, documents are received from citizens, but not registered. At the entrance to the mentioned office, a "box" is hung on the wall and people who are bringing documents are instructed to put their documents in the box. Due to the fact that the registration is not carried out in accordance with the legal requirements, documents are lost in some cases. Another gap that we found out is the violation of the Article 8.3 of the Law of the Republic of Azerbaijan "On State Registration and State Registry of Legal Entities" by the Main Department for Registration and Notary of the Ministry of Justice. Thus, the mentioned Article of the Law states: "In the event of findings of deficiencies in documents, which do not form basis for refusal in state registration, the relevant executive authority of the Azerbaijan Republic returns these documents to the applicant and sets the period of additional 20 days for resolution of these deficiencies. All deficiencies not providing basis for refusal shall be identified at once and submitted to the applicant for resolution." The similar requirement is also stipulated in Article 13 of the Federal Law of the Russian Federation on Non-

Commercial Organizations.[14] However, as a result of our research, we have determined that the registration office - the Main Department for Registration and Notary of the Ministry of Justice does not explain to the citizens the gaps and shortcomings in their documents at ones, as required by law. Citizens cannot get registration in some cases after submitting documents of an organization they want to establish to the Head Department. The Head Department indicates as the main reason the mistakes, shortcomings in the documents. Under the law, these shortcomings should be reported to the citizen in the first instance. Our study shows that this kind of violation by the Main Department for Registration and Notary of the Ministry of Justice causes reasonable dissatisfaction of citizens. Therefore, these disputes in some cases go to the European Court of Human Rights. As an example, the case of Ramazanova and others v. Azerbaijan at the European Court of Human Rights in 2007 can be indicated. In the case of Ramazanova and others against Azerbaijan, the court ruled out that Article 11 was infringed. The applicants founded a public association named "Assistance to the Human Rights Protection of the Homeless and Vulnerable Residents of Baku" and repeatedly applied to state bodies to register the organization. The Court stated that the major delays in the registration of the Association were due to the violation of the right of freedom to association by the applicant.[15] In order to avoid recurrence of such cases, it is advised to carry out the registration of public associations online, in a more simplified form.

Political Parties

One of the targeted associations of citizens in the Republic of Azerbaijan is Political Parties. At present, 55 political parties are registered in Azerbaijan and they participate in the political life of the country. The Law of the Republic of Azerbaijan on Political Parties [4] was adopted on June 3, 1996. Analysis of the Law of the Republic of Azerbaijan on Political Parties shows that it also is aimed at securing the right to association,

which belongs to a kind of basic human rights category. Thus, in Article I of the Law, the following is stated by explaining the political party concept: "For the purposes of this Law, political party shall mean an association of citizens of the Republic of Azerbaijan pursuing common political ideas and aims, and participating in the political life of the country."[4. Article I.] As it's obvious, political parties also serve as a public union established on the basis of the realization of citizens' right to association. Here also the principle of volunteerism serves as the main principle. This point is clearly stated in Article III of the Law. Thus, this article states: "Political parties shall be established and function on the basis of the principles of freedom of association, voluntariness, an equality of rights of their members, self-government, legality and publicity. Activities of political parties cannot be directed to restriction of the basic human and civil rights and freedoms of their members which were determined in the Constitution of the Republic of Azerbaijan, international treaties to which the Republic of Azerbaijan is a party, and other legislative acts of the Republic of Azerbaijan."[4. Article III.] As it's seen, the right to freedom of association is promoted in the creation of political parties. The law prohibits the limitation of participation in the work of political parties. Thus, it is forbidden to limit the membership of citizens to political parties for any indication. This can also be regarded as a guarantee of the right to freedom of association. If review the Law of the Republic of Azerbaijan on Political Parties, it also stipulates the possibility of limiting the right to association. Naturally, it also stipulates the possibility of limiting the activities of political parties in specific cases on grounds of the national security and interests, and the motives for ensuring sustainable development of the society. In other words, it can be considered somehow as limitation of the right to association. As we already know, international normative-legal acts also justify limitations of the right to association within certain

conditions. The possibilities of restrictions in this regard are stated in Article IV of the Law of the Republic of Azerbaijan on Political Parties. Thus, Article IV of the Law states: "The establishment and functioning of the political parties whose purpose or the method of operation is to overthrow or change forcibly the constitutional order of the Republic of Azerbaijan or to violate its territorial integrity, to advocate for war, violence and brutality, to instigate racial, national and religious hatred, to perpetrate other acts contradictory to the constitutional order of the Republic of Azerbaijan and incompatible with its international legal obligations shall be prohibited. The establishment and functioning of political parties of foreign States, as well as their branches and subsidiaries in the territory of the Republic of Azerbaijan shall not be allowed."[4. Article IV] The similar standard exists in legislative acts of all states. For example, Article 9 of the Federal Law of the Russian Federation on Political Parties is about the restrictions on the establishment and functioning of political parties. Article 9.1 of this Law states: "It is prohibited the formation and activity of political parties whose aims or actions are directed toward carrying out extremist activities."[16] This restriction was also reflected in paragraph 2 of Article 11 of the European Convention on Human Rights, which was adopted in 1950. Article 11.2 of the Convention states that, "No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."[17]

Article 14 of the Law of the Republic of Azerbaijan on Political Parties does not contain the rules of

registration of political parties. The article points out that, "A political party shall be subject to state registration by the relevant body of executive authority in accordance with the Law of the Republic of Azerbaijan "on state registration and state registry of legal entities."

14.2. "A political party which has not undergone state registration may not act and operate as a political party which has undergone state registration."

I believe that, it is necessary to clarify the requirement of Article 14.2. For it generally restricts the right of people to association. In this regard, the law should specify the legal relations and areas in terms of differentiation of the registration and non- registration.

Another point to be considered is Article 4, paragraph 3 of the Law of The Republic of Azerbaijan on Political Parties, which states that "In order to get registered, at least the membership of 1000 citizens of the Republic of Azerbaijan in a political party shall be required." I think such a requirement for registration, i.e., the membership of at least 1000 citizens restricts the activity and registration of newly emerging political groups. Because experience shows that most political parties have been founded with the idea of 10-15 people, and the number of their members and supporters has increased in their subsequent activities. There is also incompatibility between the mentioned article (4.3) and Article 14.2. On the one hand, Article 14.2 requires 1,000 members for registration as a prerequisite, while on the other hand, the activity necessary to gather so many people is restricted by the requirement of Article 4.3. I think that the contradiction between the norms that I mentioned should be eliminated.

Religious associations

Another type of association is religious associations. Throughout history, people who believe in different religions and sects have been united in religious organizations in order to share their religious feelings, accomplish religious rituals, solve problems that believers facing, and so on. Currently, religious associations

representing widespread religions such as Islam, Christianity, Buddhism, as well as less spread religions such as, Judaism, Shintoism, and etc. have had a major impact on the political processes in society, the formation of political and legal culture, and the position of personality in society and state. The activities of religious organizations in the Republic of Azerbaijan are regulated specifically by the Law of the Republic of Azerbaijan "On Religious Freedom", dated August 20, 1992.[22] According to the Law, all religious organizations can function only after being registered in the relevant executive body, i.e. the State Committee for Work with Religious Organizations, and being included in the State Register of Religious Organizations.

783 religious institutions have been registered since the start of the process of re-registration of religious organizations (01.09.2017). From confessional point of view, 755 of them have been Islamic, 28 non-Islamic (Christian - 17, Jewish - 8, Krishna - 1, Bahai - 2). 10 religious education institutions have been registered in the country since the beginning of state registration of religious education institutions (colleges) in 2017. There are 2246 mosques in the country, 136 of which are located in Baku. There are 14 churches and 7 synagogues in the country. Also there are 748 sacred places and sanctuaries in the country, 25 of which are in the Baku-Absheron region.[23]

Trade Unions

One of the organizations where people realize their right to association in the Republic of Azerbaijan are the Trade Unions. Trade unions are the largest form of association in Azerbaijan for both their members and coverage. There is a specific law, i.e., the Law of the Republic of Azerbaijan "On Trade Unions" [5], which regulates the activities of trade unions in the Republic of Azerbaijan.

The Law of the Republic of Azerbaijan "On Trade Unions" is sufficiently comprehensive and can be regarded as a document conforming to the European standards. The document clearly illustrates the options for

association of workers around common interests and goals. Article 22 (1) of the International Covenant on Civil and Political Rights also provides similar content. The International Covenant stipulates that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests." Similarly, the Labour Code of the Republic of Azerbaijan also contains a specific provision for the right to association. Articles 19 and 20 of the Labour Code of the Republic of Azerbaijan refer to relevant associations of employees and employers.

When analysing the situation of the "Trade Union" movement in the Republic of Azerbaijan, it is necessary to look at the activities of the Azerbaijan Trade Unions Confederation. Because the most prominent trade union in the Republic is the Azerbaijan Trade Unions Confederation. First of all, it should be noted that the Azerbaijan Trade Unions Confederation was established in February 1993. Indeed, there are grounds for considering the Azerbaijan Trade Unions Confederation as the most successful realization of the right to association. Thus, the Azerbaijan Trade Unions Confederation covers and coordinates the activities of the 17400 initial (local) trade union organizations.[19] The presence of such a large-scale union in the Republic of Azerbaijan promises better prospects for the protection of human rights, in particular the right to association. The existence of such a confederation allows easier coordination of efforts to protect the rights and interests of employees in different activity areas. It should be borne in mind that the existing 26 trade unions in the Republic of Azerbaijan have been associated in the Azerbaijan Trade Unions Confederation and have 1600,000 members in total. [20] The Azerbaijan Trade Unions Confederation is actively involved in a broad international cooperation system for the protection of workers' rights. Thus, the ATUC has been a member of the International Trade Union

Confederation since 2000. Currently, Chairman of the ATUC Board Sattar Mehbaliyev is the Vice President of the International Trade Union Confederation. The most important point to be mentioned is that the Azerbaijan Trade Unions Confederation has been represented in the International Labour Organization since 1992. Of course, the boundaries of the ATUC's international cooperation are not limited to what we have mentioned. Taking all this into consideration, we want to reaffirm that the current scope of ATUC's activities also creates a full picture of the state of the right to association in the Republic of Azerbaijan. In other words, the right to association in the Republic of Azerbaijan is now ensured in accordance with the principles and requirements set forth in international treaties and the ILO Conventions. As we have already mentioned, the Republic of Azerbaijan by joining international conventions, has taken relevant obligations to ensure the enjoyment of human rights and freedoms, as well as the right to association. These obligations are related to the creation of a regulatory framework, as well as the steps necessary to take practical steps. It is clear from the points we have already considered in the previous sections that the situation in these areas is sufficiently satisfactory and all necessary bases are created for future actions. There are some problems in the trade union system along with the positive activity mentioned. This is due to the lack of more effective mechanisms for the defence of the members of the Association. Experience has shown that in many cases, a trade union cannot ensure the rights of its members, and disputes go to the employer and courts. Such case, of course, causes dissatisfaction among the members of the association. Only within one year, 143 out of 823 appeals related to employment reinstatement were resolved positively. During this period, the jobs of 4211 people were saved.[21]

It should be noted that the presence of highly-qualified trade unions in the Republic of Azerbaijan is reflected in

legislative acts. I would like to present my idea in one example. Article 80 of the Labour Code which is the main document regulating the labor relations in the Republic of Azerbaijan:

Agreements when Employment Contracts are Terminated by Employers:

A labour agreement concluded with an employee, who is a member of the trade union, shall, on the grounds specified in Article 70, items b) and q) of this Code, be terminated by an employer by obtaining prior consent of the trade union functioning at the enterprise.

An employer intending to terminate a labour agreement concluded with an employee, who is a member of a trade union, in connection with one of the cases provided for in paragraph 1 of this article, shall apply to the trade union of the same enterprise with a well-grounded application. Evidencing documents shall be attached to the application. The trade union shall provide their well-argued written decision at least within ten days of the date of receiving such application to the employer.[18]

I would like to state that Article 70 (b) and (d) of the Labour Code of the Republic of Azerbaijan has the following content:

An employment contract may be terminated at the employer's initiative in the following cases:

b) There are staff lay-offs at the enterprise;

d) The employee does not fulfil his job description or fails to perform his duties as defined by the employment contract and gross violation of job description as indicated in Article 72 hereof without valid reason;

The circumstances listed in article 72 of the Labour Code of the Republic of Azerbaijan are as follows:

If an employee:

■ is absent from work for a whole day without good reason, except in the case of his own illness or a close relative's illness or death;

■ comes to work under the influence of alcohol, narcotic drugs and psychotropic agents, or other intoxicants or drinks or takes these substances at work;

■ causes material damage to the owners as a result of his activities or lack thereof;

■ violates the procedures on protection of labour as a result of his improper activity (inactivity) and causes damage to his co-worker's health or they get killed for above reasons;

■ intentionally fails to maintain the confidentiality of state, production and commercial secrets or fails to fulfil his obligations on keeping of above secrets confidential;

■ causes serious damage to employers, enterprises or owners legitimate interests as a result of his gross negligence or the infringement of the law during his employment activity;

■ breaches the job description a second time within six months, regardless of the disciplinary fine imposed by the employer;

■ commits administrative offences or crimes creating a public menace during working hours and causes serious damage to employers, enterprises or the owner's legal interests. He shall be considered to have committed a gross violation of his job description.

By referring to the above-mentioned points that I found out based on my research, I can say that the measures taken to improve the overall situation in ensuring the right to association in the Republic of Azerbaijan also serve as a driving force for the civil society development. In other words, effective access to the right to association creates more realistic opportunities for the establishment and operation of non-governmental organizations that form the core element of the civil society. The non-governmental sector consisting of various public associations, foundations and non-governmental organizations has been formed in the Republic of Azerbaijan thanks to the real guarantees of right to association. As you can see, the dynamics of establishment and development of non-governmental organizations and the development in the area of ensuring the right to association complement each other.

It should be borne in mind that one of the strategic points outlined

in the "Azerbaijan 2020: Look into the Future" development concept is related to the development of the civil society. Hence, it is envisaged to implement new effective legal reforms to ensure the right to association, respectively. Thus, the thesis that civil society is a driving force of general development is supported in the Republic of Azerbaijan. In the civil society, restrictions by the government, unreasonable interference in the life of citizens are minimized. By exercising their right to association in the civil society, citizens have not only the opportunity to engage in joint activities to protect their common interests and achieve their goals, but also participate directly in the management process. Hence, the civil society building in the Republic of Azerbaijan is also aimed at the formation of a constructive state-society dialogue, initial start of which is the right to association. At present, the civil society building in the Republic of Azerbaijan gives reason to think optimally about the right to association prospects.

The issue of the effective realization of the establishment of public associations and the right to association has always been a top issue for the Azerbaijani State. International experience in this regard is constantly studied by relevant agencies. The seminar on "International Standards for Establishment of Non-Governmental Organizations" held by the OSCE Office for Democratic Institutions and Human Rights, OSCE Office in Baku and the Council of State Support to Non-Governmental Organizations under the President of the Republic of Azerbaijan in December 2010 can serve as an example. During the two-day seminar, discussions were held on domestic and international law in which the right to association was established.[24] Furthermore, an event entitled "The right to association and ways for its implementation" was organized by the Democracy and Human Rights Resource Centre in June 2011. In the event, detailed information on the right to association was provided and exchange of views was made. Also, information on

means for establishment of non-governmental organizations was provided. These facts prove once again that the right to association and the establishment and functioning of public associations are among the issues that are actively discussed.

While analysing the current situation and perspective of the right to association in the Republic of Azerbaijan, it is important to pay attention to the referendum on amendments to the Constitution of the Republic of Azerbaijan, which was held on September 26, 2016. It should be noted that the intended amendments to the Constitution of the Republic of Azerbaijan has been mainly in two directions:

- strengthening the protection of human rights and freedoms;

- improvement of public administration.

According to the referendum act, a number of major changes have been envisaged to protect the human rights. This means that the human rights issue is a central issue. Thus, the phrase "Human dignity is protected and respected" has been added to Article 24 of the Constitution of the Republic of Azerbaijan. Furthermore, the provision on non-admission of human rights abuses was also added thereto. It should be noted that the human rights related amendments and supplements approved by the referendum to the Constitution of the Republic of Azerbaijan expands the possibilities for more secure protection of the human rights. One of the key points to pay attention is that, certain amendments to the right of association have been confirmed by the referendum act. Mainly restrictive aspects have been envisaged concerning the right to association. Thus, it was proposed to read the first sentence of Article 59 of the Constitution of the Republic of Azerbaijan as follows: "Associations for the purpose of overthrowing the legitimate state power in all or any part of the Republic of Azerbaijan, for other purposes which are regarded as offenses or which use criminal methods are forbidden."[25] Apparently, this amendment implies the limitation of the right to association. As it's known, the European Convention

on Human Rights also points out the possibility of limiting the right to association within specific conditions. Thus, Article 11, paragraph 2, of the Convention provides for the possibility of restricting the right of association in specific cases. Such restrictions are important in terms of the provision of security, protection of public order, protection of morals, and so on. Based on these points, it can be noted that the proposed amendment to Article 59 of the Constitution of the Republic of Azerbaijan for restriction of the right to association is not contradictory with the European Convention on Human Rights.

Results

Based on our analysis, it can be noted that the real formation and development of the civil society directly depends on the right to association;

In addition to the following the human and civil rights and freedoms, it is essential to have well-developed civil society institutions in a legal state;

Traditionally, there are the following association forms concerning the civil society institutions in the Republic of Azerbaijan according to international standards:

-political parties;

-trade unions;

-public associations;

-mass media;

-family;

-religious;

-business, etc.

Restriction of the right to association in the Republic of Azerbaijan is legally admissible by Article 11 of the European Convention on Human Rights. Such restrictions may generally apply to certain categories of people. For example:- Military; [1]

- Police;

- Administrative bodies' staff;

Based on the analysis of the current situation and prospects for the right to association in the Republic of Azerbaijan, it can be said that the Republic of Azerbaijan is fulfilling its commitments arising out of the international conventions, which were ratified by the Republic of

Azerbaijan concerning the right to association. Thus, all the necessary steps have been taken to form the regulatory framework for the protection of the right to association. Also, practical measures in this regard are in the focus of attention. The success made in the civil society development also indicates a good level of the right to association. Efforts to study the best international practice in the field of the right to association, the seminars and conferences organized provide a better prospect for ensuring the right to association in the Republic of Azerbaijan.

During the study, it was reaffirmed that the regulatory framework of the right to association in all former Soviet countries is very similar with very small differences.

Recommendations

1. The practice for restriction of the right to association in the Republic of Azerbaijan is consistent with the relevant provisions of the international conventions. Based on the results of our research, it can be said that, there is a need to define more precisely the principles and mechanisms of restricting the right to association in Azerbaijan.

2. Legislation for legal regulation of the right to association in the Republic of Azerbaijan, as well as in most countries of the world, is not systematic enough. Thus, the right to association has been expressed both in the Constitution and in many other legislative acts. This can sometimes lead to certain contradictions. There is a need to create a universal database that will be applied to all aspects of regulating the right to association legally. It would be more expedient to regulate the establishment and operation of all public associations on the basis of a single legislative act.

3. I believe that the existence of a single system of classification of public associations and non-profit organizations can have a positive impact on the development of the civil society in the country.

4. I believe that electronic mechanisms of the state registration of public associations

should be developed. In this case, the relationship between the founders and the registering government agency may be more transparent and procedure can be simpler.

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THE IDEAS OF INTERNATIONAL SOLIDARITY IN THE EASTERN CYCLE OF POEMS "TWO STREAMS" AND THE STORIES OF "SIX COLUMNS" BY N.S.TIKHONOV

Kamran Kazimov[1]

Abstract: The article discusses the series of poems "Two streams" by a prominent figure of XX century russian poetry N.S.Tikhonov. The ideas of international solidarity, reflected by the poet in these poems are investigated.

The poem titled "The Night of Eternity", which was included in the book titled "Braga" (1922) by N.Tikhonov, was the first proof of the strengthening of friendship between the Arab and Soviet nations.The cunning and observing craftsman clearly reveals what he saw in his new stories in Beirut and in Damascus. He listened to midnight friendly conversations and public literary sessions. "The six columns" is a book of stories and narratives by N.Tikhonov. These works are based on the impression that a distinguished writer gained during his journeys to the Middle East and Southeast Asia. Between 1949 and 1962, the peoples of these countries broke the colonial chain and embarked on an independent path of development.

Keywords: international solidarity, N.S.Tikhonov, the East, “Two Stre-ams”,”Six Columns”, the struggle for peace, poetry.

INTRODUCTION

In Russian literature for many years, poets and writers walked through the lands of the East, to know wisdom of life and collected materials for their parables so that to be able to learn, understand and express everything. Among these outstanding individuals were A. Pushkin, M.Lermontov, L.Tolstoy, A. Blok, M.Gorky, M.Prishvin and many others. Every stream, every mountain peak of the places they were in can tell about them. And the East River, according to Tursunzadeh, can also tell you about N.S.Tikhonov: He used to drink water here. Another researcher of the poet V.

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Shoshin writes that N. Tikhonov has always been concerned about the fate of the world; he was never tired of reminding about it in his works, urging people to be vigilant, unite in the struggle for peace and against the new wave of threats, to humanity.

The source of many N.Tikhonov's works of interest to the East, in our opinion, is the result of his affection to Oriental people, their traditions. The historical and contemporary fate of the East made him think too much.

N.Tikhonov recalls the history of Al-Gadr's poetry: "It happened long ago in the 20's, in a sleepless night of my native Neva city. I got a pen and opened my book. There I wrote about the humiliation of the Arabs, their capture, their military service done under force in the imperialist armies, and I called them to war. "

N.Tikhonov writes about his trips to the East: "For over a decade, from 1949 to 1962, I have been travelling around the countries of South-East Asia and the East with a mission of goodwill, the struggle for peace". (Tikhonov N.S.,1986). He worked on the topic with the same diligence with which he used to read and write about the East being a child, even without seeing it. "I never thought that some day I would see with my own eyes the things I have read so much about." (Tikhonov N.S.,1986).

In the book of poems, "The times and the roads" we find reflections on the passed years and the fate of the world, the poet anxiously reminds people of good will about the dangers of war. His anxious words to future generations sound invitingly:

I hear frantic sound.
It cries Nagasaki
On the ground burned.
In this weeping and wailing
There is no falsehood,
The whole world is crying pending:"
Who's crying now? "(Tikhonov N.S.,1956).

In those days a lot of literary movements and schools fought among themselves. It was a time of literary discussions and debates about the national poetry trends, fate of poetry, and poet’s place in worker's ranks. The ideas of international solidarity and brotherhood of peoples have created the basis for organic unity of all N.Tikhonov's creative endeavors. There is interdependence between the works dedicated to the new, revolutionary Russia and the works dedicated to the

East, awakening from centuries of colonial rule. N.Tikhonov alien exotic, sugary fiction, whether it concerns painful everyday life of war or extreme poverty of the southern countries. If in the poems of the war years, he rebelled against false pathos, against lightweight use of the words of "heroism", "courage", "immortality", in the development of the eastern theme the edge of controversy was directed against the so-called colonial novels, against poetization "feats" of the white man and exotic "secrets" of the East.

The stories "Al-Gadr Night", "Earthquake", and "The Six Columns" contain a brief encyclopedia of Arabic life, so they were full of materials about true facts and the authors' excited feelings. Professor Georgi Sereteli's voice echoes the excellent orientalists of the past years in his meeting with the Arab community as his voice echoed the Soviet-Arabic friendship. N.Tikhonov writes that Ahmed ibn Majed, who is now regarded as a saint by the Syrians, has acquired a new life in the hands of Fyodor Shumovski in Leningrad. The writer emphasizes the devotion of good people's to their national traditions. His heroes understand the spirit of the nation, and admire the life power of the folk art. The life of modern Arabian Arabs opens before the readers.

The book "Six Columns" by N. Tikhonov's awarded by Lenin Award was published in Baku for the first time translated into Azerbaijani by Sabir Almazov (from the original in 1968, in the Moscow "Sovetsky pisatel" publishing house) in 1975-1981. Editor-in- It is said in the annotation of the first edition of the book edited by R.Shikhamirovas: "The six columns" is a book of stories and narratives by N.Tikhonov. These works are based on the impression that a distinguished writer gained during his journeys to the Middle East and Southeast Asia. Between 1949 and 1962, the peoples of these countries broke the colonial chain and embarked on an independent path of development. For his work "Six Columns" the writer Nikolay Tikhonov was awarded the Lenin Prize in 1970. The stories we presented to our readers were also taken from that book".

By the way, only two of the narratives and six stories in the original, eight out of four, have been translated and published in Azerbaijani (Najafov M.,1991).

DEVELPOMENT.

Description of research.

Long-term N.Tikhonov's participation in the international movement of struggle for peace, his trips to the western and eastern countries were noticeably reflected in his works: the series of poems "Two streams" (1951; State Prize, 1952) (Shoshin V.A.,19768) and others.

The world recreated in the works of the poet, was truly unique and new: "the ax on the immense log cabins knocked" in it, "through a small stone germinated mountains" in it, and "in every drop flood was asleep". And now, when the poet thinks of the main direction of his "creative behavior", when he thinks of the future of his books dedicated to the peoples of the East, he does not unreasonably believe that these people "will eventually know all that I have written about them" and that

In the city or in the green thicket,
Maybe they will say about me:
"It was a good and true friend,
Though he lived far away. "(Tikhonov N.S.,1956).

Nikolai Tikhonov was endowed with a special gift: he felt extremely precise the atmosphere of time. He started the verses like "from the middle", with the highest point of lyrical experience.

N.Tikhonov's poems and prose about the East are a kind of diary-essay in which the author discovering new world with all its national ethnographical and geographical features and signs, is enriched with the thoughts and feelings, and is revealed as a poet-humanist and an internationalist. N.Tikhonov's humanism is a phenomenon simple and complex at the same time. It is simple, because it proceeds from the common sense, the recognition of human reality, its positive and negative inclinations, needs, qualities, ambitions. It is difficult, because the description of the person, in principle, can not be exhaustive and unambiguous. "After all, a man is not only a reality and fact, but also an opportunity, choice, freedom, infinity, creativity and the many other things that makes him probably the most amazing creature of the Universe" (Kuvakin V.A.,1998).

"N.S Tikhonov poeticizes the East, to which he was filled with deep sympathy and love." (Grinberg I.,1972).

His poetry and prose are so diverse due to the infinite variety of a man and nature, states, religions, culture. Society itself is dear to him because a man, truly

worthy of a great song, is immeasurably dear to him. So, in verse and prose Nikolai Tikhonov remained faithful to great thoughts about the new world order that arose, became highly anticipated reality in his eyes, the reality which was dear to him because he completely gave himself and his talent and his whole life to approval of its foundations. The poet may cast a single glance and see almost all decades of this century. What is the result of his great thoughts?

From his very first collections Nikolai Tikhonov announced himself as a first-class master of a verse. Both in life and in poetry he knew the bitterness of losses, "a furious wind of delight", a chill of loneliness, deadly storms, with which he had the opportunity to face very frequently. He knew the "art of violent songs" up to its secret and hidden depths. His love for an Earth woman was extraordinary ("I do not complain, I'm not jealous - you are my bread in this lack of passion"), but love for the poetry was great.

Then the other god's faces will be darkened,
And any trouble will be obvious,
But what was truly great,
Will be great forever "(Tikhonov N.S.,1956).

Contiguity of Tikhonov's motives with foreign literature is found out, for example, R. Kipling's civilian motives of lyrics have something in common with Tikhonov's ones. We should remember that he is a post-colonial poet who is against the capture of India by England and perceives the relations between the East and the West as unfair, who writes about the life of soldiers, military operations in India ("The Ballad of East and West", "A White Man's Burden," "Tommy"). Similar motives we hear from the Russian poet: "Perekop", "Makhno", "Over the Green Tunic", "A Deserter".

Nikolai Tikhonov, who sees the main purpose of the life and work in poetization of "truly great", eternal values of time, epoch, an individual human "I", has the right to assert that these values will remain forever in the history of Russian people, in the history of literature. He has the right to say so, yet because that he is really on the "difficult path" of his generation, on behalf of that the poet speaks, "we gave people the main thing, and we do not feel sorry about that."

But if tension and anxiety are the only features characterizing the world of the poet, if only these tones are heard in

his poetry? Of course, not. There was something else. There were poems about Kakheti, echoing, as a roll of drums on a holiday in Alaverdi, poems as bright as pheasant's feathers, as fresh as the air of mountain heights.What is typical for Tikhonov's works about foreign countries?

First of all, topicality and social sharpness of observations and conclusions. Tikhonov- humanist and internationalist witnessed the scourge of Arab refugees from occupied by Israel territories. In the book "Six columns," the drama of their experiences is truly expressed with an impressive force, but historicism, distinguishing, in our opinion, Tikhonov's creativity is particularly evident. His prose about the East can be called "colorful stories" because there are multicolor paints of Burmese jungles, roads and cities of India, wild winter gorges of the Hindu Kush, slightly outlined coastline of spring Mediterranean in fragrant Lebanon, heavy tropical paints of Ceylon and Indonesia in them.

Echoing to N.Tikhonov, we call these stories "A Book of a Road", as it is accepted in the East - because they contain the themes of Asia, seeking the way to the future, people of Asian countries liberated from colonialism, starting their independent way. Short stories and novels are based on real stories and events that took place in real life. The characters are often prototypes of really existing people.

In the story "Green darkness", he creates a character of a neo-colonialist Otto Mueller. Here is a young man who flies to Burma, and his flight is like a fairy tale: "The stars danced some crazy dance, hiding in pairs in this blue fragility, digging, like golden bees, spilling into pieces, and sharp cuts of these pieces were shining somewhere in the depths ... "But Otto Mueller flies from West Germany not to admire the East, he hastens to" capture it."

Neo-colonialist Mueller is indifferent to the art of a Burmese dancer, who impressed the author. Muller could not enjoy the national customs of the peoples of the East, because he admits only his own - German nation. Just some speech about folk dance, but even it brings to a clash of opposing viewpoints. Otto intends to bring up the "natives", and Burmese engineer U Tin Bo thinks, "the ones like this young German, they can not imagine reality, they have no idea that Asia has changed. Hidden spirit of the old

contempt for "natives" still lives in them, and it is necessary to teach them that the past will not return." The character of the Burmese engineer U Tin Bo shows us advanced features of a new man of the East. "Tikhonov strongly argues against the preaching of the denial of national independence and sovereignty, which, in fact, confirms neo-colonial domination of the world" (Grinberg I.,1972).

A figure of a scientist-ethnographer William Winger in the story "Green Darkness" is interesting in this regard. Winger says about the inhabitants of the hill tribe on the border of Burma: "I was accepted like a good guest. And so they will accept everyone, regardless of skin color, if he is friendly towards them". Not the origin and skin color separate people, but social outlook - that is both Winger's and Aylen Broudep's, the heroine of the story "A Long day", view point.These stories are included in a collection of prose "Six columns", which by its subject belongs entirely to the East. "I must say that I wrote the book "Six columns" with a sense of deep respect and heartfelt sympathy to the peoples of Southeast Asia and the Middle East" (Tikhonov N.S.,1986).

The works included in the book are arranged sequentially as in the original: "Six Columns" (p.5-51), "Carefree City" (pp. 52-80), "Long Day" (p.81-120), "Rose" (p.121-146). In the second edition, the annotation was relatively shortened (Karamovah Sh.,1990). In fact, the annotations of both the first and second editions of the book published in Baku are at the same level of translation as their translation from the original in Russian editions. But in the second edition Tikhonov's book was presented only as a "Book of Stories", meaning that there were no narratives here. This, in our opinion, is connected with the uncertainty of thoughts of interpreters and editors on the genres of works included in the book, while it was for them possible to emphasize specifically if it is a narrative or a story.

When the "Six Columns" were presented to the Lenin Prize and the author received this award, many articles about the book were published. N.S Tikhonov's Lenin Prize-winning book, titled "The Six Columns" ("The Shest Colon"), was published for the first time in the journal Znama with two more stories (Nikolay Tikhonov, "The "The Shest Colon", "Zelzele", "Noch Al-Gadr", No. 1, 1966).

Critic Valentin Shepelev, quoting his comment on the "Six Columns" in the "Small Resumes" column, writes: "At the ruins of the ancient temple of the Sun in Baalbek (the story "Six Columns"), the Soviet artist Latov made sketches from nature, he not only drew but lived with impressions of what he saw. The majestic beauty of the surviving six marvelous columns, that inspired some spirit of health, opened the secret of the real living East for him, not exotic and illusory, but strong by its ineradicable creative vitality. "And on the way to Beirut, Latov saw the waiter running out to the street from the night restaurant approached the Soviet car and reverently kissed the flag with a sickle and a hammer, twice pressing his lips to a red piece of matter. The invisible link was guessed between this amazing manifestation of a new humanity and the enchanting beauty of those six columns, that would say with each piece of their being about the great integrity of the world "(Goltsev V., 1958).

Speaking on the contents of one of the episodes of the work and the kissing with admiration the flag with sickle and hammer of the Arabic waiter, the author, that emphasizes political and ideological aspects, sees a brutal discrepancy between the new world and the old world. Producer Mossar is featured as the flag head of the old world in the story. In his pamphlet: "The whole world is nonsense," Mossar states cynically: "A person is alone, he welcomes chaos, decay, to feel free from everything." It is also natural for a human having such attitude to life to be so predatory and aggressive. That is why V. Chepelev writes very correctly:

Mossar wants to use and adapt the national eastern ornamentation and exotics for his predatory, aggressive intentions: "This is also hashish, and maybe worse," Latov thinks of him as poisonous ideological poisoning "(Goltsev V., 1958)

The critic of the story defines the content of the story as follows: The story "Six Columns" with all its colors fights for the present-day East, its people's outlook on new life, freedom, justice".

The review is summarized by a single idea, which helps the reader to understand the writer's correct appreciation of the objective content of T. Tixonov's creative work. The last paragraph of V. Chapelev is as follows: "Правда увиденною в рассказах - новеллах Николай Тихонова живет впечатляюще ярко и окрыленно" (

Goltsev V., 1958). Translation: "The truth that appears in Nikolai Tikhonov's stories is brilliant and winged."

One of the reviews of the book "Six Columns" was awarded the title "High Power of the Word". At the beginning of this valuable review published in the rubric "Lenin Award" by critic Dm. Kovalyov, in general notes on the creative activity of the outstanding artist some biographical facts, especially about the East that occupies an important place in Tixonov's biography are mentioned. The critic shows that in Tikhonov's poems and novels powerful and brave people are dwellers; and wherever he is - in the north, east, west or south -he is always with his heroes. Tikhonov does not sit still - he's always driving, walking, flying, swimming. "But the East is attracting the writer more and more among the other remote and nearby regions. He travels to Turkmenistan in 1926 and 1930. He looks more closely at the new in the fate of Turkmen, Tajiks, Uzbeks and their foreign neighbors. And then trips to the Caucasus. The poet translates the singers of this wonderful land - the poets of Georgia and other peoples of the Caucasus. Thus, all is clearer, more definite, from inside not only the main theme of his creativity but also his whole life - friendship of peoples, friendship for a just peace on earth- is marked." (Kazimov K.Sh.,2002).

According to the literary-critic criteria of Soviet period review author's evaluation of N. Thixonov's creativity as well as his life as "peoples friendship, friendship for the sake of fair peace in the Earth", sounds templating. However, emphasizing only the ideological aspect of Tikhonov's personal life and creativity led to indifference to the true mastery issues, led them to the forefront. This review, mentioned in a number of analysis, follows the same direction in subsequent paragraphs as the author's Soviet-socialist intentions. Dm. Kovalev writes in his essay: "And the latest book by N.Tikhonov awarded to "Lenin Award" like "Six Columns" which is as poetic as poetry books, is the poetical agenda of goodwill ambassador of our people."

DISCUSSION

According to the objective content of the story, the critic's view of contradiction and the moral gap between the two worlds cannot ne considered as fair. But when he summarizes the contradiction and the gap of the present,

past and future he runs to the extremes, because he divides mankind into two enemy fronts, two opposed classes that are incompatible with the Marxist-Leninist ideology, which dominates the society in which he lives. That is why the author of the review while comparing Latov and producer Moss instead of giving them characteristic offered by the writer, is based on the rage and hatred towards business and capital world from the point of view of fake socialist patriotism. "But producer Moser, a businessman who has come to an exotic country to make capital, uses all the wonders of immortal, inspired creations of antiquity and wonders of black and white magic for tis own purposes. The beautiful creation of human hands turns in his film into a "slightly painful but exciting fairy tale" that gives "good money" (Kazimov K.Sh.,2002).

Now, when the Soviet-socialist system has collapsed, in the former USSR, present-day CIS, at a time when the market economy, free competition, that we criticized and rejected in the Western countries, is dominating, the following words about producer Mossar, with the moral -ethic considerations, may sound ridiculous and or at least funny: "It appeared before rude and sinik businessman who thinks of nothing but money, Latov said: "Do you know why he surprised me at first? He is completely covered in black dark and is approaching stealthily... "Of course, rudeness, humiliation, violence exist in all periods and in all societies, but only those who served Soviet period policy, socialist ideology could treat business and capital as a negative moral quality. Indeed, the author of the review must write down the following words for strengthening his ideological position and to justify the Soviet writer: "The man who came here with a good will goes towards people and even without feeling himself, as we have seen in his story "Al-Gadr", they are heartfelt with them."

Inspite of some shortcomings in Dm. Kovalev's article that can be explained by a number of objective reasons, his thoughts based on N. Thixonov's book are actual for their moral-ethical content as his analytical thinking is dominating. He writes: "A lot of kind, human things arise between people of different countries when it comes to friendship, peace and especially when people not only sympathize, but also try to help in their liberation struggle, that they cast off shameful slavery, the yoke of

colonialism, strengthen their state independence" . The author shows that most poetic book contains many aspects of the Arabian East's life and household. However, as the critic says, the most painful and harshest thing here is the hatred towards forcibly imposed war against people of his country, imperialist threat, everything fueled by Israel and those who inspired it from the other side of the ocean.

Since then, much has changed in the life of the peoples of East and South-East Asia. The view of a big city, people's characters have changed. The achievements of modern world culture penetrated into everyday life, known social changes, which N.Tikhonov foresaw and dreamt of, took place.

In 1970, in the field of literature and art N. Tixonov, Uzbek poet Gafur Gulam and singer Lyudmila Zykina became laureates of Lenin Award. Igor Vasilyev, the scientific secretary of the Lenin and State Awards Committee, wrote about this: "Nikolai Tikhonov, awarded the Lenin Prize for the book "Six Columns", wrote bright pages in the history of Soviet literature with his verses, poems, prose, and journalism ... " Six Columns "- is a book about the path traveled by the writer on the roads of the Arab East, India , Ceylon, Burma, Pakistan. The diverse gallery of characters, the sharp plot and the bright coloring of the book show the true knowledge of the writer of these countries' people, subtle signs of everyday life. The two novels and six stories included in the book "The Six Columns" are united by the light faith of the poet in the future of the peoples fighting against colonial yoke, in fraternal relations of people to oppose the oppression of the great ideals of friendship, national identity and independence "(Karamovah Sh.,1990).

After he received the Lenin Award N.Tikhonov wrote in revised edition of the book "Six Columns", in his notes "Several words from the author" ("Neskolgko slov ot avtora"): "For more than a decade, from 1949-1962, I had to travel a lot with the mission of goodwill, the struggle for peace over the countries of Southeast Asia, the countries of the Middle East." The book, entitled "Six Columns" according to its subject entirely belongs to the East, I have been working on it for several years "(Tikhonov N.S.,1985).

CONCLUSIONS

Today N.Tikhonov's prose is perceived as evidence of the

effectiveness of the great international communication that unites progressive forces of all nations. We are convinced that a secret of N.Tikhonov's prose and poetry is that it is based on the truth and simplicity. They are considered the great goals in art, and they express the writer's position. Every poet can find subjects in his memory, which he would like to see embodied in his poems.

Nikolai Tikhonov was one of the first who paved the way of Russian poetry to the East, enriched Russian poetry with translations of poems about the East. He was a friend of the East. The friend, who confirmed his friendship by his deeds. He expanded the borders of the great Russian poetry by his journeys. "I haven't written much about, and I hope that I will still be able to write new poems and new prose that will be a modest contribution to our large, multi-national literature" (Abdullayev J.,1976).

N.Tikhonov's creative activity differs by persistence of poet's interests. Freedom for the peoples of all countries under the banner of world socialist revolution! – N.Tikhonov's ideal, sung in his poetry of 1920s - 30s. Poetic pathos is characterized by enthusiasm, inspiration, hope for brighter future, rebellion against the old foundations, civic enthusiasm.

Later, N. Tixonov speaks about the deprivation of peoples in Asia, the struggle for colonialism in Asia and the East and the tension in the Near East. He showed that, in the plot of his works, there are real subjects and events. The characters are also the prototypes of the real people. He ended his remarks: "I must also say that I wrote the book "Six Columns" with a feeling of deep respect and heartfelt sympathy for the peoples of Southeast Asia and the Middle East" (Tikhonov N.S.,1985).

Works included in by N. Tikhonov's book "Six Columns" in terms of content are deserved to be analyzed and researched as a literary sample, as well as the fact of our translation literature.

In the final of his article when Dm. Kovalev highly praises N. Tikhonov's creativity he very rightly points out to his service to the public. What could be, in his opinion, more important in the world to which he has given his best years and works, than self-sacrifice for the universal happiness of all the workers, against the evil on earth?

The last sentences of the article sound like apoféosis for a contender of

the Lenin Award in response to questions raised. The author writes: "Is it not dear and not close to all the people, to all nations? In this high sense Nikolai Tikhonov is one of the most popular of our poets. The nationality of the spirit of his poetry, his word, not divergent with his work, everything that he is inspired and inspires his readers, is the best confirmation of this. This, apparently, Gorky felt in him from his first steps, that's why he followed his development so closely, so in the fatherly way he had hoped for him "(Karamovah Sh.,1990).

The article also notes that some episodes of the awakening and strengthening of freedom ideas, the liberation of national consciousness in Tixonov's book seem to be somewhat sentimental on the background of this diverse, colorful, controversial world.

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THE LANGUAGE FEATURES OF SOCIAL MEDIA

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Abstract: In Azerbaijan, as in many other countries, the number of internet users increases day by day. This means that Azerbaijani language spreads in the virtual space as the main communication language of these users. Issues of language usage cause several specific reasons in the virtual world. This creates new language trends linked to the social media phenomenon. Language in the virtual world is not only the mode of communication, but also the mode of self-expression of each internet user, particularly the member of the social networks. In the virtual environment people use language more creatively, than in real life. All these forms peculiar language and style of social media. Sometimes this peculiarity exceeds the bounds of rules and norms of traditional linguistics. Often it also affects the verbal environment of the real life. Therefore, new verbal trends, which we can observe in the virtual space, can both create new perspectives and incur some danger for preserving national linguistic traditions. Also, because of using social media as the tool of communication, adoption of their peculiar style turned into necessity. From this point of view, learning peculiar features of the social media is actual issue for contemporary linguistics. This article is following new linguistic trends observed in the virtual space. It provides detailed information about typical characteristics of the virtual communication, main and additional tools, cases of breaking borders of common language norms and their conditioning factors and new genres created in the virtual space. It also pays attention on the new development perspectives of national languages, created by social media. The article offers suggestions to gain benefits from these perspectives and preserve national languages from the negative impact of the virtual space.

Keywords: social media, social network, language, virtual space, communication, virtual personality.

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Introduction

Social media, along with other fundamental changes that it has brought to various areas of the society today, is also creating a new look with its ever-increasing influence on the national languages. The most distinctive characteristics of this are tendencies such as deviations from language norms in social media environment as in verbal speech, the inclination towards the compact expression of opinion, substitution of words, sentences and texts with characters, images, emergence of new words, development of new meanings of existing words, and so on [Reed J. ,2014].

The number of words and terms that Facebook alone has brought to the Azerbaijani language or has added new meanings to the ones already available in the language in recent years, are dozen: hashtag, follower, friend, friendship, friendship request, post, like, status, wall, page, profile, troll, fake and so forth.

Furthermore, the wide-spread use of argots and slang words among internet users, revival of the epistolary style in the form of the electronic texting, expression of opinion by the means of as simple units as possible are also examples of the innovations that virtual reality has brought to the language environment. Thus, the playful nature of the virtual space reinforces the verbal speech manner in communication. Even in the most serious sites, this content which is a reminiscent of that manner can be observed. This is the formation of a completely new functional style in the language, which we can call the Internet style. This style, which has emerged in the context of the internet communication, is gradually influencing people's speech culture in the real world. Italian scientist, Marino Niola, has made a very interesting statement about this in his book "#Hashtag": "Today we are starting the very beginning of the era of "homo digitalis" (the man of digital era). Digital communication is changing the way we are communicating. This change affects our thinking and begins to manifest itself in other forms and types of communication. The nature of the media (books, newspapers, radio, TV) has always made certain changes in the format of information. Similar changes have occurred in both the manuscript and the print eras, as well as during the period witnessing the emergence of the electronic media. If I was given a chance of posting only 140 characters on Twitter

today, every text that I wrote would definitely remind me of a slogan. We are talking about the gradual transformation of our thoughts and thinking to a digital essence. If we removed the marks, then we would automatically remove the data capacity" [Language of the era of social networks: epoch-making changes, 2014].

Today, language is not only a means of communication; it is also fulfilling the mission of creating a virtual reality. Now artificial languages are being generated for technological purposes. Virtual reality has a very significant impact on the development processes happening in the national languages. At the same time, virtual space itself becomes one of the main sources for the enrichment of the national languages. For instance, when it is not possible to obtain internet terms from other languages in the UK today, terminology experts consider the functionality of the Weblish (a short form of Web + English expression used in the Internet environment) and try to get some words out of it [Johnstone, Barbara, 2016]. New language trends in the virtual space are also gradually infiltrating business documentations and enhancing democracy in this area [Vinogradova T.Yu, 2015]. As texting takes place online, it alleviates the office standards for business communication.

Develpoment.

Description of research.

Features of the virtual communication**.** We can summarize the main features of the virtual communication as followings:

1. Anonymity. Although a virtual person's profile contains some information and photos, this is not sufficient for the real and adequate perception of the individual. Additionally, chances of one's concealing his/her identity and presenting it in a different image in the virtual environment are vast. This poses certain socio-psychological risks. It provides a wide platform for non-normativeness and irresponsible behavior of users during communication. Users try to use offensive words, expressions that are censored, and tricks that serve various purposes.
2. Freedom. In the virtual environment, the individual eases the communication process by "wearing various masks". By overcoming the psychological barrier, he/she releases the creative "self". The interactive dialogue gives the individual

unique opportunities to express himself/herself. This not only relieve communication conditions and weight of the responsibility of the conversation but also activates the virtual individual's attention and draws this attention to the language tools. He/she becomes so much attentive and determined on the use of the language tools. All of these also generate a new attitude to the language. The virtual individual no longer views the language only as a means of communication but also as a means of expression of the individual creativity capacities.

3. Occurrence of the mutual understanding process between individuals in a non-verbal information environment. The high-level self-expression of the interlocutor in the virtual environment has stereotyping and identification mechanisms. This effect determines the qualities expected from the partner.
4. Willingness and desirability in communication. In the virtual environment, interlocutors either voluntarily contact or stop the communication whenever they want. At the same time, they get a chance of getting back in touch.
5. Inadequacy of emotional components in communication. To compensate for this deficiency, usually, special characters are used.
6. Exhibition of non-standard behavior. In the virtual environment, users present themselves in a way that does not reflect real social conditions.
7. Similarity of the virtual communication style to the conversational style. This brings the virtual personality image closer to the reality and strengthens the credibility of words which is one of the most important factors in the communication [Vinogradova T.Yu,2015].

There are many reasons why people engage in the virtual communication. As a first reason, we can point out the lack of communication in real life. If this need was met in real life, then the internet communication would probably not be needed. However, we must also note that if the virtual communication was merely a repetition of the real communication, people would lose interest in it very quickly.

In our opinion, one of the most important factors that motivates people to use the virtual communication is the fact that there are infinite opportunities for the realization of the character. Freedom, anonymity, role play, expression of emotions, imitation

conditions, the ability to create one's dream character, and many other features that are not possible in real life are factors that draw people to the virtual communication. Non-rigid normativeness also play a very important role here. Communication in the virtual space is more informal and open than in real life.

A person is more detailed and flexible while communicating on social media than in real life. It also urges him/her to be creative and express himself/herself in a more compact way. The newly created acronyms, abbreviations and neologisms are very characteristic for this new form of communication. As the communication tools evolve, the number of new language units emerging in this environment also increases and develops. All this helps us to understand "the language" of technology. During the virtual communication, these acronyms accelerate the process of writing chats in real time. For instance, emoticons such as ;-) and acronyms like LOL (laughing out loud) add useful elements for the non-verbal communication. As you know, participants of the virtual communication are deprived of paralinguistic auxiliary means such as sound timbre, logical emphasis, emotional tones, diction, gesture, facial expressions and so on. that play a very important role in real communication acts. So, these elements, by replacing some of the aforementioned means, create the conditions for the visual imagination of the emotions of the interlocutor [Reed J., 20141].

According to psychologists, the use of non-verbal means in the act of communication provides approximately 55% of the results. In this sense, the tools used to address emotional deficiencies during the virtual communication have a significant impact on the outcomes of the communication. We must also note that they are surrogate means and their generated reactions are surrogate in character. For instance, many people try to hide their true emotional state by using the smile emoji (☺) during the communication. Although sometimes it might not be so successful, the smile emojis in general provide information about the emotional color that the author has expressed in the text, determine the level of his/her emotions, and guides the thoughts of the other party.

In addition to the smile emojis, the capital letters are sometimes used to specifically emphasize the pace of the speech that falls under the logical

emphasis. Or users use the exclamation mark when they replace the color, sound, movement, or emotion deficiencies with their verbal or gesture analogues.

As every sign in a language has its own function, each of these symbols in the virtual communication has a corresponding meaning as well. For example, LOL, which means to laugh out loud, is used as a way of empathizing with the partner or as a sign of reconciliation. These situations encountered in social media are called the "pragmatic practice" by linguists. Although the word or phrase used here is not semantically related to the context of the sentence, it can better convey the attitude of the speaker. Uh, um, hm, aha and other expressions like this can be considered examples of the pragmatic practice. The usage of such pragmatic practice reflects the evolutionary nature of the language. However, one factor which should not be overlooked is that the excessive use of these expressions can annoy people and negatively affect the communication process [Angie Pascale,2012].

Another phenomenon that emerges in social media communication is the level of prudence in the communication. This is also generated through the use of language units. If the interlocutor uses language units neatly and completes the words and sentences, this may be the indication of his/her patience. Fractured words and sentences, the incomplete use of the language units, and the misuse of the punctuation marks may be considered as manifestations of the time limitation, anger and aggression of the interlocutor, or his/her dissatisfaction with the flow of the conversation.

It is worth noting that sometimes the punctuation marks are also often summarized in a specific sign in social media. For instance, the broken lines can replace many punctuation marks. In addition, there are also the punctuation marks on social media that change its meaning. For example, !?… sign which implies appeal, excitement in the literary language, does not have the same meaning when used in social media. Nevertheless, it displays that the person understands the meaning of the text that has been sent to him/her. We observe that the question mark on the social networks is also subject to the meaning change. In this environment, the question mark does not just imply a question but also hints a disagreement [Hilte, Lisa, 20186].

We also see that the ellipsis, widely used in the literary language, which implies that the idea is not completed yet or creates a long pause, also has different connotation in social media communication. The sign here displays the openness of the conversation, or insistence of one of the interlocutors on the continuation of the conversation, and provocation towards the other interlocutors for the unavoidable answer.

Another phenomenon encountered in social media language is that sometimes each word conveys separate ideas. For example, “Worst. Breakfast. Ever.” or “Best. Party. In History.” Sign limitations in some social media networks, distortion of the harmonization between the speed of thought and speed of fingers plays a certain role in the emergence of such phenomena.

There is an ambiguity in social media in terms of the violation of rules as well as the usage of coded initials, incorrect abbreviations, emotion signs during communication processes in this environment. Many people believe that social media has caused a great damage to the national languages. At the same time, whether the language used in social media is actually a fact of the written literary language is still a matter of debate. Because this language cannot be compared with other manifestation forms of the literary language examples [Hilte, Lisa, 2018].

American linguist John McWhorter in his TED lecture presented abbreviations, emoticons, idioms as an essential part of social media messages and considered virtual communication parties’ use of them completely natural in terms of social perspective [John Mc Whorter,2015].

According to him, the language used in social media is not a real written language. However, this language cannot be considered purely verbal either. Because the verbal language is more spontaneous and less pondered and informal compared to the written language. The social media language, however, is more formal compared to the verbal language. Thus, the social media language is placed in the middle position between the written language and the spoken language. John McWhorter calls this language, which reminds more of a written verbal language, with an interesting name – “finger speech”. McWhorters' theory demonstrates that people write on social media as in the way they speak. This also has its own

specific reasons. Virtual communication is mainly realized through the words, sentences, texts that the interlocutors mutually address to each other. It happens in real time, and during this time there emerges an involuntary inclination towards the verbal communication. In real life, there is a harmony between a person's thoughts and speech. A person can put his/her thoughts into words at the same time while he/she is thinking. In virtual communication though, a person's pace of writing lags behind the speed of his/her thinking. That is why virtual personalities seek to find shorter expressions to accommodate this speed. Thus, even if the language units are mainly used in the written variant in the internet environment, the interactive conditions of the network communication and the temp of speech give it a completely different form. This introduces the "Olbanian language", which is now widely studied in Russian linguistics as a new phenomenon. This phenomenon is also often referred to as the "Padonkaffsky jargon". The main characteristics of the "Olbanian language" are that, excluding few exceptions, words are written correctly from the orthoepic point of view but incorrectly orthographically, and the non-normative lexicology is used widely in the communication process. Another key feature of the "Olbanian language" is that the spelling error can later turn into a peculiar cult for other users. Meaning, the same error is regarded as some kind of norm [Rogacheva N. B.,2011].

Although the "Olbanian language" is more commonly used in blogs, chats, web forums, text messages, it can be observed that this language tends to gradually penetrate the spoken language. Psychotherapeutist D.K Kovpak believes that the "Padonkaffsky jargon" does not appear as an element. This is the result of purposeful activities of a number of amateurs, that it initially appears in writing forms on the internet and then enter the oral discourse [Kovpak D. V. ,2012].

There are some reasons for the emergence of these mistakes. First, as John McWhorter also pointed out, is the factor that words are written in the way they are pronounced. Second is the difficulty with the pronunciation of the voiced consonants at the end of many words. Restrictions on the use of certain letters on the computer may also lead to the emergence of the "Olbanian language" examples. For instance, the letter "ş" which exists in the orthography

of the Azerbaijani language is written primarily as “sh” in the virtual environment in case of the appearance of these restrictions. Or limitations concerning the vowel “ə” are overcome. These situations are sometimes so standardized that, even in the absence of such restrictions, the user will naturally begin to use such spelling forms.

Dialect affiliations of participants in the virtual communication can also lead to the emergence of the "Olbanian language" examples. In particular, some users with relatively low literacy or language skills unconciously write certain words and expressions in their own dialect instead of the literary language. In some cases, such tendencies are also observed in the virtual communication style of those who are sufficiently literate and have a high speech culture. In our opinion, this is largely due to the intention of these individuals to accentuate their sense of belonging to the subculture they represent. Manifestations of the "Olbanian language" in Azerbaijan can also be found in primitive announcements of various commercial and public catering enterprises.

This phenomenon negatively affects the development of the literary language in all cases, preventing people from mastering the norms of the speech culture. It should not be forgotten that the mother tongue is the spirit of the people: the national psychology (mentality) of the people is expressed through the language. In the language, the character of the people is reflected, their mentality is preserved, and the uniqueness of their artistic creativity is formed. From this point of view, the "Olbanian language" is a serious threat to the national languages. Because the vocabulary of a young internet user who does not have a thorough knowledge of the literary language norms and linguistic mistakes he/she makes gradually become a benchmark for other people, and also lead to the primitiveness of thinking as well as the language. Because the primitiveness in language is an indicator of the primitiveness in thinking. Obviously, not everyone can utilize the language capabilities at the same level. It depends on the level of the speech culture; therefore, it is definite that there will be certain differences between language users. Therefore, two levels of the speech culture are distinguished in the modern linguistics: low and high. For the low level, it is necessary to master the first level of the literary

language. At this level the speech is quite clear and the lexical, orthoepic, grammatical, word-building, morphological and syntactic norms of the language are followed. The high level is the perfect level of the speech culture. If a person has a fluent speech, it means that he/she has reached the highest level of the speech culture. A person can make certain mistakes in his/her speech at this level too. Nevertheless, these errors are not primitive in character. The person gets the opportunity to approach properly each point of words and constructions, creates vivid, memorable expressions that correspond to the content of the communication, follows the orthoepical norms of the language, and avoids any mistakes in pronunciation. For if the word is the material mold of our mind, then the sound is the dress of our speech.

Discussion

All this demonstrates that regardless of the level of the speech culture, during the use of the language, the basic norms of it must be followed. Language is made of human experience. Like a culture, it is produced and improved in a generally accepted sense. The ultimate result of the language in our daily lives is the extent to which we can understand each other as individuals, the neutrality and general acceptance of the language units used at this time as normal. Furthermore, leaving a positive impression on the interlocutor and ensuring the consistency and sustainability of the communication are also the part of the result.

The analysis of the "Olbanian language" phenomenon displays that it contradicts these factors and leads to the social disintegration of the society. The widespread use of slangs, argos, and jargons, violation of word order in sentences, tendency towards the reduction of words damage the relevant norms of the language. Therefore, researchers' position on the perspectives of the "Olbanian language" is clear:

- The "Olbanian language" should remain only on the computer keyboard;
- The "Olbanian language" should not be disseminated from internet to television and radio;
- It is desirable to cope with this language, and its restriction is necessary;
- Learning this language is important for recognizing virtual interlocutors.

In general, the language of social media is currently undergoing rapid evolution, and it is in the interest of many

people that what language situations this process will be accompanied with in the future. According to the forecasts of the The New York Times, in the future, people will begin to talk in virtual space only in the form of images. [Richard Dawkins,1989].

Images, symbols, ideographical and pictographic text examples, that express the interlocutor's mood and messages he/she wants to convey in a very compact and specific way, will replace conventional texts. We are already observing this trend on social media channels that are based on the image concept such as Instagram, Vine, Tumblr, and others. As technology develops, this trend will grow stronger.

In fact, one can argue that nothing new has happened regarding the language on social media, but the language which has been used by mankind for thousands of years at various levels, has just begun to be used in social media. That means that the language, with its potential in real life, is now transformed into the virtual reality. Argos, jargons, slangs, vulgarisms, etc., which seem to be one of the main attributes of the virtual communication today, in fact, have been also used for centuries in real communication of people. Individuals' adaptation of the language to their wishes and needs is a social norm. In this sense, one can assume that social media has done nothing regarding the language. The social media tools that have come into our lives in relation to the development of the internet are just technical means. Because the only force that can change the language is the people who use it for pragmatic purposes. 50-100 years ago, too, it was possible to communicate through some pictures published in the journal. Or, the ultimate goal of an artist working on a particular artwork is also to transmit a message, in other words, to communicate through image. And social media tools are increasingly expanding such transmission capabilities. The effect of sharing a material on social media and sharing something in real life is different. Individuals have an incomparably larger audience on social media channels than in real life. Here the materials that are shared by an individual - texts, pictures, videos, music and so on., the mass interest he/she causes, the number of people in his/her friendship, etc. play an important role. At the same time, it is also crucial that the language used by the individual is understandable to the audience.

The massive impact of social media channels on people has made them one of the main means of communication between various business entities, private and public institutions and their target audience today. Activities conducted for the effectiveness of the communication, attracting more followers to various individual and corporate pages and not losing them, drawing the attention of page followers to a particular product, service, etc. have led to the emergence of a new and extremely promising type of activity – digital marketing today. One of the main directions of this activity is related to the language.

The proximity of the language units used to produce different contents to the social media audience is claimed to be one of the most important conditions for digital marketing. If purely the academic rules of the language not the opinion of the audience are considered essential while developing contents for any company's corporative site on social networks, then the language mismatch will have a negative effect on customers. Therefore, it is advisable to take into account a few important considerations regarding the use of language units when developing contents:

- Who is the target population, and what is their demographic distribution? If the majority of the audience is women over the age of 55, it is not advisable to use smiles or other emoticons in the content. On the contrary, if the target is made up of teenage girls, then such signs and symbols should be an integral part of the content. Only in this way the language of the content can be adapted to the language of users.
- Is the represented brand included in B2B or B2C as indicated in the marketing language? The B2B brands are usually intended for a specific professional group that uses the formal, academic language. The B2C brands, on the contrary, are unofficial, and their presentation language, by being simple and playful, is designed for people from different professions.
- How is the voice tone of the brand? The tone of the presentation may be overly noisy or too low. The key issue here is to adapt its harmony to the common language of the social media.
- What social media channel is your content being developed for? If the Twitter is used, then the use of contents adapted to a specific character limit is mandatory. Or, if the Linkedin's social network is used, in this case there is a

great need for the content to be written in a more professional and specific language [Ukhova L.V.,2011].

Taking these points into account can help the parties understand each other more easily and build effective, purposeful communication. Being knowledgeable about the language used in social media can help to understand the virtual audience and determine practices that are in compatible with them. For example, being unaware of the meaning of many of the characters used by Facebook users may cause certain difficulties in terms of responding accordingly to written comments. One of the main features of the communication carried out through social networks is that many of its types are semi-transparent. Only those who are aware of their meaning know these. All of this is the subtlety of the social media communication.

There is another phenomenon, which researchers call internet-meme, that is evolving very quickly in virtual communication and social networks in recent years. The term meme is brought by the English biologist Richard Dawkins. He used the term to describe the process of preserving and spreading a particular element of culture [Breen, Patrick; Kelly, Jane; Heckman, Timothy; et al.,2016].

Internet memes are ideas and behaviors that are spread across the internet and social networks. Internet memes can be in the forms of pictures, hyperlinks, videos, web pages, hashtags and more. We can briefly explain its essence like this: any thought, idea, or speech that has never been so popular until recent times suddenly emerges in various audiovisual forms (sound, video, picture, text, etc.), starts to rapidly gain popularity by disseminating from one user to the internet and becomes a major trend in social media over time. The internet meme is essentially information in nature. However, from a functional point of view, it can sometimes lead to serious consequences. Memes can spread both horizontally and vertically. Horizontal spreading is its dissemination among representatives of only one generation. In the vertical dissemination, the meme is also transmitted from generation to generation. Popularity periods of different memes may vary. The existence of a meme depends on its popularity. Each meme loses its popularity over time, and thus, its existence as a phenomenon. Its

resurgence depends on the user seeking to revive the existing meme.

The popularity of a meme corresponds to its content. It is impossible to artificially popularize a meme. The effect of the information it carries should psychologically persuade social media participants to share this content with others. A meme may undergo changes for the development of another meme. In this sense, there is a natural selection process in the virtual space, and the winner is the one that has a stronger psychological impact on internet users.

If we examine the trends that have been followed in Azerbaijan's social media environment in recent years, we will observe that the most popular memes mostly have satirical contents. This fact is not only characteristic for Azerbaijan, but for the whole world. Currently, the most popular meme genres on the internet are demotivators, caps, vines, strip comics, and cartoons.

In general, all these internet memes, especially demotivators, are a fairly complex sociocultural phenomenon of the internet communication and need an extensive scientific research. Verbal and visual components do not include details in internet memes. The addressee should come to some conclusions by analyzing these components. In many cases, he/she perceives the material in the literal sense – in the way he understands it.

Therefore, when exploring this phenomenon, one should also look at the communication chains created through internet memes. As it is known, any idea goes through several stages, by travelling from its source to the end point of the communication, until it forms a certain attitude for the addressee. This is the case in any form of creativity (literature, movie, music, painting, etc.) presented to audiences of readers, viewers, listeners. Internet memes, which are spreading on social media, are also an example of creativity, and through them the communication chain can be displayed as follows: source, message, encryption mechanism, transmission channel, decryption mechanism, addressee, communication outcome, feedback. The main condition here is that the adressee’s worldview should be at the level that is sufficient to decode demotivators' visual image. If this condition is not met, the encrypted message indicated in the demotivator will not reach its destination or will be distorted.

A number of specific features of demotivators and functions they perform bring them very close to the language. Because most of these are functions and features that are in common with language: 1) it is a means of communication between people (communicative function); 2) it is a means of acquiring new knowledge about activities (cognitive function); 3) it is a means of accumulating and transferring knowledge about activities, traditions, cultures and history (accumulative function); 4) it is a means of expressing feelings and emotions (emotional function); 5) it fulfills an effect function (voluntative function) [Boulton, C. A.; Shotton, H.; Williams, H. T. ,2016].

After all this, the question arises: can demotivators be considered as language units? In our opinion, they are a special type of language. Demotivators are made up of two types of symbols. The relationship between them is not just semantic, but also international.

Internet memes are not just a set of characters but have a synergistic effect. As it is known, the synergistic effect is considered to increase the efficiency of the activity as a result of the integration. A classic example of this is that if two people exchange their apples, each will still have one. Thus, there will be no increase in the number of apples. However, if two people exchange their ideas, then each of them will have two ideas. Internet-memes shared on social media, in fact, are exchange of ideas, and they affect multilateral relationships through the synergistic effect.

Another distinctive feature of demotivators is the multivariate usage level of visual components of text and mobile verticality. In this case, one visual image is used with different slogans. Or a particular slogan is used in different forms. Despite the repetition of certain components, synergistic effects of these demotivators also vary.

In social networks, demotivators are used to correlate speech situations in the private interpersonal communication (discussion initiatives, debate, lifting the interlocutor’s mood, stinging the interlocutor, impressing the interlocutor, attaching special meanings to words, reconciling, sharing expressions and emotions, confessing love, using for holiday congratulations, traditional jokes, presentation of ideas in an original manner, quotes, pseudowords and so forth.). Many of these are collected based on pre-existing examples in the

language, including aphorisms, winged expressions, humorous phrases, etc. Therefore, due to the spread of internet memes on social media, there also emerges some changes in the status of the language used in this environment. The intention of expressing as wide content as possible with few words, makes it necessary to expose the rich layers of the language.

If we accept demotivators as a specific language of the internet communication, then users of this language and whether learning this language is possible are also the urgent questions that arise. Practices show that, like other languages, demotivators can be learned as a language and used whenever necessary. Some websites create their own demotivators and give each user an opportunity to use it according to their own wishes. Demotivators can also be created independently without the need for anybody's help.

Conclusions

All these notes demonstrate that the digital era has already laid the groundwork for a new phase in the development of the national languages and the need to ensure the proper development of the Azerbaijani language, which today is the language of communication for millions of virtual participants.

According to statistical estimates, by the end of 2019, the number of internet users in Azerbaijan was 79.999,431 amounting to 80.6% of the country's population [Dernoncourt, Franck, Lee, Ji Young; Szolovits, Peter. P.,2017].

As can be observed from this figure, the number of internet users who use the Azerbaijani language as a means of communication in the virtual space in our country is growing rapidly. In this context, there is a great need for a research and the implementation of relevant research projects in this area in order to preserve and develop our native language.

Social networks provide a favorable environment for tracking changes and new vocabulary trends in the language. By making observations here, you can see how words become common in usage. In this regard, social networks mean great opportunities for developing the literary language, carrying out experiments regarding the language and performing reforms in this area.

Discussions held on social networks, highlighting of the facts regarding the emergence of new words and their acquisition of functionality, development of new words and their dissemination with viral effects provide great prospects for the development of the language. By organizing virtual public referendums on social networks, it is possible to determine to what extent both the words taken from foreign languages and the newly created words in the language have been successful, and whether these words will be assimilated in the Azerbaijani language.

Overall, the virtual space is like a litmus paper and exposes the language literacy status of the mass audience. It is well-known that a person's grammatical habits and orthoepic abilities appear in a spontaneous speech act. Before the emergence of the internet, the spontaneous speech was purely verbal and instantaneous. Therefore, the investigation of the general situation in this area and the scientific analysis of characteristics of the public speaking did not appear to be so easy. However, now it is possible to save speech acts carried out on the internet, print them on paper, use them for various scientific purposes, identify inherent flaws in people's speech and take comprehensive measures in order to eliminate them.

Preliminary studies in the country display that Azerbaijani internet users mostly make the following violations when using their native language in the virtual communication process: the tendency to use words and terms taken from foreign languages unnecessarily widely; the use of words taken from foreign languages without adapting them to the rules of the Azerbaijani language; shortening of words and sentences; the improper use of punctuation marks; the use of argos and vulgarisms, etc.

Considering that the dangers posed by the rapid increase in the number of internet users in our country is becoming more and more important for the national treasure of the Azerbaijani people – our mother tongue, it is necessary to take some measures to improve the level of the language literacy of citizens.

In order to prevent language violations in social media, first of all, students must be taught special subjects during secondary education, to perfect their writing skills in their native language. Today, there is a great need for social media to be taught as a separate subject in secondary and higher

education institutions. Because violations committed by people during the use of the language are mostly education-related violations. The defective use of the native language by people is not due to the expressive power and deficiency of the language. The main reason for this is the low educational and cultural level of people who use the language. Therefore, an early and serious consideration of this issue in the educational process would ensure that in the future, the younger generation would use the language in the virtual space at a desirable level. To this end, the curriculum of the Azerbaijani language should be changed in educational institutions. A particular attention should be given to pupils' and students' development of habits of expressing themselves in written forms in their native language. For this purpose, mostly, alternative methods that are based on practical activities should be used. Activities such as implementing distant learning projects in the Azerbaijani language, making video tutorials for the development of writing and speaking skills of people and offering them for public use in online resources, as well as monitoring the use of language on social media as on radio and television etc. can be helpful in this regard.

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LINGUISTIC ANALYSIS OF SURAT AN-ANUR BASED ON SPEECH ACT THEORY

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Abstract: Speech theory is one of the most important linguistic theories. This theory is subdivided into discourse analysis which is one of the approaches proposed in the field of linguistics. This theory in the thirties by Jay. L. Austin was raised. The present study, considering the context and content of the verses, has analyzed Surah Noor from the perspective of spoken action. This study concludes with an analytical-comparative method. The structures used in these verses are: statement, exhortation, commitment, and revelation. The purpose of Sura is to warn in the form of punishment. In This chapter highlights the importance of protecting the privacy and respect of individuals in the community and in the family.

Keywords: Speech Action, Discourse Analysis, Surah Noor, J. L. Austin

Introduction

Speech theory is one of the most important linguistic theories, which seeks to analyze the text and to examine the unique arrangement of the words in the texts. (Shams al-Din Gursani, 1397:1) Speech analysis is a subset of discourse analysis Discourse analysis is one of the approaches in the field of linguistics And it is a trend of interdisciplinary studies that has taken place since the mid-1980s to the mid-1990s following widespread scientific-epistemic changes in fields such as anthropology, ethnography, micro sociology, perceptual and social psychology. , Semiotics, poetry, linguistics and other disciplines of social

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and humanities interested in systematic studies of the structure and function and process of speech and text production have emerged.(Fairclough, 1387:7) Methodological and analytical discourse analysis has a wide scope The main purpose of discourse analysis is to develop new techniques and methods in the study of texts, media, cultures, sciences, politics, social and so on. It is used in text or speech and is used in various fields such as politics, media, etc. (Kalantari & others, 1388:1) Speech action is a statement that forms all or part of an action. Speech Theory Speech was introduced in the thirties by JL Austin Speech theory is still the most prominent aspect in areas such as pragmatics, intercultural learning, communicative language teaching and some literary theories.(Yazdanjo, 1389:507-508) Surveys carried out in the Sura of Noor based on the theory of speech action revealed that there are many jurisprudential verdicts such as the necessity of hijab, adultery, marriage and so on. This chapter attempts to introduce the Surah, its content and its dignity. Much of Surat al-Noor contains the personal, family, and social ethics that fall within the concept of chastity. If, according to the words of the innocent, reciting the Surah of Noor and paying attention to its contents protects the human being from the shame of shamelessness and protects women from the perversions of her commandments. (Makarem, 1388: 141) The exemplary commentator also considers this surah to be a chastity and chastity and to fight sexual offenses and believes that some verses of this surah refer to issues of monotheism and origin, resurrection and submission to the Prophet's command, That is why the backing of all practical and ethical programs is matters of faith and faith in God and beliefs are the root of moral plans. (Ibid, 1374: 354-355) In this research, the moral concepts of chastity are extracted from the light of surah in order to answer the question of how this concept can be guided in the form of an ethical system from the perspective of the Holy Quran by examining and classifying it and explaining the chastical moral system from the perspective of the surah. And does human society have to face moral deviation? (Hejazi, 1397: 2)

Speech Action Theory

Rather than addressing the theory of speech action, it is necessary to make a brief reference to the concept of

discourse analysis, since the analysis of speech action is a subset of discourse analysis. Discourse analysis is the analysis of language. According to famous American linguist Zalig Harris, the word has a structure; that is, it has a pattern in which the verbal units are interconnected; in general, he introduces discourse analysis as a method of continuous speech (or writing) analysis. That is, it extends descriptive linguistics beyond the scope of a sentence in a language. (Baghini Pour, 1380: 16) Michel Foucault has a very broad sense of discourse. In the paleontology and genealogy of the social sciences and humanities, he refers to the discourse as "a set of rules, principles, and arrangements that unconsciously surround the social sciences and humanities.(Tajik, 1379: 4) Discourse is a concept used by both theorists, social analysts and linguists, he says, meaning discourse means "using speech or written language as well as other signaling activities such as imagery. It also includes visual (photo, film, etc.) and non-verbal communication (such as gestures) >> that is, in traditional linguistics such as performance, parol or usage The language is rememberedtraditional linguistics such as performance, parol or usage The language is remembered. (Fairclough, 1387: 6) This theory seeks to provide a comprehensive analysis of language use and communication. Speech action theory is a philosophical theory that falls within the domain of language philosophy and is an important method for examining and understanding the function of language in context. John Long Shan Austin, the principal designer of this theory (1–2), is a professor of ethics at Oxford University. He presented the theory in the 1980s, which he later expanded into a series of lectures at Harvard University in the following year. It was Austin who gave the first systematic description of language use. He proposed the theory of speech action in response to the three principles which, among the positivist logicians, formed the basis of an attitude toward meaning. These three principles are: The main use of language sentences is second, that the main use of language is to inform through sentences, and third, that the truth and falsehood of the meaning of the fragments can be determined. (Safavid, 1383: 173-174) According to the theory of speech action, news sentences are not just main and meaningful language sentences, and secondly, it is not possible

to determine the truth and falsehood of all sentences because the purpose of the speaker is to describe the action sentences as describing the action itself rather than describing a category or situation. Accordingly, the sentences are divided into two actions (executive) and news. (Ishani & others, 1393: 30)

What led Austin to formulate the theory of "spoken action" was his opposition to the sophistication that was raised in the "logical positivism" view of the meaningful problem. According to that sophistry, the only philosophical function of language, making a sentence True or false; the positivists asserted that if a sentence can be judged fundamentally in terms of truth and falsehood, that sentence is meaningless.(Levinson, 1983: 227) Declarative action: A declarative action is a description of an event or incident, and the speaker expresses his or her beliefs about the accuracy of the material. It concludes with a point.(Searle, 1999:13) & (Safavi, 1378: 82) Generally statements, assertions, conclusions, statements, assertions and statements of truth, and the like, in which the narrator portrays the outside world as he or she believes, act.(Yule, 1996: 5)

Grammatical or persuasive action

Such actions are an attempt to encourage or persuade the listener to act or give information that the speaker can find in questions and requests. (searl, 1999: 13-14)

Accredited action

The speaker commits itself to the course of its actions. (Alam, 1382: 206) There are promises, oaths, and contracts, such as the sentences we read: "Read and Accept" or "Record Equals Document"(lbid, 14) The use of this action in speaking of the resurrection is abundantly found at the end of the Qur'an.

Declared action

They include speech acts that, as soon as they are expressed, make real changes in the outside world (libd: 13) Actions that include declarative action include declaring, denouncing, and appointing.(Fazaeli, 1390: 91)

Surah (Noor) analysis based on speech action

First of all, the Qur'an is a divine word and all the words are all human, so we must be careful in using discourse, and in the light of valid

interpretations, do this analysis and make those assumptions, goals, and components. He did not include a discourse that relates solely to the word of man in this study, trying to cover all the stages of discourse related to the verses; thus, by mentioning the verses, all the rules of the new style related to the text and verbal and spiritual arrays Based on the contextual context, they are examined in this analysis and their relationship to the position and status of the verses is revealed. Surat an-Nur expresses many jurisprudential verdicts: the necessity of hijab for women, the exemption of hijab from old and disabled women, the necessity of four witnesses to prove adultery, marriage matters, and the affair affair of other surah material and advice. God forbid believers from talking about something they are not aware of and avoiding slander, vengeance, profane slander, and entry practices that must be allowed when permitting entry into the homes and places of others. Own it.

Verse 1 - [This is] a chapter which We have revealed and made obligatory and in which We have revealed clear communications that you may be mindful.

Verse message:

-Judgment is mandatory by God's commandments. (Faraznaha).

- Quran is the obligatory law of religion. (Faraznaha)

- The verses of the Qur'an are clear and understandable.

-- Man needs advice.

- The doctrines of the Qur'an are rooted in human nature and are removed with a hint of neglect.

Verse 12- Why did not the believing men and the believing women, when you heard it, think well of their own people, and say: This is an evident falsehood?

Verse15- When you received it with your tongues and spoke with your mouths what you had no knowledge of, and you deemed it an easy matter while with Allah it was grievous.

Verse16- And why did you not, when you heard it, say: It does not beseem us that we should talk of it; glory be to Thee! this is a great calumny?

Verse26- Bad women are for bad men and bad men are for bad women. Good women are for good men and good men are for good women.

Verse30- Say to the believing men that they cast down their looks and guard their private parts; that is purer for

them; surely Allah is Aware of what they do.

Verse 31. And say to the believing women that they cast down their looks and guard their private parts and do not display their ornaments except what appears thereof, and let them wear their head-coverings over their bosoms, and not display their ornaments except to their husbands or their fathers, or the fathers of their husbands, or their sons, or the sons of their husbands, or their brothers, or their brothers' sons, or their sisters' sons, or their women,or those whom their right hands possess, or the male servants not having need [of women], or the children who have not attained knowledge of what is hidden of women; and let them not strike their feet so that what they hide of their ornaments may be known; and turn to Allah all of you, O believers! so that you may be successful.

Verse 32. And marry those among you who are single and those who are fit among your male slaves and your female slaves; if they are needy, Allah will make them free from want out of His grace; and Allah is Ample-giving, Knowing.

Verse35- Allah is the light of the heavens and the earth; a likeness of His light isas a niche in which is a lamp, the lamp is in a glass, [and] the glass is as itwere a brightly shining star, lit from a blessed olive-tree, neither eastern nor western, the oil whereof almost gives light though fire touch it not—light upon light-- Allah guides to His light whom He pleases, and Allah sets forth parables for men, and Allah is Cognizant of all things.

- In verse twelve, God in this verse rebukes the Muslims for the Prophet's wife and their vulnerability to rumors. And still in verse 15, accepting what is in the languages is condemned without research.

- Speech must be science-based.

- The smallness or magnitude of sin is determined by God.

- Not all calculations are realistic.

- It is obligatory to prevent evil. It is imperative to speak out in defense of Muslim honor.

- Man is responsible for what he hears.

- When dealing with important issues, (Subhanahu wa Ta'ala).

- In the sight of God, the world is small but great to you.

- There are three successive verses of the great word: once (Azabon

Azim) and twice (with two utterances) (Bohtanon Azim) to say that the great sin is the great punishment. Verse 1 - This verse sets out a general principle that should be carefully considered when choosing a spouse and that the principle is based on faith and purity. Not beauty and wealth. So the verse does not mean that if a man or a woman were good, his wife must have been good too and be subject to blessings, for the Qur'an considers the criterion of entering Paradise to be faith and piety, and so even though Prophet Noah and Lot had their wives, They are evils and hell.

- According to the previous verses about the slander of pure women and the story of the sorcerer, and according to the phrase "Mamreon Mamma Yaghulon", the meaning of the verse is that the word evil, such as slander and defamation, deserves evil words and speech. The clean is worthy of the clean people, and the filthy people speak the ugly words, and the clean people speak the pure words.

- The verse may be the expression of a religious injunction prohibiting Pakistani marriage to impostors.

Verse41- Do you not see that Allah is He Whom do glorify all those who are in the heavens and the earth, and the [very] birds with expanded wings? He knows the prayer of each one and its glorification, and Allah is Cognizant of what they do.

Verse 42. And Allah's is the kingdom of the heavens and the earth, and to Allah is the eventual coming.

Verse 43. Do you not see that Allah drives along the clouds, then gathers themtogether, then piles them up, so that you see the rain coming forth from theirmidst? And He sends down of the clouds that are [like] mountains wherein is hail, afflicting therewith whom He pleases and turning it away from whom He pleases; the flash of His lightning almost takes away the sight.

Verse message:

- All movements in the world of nature are done with divine power and will for a wise purpose.

- Allah turns over the night and the day; most surely there is a lesson in this for those who have sight.

The message of the verse:

- Encourage the contemplation of the Qur'anic order of succession.

Verse51- The response of the believers, when they are invited to Allah and His Messenger that he may judge between them, is only to say: We hear

and we obey; and these it is that are the successful.

- Message of the verse: Achieving salvation is in the shadow of submission to obedience and obedience to God.

Verse60- And [as for] women advanced in years who do not hope for a marriage, it is no sin for them if they put off their clothes without displaying their ornaments; and if they restrain themselves it is better for them; and Allah is Hearing, Knowing.

Verse message:

-Aging alone is not enough, but there must also be a reluctance to marry women to be allowed to wear a scarf.

-The message of the verse: The veil is the preserve of chastity.

Verse62- Only those are believers who believe in Allah and His Messenger, and when they are with him on a momentous affair they go not away until they have asked his permission; surely they who ask your permission are they who believe in Allah and His Messenger; so when they ask your permission for some affair of theirs, give permission to whom you please of them and ask forgiveness for them

from Allah; surely Allah is Forgiving, Merciful.

Verse message:

- In social life, there is a need for a leader to follow him.

-Verse Message: Faith must be accompanied by submission and obedience to leadership.

Verse64- Now surely Allah's is whatever is in the heavens and the earth; He knows indeed that to which you are conforming yourselves; and on the day on which they are returned to Him He will inform them of what they did; and Allah is Cognizant of all things.

- Verse message: Faith in the knowledge of God is by deterring evil.

Also, in verses 1 and 2, keeping the look and veil of women is a requirement of chastity, which is the pure eye of the chaste introduction. (Graati, 1388:173) Verse 1 of Surat al-Noor refers to the most important principle of the moral statements of the Qur'an, which is the monotheism and faith of the origin of the original being, which plays the most important role in determining the moral requirements of the Qur'an. And it is mentioned in this sura as an important source of attainment of virtue virtue. In this verse God is referred to as light and is depicted as the works and manifestations of light in the hearts of men by the practice of the

rituals expressed in sura. (Gotb, 1412:2485)

Points:

-Adultery rules vary according to people's circumstances, in this verse there is only one way of saying that if a man or woman commits adultery, one hundred lashes will be used, but if one commits adultery with her husband and access to her, she will be subject to adultery and stoning.

- The adulterous man shall not marry the adulteress or the idolater, and the adulteress shall not marry the adulteress or the idolater. And this is forbidden to the believers.

- This verse has the mood of the verse (al-khabithat lel-khalbithat lel-khalbithin) which comes in verse 2 of this sura and states the principle: pigeon to pigeon, open to pigeon.

- In this verse, the adulterer is beside the idolater.

- In addition to corporal and social punishment, there must be other restrictions on adultery.

-In the traditions it is said that this verse is about those who are known for adultery and that if he repents of adultery he can marry his beloved one like others.

-Imam Baqir (AS) said: In this verse God puts the adulterer in front of the believer and shows that the adulterer is not a believer in adultery.(Graati, 1387: 143-145)

Conclusion

- Given that speech action is a means of analyzing and clarifying texts, taking advantage of this theory in the Qur'an is a useful way of analyzing the Qur'anic speech; the purpose of the writer or speaker is to communicate with his or her audience.

- By analyzing the speech action performed on Surah Noor based on Austin's classification of speech acts, it became clear that the purpose of the surah was to invite the family to teach the surah as well as protect their property and sexual instincts and not commit adultery. This sura followed. And it can also be concluded that the Surah of Noor includes the preservation of the honor and respect for the privacy of individuals in the community and the family of true faith and complete obedience to the Apostle of God. It was also found that in addition to the punishment for adultery, there were other penalties such as corporal punishment and other restrictions on adultery. And one of the

most beautiful and mystical verses mentioned in the Qur'an is the surah of light which is mentioned in verse 26 which has depicted God in a beautiful and very interesting example.

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