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EDITORIAL

Pravo i sovremennye gosudarstva [Law and Modern States] is a research and practice law journal published since 2011. It is intended as a special forum for scholars at the beginning of their careers to publish articles based on the results of their research within the framework of the Law-Making and Legislative Process programme at the Russian Presidential Academy of National Economy and Public Administration.

For two years the journal was published in a semi-professional version, during which time a circle of authors and methods of preparation of research and practice were formed. The major of these is the Round Table that is held on the last Friday of every month, in the afternoon. Here, in a creative and friendly atmosphere, we discuss topical issues, and listen to papers by the most prestigious scholars as well as by postgraduate students, master’s degree and even undergraduate students. Such cooperation creates an opportunity for widely different researchers to work together, and guarantees transfer of experience and continuity of generations. The subjects discussed at the Round Table are socio-political, legal and social: comparative studies are encouraged, where identical developments in different countries are associated.

The journal moved to a new level in 2013 when we set a new task for ourselves: to make our Russian scholars renowned in the foreign academic community, and for that it was necessary to enter foreign scholarly citation indices. In conducting that mission we were helped by the representative of Rossotrudnichestvo (the Russian Federal Cultural Agency) in the USA, the Director of the Russian Center of Science and Culture (RCSC) in Washington, Yuri Zaitsev, and a professor of

A new concept of the journal was developed, and work on a new professional-quality level started. Thereby, at the beginning of June 2013, the second issue of the journal Pravo i sovremennye gosudarstva was published in Russian and a proof copy of its English version, Law and Modern States, was prepared.

The novelty of the journal consists in its being published now in mirror copies: in Russian and in English. On the basis of a transcontinental discussion, its appearance, including cover, headers and footers, fonts etc., was radically revised. The design versions were changed several times, taking into account the remarks and suggestions of an American publisher and developments within the editorial collective, to achieve the current design.

Not long ago our journal celebrated a significant event in its history — the presentation of its English version in the USA.

What is the meaning of that event and why is it so important for our authors, subscribers and readers, along with the editorial board and the editorial staff? Our journal was intended as both an academic and a popularizing publication. We want to prepare and publish articles that will be useful and understandable not only to a Russian readership, but also to foreign readers. It is not a simple problem but we work to solve it together and sharpen our skills as we do so.

Presentation of the journal was in the RCSC in Washington as part of the 2013 32nd World Russian Forum, on the very symbolic date of 11 June — the eve of Russia Day. The participants of the event were well-known Russian and American scholars, those working in culture, politicians and representatives of the media. The forum was devoted to the pressing topics of Russian-American relations and touched the most diverse subjects. For relations between countries are not only a matter of politics; science, including legal science, can do very much for creating mutual understanding of citizens and countries as a whole. Detailed information on the forum is on the official website of the RCSC: http://rccusa.org/ru/2013/06/13/4185/.
The journal was presented to the forum participants. The presentation was attended by the editors of the second issue of 2013: Professors Svetlana Boshno and Marina Davydova, as well as the editor of this issue, L.D. Olga Seregina. On the evening of 12 June, an official reception in the Russian embassy in the USA confirmed the importance of our legal scholars’ cooperation in conditions of a none too simple political reality, with the necessity for unification of all creative forces with the aim of attainment of mutual understanding. Cooperation was offered by various participants of the conference. The surprising thing is that among them were many people in the RCSC who spoke Russian or were willing to speak it, that is, studying our language. Perhaps soon we shall not need to translate our journal into English because we shall be read in the USA in Russian (a joke). But before that wonderful time comes, our main care is quality of translation and conveying the sense contained in the articles. More precisely, it is not a translation but an adaptation of our legal understanding of the world for readers whom we respect very much and want to interest. It was really a transcontinental presentation because among its organizers was Johannes Zeleker, Ph.D. (Archaeology), born in Ethiopia, who provides support for our journal on the African continent.

The composition of the editorial board was also enhanced: it was joined by Honorary Professor of Law of Pennsylvania State University’s Dickinson Law School, William E. Butler, and the Director of the Indonesia University’s (Jakarta) Center of European Studies, Professor Jenny M. Hardjatno (both know Russian well and can actively work at the earliest stages of the journal’s preparation).

Now the journal is known and expected not only by Russian readers, and that places great responsibility on our whole team of authors and editorial staff.

Today our journal is a professional publication registered as a media means. In fact, there are two journals in two languages with different ISSNs. The journal is submitted to the Book Chamber of Russia and is included in the Russian Scientific Citation Index.
Abstract:
This article emphasises that scientific discoveries, developments and the creation of new computer programs have become driving forces in the shaping of modern procedural and substantive law. Current trends in the development of nanotechnology and its influence on the nature of exclusive rights are considered. The application and improvement of information technology is presented as a tool to change the rules of procedural law, the work of state bodies and the judicial system in particular.

Keywords:
nanotechnology, intellectual property, government policy, protection, new idea, legal activities, technology, comparative legal.
countries plays a critical role in ensuring innovative development.

Innovative activity currently is perceived as a necessary attribute in market relations. Innovation, in the literature, is considered to be the creation of something new and previously unknown and is identified with the creative activity connected to the development of new goals and the corresponding means or with the achievement of known objectives using new tools.

Innovative activity means the transformation of the results of intellectual activity into inventions, useful models, industrial samples, selection achievements, topology of integrated microcircuits, databases, know-how and computer programs. In addition, the products must be introduced into circulation in the community. All this shows the objective existence of a direct link between the concept of copyrighting created objects, methods, means or other discoveries and the attribution of tangible and intangible rights to them as well as the registration of these rights and the methods to protect them.

When a society is experiencing this type of progress, the role of the state in regulating the processes in the civil law for the legal protection and production of objects as intellectual property, as well as providing for the protection of the rights and lawful interests of authors, creators, organisations, investors and the state in general, is important.

During the process of economic reform in our country, the position of intellectual property has changed dramatically. At the present time, the protection of intellectual property is playing a special role in state policy and may contribute to the early growth of social and economic development in Russia.

The emergence of new ideas in the sphere of nanotechnology requires the development of an identification system for intellectual property rights. The system needs to more closely define and register an invention of a completely new quality, identify the geographic place where a discovery occurred, provide for the registration of a copyright for that discovery, provide property rights for research having a global character, take into account multinational teams of participants in research groups and choose a patent system.

In this connection, and in view of the rapid development of science and technology, the identification and protection of intellectual property rights and the execution of patents for innovation and inventions is becoming important because they provide unconditional economic benefits and advantages. Because rights to scientific discoveries are given special value in a new era of innovation, issues of intellectual property rights, and in particular, those related to nanotechnology-based products, are vitally important to enhance competition, the promotion of innovation and the introduction of new technologies.

Prior to the identification of specific problems in nanotechnology that need to be resolved, it is necessary to define certain concepts.

Nanotechnology is the interdisciplinary field of fundamental and applied science and techniques. It contributes to the simultaneous development of theoretical justifications, practical methods of research, as well as methods of production and

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the use of products with a specified atomic structure by the controlled manipulation of individual atoms and molecules. The deployment of advanced scientific achievement in nanotechnology allows us to refer to it as high technology.

Nanoscience is a science developed and studied within the framework of physics, chemistry, molecular biology, genetics, microelectronics, computer technology, medicine and pharmacology.

Thus, nanotechnology is a very broad term that includes research in various branches of knowledge, possible discoveries, production methods and much more that, at the current stage of development of science and technology, cannot be assumed, otherwise these discoveries would already be made. Nano discovery is a completely new sphere and probably, therefore, a prospective one. It is difficult to predict exactly which intellectual property rights can be used to protect this or that nano discovery. However, undoubtedly, the acquisition of new knowledge in the field of nanotechnology and its deployment in innovative activities may affect the role and place of this country in the international community, promote a higher standard of living and quality of life for the population and contribute toward ensuring national security.

The concept of development of products in the Russian Federation in the field of nanotechnology for the period up to the year 2010 has defined nanotechnology as a set of methods and techniques that, in a controlled way, make it possible to create and modify products that include components that include at least one dimension that is less than 100 nm in size. As a result of this, they have a completely new quality allowing their integration into fully functioning systems of a larger scale.

Currently, the goal of science in various fields is to produce devices necessary to create and manipulate nanoparticles. There is no need at all to create an object smaller than 100 nm. The primary goal is to study these properties, to learn to control them and perhaps to utilise them in macro-objects.

Thus, the concept of “nanotechnology” is used to define the knowledge and management of processes under 100nm in scale when that size leads to the possibility of new applications. In addition, the properties of objects and materials at the nanometre scale are used to create improved materials, devices and systems implementing these properties. The basic discoveries that have been predicted in the field of nanotechnology have not yet been made. However, the research that has been conducted is already yielding practical results.

It appears that the formulation of proposals for the establishment of legal protection for nanotechnology, which is not yet recognised as a new source of intellectual property, needs to start with a determination of whether existing and prospective nano discoveries should be categorised as any type of intellectual property previously established by legislation.

Products of the nano industry can potentially be used in the results of certain types of intellectual activity which, pursuant to legislation, may be registered and to which legal protection is granted; these include useful models, industrial samples, selection achievements, topology of integrated microcircuits, programs for electronic devices and databases.¹

The types of intellectual property listed above require various types of registration, protection or patenting. Therefore, the most complete intellectual property protection in the field of nanotechnology may be achieved through the application of comprehensive measures using both patent and copyright provisions. In addition to these forms of protection, it is possible to treat the information as trade secrets (know-how) which are not subject to patenting, but to the contrary, assume secrecy.

Since 1992, Russia has established a system for the legal protection of intellectual property pursuant to which the results of scientific and technological activities are deemed to be private property and protected, for example, by patents. The legislation that defines the intellectual property rights gives authors a monopoly with respect to certain uses of the results of their intellectual activity and permits it to be used by other individuals only with their permission.

In a market economy, the registration of rights to protect the results of scientific and technological activity provides its owners with the opportunity to use these products themselves and to receive the resulting material benefits. Thus, it is necessary to be able to manage intellectual capital subject to ownership rights successfully. It is noted that the results of scientific and technical activity in Russia are not primarily commercial products ready for production and effective distribution. Russian companies find it possible to transfer the latest knowledge abroad, not reinforcing it with know-how, secrets or services. This strategy is very different from a modern global one, in which the increase of competition in the world market has become typical in technical, scientific and technological exchange, leading to significant complexity in gaining access to advanced technologies which are subject to limitations on their commercial use.¹

Given the growth of innovation as part of the Russian economy, the focus should be on achieving the maximum degree of effectiveness in enforcement to protect the creation and use of the results of intellectual activity.²

The application of information technology is an effective tool in the work of state bodies and in the judicial system, in particular. The use of information and communication technology in the justice system is the result of a policy aimed at assisting courts to receive and process online legal information as well as to ensure free access to laws and judicial decisions.

The main direction in this field is currently “e-Justice” technology, which allows the electronic exchange of documents between the courts, allows courts to obtain information about traffic cases in real time and allows access to other features permitting the electronic flow of documents. It assumes that business will be conducted as usual using both hard copies and electronic versions (all documents in a case are scanned and entered into a database). It saves the time required to request cases from other courts and also alleviates the need to spend money copying materials. In addition, the storage of case materials in an electronic format facilitates more reliable safekeeping. However, some are of the opinion that the risk of leakage of information


through unauthorised access is an unresolved issue.

However, regarding this problem, the Supreme Commercial Court of the Russian Federation has firmly declared that all processing and storage of data are to be carried out on the server, allowing the provision of centralised management, the required level of performance, reliable information storage, efficiency in data processing and protection against unauthorised access.

During the implementation of the technology of “e-Justice”, the confidentiality of some information that is in the files must be taken into account. If there is open access to the materials for all comers, in certain cases, individual human rights may be affected, trade secrets of business entities may be disclosed and business reputations may be discredited.

The U. S. legal system undoubtedly has previously implemented a type of “e-Justice”, including access to the courts, the retrieval of information about court cases, the ability to search for documents, the transmission of documents from one court to another and their circulation within the same court, the ability to obtain information about the parties in a case and the date of filing, the maintenance of files containing the documents and other information associated with legal proceedings. These features are expanded by technology allowing “Open Access to Judicial Electronic Data”, which permits users to gain access to electronic files relating to cases.

Most of the states using the Anglo-Saxon and the Romano-Germanic legal systems either currently use information and communication technology in the justice system or are actively developing it. Thus, in Ireland, the decisions of the Supreme Court are filed not only as hard copies, but also have been fully converted into an electronic format and are available on the official website of the court. In addition, in the district courts in Ireland, an interactive system of filing claims is in operation and a unified database of court decisions is under development.

The Royal judicial service operating in Great Britain provides free access to the legal databases of all judicial institutions in the country by means of an electronic legal library.

Since 2005, a project has been in the process of being implemented in Belgium allowing the courts and other participants in the legal process to exchange documents electronically or to interact using Internet technology.

“E-Justice” technology is widely used in the practice of the European Court of Human Rights. In order to ensure the unification of the information processes of the common European space, on February 28, 2001, the Council of Europe adopted the Recommendations of the Committee of Ministers to the member States of the Council of Europe.

The recommendations have been implemented and address issues regarding the cost-effectiveness of the structure and reorganisation of judicial systems, legal information systems and the provision of judicial and other legal services to citizens using new technology. The recommendations have been implemented through the introduction of judicial management systems, statistical systems and modelling solutions systems to legal proceedings.

Our country, in learning from the experience of other states, should study the solutions they will find to problems that have arisen, but have not yet been resolved. For example, the filing of applications and complaints in courts via the Internet, while significantly reducing delivery times to the courts and decreasing costs, has created
difficulties relating to the authentication of applicants.\(^1\)

Currently, a video conferencing system is actively used in the courts of the Russian Federation. Judges and employees of more than 53 commercial courts already have been provided with the opportunity for video conferencing both between courts and with external callers.

This modern technology not only allows significant reductions in the time required to troubleshoot problems that occur in the everyday working of the courts, but it also makes it possible to conduct trials using this type of communication. For more than two years, trials have been recorded on digital video cameras and microphones installed in the courtroom. A video camera and the installation of special automatic equipment almost completely prevents the opportunity to falsify results.

The creation of electronic justice continues. For this purpose, under the guidance of the Supreme Commercial Court of the Russian Federation (SCCRF), a series of measures is being carried out:

— periodically, there is a version of a “Mobile File Cabinet” available for users of mobile devices having the Android operating system that enables them to view detailed information on any arbitration case at any time;
— the information resource “Presidium Online” is constantly updated, allowing everyone to see how cases are decided in the Presidium of SCCR;
— a new special information resource, the “Mobile File Cabinet,” was opened that made access to the information system “Commercial Cases Card File” possible with the help of multimedia smartphones such as the iPhone;
— twitter, a new service for information dissemination, is used;
— the automated information system, “Bank of Decisions of Commercial Courts” service (BDCC), has been implemented, allowing the arbitration system to take its place in prestigious foreign publishing systems of judicial acts.

Finally, it is already possible to discuss the use of the most sophisticated technology in the framework of “e-Justice” — a trial, conducted only using a web information system, without calling the parties to the court. It appears that this requires lengthy preparation of the normative as well as the high-tech material base. Similarly, in Great Britain, there is an existing special system for the acceleration of the consideration of disputes, which consists of an online hearing during which participants are virtually present in the arbitration. The need for such a procedure is caused by the active use of new information and communication services and the wide spread of the Internet.

Modern information technology and its introduction to legal services is an inevitable trend in law, subject only to the need for certain changes in existing regulations or the creation of new ones.

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abstract: The article is focused on the problem of describing the characteristics of such forms of the systematic arrangement of legislation as consolidation. The authors observe different points of jurisprudence concerning the problem of categorizing the types of systematic arrangement of laws and regulations, emphasizing the place of consolidation in these studies. The article presents not only the views of modern scholars, but also gives a brief review of pre-revolutionary Russian and Soviet literature on the issue. The authors also provide examples of using consolidation in the legal systems of civil law and common law countries.

Keywords: consolidation, systematization of legislation, consolidation bills, codification, codes.

In legal theory there are typically three forms (methods) of the systematization of legislation\(^1\). These are incorporation, consolidation and codification. Some sources name record of regulations as a fourth form, and the creation of codes of law as a fifth. In this classification, the description of the types is made according to the level of complexity (depth) of the rule by which the material is handled.

Consolidation is usually understood to be the systematization of legislation and omission of associated regulations that have been repealed, into a single enlarged document; it is carried out by an authorized law-making body. Acts are included in the structure of the consolidated Act as individual chapters, articles or items. Using this definition, some scholars believe that the relevant regulations are not modified at all\(^2\), while others deem the changes to have only an editorial effect (less than the effect of codification) on the text\(^3\), with the removal of some contradictions and repetitions.

\(^1\) Herewith the term legislation is used to wide extent, and includes both legal acts and legally enforceable enactments.


Consolidation under this definition lies between incorporation and codification: the first of these is characterized by the streamlining of regulations, by placing them into different groups without modification, while the second involves the substantial reworking of legal material, with a structurally and substantively new combined complex being created as a result, such as an Act of basic legislation, a code, a statute, etc.

Distinguishing consolidation as an independent form of the systematization of legislation is a controversial issue. In legal literature there is both a recognition of the presence of consolidation and the need to work to consolidate regulations, and a position which does not recognize the independent nature of this form of systematic rearrangement1 or does not even mention it2.

For example, Prof. A. S. Pigolkin, describing consolidation, points out that “this kind of work to merge regulations cannot be called codification, although apparently there are two of its signs: unification of legislation into a single Act and its simultaneous modification. But codification is characterized by other typical signs, i.e. the creation of a large and structurally complex Act in a particular area of law or legislation and characterized by stable content.” He notes that such characteristics are absent in the case of the consolidation of legislation3.

However, the literature on the subject contains only a few examples of the consolidation of regulations. So, speaking on examples of consolidation, A. S. Pigolkin only mentions the publication of a consolidated Act in the field of agriculture in the preparation of the collection of active legislation of the USSR4. Prof. T. V. Kashanina mentions, as an example of consolidated regulations, the Federal Law of 12 January 1995 No 5 “On Veterans” (and she notes that this Law combined more than one hundred different regulations governing benefits for veterans5) and the Water Code of the Russian Federation that is no longer in force (hereinafter — the WC RF 1995). Although T. V. Kashanina agrees that the boundary between consolidation and codification in the Russian legal system is currently blurred, she considers the WC RF 1995 to be a consolidated Act, pointing out that there were earlier “mechanically joined” Acts dealing with water management. It is difficult to accept such a conclusion, because the Code was

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4 Ibid. P. 43.
adopted in place of the Water Code of the RSFSR that had expired (Article 148 WC RF 1995). The connection with other regulations in this Code, without any change to the texts of those laws, is also in doubt.

In addition, codification does not necessarily involve the creation of "primary" industry legislation. Thus, a special category for codification that is designed to combine the rules of law applying to one or more institutions is allocated in the literature. At first glance, the criteria for dividing the legal world into sectors, sub-sectors and institutions are ambiguous because there are a variety of factors determining the formation of these structures; it is difficult to distinguish clearly between regulations containing legal rules applying across a legal field from Acts containing only rules applying to certain legal units and rules governing universal questions.

As was mentioned above, some authors who attempt to distinguish consolidation from systematization note that, in the course of consolidation, no changes in the content of the legal rules occur — the rules are just mechanically connected to form the text of the new regulation. Such an approach leads other researchers to the conclusion that consolidation has shortcomings connected with the possibility of it being of no practical use. However, even if we recognize that consolidation provides opportunities for editing the text, the literature indicates that consolidation as such poses challenges that are overcome by codification. Yet scholars note that, even if it is recognized that consolidation gives an opportunity for editing texts, consolidation does generate problems that are avoided by codification. Indeed, taking into account the dynamism of modern Russian legislation, it is difficult to imagine how we could work to create Acts which would recognize repealed legal regulations as invalid and give effect to new regulations, in the form of a single enlarged Act with no change in content.

To construct a more complete picture of the theoretical question of consolidation, we can appeal to foreign experience and examine the consolidation of UK statute law which is essentially different from the consolidation of Russian law.

It is interesting to look at the practice of creating consolidating legislation in England. The House of Commons publication Stages of Parliamentary review of a Government Bill states that Consolidation Bills make it possible to join together several existing laws, sometimes with minor revisions, in order to simplify the statutory law. In the course of passing a Consolidation Bill a simple process is followed in Parliament: the procedures are formal and, as a rule, there is no debate over the Bill. In this case, there may be a pure consolidation, i.e. there is no modification of the existing law, or there may be amendments.

However, English law does not provide for the kind of systematization of legislation known as codification. For this reason consolidation is possible, as a

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substitute for codification, which (in the sense in which it is used in continental law) is not possible\(^1\). In this example, the practice of consolidation is closer to the theoretical framework which we call consolidation in Russian legal science. The conclusion of representatives of French legal doctrine is also interesting: they are happy to call any activity aimed at the systematization of legislation “codification”, regardless of the nature of this activity. Investigating this problem, S. V. Bakhvalov notes that French practice now uses so-called “continuous codification”, which consists in a rational rearrangement of the existing law without making any changes. This is based on the use of information and communication technologies, even though such use today has some serious shortcomings and unsolved problems\(^2\).

Summing up the analysis of the consolidation of regulations, one can conclude that the current legislation in continental countries is too dynamic to allow the use of the mechanism of consolidation for the joining together of regulations by a mechanical connection only. Pure consolidation could probably have occurred in such countries in the past, but now it can take place only in legal systems where legislation is not the main source of law (and this is not the case for all common law systems\(^3\)). If we examine systematization that includes editorial or substantive processing, the evolution of legal material, the abolition of outdated legal provisions and the inclusion of minor changes by the editors, creating a new instrument to replace the previously existing one, then it is not possible in practice to divide these arrangements into consolidation and codification.

Thus, the concept of consolidation as a form of organizing Russian legislation is largely a theoretical construction which is of little use for modern law-making. Consolidation appears only as a technique in the preparation of a new legal Act, but not as an independent type of systematization. With this approach, we can agree with S. V. Bakhvalov’s conclusion about the current trend of increasing the role of consolidation in the process of improving legislation\(^4\). There is no prospect that consolidation itself, as a separate kind systematization, can be developed, for the reasons given above.

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\(^3\) For example, there is a viewpoint expressed is in the literature on the systematization of federal legislation in the United States describing this process as incorporation and, with some features codification (for any particular standard material there is an appropriate form of organizing of the United States Code). Vide: Sistematizatsija zakonodatelstva. P. 376.

PROBLEMS REGARDING THE INCREASE OF LEGAL CONSCIOUSNESS IN RUSSIA

Sergey Nosov, Doctor of Legal Sciences, Professor, Faculty of Theory and History of Law Peoples’ Friendship University of Russia

Abstract: This article examines the concept and the essence of nihilism as a social phenomenon. It considers the causes and factors contributing to its spread in our country and the forms in which it is manifested. The article discusses ways to overcome legal nihilism.

Keywords: nihilism, legal nihilism, sense of justice, spirituality, morality, bases of society, anti-legal guidelines, corruption manifestations.

The idea of the rule of law is not feasible without overcoming legal incivility and the low levels of a sense of justice. Therefore, the problems of expanding a sense of justice and overcoming the legal nihilism that has existed in our country for many decades are extremely relevant.

Is legal nihilism a purely Russian phenomenon? Of course it is not. It exists in other states as well. However, the extent to which it has spread and the forms in which it is manifested vary in different countries. In our country, this phenomenon has a broad scope and its existence is supported by a wide variety of evidence.

In the modern period, in which the course for establishing a legal and democratic state has been constitutionally defined, rights are becoming more popular in society, while the problems associated with legal nihilism and the means to overcome it are becoming much more noticeable and painful than was the case when rights were disregarded.

Despite the considerable number of scientific works dedicated to the development of the nature of the problem of legal nihilism, research addressing the essence of the phenomenon and the forms in which it is manifested remain very relevant.

The relevance of research also is supported by the extreme persistence of the phenomenon in the public consciousness. Legal nihilism routinely causes existing legislation to be universally ignored, violated and not executed, inflicting serious harm on constitutional legality and the rule of law. Legal nihilism affects the most vulnerable sectors and is associated with the consciousness, i.e., the psychology of people. Hence, it is difficult to overcome.

It should be noted that positive changes are occurring in the public consciousness, albeit slowly. When comparing Russian society in the early 90s of the twentieth century with that of the present, it is obvious that the people’s legal consciousness has changed not only in its form but in its content as well. Citizens are more active in using legal mechanisms for the protection of their rights and in asserting their legal claims.
rights, freedoms and interests. However, the general level of legal awareness in our country continues to remain low.

Nihilism has many faces and is manifested in a variety of forms. To understand the essence of legal nihilism, a grasp of its nature as a social phenomenon is necessary. The term “nihilism” comes from the Latin nihil, or nothing, which means not anything. Nihilism has many shades and features; depending on the sphere in which it is manifested, it can be moral, political, religious, etc.

Negation is distinguished as the common feature of all of the manifestations of nihilism and frequently, it is perceived as a negative and destructive phenomenon. There are many examples of how nihilism takes extreme and destructive forms. However, sometimes legal nihilism shows itself to be a positive factor, although this is an exception to the general rule. Legal nihilism occurs in a positive context when it responds to totalitarian, antidemocratic regimes and the arbitrariness of authorities that violate the rights and freedoms of citizens. In the words of J. J. Rousseau, a “despot cannot complain about violence dethroning him.” Admittedly, nihilism loses its negative meaning when it becomes an objective denial of reactionary conservatism. Throughout history, including the history of our country, there are quite a few examples of this.1 In general, however, nihilism, in its traditional sense, is a negative and socially harmful phenomenon.

A sign of nihilism is not an object, but a degree of negation that is categorical and uncompromising in its intensity and that is reflected in the predominance of subjectivity, beginning with hypertrophic doubts regarding known values and principles. Moreover, a nihilist chooses actions that border on anti-social behaviour and represent a violation of moral and legal norms. In addition, the “absence of any positive program or, at least, the presence of one that is abstract and amorphous, is characteristic of nihilism”.2

Social nihilism took root in our country long ago and has manifested itself in distinct ways in different historical eras. Our own experience shows that, in periods of instability, it can manifest itself with great destructive force. At the end of the 20th century, it “bloomed” on the waves of the “general negativism” that captured the country when so much was reconsidered, rejected and denied. Despite the fact that the extremes of social nihilism, at a great cost and loss, have been overcome, the forms in which it is manifested continue to be extremely varied (ranging from discontent with general political policies in the country to a hostile attitude towards government institutions and power structures in general). Unfortunately, public opinion has become much less sensitive to violations of legal and moral norms.

History testifies that the occurrence of social nihilism is a potential threat in a society of contradictions and social conflicts and that overcoming it is a major problem in any democratic and social state.

One form of social nihilism is legal nihilism, which is in essence pessimistic and negative and is manifested by a disrespectful attitude toward the right. Unlawful guidelines and stereotypes are quite often considered to be an element, feature, or property of the public consciousness and national psychology of the Russian society. The prevalence of legal nihilism for many decades (or even centuries) has given rise to a belief in the uselessness of the right in Russian

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1 Kara-Mirza S. Inteligentsija na pepelische Rossii [Intellectuals on the Ashes of Russia], M., 1997. P. 162
society.

According to many scientists, the high level of legal nihilism present in Russian society is largely a consequence of the historical heritage that is associated with the specific nature of state power, the lack of development of a legal culture and the national mentality. As noted in the special literature, the concept of law is most often associated with a monarch as the head of the state. It is something that comes from “above” or from “higher-ups”, i.e., the right.¹

Unfortunately, modern Russia has not eliminated these vices. Legal nihilism is fuelled extensively by realities such as the cynical populism of individuals in power as well as ambitious, vain and incompetent officials.

Forms of legal nihilism include:

— apparent disregard for laws and other regulatory legal acts (e.g., crimes, deliberate offences);
— manifestations of corruption;
— failure to fulfill legal requirements (e.g., mass violations of traffic rules, etc.),²
— selective application of laws.

The more we declare that a democratic and social state has been formed, the more sensitive and painful these problems are.

There is no need to say that corruption is an acute problem to overcome. Apparently, the fight against corruption cannot be conducted in a way that treats it as “pardonable,” as we quite often see in practice. Rather, tougher and more decisive measures should be taken, given the extremely common and pervasive nature of the phenomenon. Excessive delicacy and indecision is more likely to be harmful than to indicate that serious work is being done to address it.

Often Russian citizens seriously and legitimately criticise authorities and law enforcement agencies for their inconsistency and indecision, but are not always principled themselves and sometimes display the same tendencies.

Can we overcome the legal nihilism in our country? Or it has become so ingrained in Russian tradition that no means of fighting it appear to be effective?

The prevalence and deep historical roots of nihilism, the lack of development of a legal culture and the widespread propaganda of the anti-right in the form of brochures, books and publications which educate the reader regarding methods to bypass the law and to find loopholes in it, do not provide grounds for optimism or hope that serious progress will be made to overcome the phenomenon.

At the same time, it should be noted the exceptional complexity of this work is explained by the need to influence the conscious will and psychology underlying human activity. It is also explained by the stream of negativity which influences people’s minds and by inability of legal education and the dissemination of effective legal advocacy to actively oppose the impact of this stream. Most importantly, it fails to provide a major part of the population with a perception of legal ideas and a legal culture.

In the absence of the formation of deliberate and decisive guidelines to create a positive perception of the law, it is useless to discuss growth in the

² According to statistics, about 300,000 people are killed on the roads of Russia per year and the main reason for this is the non-observance of traffic rules by drivers and pedestrians.
citizens’ sense of justice as a prerequisite for overcoming legal nihilism. It requires a range of well-designed and targeted organisational, ideological and educational measures and an extended period to implement them. Rapid results are an unachievable goal.

Another equally important part of this task is the implementation of a sound regulatory system for state institutions and for society as well as the adherence to and application of laws and other regulatory legal acts.

These two components should be addressed synchronously. It is impossible to ensure the universal adherence to existing legislation by all citizens without a high level of awareness that can be achieved only if all those who carry out the law perceive the ideas and postulates underlying those rights.

Also, it is impossible to create high quality legal rules and efficient enforcement practices without the proper levels of legal thinking, respect for the law and the presence of an attitude viewing it as having social value.

All civil society, together with government institutions, should actively address the problem of legal nihilism in our country. Only then will it be possible to achieve results.
THE RELEVANCE OF EMOTIONAL PSYCHOLOGY TO UNDERSTAND THE LAW

Lyudmila Golovina, L. L.D., Legal adviser ANO TV-Novosti

Abstract: The article describes Leon Petrazycki’s original psychology theory of understanding of law and observes the proofs of actuality of his theory for contemporary conditions of the changing forms of state society.

Keywords: history of law, understanding the law, evolution of forms of law, behaviour motivation, psychology approach to understand the law.

There is an important Russian scholar in the science of law history, the author of the psychology approach to understanding the law which explains the motivation of human behaviour.

The theory of Leon Petrazycki (1867—1931) is related from the start with the author’s biography. He proved by the way he lived his whole life that if one realizes the world’s imperfection in certain fields one should work to improve them. Petrazycki changed from the medicine faculty to law during his studies at Kiev University. Then in Berlin he published a significant work in German concerning joint stock company dividends.

Leon Petrazycki was a lecturer for St Petersburg Women’s History and Literature Courses and for 20 years was Professor of the Philosophy of Law at St Petersburg University. He played an important role in the opposition Constitutional Democratic Party and was elected to the illfated First Duma (Russian parliament during the monarchy period). For his opposition activity he was convicted and sentenced to three months in prison. His awareness of socialist ideas enabled him to explain the existence of society without positive (written) law, with the idea that law came into the world earlier than the state.

The new bolshevik politicians perverted his explication. Petrazycki had to leave the country and became the first Professor of Sociology at Warsaw University. In 1931 he committed suicide.

Petrazycki wrote mostly in Russian although his early works were in German. There is no full translation of his works and his latest essays in Polish were lost. For European and English speaking people his theory is known from the reviews of critical researchers published in the middle of the twentieth century. J. Gorecki at Stanford University and P. Sorokin at the Harvard University had published some works on psychological sociology, developed on the basis of Petrazycki’s theory. Some scientists who emigrated to the USA and China also devoted their works to Petrazycki’s theory (N. Timashev, H. Heins). His theory was represented in textbooks only in continental law programmes. Some parts of his theory are
studied in postgraduate courses in philosophy of law in the themes of nature of law, and mental essence of law.

A specific and incorrect interpretation of Petrazycki’s theory became the basis to legitimate the illegal new regime in Russia, used to justify the ideologizing process as an attempt to regulate life in society according to the proletarian sense of justice (in the work of P. Stuchka, the first minister of justice in the USSR) and the outrages committed in tribunals. Exploration of class justice (fairness) could give us nothing in learning the law and its inner structure, which is available only in the personal psyche. The psychology approach could give the possibility to explore the Russian legal tendency to unite law subjects, based on sobornost1 and to appreciate the value of human rights, defending the idea of one human fairness.

Some attempts to use psychology in the science of law were made after Petrazycki’s theory appeared. Legal scholars developed certain psychological approaches indifferent to the type of psychology and what is recognized as its subject and method: for example, solidarism in France and law solipsism in Italy (E. Fitipaldi). As a result scholars mixed their understanding of science: if they should investigate behaviour or emotions and experience, if experience consists of parts or it could be recognized as a unit of measure like an atom, if they should use observation, experiment or inner analysis (introspection).

Intuitive law is the main point of Petrazycky’s theory, that is psychological appraisal of our own behaviour based on an inner sense of justice (fairness). The basic norms in a democratic state are interconnected and equated for fairness. The importance of written legal rules, if they include the above mentioned basic norms and people realize and execute them, is concluded in self-regulating personal behaviour. Intuitive law appears as dual emotions; empowerment and obligation. Persons feel the emotion to demand and to execute such demand. The rule of law system supposes to provide each right by obligation. This dual principle of law was proved by Petrazycki.

Written law is not able to regulate social relations by itself. Norms should be apprehended by people and realized as they were understood depending on people’s wills. Even the executive power of the state depends on understanding the written norms.

Accepting the structure of law as consisting of rights-obligations, future use of Petrazycki’s theory can be evaluated in the light of realizing his prognosis: role of positive law is really reduced. It is due to evolved forms of law (as shown at research in Harvard University) and appeared new law-meaning. For Petrazycki the law exists in the psyche of the person, in his or her mind, and does not depend on the executive power of the state. We observe the evolution of state forms, state functions are changing and political interests of people groups predominate over written norms of international conventions. The new law-meaning is able to regulate international relations and economics as much as private life situations. We recognize the precondition of such a process in the spread of democracy assuming goodwill in maintenance of law and order on the base of their law-sense. The reduced influence of written law and the tendency to reduce legal formalism in justice are factors in the spread of intuitive law.

New state forms unite to become more international and do not possess all the signs of absolutely sovereignty. We need to investigate the interdependencies and inner legal norms inside each psychological multinational group. A general definition of property right may become more conditional due to the legal norms of a certain state.

One legal entity may acquire different rights in the same property or goods when they are transported around the world. The truth of this prognosis is the factor that proves the existence of transnational psychological groups.

Learning Petrazcycki’s theory helps the achievement of a high standard in professions that apply the law: police officers, prosecutors, judges. His theory is relevant in practice for professionals in all types of state, whether it is called a “nation” and realizes security functions or a more contemporary one in which people are united in groups on the basis of their dominant emotions and experience. Thus they unite on psychological criteria but not on social ones or on citizenship, as in the theory of Paolo Virno. Equal arguments in behaviour or life position in the groups united on psychological principles prove the possibility to investigate individuals’ minds to find equal fairness. Petrazycki studied the struggle for survival among emotions (impulses) and the group of emotions that become more common if they offer survival for people who feel them.

Petrazycki showed the absolute impossibility of creating legislation to satisfy all types of fairness, especially opposites. Legislative authority is guided by its own sense of fairness during the legislative process. Only a narrow group of wealthy people is able to influence that process by means of lobbying. Thus the legislation protects only a few people, personalism takes place. Legislation is a process being executed voluntarily.

Petrazycki’s theory includes some contradictions that were obvious to his contemporaries. Such contradictions could be eliminated on the basis of what we now know from the intuitivism theories of Lossky, Frank and Karsavin who developed the units of good and evil, and the similarity of individual and collective phenomena. Their works were published widely in Europe in English. Solidarism and union of persons joined by a sense of love (psychological inner energy) gives the opportunity to know the truth and to realize common values. The level of its realization determines the intuitive law. The unknown problem for non-Polish and non-Russian researchers is that Petrazycki could not be understood correctly even in Russian. It becomes easier to understand his works when new words and equivalents are used, which did not exist earlier. Based on current knowledge of philosophy and psychology, the misunderstandings that appeared in his theory can be resolved. As a result an adequate understanding of Petrazicky’s theory could be reached.

A matter of curiosity and relevance at present is in the values from the Bible included in Petrazycki’s theory: love, for example. In his theory, love represents the inner energy which moves us. It directs and is determined by the whole sum of human knowledge, by the sense of justice. Contemporary research into evidence of pre-given norms and the order of creation (Association for Reformational Philosophy, VU University, Amsterdam) has made Petrazycki’s theory very real due to Christian values and methods of understanding reality being very relevant to those which were used by Petrazycki. Only love and clarity, evidence of pre-given norms, could change people’s behaviour to be more acceptable to society.
by alteration of human wishes and minds and to make human intentions sincere. Executive power, intimidation or material stimulation can only change people’s behaviour.

The modern renewal Petrazycki’s theory seems very appropriate to understand the reality of changing the state and legal forms, to discover the interdependencies and directions in forming new groups in society, and their sense of justice. Successful attempts to revive this theory could give the methods and principles to rule people’s behaviour as a result.
The article describes Leon Petrazycki’s original psychology theory of understanding of law and observes the proofs of actuality of his theory for contemporary conditions of the changing forms of state society.

Abstract: The article shows a specific role of the code of ethics as one of the means to improve the level of moral and legal culture of subjects of authority in the context of forming a civil society in Russia. The authors declare their position concerning the nature of normative acts in this field and emphasize the significance of interaction between law and morality in regulating social relations.

Keywords: Ethics, code of ethics, professional code of laws, law, morality.

Contemporary Russia desperately needs to identify moral and legal milestones that would appropriately mark the stage of socioeconomic development the country has reached. The identification of such milestones is not only an impelling demand of the society, but also a high-priority objective for academic research.

Cross liability of the state and the personality is not restricted to legal relations; in fact it implies a spiritual foundation in relationships between the state as a public authority and the personality who is an actor in effectuating this authority’s power. According to Immanuel Kant, one may declare that the legal system operates properly only when the society does not depend upon the state and possesses certain media and sanctions by means of which it can induce the individual to observe the moral code, and besides, there is general admittance of the fact. To a considerable extent this proposition concerns state officials and civil servants.

Improving the morality of the subjects of authority involves simultaneous efforts in several directions. One direction is to provide for legislative regulation of authoritative bodies’ activity, the other is to define fundamental moral standards by introducing certain codes of ethics, for example, the parliamentary code of ethics, code of honour for judges, the public servants’ code of conduct, etc. In order to create a proper moral environment it is essential to translate the moral code into the language of procedures and technologies. It is also important to frame applied ethics and professional codes of laws. Presumably they will play a crucial role in
setting up moral parameters in civil servants’ behaviour, and allow the elimination of conflicts of interest, and also defend the honour and dignity of authorities.

Objectivity in today’s Russia dictates the necessity to pay special attention to candidates’ moral qualities when selecting and promoting public servants. The application of these codes of laws in formal procedures can result and has resulted in situations where individuals are excluded from the given professional community for breaking professional ethics rules. Thus they already provide for establishing moral parameters of behaviour for civil servants and preventing conflicts of interests.

The first and foremost positive value of the codes of ethics is that they make individuals focus their attention on their own moral status.

Besides, they give an insight into the subject matter of ethics theory without being its substitute.¹ In January 2003 the first All-Russian Congress of Lawyers passed the Code of Professional Ethics for Lawyers. In 2004 the sixth Congress of Judges passed the Judicial Ethics Code (this replaced the Judges of the Russian Federation Code of Honour, which was adopted in 1993). This document has the power of law for judges. Its function is not only to specify sanctions for judges who infringe rules of judicial ethics, but also to protect judges from insubstantial accusations including those connected with attempts to influence the decision of the court. Currently a new concept of the code of judicial ethics is being actively discussed in the judicial community.²

The Board of the Federal Notarial Chamber ratified a Professional Code for Public Notaries of the Russian Federation. The Code of Professional Ethics for the Russian Federation Home Affairs Bodies was enacted by the Order of the Minister of Home Affairs of 24 November 2008 (No. 1138). In 2010 after long discussions and negotiations the Standard Code of Ethics and Official Behaviour for Public Servants of the Russian Federation was adopted. The Code of Ethics of Deputies was also developed.

In the literature, researchers state that codes of ethics have acquired such topicality today for the following reasons: society’s requirements of political institutions are increasing and methods to control them are being developed; today’s politicians are more anxious about their reputation. We should also note that the concept of “conflict of interests” is one of the key concepts in all codes of ethics, and it is by no means just a coincidence. Officials in politics and administrative officials attract close attention. That is why it is also their priority to have a set of rules stating how to behave and present information, which will allow them to make correct decisions and to defend themselves from false accusations. Any actions in the daily work and relationships of civil servants that can lead to corruption or create opportunities for corruption are to be strongly discouraged, since they destroy the credibility of the state in no less a degree than corruption itself. It is easier to act correctly if a person knows what kind of behaviour people expect from him or her.

Unlike the code of laws, which deals with the negative side of human

nature, the code of ethics appeals primarily to the highest expression of human
nature — to conscience. The code of ethics should embody such moral principles
and norms as continuity of values, customs and traditions typical of the Russian
society, and conformity of ethical norms to nationwide interests. Until recently
the general trend in interaction between standards of law and morality could be
presented as ethics requirements being absorbed by juridical ones, i.e. ethics
norms were validated as legally operative, and the criteria applied to evaluate
these norms were purely formal and based on existing legal practices. The very
fact that today it is becoming more and more common for corporations to adopt
their own codes of ethics indicates a new tendency, which can be described as
an aspiration to diversify forms of legalization of ethical requirements, to transfer
ethics norms into the area of formalized rules of conduct.

Just to adopt such documents is insufficient. Regulatory bodies should
have in their structure special committees on ethics designed to examine cases
of moral offences, to render public reproof (to impeach credit), and also to give
recommendations on how to encourage people towards sound moral conduct.

Today professional codes of ethics either have been already adopted or are
being discussed in most sectors of business.

When searching for common sense and morality in the market economy
per se, one comes to the conclusion that it is not the market that is amoral, but
the behaviour of people acting within the framework of this market. It is inherent
in the market economy to view a human being with a cold-eyed realism, but
market relations do not remove the significance of mutual trust, liberty, and
obeying accepted moral standards voluntarily. This is proved by practice existing
abroad. Almost 100 years ago a distinguished German scholar Max Weber gave
convincing evidence that western capitalism was built not on the so-called “primary
accumulation” but on a sound foundation of Protestant ethics, which presented a
distinct ethical guidance determined by Christian ethics.

In different countries economic ethics are based on different religions,
however in principle the foundation is the same. The common approach is that in
order to make a profit one should apply accounting methods, lead a prudent life,
reduce expenses, be honest, modest, and hardworking. The “economic miracle”
of Germany and Japan, South Korea and Taiwan, Singapore and Malaysia, as
well as of other newly industrialized countries, was created by applying individual
approaches that took into account the distinct features of each state and society,
national identity issues and the national genius. But one thing these approaches
did share as a common feature was their focus on building a market economy and
representative democracy.¹

The experience of many countries has shown that it is absolutely unacceptable
to oversimplify and to narrow down all social needs to mere economic needs by
leaving out the moral sphere. The material production of capitalism at its initial
stage in order to ensure further development also required in the first place to solve
problems of morality rather than solving purely scientific and technical problems,
since it was impossible to evolve new economics based on private initiative
without forming a new type of person. It was not accidental that the central nerve
of philosophical research in that period lay not in the sphere of natural philosophy,

¹ Vozmozhno li russkoe ekonomichesko chudo? [An Economic Miracle — Is It Possible in Russia?] // Parla-
but in that of ethics. However, according to the German specialist in contemporary social morality, Karl Homann, one should not go to extremes. The conflict between the entrepreneur's consciousness in the field of ethics and the intrinsic logic of the entrepreneurship per se should be resolved neither in a spirit of a radical liberalism (i.e. by focusing on cultivation of the individual's selfishness in what concerns his or her activities), nor in a spirit of moral fundamentalism (i.e. by condemning bitterly a moneymaking attitude understood as acquisitiveness and attempting to do without entrepreneurship as it is). No ethics system should block evolution of the economic system. Karl Homann suggests that individuals should view their moral aspirations as obeying laws with utmost honesty. Speaking about proper timing for efforts aimed at forming ethical norms and values, we should note that it is to be done on a different stage, namely when establishing frames and general operating procedures in economics. Only when it is done in this order is there a possibility of generating "moral economy".  

According to the report "Corporate Ethics: a Prime Business Asset", which was presented at the Business Roundtable, the corporate community is to make continuous attempts to improve its activity and enhance outcomes. Many top managers believe that a corporate culture imbued with ethics throughout all the organizational structures best serves the interests of the company. They feel that such penetration is necessary to ensure that their company will be profitable, competitive and effective. From the point of view of chief executive officers presented in this report, there is no conflict between ethical practice and acceptable profitability. In fact the former provides for the latter.  

The vice-president of the New York Stock Exchange, Richard Bernard, has stated that it is necessary to develop and apply codes of business conduct or business ethics for directors, executive officers and employees. It makes it possible to avoid conflicts of interests in the corporation.  

The prime objective of business ethics consists in assuming a moral responsibility when it proves to be necessary in the context of weakened moral and legal regulation. In the long run more benefits can be derived from this course of action than from trying to adapt to or abuse the defects and collisions existing in the legal system. It accounts for the fact that growth prospects are no doubt much higher when the systems organization of a business is being perfected in comparison with the possible temporary benefits derived from disorganization. Thus we can conclude that corporate ethics is a key factor in the strategy of survival in the current period of fierce competition in the global economy.

The Russian business community on the whole has recognized the problem of ethics. Business ethics in contemporary Russia started to become an issue in the 1990s. A number of professional codes of ethics were formulated, among them; the Code of Honour for Bankers (1992), Rules of Conscientious Practice of the Stock Market Players Association (1994), Code of Honour for Associates of

the Russian Guild of Realtors (1994), Code of Professional Ethics for Associates of the Russian Society of Appraisers (1994). In 1995 the Chamber of Commerce and Industry of Russia set as a priority developing the business culture of entrepreneurs, and initiated the project which came to be known as “Russian Business Culture”.

In the frame of the trend presented above, the idea to create a Code of Business Ethics proved to be timely indeed. The idea was put forward at the Seventh World Russian People’s Council held in 2002. The main topic of the Council was “Faith and Labour: Spiritual and Cultural Traditions in the Light of Economic Future in Russia”. At the beginning of 2004 this project was implemented, and Eights World Russian People’s Council adopted the “Code of Ethical Principles and Rules for Management in the Economy”. Representatives of all confessions, business circles, journalists and officials participated in discussing the Code. In its preamble it is stated that the document is intended for top managers of enterprises, commercial entities, and entrepreneurs who will voluntarily apply the principles and rules prescribed by the Code.

Recent experience of Russia as a state with a transition economy furnishes evidence that not purely economic, but rather social and judicial factors played a fundamental role in causing the current crisis. According to Vladimir Yakunin, President of the World Public Forum “Dialogue of Civilizations”, the essential flaws that provoked the world financial crisis also have a moral nature, since it was a supranational principle “Profit above All” that precipitated the whole world into the crisis when it was made the corner-stone in the hierarchy of values. Economic selfishness is a moral category.

Nevertheless, social research shows that people in Russia have generally adapted to new socioeconomic forms and living conditions. On the whole the population of the country has accepted the market economy despite the drawbacks of “brigandish capitalism”. However, in the mass psychology of modern Russian society there remains an injured moral sense, a protest against the moral and mental violence which accompanied the reforms, and against the results of numerous distortions in implementing these reforms. This discrepancy is growing and can become socially dangerous.

At the same time, according to the well-known Russian political analyst Alexey Kiva, it would be wrong to say that western democratic society ignores all issues that are not directly connected with financial interests or that it does not care about the course the country is taking, its ideology, national identity, and such like. At this new rung on the ladder of historical evolution, even in highly developed and wealthy countries, their governing bodies often have to ask common people for their opinions to put forward new ideas and to offer methods for the solution of significant problems with due regard to the people’s mentality. Otherwise world history would not have known either Reaganomics or Thatcherism. It was American pragmatism that gave birth to a national idea to match it. We mean the so called “American dream”, the idea that one should have material wealth in this life rather than in some kind of distant “bright future”.¹

The very fact that in Russia there have appeared codes of ethics both in private and in public spheres raises a number of questions. For example, it is open to dispute what role is to be assigned to the code of ethics in the system of regulatory enactments. The norms of corporate and professional ethics are to be legalized, but it is not clear how. One of the possible methods to apply is to legitimate codes of ethics as localized legal acts. Another way is to recognize such codes as mere corporate rule-books, which means that the breach of such a code shall not entail a legal liability, and then there is no need to attach the status of a localized legal act to it. Norms of this type do not collide with the legal system, just the opposite, they complement and amplify its effectiveness. When laying emphasis on a specific role of professional codes of ethics in his department, Head of the Chamber of Accounts of the Russian Federation, Sergey Stepashin, declared that twelve officials had to leave the Chamber of Accounts in 2011 on the grounds of breaching the professional code of ethics.²

In conclusion it is important to note the futility of certain illusions like an expectation that everybody will tenaciously adhere to all ethics standards. Nevertheless, by the mere adoption of such codes we are creating a favourable psychological climate, civilizing the market, shaping a new mentality. This is only the first step, but it is vital to make in order to promote the establishment of ethics in the future.

ANTI–CORRUPTION LEGISLATION

PROBLEMS OF FORMING ANTI–CORRUPTION LAW POLICY IN MODERN RUSSIA

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Nataliya Mamitova, Doctor of Legal Sciences, Professor, Chair of Political Science and Law International Institute of Public Administration and Management of Russian of Presidential Academy of National Economy and Public Administration

Abstract: For the Russian Federation and its subjects, it is still topical to develop and implement an effective anti-corruption policy, which would include a set of measures aimed at countering corruption. The article clarifies the contents of some of the measures, and sheds light on the priorities set in the anti-corruption law policy of the country.

Keywords: policy, law policy, corruption, legislation, examination, anti-corruption examination, expert.

Solving the problem of corruption is one of the significant challenges contemporary Russia is facing. Corruption hinders the accomplishment of the most important economical and political goals, undermines the authority of governing bodies in the eyes of people, interferes with effective development of commercial, economic and other types of relations at the international level and stands in the way of efficient lawmaking.

Expertise (the word is of Latin origin, from expertus, meaning “the one who knows by experience, sophisticated”) is understood as the conduct of a specialist (expert) investigation of a certain subject on the assumption that considering this subject requires special knowledge in the domain of science, engineering, art, etc. Expertise, or examination (a more common term), is an in-depth analysis of a particular object (including information objects), based on the application of stored professional knowledge and an expert’s own experience. This is summed up in the expert opinion, registered according to the established procedure as an official document so that there are provisions for taking a responsible decision on the matter under investigation.

The present concept refers to any kind of examination, be it an examination assigned by state agencies or institutions, or conducted by public organisations

and individual experts.\(^1\) Anti-corruption examination of regulatory legal acts and their drafts aims to identify and eliminate such provisions in regulatory legal acts that may create conditions for corruption.

The search for a resolution in the given area is indisputably a matter of urgency.

Firstly, in today’s Russia there exists a variety of examinations. However, their legislative status is not determined, whereas the demands of legal practices in this sphere remain urgent. Until recently, anti-corruption examination also ranked among numerous investigations that have no defined legislative status. Secondly, as a result of the rapid development of modern Russian legislation, there is a need to update provisions for expert activity in the course of lawmaking. Furthermore, this necessity should be considered an integral part of law policy in the Russian Federation.

An idea to revise legislative acts against the criterion of present corruptionogenic factors emerged in 2002—2003. In 2004, there was created the integrated and agreed-upon document titled “Instructions to the expert for conducting primary analysis of the corruptionogenicity of the legislative act”. The prescribed procedure in the document on analysing a regulatory legal act is based on verifying compliance with legalistic technique and valuating norms with a view to “defectiveness” in terms of their corruptionogenic potential.\(^2\)

This problem is actively discussed in modern legal literature,\(^3\) and to date, we have already accumulated some experience in analysing drafts of federal laws and laws of constituent entities of the Russian Federation with a view to detecting their corruptionogenicity. However, further efforts should be made to improve the analysis technique.

The normative legal base for conducting anti-corruption examination is provided by the Federal Law of 25 December, 2008, No. 273-FZ “On Counteracting Corruption”, and the Federal Law of 17 July, 2009, No. 172-FZ “On Anti-Corruption Examination of Regulatory Legal Acts and Draft Regulatory Legal Acts”. These laws considerably expanded the scope of anti-corruption examination. Now, not only draft regulatory legal acts, but also regulatory legal acts in force can be subject to anti-corruption examination. Besides, these laws provided for a significant increase in the number of objects and subjects that can undergo anti-corruption examination. The legislators pointed out which draft regulatory legal acts could be subject to obligatory anticorruption examination.

The Presidential Decree of 19 May, 2008 “On Measures Aimed at Counteracting Corruption”, and the “National Plan of Counteracting Corruption” (No Pr-1568), ratified by the President on 31 July, 2008, have proven to be essential in the development of legislation at the federal level.

On 26 February, 2010, there was enacted the government regulation of the

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\(^1\) See: \(\text{Zakonodatel’naja tekhnika [Legislative Technique] / Ed. Ju.A. Tikhomirov. Moscow, 2000.}\)

Russian Federation No. 96 “On Anti-Corruption Examination of Regulatory Legal Acts and Draft Regulatory Legal Acts”, which legislated Rules and Methods of conducting anti-corruption examination of regulatory legal acts and draft regulatory legal acts. On the basis of the analysis of federal regulatory legal acts, one can draw a conclusion that it is mainly the procuratorate together with federal and regional agencies of the executive branch who bear responsibility for implementing anti-corruption examination as a means of law policy.\(^1\) Russian legislation in effect stipulates conduction of two kinds of anti-corruption examination of regulatory legal acts and their drafts — an official or state examination, and an independent examination, which specialists also call a social or public examination.

The former, an obligatory official state anti-corruption examination, is conducted by the Procuratorate, subdivisions of the Russian Department of Justice and federal and regional agencies of the executive branch, as well as by local authorities and their functionaries, who are empowered to perform such an activity.

Independent experts, who act as subjects of unofficial public examination, can conduct the latter unofficial anti-corruption examination. In fact, this kind of examination is accomplished by nonstate agencies and organisations, various scientific and educational institutions, panels of law experts and certain individuals. Their opinion does not imply any legal consequence whatsoever, and their conclusions concerning the subject matter of the examination are of nonbinding character. We assume that the notions “unofficial examination”, “public examination” and “social examination” are to be treated as identical.

Admittedly, the legal control framework used currently to regulate procedures in the domain of anti-corruption examination of regulatory legal acts and their drafts remains deficient, especially in constituent entities of the Russian Federation.

A number of constituent entities of the Russian Federation have already adopted laws on counteracting corruption, which stipulate anti-corruption examination of regulatory legal acts and their drafts. However, when estimating general conditions for conducting anticorruption examination of regulatory legal acts, a significant role is assigned to the actual procedure in use, which, we regret to say, is not properly developed at the federal level. Federal legislators have confined themselves to mere specification of corruptionogenic factors, which the expert should bring to light in the course of the examination. However, the procedure itself must present a much more complete and precise technique based on a theoretic foundation, academically proven methodology, concrete means of carrying out the expert examination and sociologic methods (understood as a complex technology used to ensure effective application of this or that tool). Only such a procedure will make it possible to see corruption through the prism of precision instruments designed for its analysis.

Imperfection of the procedure is one of the main problems that block conducting anti-corruption examination today.

According to government regulation No. 96, rules and methods of conducting anti-corruption examination of regulatory legal acts and draft regulatory legal acts amount to identification of 11 corruptionogenic factors divided into two main groups:

1. When law provisions allow for a law enforcement body to have a unfairly

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\(^1\) See: Mamitova N. V. Problemy provedenija antikorruptsionnoi ekspertizy organami prokuratury Rossii.

broad discretionary power or a possibility to apply exceptions to general rules.

2. When law provisions contain requirements from individuals and organisations that are vague, difficult to accomplish and onerous.

**Corruptionogenicity is, therefore, understood** as possibility which is provided in a legal norm and capable to cause corruption in the course of implementation of this norm.

Regrettably, the present procedure confined itself to merely giving a checklist of corruptionogenic factors that must be revealed in the course of carrying out the expert examination, whereas intrinsically any procedure must comprise main objectives, problems, principles and recommendations, which form the basis for its application. In our opinion, the procedure for analysis of regulatory legal acts and their drafts against corruptionogenicity should contain the following features:

1. Qualitative and quantitative criteria that allow to determine whether the given norm, article, section, or paragraph can be classified as corruptionogenic.
3. Statement about preparation of proposals concerning either the necessity to introduce alterations and amendments into the regulatory legal act or to reject and refine the draft regulatory legal act.
4. Formulated legislative technique focused on how to prevent corruptionogenicity of legal norms.

It is important to note that in modern interpretation of the lawmaking process, the law is not regarded as an activity intended to govern society, but rather as an activity intended to coordinate different social interests, so that the freedom of one member of the society does not derogate from the freedom of others. In this context, a corruptionogenic norm emerges in cases where the rule-making process fails to identify all legislative interests.

Apart from defining assessment indicators and criteria for regulatory legal acts and their drafts with a view to revealing their corruptionogenicity, it is equally important to specify who will conduct anti-corruption examination and how this will be carried out.

**Another problem that hinders conducting anti-corruption law policy is the indeterminate legal status of the expert.**

The essential element of legal examination is a comprehensive analysis of the subject matter by the expert within a distinct area of knowledge and an obligatory submission of the expert opinion summarising the results of the conducted activities.

Scientifically well-founded notions and conceptional ideas should form a solid basis for examination results. This basis will serve to ensure the proper quality of laws, contribute to their systematisation and facilitate identification of possible negative social, economic, juridical and other consequences that can emerge in the process of implementing these laws.

To conduct a legal examination, it is necessary to provide informative and technologic support. A key role in providing such support should be played by an expertise system that integrates experts’ knowledge and experience with the potential offered by modern computer engineering. This is an opportunity to optimise a technology for carrying out the examination, and to reduce time and labour inputs. Creating an information-oriented society and an electronic
framework of the state opens up fresh opportunities for lawmaking activities.

However, public examination must not be limited to the authority delegated to the Civic Chamber of the Russian Federation or Civic Chambers of its constituent entities. For example, the Chamber of Commerce and Industry also has the right to perform independent examination of draft normative acts in the area of economics, foreign economic relations and other areas, in case some issues in the normative acts in question affect the interests of businesses and entrepreneurs.

**One more problem in the system of anti-corruption law policy which requires legislative resolution is that of administrative barriers.**

The issue of administrative barriers as a source of corruption has become quite a topical subject. Detecting administrative barriers and developing methods aimed at overcoming them can be based on monitoring laws and regulations. The monitoring concept was justified and formulated by the Law Monitoring Centre attached to the Council of the Federation. Therefore, lawmaking and law enforcement should be viewed as complex, and the monitoring of laws and regulations per se is understood as a systematic activity intended to estimate, analyse, generalise and anticipate changes concerning the legal system.

Today, in the Russian anti-corruption legislation, there can be identified a number of loopholes, which can be eliminated by conducting effective anti-corruption law policy. The loopholes are as follows:

1. It is not obligatory to remove the corruption factors revealed in the course of anti-corruption examination.
2. It is obligatory to consider the expert opinion drawn up in accordance with the findings of an anti-corruption examination, but it is not subject to compulsory implementation. The expert opinion is nonbinding.
3. There are no law provisions stipulating any responsibility for the agencies that pass regulatory legal acts and their drafts in case the corruptionogenic factors revealed in the course of anti-corruption examination are not removed.
4. There are no law provisions stipulating that formerly adopted regulatory legal acts already in force must also undergo anti-corruption examination. Neither does the law stipulate any mechanisms that would guarantee an obligatoriness of carrying out anti-corruption examination of draft regulatory legal acts.
5. There are no law provisions that would determine the legal status of the expert, specifically, their rights, obligations and responsibilities.

The discussion so far provides the basis for further improving anti-corruption law policy in the Russian state, which would require taking the following actions:

— enacting in law that conducting a scientifically justified legal examination should be an obligatory phase in preparing an act of legislation, and introducing this phase as a legislative norm in the general scheme of the lawmaking procedure;
— developing and legislating fundamental requirements of normative acts in terms of their compliance with the juridical technique;
— developing the integrated and uniform scientifically proven procedure of conducting a legal examination, including an anticorruption examination that all draft laws should undergo;
— ensuring the development of a scientifically justified concept of anti-corruption law policy in modern Russia, which would be based upon ideas with a high degree of topicality and social relevancy.
ANTICORRUPTION EXAMINATION
IN THE SYSTEM OF MEASURES DESIGNED TO COUNTERACT AND PREVENT CORRUPTION

Tengiz Tatishvili, Post-graduate student at the Chair of Political Science and Law International Institute of Public Administration and Management of the Russian Presidential Academy of National Economy and Public Administration.

Abstract: The subject of the article is anti-corruption examination — a relatively new procedure in the struggle against corrupt practices, and its place in the system of counteracting corruption. The article presents corruptionogenic factors and methods used to detect such factors in regulatory legal acts.

Keywords: corruption, corruptionogenicity, anti-corruption policy, anti-corruption examination, corruptionogenic factor

In the context of this study, corruption is understood as wrongdoing on the part of public officers in the form of granting and using tangible objects and non-tangible advantages and benefits when exercising their public power or using their official position. The word “corruption” is of Latin origin, and in Latin the word corruptio meant “damage, bribery”.

Corruption results in mistrust of the state by citizens, and it appears to be a global problem not only for Russia but for the whole world. There are scholars who regard corruption as a trap which men of influence use to capture the state by simply purchasing from government bodies the decisions they need.

The phenomenon per se is known from the earliest times; it existed already in ancient Greece. Plato suggested that officials who obtained additional fees for performing their responsibilities should be put to death. The Persian king Darius used to execute judges for bribery. Whereas Rome, on the contrary, witnessed times of exuberant corruption, when officials were permitted to receive presents, though their price had to be within some fixed sum.

In Russia corruption flourished in tsarist times. We can cite the historical case of a man who, having offered a bribe of three thousand roubles to an official, promised that he would not tell anyone about it, but the official replied: “Give me five thousand, and then you can tell everyone whatever you want”. There were attempts made to fight against this phenomenon, for example, Ivan the Terrible imposed the death penalty for persons who took excessive bribes. Peter the Great also strove hard against corruption, and the following episodes can serve as proof: the Governor of Siberia M. P. Gagarin was executed “for covetousness”, then the ober-fiscal A.Ya. Nesterov was quartered on a charge
of corrupt practices. Ironically, it was Nesterov himself who, several years before, had established the guilt of Gagarin.¹

Corruption did not disappear in Soviet times. The Procurator General of the USSR (1948—1953), G. N. Safonov, reported to the central government that the Soviet judicial system was grievously afflicted with corruption from top to bottom:

I report that recently the procuratorate of the USSR has revealed numerous facts of bribery, abusive practice, incorporations with criminal elements, illegal sentencing and passing wrongful judgement decisions in law courts of Moscow, Kiev, Krasnodar and Ufa. In the course of the investigation it was found that these crimes were committed at various levels of the court system, namely, in people's courts, the Moscow Municipal Court, Kiev Regional Court, Krasnodar Territory Court, Supreme Court of the Russian Soviet Federative Socialist Republic, and, ultimately, in the Supreme Court of the USSR ... Although the investigation of these cases is far from being over, in Moscow alone 111 officials have already been arrested, including: judicial officers — 28, advocates — 8, legal advisers — 5, other officials — 70.²

In 1998 the INDEM Foundation presented the report: “Russia and Corruption: Who Is Going To Win?”. According to the report, practically all spheres of social life in Russia are exposed to corruption; therefore it was recommended to integrate an anti-corruption programme into the state policy:

Anti-corruption policy must become an integral part of the state policy. In practice this dictates that an anti-corruption programme must be promptly developed and launched, and in the perspective it should be imposed as a standing corruption constraints system.

Development and implementation of such a programme should be based on precise understanding of the nature of corruption, on analysis of the causes that accounted for failure in the fight against corruption, on recognition of existing conditions and restrictions; on clear and productive principles.³

This account allows us to conclude that corrupt practices have existed in Russia at all times, and there have always been efforts made to counter them, though these attempts proved to be mainly fruitless. However, legislation does not stand still, and new methods aimed at fighting corruption are being constantly developed. In 2006 Russia ratified the European Criminal Law Convention on Corruption (adopted in Strasbourg in 1999) and the United Nations Convention against Corruption (UNCAC), where corrupt practice is characterized as a universal threat, which weakens democracy and thwarts the progress of humankind taken as a whole. This ratification started a new period of political housecleaning in Russia.

Today we observe that both the state and citizens take vigorous actions in

¹ Find more details in Kirpichnikov A. I. Vzjatka i korruptsija v Rossii [Bribery and corruption in Russia], St. Peters burg: Alpha 1997. Translator’s note: The statutory office of ober-fiscal was introduced by Peter the Great; ober-fiscals were high-ranking state financial controllers, whose function was to supervise officials and to investigate cases of abuse of power.
order to discourage and prevent corruption. The Presidential Decree of the Russian Federation No. 460 “On the National Strategy of Counteracting Corruption” provides for a number of steps in this direction. New provisions in the field, include the following: people’s claims and applications that concern corruption practices are monitored, and the results of such monitoring are published in mass media and on official web-sites; public-opinion polls on corruption-related issues are conducted; accuracy and completeness of income records provided by public servants are checked; performance of public offices and businesses is inspected with a view to certify if public assets are used effectively; topics on anti-corruption methods are included into the curricula of further training courses for public servants.

It is essential to bring into focus the notion of “anti-corruption examination”, since it is spreading quickly and is used more and more by experts in this field. President D. A. Medvedev also pointed out that applying anti-corruption examinations would be highly appropriate at the present moment. On 2 July 2008 in a Panel Session of the Council of Legislators he emphasized the urgency of setting criteria for such examinations. Paragraph 2 of Article 6 of the Federal Law “On Counteracting Corrupt Practices” dated 19 December 2008 officially introduces the concept of anti-corruption examination of regulatory legal acts. Moreover, such examination is assigned to play a key role as one of the basic measures intended to counter corruption.

On 17 July 2009 the State Duma passed the Federal Law “On Anti-Corruption Examination of Regulatory Legal Acts and Draft Regulatory Legal Acts”. The law fixed the judicial and organizational framework for anti-corruption examination, and it was the next step along the given route.

Anti-corruption examination is obligatory for all draft regulatory legal acts. In case it comes to light that an effective law contains some provisions, which conduce to the formation or development of corrupt practices, an examination is also carried out for the act already in effect. In compliance with the legislation, anti-corruption examination can be carried out by the procuratorate, a federal agency of the executive branch in the area of justice, and, besides, by companies and organizations and their functionaries.

Thus, the aforesaid law provides for two types of anti-corruption examination, i.e., internal and external examination. Internal examination is conducted by procuratorate, Ministry of Justice, authorities (including constituent territories of the Federation and bodies of local self-government), as well as by state organizations and their officials. They inform the Procuratorate of the Russian Federation about the revealed corruptionogenic factors. The Procuratorate either directs to the corresponding entity or official a demand that alterations be introduced into the given regulatory legal act, or applies to court. External examination is conducted by accredited independent expert bodies, established by civil society institutions or by individuals. Independent experts have a right to conduct an examination of any regulatory legal act, but at their own expense. Their report with proposals on how to eliminate the detected corruptionogenic

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factors is directed to the corresponding entity. The report is not binding, although it is subject to obligatory consideration. Having considered the report, the entity in question must give a reasoned response, though in case the report of the expert organization or physical body contained no proposals, the state authority reserves the right not to respond.

By means of anti-corruption examination the state establishes an obligatory integrated framework for analysis of the legal system of the Russian Federation as a whole. Inviting civil society institutions to cooperate ensures that there emerges a new force in the struggle against corruption, that public organizations start collaborating actively with authorities, and that the state guarantees its citizens the sufficient competence of experts, relevancy, objectivity and accountability of the work they do.

It is implied that in the framework of anti-corruption examination experts detect existing norms in laws that might possibly form an environment for corruption, and prevent from new ones from appearing. It has proved to be necessary to introduce a new term, “corruptionogenicity”, which defines certain conditions that in all probability can generate in a law or create in practice a risky framework that can lead to emerging corruption practices in this or that sphere of the society life.

Article 1 of the Federal Law “On Anti-Corruption Examination of Regulatory Legal Acts and Draft Regulatory Legal Acts” gives the following definition of corruptionogenic factors:

provisions of regulatory legal acts (draft regulatory legal acts) that establish for the law enforcement entity a groundlessly broad borders for judgment or a possibility to apply exceptions to general rules without sufficient grounds; as well as provisions containing requirements to individuals and organizations that are vague, difficult of accomplishment and onerous, and therefore creating conditions for corruption.

According to the definition there can be distinguished two main types of corruptionogenic factors: (1) when corruption is provoked by stipulations that provide a law enforcement body with a groundlessly broad discretionary power or a possibility to apply exceptions to general rules without sufficient grounds; and (2) when legal provisions contain requirements to individuals and organizations that are vague, difficult to accomplish and onerous, and therefore creating conditions for corruption.

According to the definition there can be distinguished two main types of corruptionogenic factors: (1) when corruption is provoked by stipulations that provide a law enforcement body with a groundlessly broad discretionary power or a possibility to apply exceptions to general rules without sufficient grounds; and (2) when legal provisions contain requirements to individuals and organizations that are vague, difficult to accomplish and onerous.

The government regulation of the Russian Federation No. 96 dated 26 February 2010 “On Anti-Corruption Examination of Regulatory Legal Acts and Draft Regulatory Legal Acts” ratifies rules and methods of conducting anti-corruption examination of regulatory legal acts and draft regulatory legal acts. The regulation specifies both types of factors. The former group includes:

(a) broadness of discretionary powers, i.e. absence or uncertainty of specified time limits, conditions or grounds for decision-making;

the fact of duplicating governmental authorities or local authorities (their functionaries);

(b) defining competences in the terms of “have a right”, i.e. that governmental authorities or local authorities (their functionaries) can perform a discretionary action in relation to citizens and organizations;

(c) selective alteration of the measure of rights, i.e. there is a possibility to make an exception to general rules without sufficient grounds for individuals
and organizations at the discretion of governmental authorities or local authorities (their functionaries);

(d) excessive liberty of sub-legislative rule-making, i.e. there are blanket and reference norms, resulting in adoption of subordinate acts superimposing on competence of the public or local authority that adopted the original regulatory legal act;

(e) adoption of a regulatory legal act beyond one’s competence, i.e. public or local authorities (their functionaries) acted beyond their competence when adopting a certain regulatory legal act;

(f) filling legislative gaps by force of bylaws in the absence of required authority, i.e. in the absence of the relevant law a subordinate act stipulates rules of conduct as compulsory for all;

(g) absence or incompleteness of administrative procedures, i.e. absence of the stated sequence of particular actions to be applied by public or local authorities (their functionaries) or absence of one element in such a sequence;

(h) refusal to participate in competitive (auction) procedures, i.e. fixing the administrative procedure of granting the right (advantage).

According to the above-cited governmental prescription of rules and methods for conducting anti-corruption examination, the latter group of factors includes:

(a) excessive requirements claimants have to meet in order to exercise their right, i.e. there are requirements on individuals and organizations that are vague, difficult to accomplish and onerous;

(b) abuse of the applicant’s right by public or local authorities (their functionaries), i.e. absence of legible regulation of civil rights and rights of organizations;

(c) juridical and linguistic uncertainty, i.e. use of unconsolidated, unsteady or ambiguous terms and categories of evaluating character.

By way of illustration and in order to enhance the understanding of corruptionogenic factors it is worthwhile to analyse one expert opinion based on the anti-corruption examination:

EXPERT OPINION


operate as a carrier of passengers and baggage by taxi-cabs in the territory of the region and of the carriers’ subsequent registration” (hereafter referred to as the Order). The Order was subjected to examination for the purpose of detecting corruptionogenic factors in it and their consequent elimination.

In the present Order there were detected the corruptionogenic factors specified by subparagraphs “a” and “g” of Para 3 of the Methods and Rules of conducting anticorruption examination of regulatory legal acts and draft regulatory legal acts.

Item 3 of the “Procedure of filing by preliminary appointment applications for a permit to operate as a carrier of passengers and baggage by taxi-cabs in the territory of the region and of the carriers’ subsequent registration” (hereafter referred to as the Procedure) reads as follows:

“Applications are submitted by preliminary appointment and with regard to the time interval required to file documents and to the current level of work pressure on the personnel of the authorized department of the State Committee”.

In the given edition of Item 3 of the Procedure there can be traced a broadness of discretionary powers in what concerns uncertainty of time limits, which falls under subparagraph “а” of Para 3 of the Methods and Rules of conducting anticorruption examination of regulatory legal acts and draft regulatory legal acts.

In order to remove the detected corruptionogenic factor it is necessary to establish a specific maximum time interval between the date the appointment is made and the date when the documents will be submitted, which is to ensure that applicants receive the government service in due time.

Item 8 of the Procedure states that the State Committee can refuse to accept the applicant’s documents in the course of considering his or her application. It is evident that the given administrative procedure is incomplete and uncertain. Given that documents are submitted to the State Committee by the applicant in person during his or her visit to the office, the decision about non-admittance of the application must be made when the documents are being submitted, but not when the application is being considered.

In order to correct the detected factor it is necessary to exclude the right of the State Committee not to admit the application from Item 8 of the Procedure, while in Item 7 there shall be included specific cases of non-admittance of the application and the documents.

According to the provisions of the Procedure subjected to analysis in the above Expert Opinion, applicants have no idea about when the Committee will respond or even if their applications will be considered or not, since there is no established procedure for non-admittance of applications. If applicants are not given any information either about when their application will be considered, or about possible reasons for a refusal, they will probably not apply, or, in case they do, they will not expect a timely or positive answer. It is but natural to assume that people who are aware of existing procedures will readily agree to pay in order to expedite the process and to ensure a favourable decision. This example clearly shows certain defects in legislation in the given area and proves the existence of the principal necessity of anti-corruption examination.

The nongovernmental international agency “Transparency International” is organized to research and fight corruption all over the world, including publication
of its “corruption perception index” annually. In 2008 Russia’s score on the corruption perception index placed it 147th out of 180 countries, but in 2012 Russia ranked 133 out of 176 countries. Thus, one can conclude that there is a certain positive shift in the struggle the Russian Federation is waging against corruption.

In this connection, I would like to cite a fragment from the dialogue between Socrates and Hippias:

Socrates. What would you say, Hippias, is it more harm than good the law does to the state?

Hippias. The law, I believe, is made for the good; however, it does harm sometimes, when it is made imperfect.

Imperfection of the law, in our case manifested in corruptionogenic factors, is traditionally linked to mistakes made by legislators, while the role of anti-corruption examination is to exclude all kinds of errors that might produce a negative effect. It should be pointed out that expert activities make the legislative process more complicated, but the prevailing opinion expressed in scientific literature is that the more complicated it was to adopt the law, the higher is its quality. It is evident that anti-corruption examination is important to apply as a key element in political housecleaning.

In conclusion it should be emphasized that anti-corruption examination is not a self-sufficient remedy in a set of measures used in the struggle against corruption, which would by itself enable the greatest decrease of corrupt practices in our state. It does occupy a prominent place among measures aimed at counteracting corruption; however, optimal results can be achieved only when anti-corruption examination is actively combined with other elements of anticorruption monitoring, preventive measures, and effective anticorruption legislation.

Speaking of anti-corruption measures, I mean not only express prohibition and established responsibility for concrete corrupt acts, but also building up powers in such a way that leaves no possibility for arbitrary actions and will not allow officials to take decisions in somebody’s behalf, even when they are inclined to do so. It is imperative to eliminate a possibility for adopting such laws or norms that generate expressly or by implication an environment that provokes bribery, blackmail and other forms of corrupt practices.

History has produced conclusive evidence that no country is immune to corruption, and to win a decisive victory in the struggle against this evil and to liquidate it totally is practically impossible. However, it does not mean at all that we have to throw up our hands. We would do better to recall that, when speaking about counteraction of corrupt practices on federal television, D. A. Medvedev stated that this is a challenge for the authorities to deal with for several decades hence.

Judging by the experience of other countries, it is quite feasible to achieve a significant breakthrough in this area, so that even though corrupt practices are not absolutely eliminated, they are scaled down to such an extent that corruption no longer remains one of the principal obstacles in the way of socioeconomic development of the country.

1 http://transparency.org.ru/search?searchword=%D0%98%D0%BA
SPECIFIC FEATURES OF THE LEGAL FRAMEWORK IN THE DOMAINS OF ENTREPRENEURIAL BUSINESS AND THE COUNTERACTION OF CORRUPTION: COMPARATIVE RESEARCH

Alexei Ivanov, Post-graduate student at the International Institute of Public Administration and Management of the Russian Presidential Academy of National Economy and Public Administration

Abstract: The article analyses the regulatory and legal framework for business regulation and the counteraction of corruption in certain countries (Finland and Singapore) that have low corruption levels according to the worldwide corrupt practices rating. We reveal a relationship between corruption level and the conditions for entrepreneurial business. Recommendations are given on how to reduce the level of corruption and to improve the economic climate in the Russian Federation.

Keywords: corruption, entrepreneurial business, legislation of foreign countries, Finland, Singapore, Russian

The author selected as subjects for research the two countries that, for the last five years, have been ranked highest by Transparency International, the non-governmental international agency. This agency was organized to fight corruption and to research corruption levels in states all over the world. Their rankings are based on the framework of the corruption perception index (CPI) and reflect a state’s annual score for how its corruption is perceived by analysts and entrepreneurs.1

The author also analysed the Doing Business in 2009 — 2013 reports.2 These reports present the results of annual research by the World Bank Group, including their estimation for 185 countries of how simple it is to do entrepreneurial business there. Their research conclusions are presented in the form of the Ease of Doing Business Index. The study covers eleven key indicators of the yearly cycle in the operation of a company. The research methodology called Doing Business and the analysis model that is applied appear to be the only standard

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tools in use across different countries. The methods are specially designed to estimate how the legislative activity of the state influences business.

To determine the rating coefficient, the World Bank Group takes into consideration indicators such as how easily one can register property and enterprises, obtain a permit for construction, connect to the electric power supply and find financing. Among the other factors they consider are the tax burden, mechanisms for protecting investors, the situation with foreign trade, methods for dealing with insolvency issues, provisions for the execution of contracts, and the hiring of workers. One more indicator, called Reasonable Approach to Regulating Activity of Small and Medium-Sized Enterprises, requires an assessment of the normative acts that regulate the activity of small and medium-sized enterprises and the procedure for their implementation.

The author analysed constitutions, codes of law and national and local regulations in the states selected for the research. Criteria such as geographical position, population, population density, ethnic differences, national ways of thinking, and affiliation of the legislation of the countries with a particular national legal system were also taken into consideration. We set out below some facts that characterize the two states.

Finland is a north European state, bordering on Sweden, Norway and Russia. Its legal system belongs to the Scandinavian ("northern") legal system. In comparative jurisprudence many academic lawyers distinguish this Scandinavian system as a standalone legal system, and it is followed in such states as Sweden, Norway, Iceland, Denmark and Finland. A number of scholars consider the Scandinavian legal system to be a variation of the Romano-Germanic legal system. A. Malmström places it between the Romano-Germanic legal system and the common law. F. Schmidt, while sharing the above view, adds that European civil law is more dogmatic than the legal system of Scandinavian countries. Since Russian law also belongs to the Romano-Germanic legal system, it is easy to see that the systems of legal regulation in Russia and Finland have much in common. It is significant that from 1809 to 1917 Finland was part of the Russian Empire, and this explains the similarity of the sources of legal control, the pragmatic approaches to the law, the legal norms and the constitutions in Russia and Finland. Decrees of the court also play a prominent role as a source of law in Finland.

So far as concerns entrepreneurial activities, there is a distinct similarity in the constitutions of Finland and Russia. Article 34 of the Russian Federation Constitution states that all citizens have the right to use their abilities and property freely for entrepreneurial activities, whereas Paragraph 18 of the Constitution of Finland, entitled "Entrepreneurial Business and Right to Work", declares that all citizens have the right to gain income by means of hiring employees, conducting entrepreneurial business and working in the manufacturing sector, and that nobody can terminate an individual's employment without a legal decision. We can trace the similarity between this Paragraph and the Labour Code of the Russian Federation, where analogous norms are stipulated in Section 8, entitled "Protection of Labour Rights and Liberties".

On its CPI (corruption perception index) score, Finland was ranked 5th, 6th, 4th, 2nd and 1st for the years from 2008 to 2012, with the best result being
achieved in 2012.

The Criminal Code of Finland does not refer to the notion of corruption, but it contains provisions concerning the taking of bribes by officials, and the prescribed punishment for taking bribes ranges from a financial penalty to imprisonment for up to four years. There is no special anti-corruption law.

By comparison, the Russian Federation adopted the Federal law “On Counteracting Corruption” in 2008, but Russia’s corruption perception index in 2012 placed the country in 133rd position, next to such states as Honduras, Iran and Guyana. The comparison allows us to suggest that the basic weapon in the struggle against corruption should be rooted in a society’s understanding of the immorality of corrupt practices, rather than in legislative measures per se.

In Finland there is a special legal agency that examines cases of crimes and minor offences committed by high-ranking officials including the President. Cases subject to investigation by this special court also include those involving corrupt practices. We can judge this agency’s efficiency by the fact that over the last ten years six government executives and 23 higher government officials were either dismissed or retired on the grounds that it had been shown that they were somehow involved in corrupt practices.1 There are comparatively few officials in the state machine in Finland, and their duties and responsibilities are clearly spelt out in regulatory legislation. The fundamental principle is the transparency of the state administration, and all transcripts and minutes are open for inspection by the general public.

The rankings on the Ease of Doing Business Index in the Doing Business global reports for Finland were 14th, 16th, 13th, 11th and 11th for the last five years, so Finland took 11th place in the rankings for 2012 and 2013. The primary factors in this achievement are as follows: the regulatory and legal framework that is used to control the relationships between the authorities and the businesses of entrepreneurs is long-established and operates as a smooth-running mechanism; and the level of corruption in the country is very low.

In Finland, the basic regulatory legislation that governs entrepreneurial activities is the 2006 Law “On Joint Stock Companies”, which was intended to rejuvenate the country’s general economic situation. The rules regulating company debts and the protection of minority shareholders’ rights have proved to be especially effective. The law gives special consideration to regulating the activities of small firms. One of the principal indulgences provided for small businesses and start-ups is a reduction of the minimum required stockholder capital from 8,000 to 2,500 Euro.

Unlike the Russian Federal Law “On Joint-Stock Companies”, the Finnish law stipulates that there is no need to have a sole executive officer (which would be shown by the existence of the post of Director or General Director). This provision can be explained by the equality that is typical of the entrepreneurial environment in Finland, and that is barely achievable in Russia with its traditional and clear vertical business hierarchies.

A special place in Finland’s legal framework is given to the 2011 Law “On Competition”, which can be compared to the Russian Federal Law “On Protection

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of Competition". There are also two laws that regulate legal relations in the area of entrepreneurial activities for nonresidents, namely, “On Control over Investments”, and “On Control Over Acquiring Companies in Finland by Foreigners”. Within the framework of these laws, foreign natural and legal persons can acquire shares in Finnish companies unless this contradicts the provisions of Article 2 “On Important National Interests” or Article 3 “Enterprises Subject to Monitoring” of this latter law. National interests are thought to require protection against such factors as threats of a social, economic, ecological or geographical character. According to the provisions of Article 3, the Finnish authorities monitor businesses with an annual turnover or balance of more than 166 million Euro, and enterprises which employ more than 1,000 people.

The term “foreign owner”, according to the law, refers to an entity whose habitual residence is outside Finland, or a foreign organization or fund, as well as a Finnish organization that is controlled by one or more foreign owners. To comply with Article 5 of the law, a prospective foreign owner must win the approval of the Employment and Economics Ministry before he or she can acquire an interest in a company subject to monitoring, if the prospective foreign owner wishes to take control (or to control more than 1/3 of the voting rights), except in certain cases specified by the law.

The position of entrepreneurs in the area of fiscal law is regulated by the Law “On Taxation of Profit and Earned Income”. Two more laws, which regulate legal matters on the stock market, are also of interest to us — the Law “On Securities” and the Law “On Trading Standard Options and Futures".

The city of Singapore is situated on the island with the same name in Southeast Asia. The island is separated from the southern end of the Malay Peninsula by the narrow Johore Strait, and its neighbouring countries are Malaysia and Indonesia. The country comprises 62 islands. Before 1963 Singapore was a British colony, so its legal framework is based upon English common law.

According to its corruption perception index (CPI) scores for 2008 to 2012, Singapore was ranked 4th, 3rd, 1st, 5th and 5th, and was one of the leading countries, with well-established anti-corruption policies. The government’s position in this sphere is consistent, clear and unequivocal. Singapore developed a regulatory and legal framework designed to counteract corruption, based on the Law “The Prevention of Corruption Act”. In addition, a specialized governmental agency, called the Corrupt Practices Investigation Bureau (CPIB) was set up. The CPIB is politically independent: it is headed by a Director, who reports only to the Prime-Minister. No high-ranking official can either affect an investigation in some way or put pressure on the Bureau officers.

The CPIB is authorized to launch investigations into alleged corruption in the government sector. Special attention is paid to public law enforcement officials, who, by the very nature of their work, are subject to the temptation of corruption to a greater degree (in Russia it is the Department of Internal Security of the Ministry of Internal Affairs of Russia that deals with such issues). The CPIB’s functions also include processing complaints against public servants and monitoring the legality of their actions (in Russia the procuratorate conducts similar activities). Besides this, the Bureau investigates crimes committed in the private sector.

Under the law the Bureau has right to make searches and to control the bank accounts and money transfers of those persons who are suspected of corrupt
practices, without a court decision. These rights are spelt out in Article 15 “Right to Make an Arrest” and Article 22 “Search and Seizure” of the abovementioned law. These Articles stipulate that the Director or a Bureau investigator can arrest a suspect without an arrest warrant.

Articles 11 and 12 of this Singaporean law define corruption crimes connected with members of parliament and the government. Article 26 regulates cases in which suspects attempt to hinder the investigation. There are sanctions in the law for false statements and for giving misleading information (in Article 28, the sanction being a financial penalty of 10,000 Singapore dollars or one year of imprisonment). The law, or more precisely Article 36 of the law, also guarantees the protection of informants (in the Russian anti-corruption law there is no analogous article, and, in practice, the Russian system for the protection of informants does not function well).

In the ratings for the Ease of Doing Business from 2009 to 2013, Singapore has consistently taken first place. Singapore has not conceded victory to such powerful economies as those of Germany and China, which, by expert estimates, is a considerable achievement. By comparison, in the global report “Doing Business — 2013” Russia takes only the 112th place for this measurement, in close vicinity to such countries as Jordan (106th) and Pakistan (107th).

Singapore is one of the countries where the entrepreneur can register his or her company very easily and comfortably. The Company Register in Singapore operates a web portal that allows a company to be registered entirely via the Internet, and to be officially set up within one or two days. It is possible to register the following types of company: company limited by shares, company limited by guarantee, and unlimited company.

According to Article 205 of the Law “On companies” the directors must appoint auditors within 3 months of the date of the official incorporation of the company, and, according to Article 171, the directors must appoint a secretary within 6 months of that same date. In the Russian legislation similar rules are stipulated in the Laws “On State Registration of Legal Entities and Individual Entrepreneurs” and “On Limited Liability Companies”, and by Article 95 of the Russian Federation Civil Code “General Provisions on the Additional Responsibility Company”.

The Singaporean Act “On Income Tax” and Part 6 “Accounting and Audit” of the Law “On Companies” correspond in many instances to the Tax Code of the Russian Federation. We should also note the Singaporean law “On Electronic Transactions”, which provides for security in conducting electronic transactions, within the framework of the UN Convention on the Use of Electronic Communications in International Contracts, adopted by the United Nations General Assembly on November 23, 2005. A similar draft law “On Electronic Commerce” is being developed in Russia; it will regulate the relevant legal relationships.


Although each of the three countries we have analysed is headed by a President, the form of state structure is different in each: Russia is a presidential-parliamentary republic, Finland is a presidential republic, and Singapore is a parliamentary republic. As opposed to Finland and Singapore, which are unitary,
Russia is a federation, and its Parliament and Federal Assembly consist of two chambers — the Soviet of the Federation and the State Duma. The legal framework of all the three states is founded on a constitution, and the regulatory and legal frameworks that regulate entrepreneurial activities and the counteraction of corruption in the three states are similar in many instances. Certain differences in the Singaporean legal framework can be easily explained by the fact that it belongs to the Anglo-Saxon legal system. Considering the parameters of the area and the demographic status, we can see that Russia is much bigger than the other two states in our study. While Finland and Singapore are alike in the number of their inhabitants, the population density in Singapore is notably higher.

The economic climate is favourable for entrepreneurial activities in the two states in the study (the Ease of Doing Business index for the last five years rates Finland and Singapore very highly), and in many ways this can account for their respective levels of corruption (the CPI rating — the rating according to the corruption perception index). The low corruption level in Finland is associated with the national mentality, with the fact that Finnish society is aware that corruption is immoral. Crimes related to corrupt practices in the civil service are very rare indeed, and the attitude of society to wrongdoers, and quite often not only to them in person but also to their relatives, can be described as an aversion. Enabling the creation of an environment that works against corruption, the regulatory and legal framework for the regulation of entrepreneurial activities is noted for its tolerance, and therefore it provides comfortable conditions for entrepreneurs and for those who are engaged in other ways in this sphere.

The Finnish model of fighting against corruption is, in my opinion, unacceptable for Russia (today’s Russia), for a number of reasons. In the first place, our society is not ready to admit, in full measure, the immorality of this phenomenon, or to recognize the economic damage that results from corrupt practices. We cannot fully beat corruption, but we can definitely reduce its scope; what it takes is to start, and, however banal it may sound, one should start with oneself. In today’s Russia it is still next to impossible to achieve the required results in many state organizations “without an envelope”, but when compared with the situation in the 1990s, one cannot but notice a positive shift. In the second place, a “soft” regulatory and legal framework in the domain of the counteraction of corruption by no means fits with our mentality, and neither can it match the practice of acquiring real property and opening accounts in foreign banks by our civil servants, who often put their own assets into the names of their close relatives.

I am confident that to begin with Russia needs radical measures, especially as regards the legal framework. In this context the experience of the Republic of Singapore is worth considering. In my opinion, a Russian anti-corruption agency should urgently be established, reporting directly to the President. Its priority task should be to investigate corrupt practices among high officials, and to return many billions which have been stolen in different ways, including through corruption. For the sake of justice, officers of this agency should be subject to additional penal responsibilities.

In order to increase its ranking on the Ease of Doing Business Index, and to improve the economic climate and the environment for entrepreneurs, Russia should:
1. Create favourable conditions for business; that is, it should:
   a) Improve the regulatory and legal framework in the domain of business regulation, so that it provides for transparency and effectiveness in business and removes all kinds of obstacles to this. These efforts should be based on the experience of foreign countries, including Finland and Singapore;
   b) Render state assistance in the area of credit financing and subsidization, and exclude double standards;
   c) Counteract corruption, specifically by applying methods of legal control and taking direct law enforcement actions in relation to both civil servants and entrepreneurs, and provide for a rapport and interaction between representatives of businesses and state structures.

2. Develop small and medium-sized entrepreneurial businesses, and increase their share of the GDP of the country. By the estimates of different experts, small and medium-sized businesses contribute between 15 and 20 per cent of GDP. In the countries of the European Community they contribute up to 50 per cent.

   In Singapore there are about 130,000 small and medium-sized enterprises, which amounts to 92 per cent of all the enterprises in the country; these businesses contribute approximately 35 per cent of the added value on the total produce and more than 25 per cent of Singapore’s GDP. Besides, 7 per cent of the annual gain in employment is provided by small and medium-sized businesses. Naturally, the state supports this economic sector in many ways.

   Small and medium-sized businesses are of paramount importance in the social and economic life of Finland. Of all the companies registered in the country, more than 90 per cent qualify as small and medium-sized enterprises (SMEs). Their aggregate annual turnover is 52 per cent of the total turnover from all companies, and they contribute 50 per cent of the GDP. 50 per cent of all workers are employed by SMEs, and up to 60 per cent of new jobs are also created by SMEs. The share contributed by SMEs to the total exports of the country amounts to 17 per cent, and their exports are growing faster than those of large businesses.

3. Reduce the level of inequality in income distribution. In the Russian Federation in 2012, the ratio between the average income of the 10 per cent of the population with highest income and the 10 per cent of the population with the lowest income was 16.4:1. By comparison, in Finland the average corrected net disposable income of the 20 per cent of the wealthiest people is 44,992 USD per year, while the 20 per cent of population with the lowest incomes have 12,236 USD per year, which means that the split is 3.7:1. In Singapore the situation is worse than in Finland, but better than in Russia: the split is 9.7:1.

   Thus, to develop entrepreneurship we can only succeed by solving a number of socioeconomic, political and legal problems, and the experience of different countries can prove very useful.
RUSSIAN LAW

COURSE OF JUSTICE OF ARBITRATION COURTS IN THE RUSSIAN FEDERATION

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Andrey Soloviev, Doctor of Legal Sciences, Federal Judge, Chair of the Court Bench, Arbitration Court of the Moscow Region

Yury Filippov, Ph.D. (History), Assistant to the Judge, Arbitration Court of the Moscow District

Abstract: The article concerns the key aspects of organization and operation of the system of arbitration courts in the Russian Federation. It outlines the history of the emergence and formation of the arbitration courts, focuses on key issues of their operation, describes the system and structure of the arbitration courts, determines their place in the Russian court system, and analyses such interesting procedural and institutional innovations as “e-justice” and summary proceedings.

Keywords: justice, arbitration court, court system, commercial disputes, business practice, e-justice, summary proceedings.


Pursuant to sections 4 and 5 of the said Law, the arbitration courts in the Russian Federation administer justice by resolving arbitration disputes and reviewing other legal matters within their competence. The principal objectives of the arbitration courts in the course of resolving disputes subject to their jurisdiction are the following: to protect the rights and lawful interests, infringed or contested, of the enterprises, institutions, entities and individuals in the area of business and other economic activities, and to contribute to strengthening of legality and preventing wrongdoing in these areas.

The arbitration courts constitute a sign of a new legal reality that emerged in Russia due to enactment of the Constitution of 1993, the formation of a new system of governmental bodies and codification of a new complex of Russian laws. The arbitration courts have as a historical prototype the commercial courts that used to exist in Russia until the October Revolution of 1917 and resolve
disputes related to commercial affairs, contracts and liabilities.

Over the last few years, Russia has made a sure step into the market economy, absorbing complicated business mechanisms related to financial markets, corporate relations, insolvency and bankruptcy procedures. As a response to the challenges of the time, the system of specialized arbitration courts was established on the eve of 1990s, having, on the other hand, a solid historical background.

In the Soviet period, regardless of the lack of private ownership and free market for goods and services, there were paralegal bodies resolving property disputes between organizations and establishments. Since 1922, departmental arbitration tribunals (arbitration commissions) had existed, followed by establishing a state arbitration tribunal. The latter was created for the settlement of property disputes between establishments, enterprises and organizations in order to improve contractual and planning discipline and commercial accounting. Although in the USSR the state arbitration tribunal was an administrative body, rather than judicial, it had an almost 60-year existence and played a leading part in the sphere of property dispute settlement and business practice development.

A new page in history was opened on 4 July 1991, when the law “On the arbitration court” was adopted. Since this exact moment, there has been arbitration court in Russia as an element of particularly judicial power, which is independent, separated from the executive and legislative powers, and implementing its authority in compliance with the Constitution and federal laws.

The arbitration courts in the Russian Federation administer justice by resolving matters referred to their competence by the Constitution, the law “On the arbitration courts of the Russian Federation”, the Arbitration Procedure Code and other federal laws enacted in compliance therewith. The common factor for attributing a dispute to the jurisdiction of the arbitration court is the genetic link of the disputable relation to commercial or other economic activities. In this context, dispute settlement by the arbitration courts in Russia is reasonably called economic or commercial justice.

Arbitration courts in Russia are strictly federal, which responds to the legislature’s idea at their creation to shape and protect a single economic space throughout the country.

Institutionally, the arbitration courts are acting on four levels. The first level is composed by the arbitration courts of constituent entities of the Russian Federation, including the arbitration courts in republics, territories, regions, federal cities, autonomous region and autonomous districts. They consider cases as the first instance trial. The first level arbitration courts currently total 81. The second level consists of arbitration courts of appeal performing the review of legality and reasonableness of judicial acts passed by the arbitration courts of constituent entities of the Russian Federation in the first instance. The authority, procedure of formation and operation for the arbitration courts of appeal is provided by section 33.1 of the Law “On the arbitration courts of the Russian Federation”.

The third level is composed of ten federal district arbitration courts, each working as cassation instance towards the group of arbitration courts constituting one court district. The court bench is determined in section 24 of the same Law. In the cassation instance the arbitration court judgments are reviewed solely with

1 For more details see: http://www.asmo.arbitr.ru/about/about.
respect to correctness of implementing material and procedural law. Thus, the Federal Arbitration Court for Moscow District carries out the review of judgments, which have entered into legal force, issued by the Arbitration Court for Moscow and the Arbitration Court for the Moscow Region along with the rulings by the 9th and 10th Arbitration Courts of Appeal.

The fourth level is represented by the High Arbitration Court of the Russian Federation. Pursuant to section 127 of the Constitution, it is the supreme judicial body to settle economic disputes as well as other cases resolved by the arbitration courts, to conduct judicial supervision of their activities and provide explanation as to the matter of court practice. It is incorporated into the single court system of the country along with the Constitutional Court and courts of law with the Supreme Court at their head. Therefore, the main field of concern for the High Arbitration Court is to ensure uniform interpretation and application by all the arbitration courts of the laws governing economic relations. This critical task is fulfilled by means of summarizing of court practice and elaborating the relevant explanations by the Plenum or Presidium of the High Arbitration Court.

It should also be noted that, during his speech on 21 June 2013 at the plenary session of the St Petersburg International Economic Forum, President Vladimir Putin suggested that the Supreme Court (being the highest court for civil, criminal, administrative and other cases subject to settlement by courts of law and heading the system of these courts) and the High Arbitration Court should be united. According to President, uniting the courts will allow for uniform approaches to solving disputes involving both individuals and entities, as well as governmental bodies and local self-governing authorities. In the meantime, even if a single Supreme Court is created in the Russian Federation, there are no plans for any substantial restructuring of the system of the first instance arbitration courts, arbitration courts of appeal and of cassation.

Due to the unified system of appointing judges, a person complying with the legal requirements and having obtained the approval of the special qualification boards composed by judges and professionals in the sphere of law can become a judge of arbitration courts. The status of the judge is life-long: while a person can exercise the duty of the judge of the arbitration court until he or she is 70 years old, upon this age the judge is honourably discharged with the judicature, immunity and allowance retained.

It is contemplated that the judges are appointed to the positions of chairpersons and deputy chairpersons of the arbitration courts of all the four levels carrying out organization and management authorities for six-year term with the right to be re-appointed for the same term. The judges of arbitration courts are appointed by the President of Russia upon the recommendations of the corresponding qualification board of judges. The structure of the arbitration courts of various levels differs depending on the functions and scope of work performed.

As a general rule, the arbitration courts are acting within the presidium of the arbitration court, the judicial division for resolving disputes arising out of civil and other relations and the judicial division for resolving disputes arising out of administrative relations.

The presidiums of the arbitration courts, upon advice of their chairpersons, approve the members of court divisions and chairpersons of the relevant court

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1 See: http://www.itar-tass.com/c188/781215.html.
Arbitration courts in Russia have been intensively implementing the e-justice system. Today, almost any application or action can be filed with the arbitration court electronically via the Internet, as can the supplemental documents.

The idea of e-justice is based on the principles of transparency and equal rights of all the parties to the arbitration proceedings.

Implementation of these principles at the national level implies, particularly, the opportunity for the parties to the proceedings to enjoy open access to information related to the status of the case and the copies of all judicial acts issued in respect thereto, exchange of the procedural documents with the court, and taking part in the hearing by means of video-conference.

The e-justice system is composed of two key units. The first one is a secured video-conference net, connecting all the arbitration courts of the Russian Federation, with direct access to the Internet through overt streaming video broadcasting channels, such as popular video hosting, for instance.

If a party to the arbitration proceedings is a person registered in a region other than the location of the relevant court, or if the court needs to question a witness, get in contact with a specialist or an expert, the teleconference link is arranged connecting the courtroom and the arbitration court in the region of Russia where the party whose appearance is required is located. It is important to note that each of the parties involved in the video-conference session appears in the arbitration court at the place of location thereof, their participation in the court proceedings via video-conference being preceded by verification of their authority by the judge in the region from where they establish the communication. In this way, the verification of legal capacity of the remote participants to the proceedings is guaranteed along with explanation of the rights and obligations thereto, to the same extent as if they were appearing in court directly.

It is obvious that large-scale implementation of video-conferencing will considerably reduce the court expenses of the parties to arbitration proceedings as well as the terms for settlement of the cases by the arbitration courts. Another advantage of the video-conference system is the opportunity to connect by this medium the judges of various courts from different regions to discuss matters related to court practice and to conduct workshops.

The second component of the e-justice system is a group of portals of the High Arbitration Court on the Internet providing access to any person anywhere in the world to up-to-date information of the work of arbitration courts. The key principle of the portal’s functioning is ensuring the transparency of justice, both in respect of procedure and access to the judicial acts in controversial cases.

Access to all the portals is exercised freely and with no charge through the main portal of the arbitration system of Russia, which is http://www.arbitr.ru. Any person with access to the Internet, including mobile browsing, can study the catalogue of arbitration cases (http://kad.arbitr.ru), the bank of arbitration court decisions (http://ras.arbitr.ru) and find all the cases involving certain parties resolved in the arbitration courts of all instances, determine the procedural status thereof and gain immediate access to all judicial acts passed in respect thereto, as all the judicial acts of the arbitration courts, with the exception of closed-door hearings, are subject to mandatory publication on the Internet.
It is important to note that the document (.pdf) obtained from this service is an official electronic copy of the judicial act and can be submitted to any arbitration court. Thus, the parties to the arbitration proceedings do not need to make requests for and certify the copies of the required judicial acts from various courts.

Verifiability of the judicial acts obtained this way is ensured by a special digital code whereby they can be found at any time on the portal of the arbitration courts and checked against the original texts available thereon.

Taking into account the fact that the judges of the arbitration courts when issuing judicial acts not only issue them in hard copy, but also sign electronic versions thereof using an electronic digital signature, the next stage in development of this unit of the e-justice system will become the expansion of a complete electronic document workflow involving courts and parties to the arbitration proceedings.

The initial step in this direction was implemented in 2012 with the system “My Arbiter” allowing persons to file documents electronically with and obtain any documents from the arbitration court. Any person, upon registration on the portal of the system http://my.arbitr.ru, may gain access to his or her profile, and may forward scanned documents via this profile directly to the court. Within a few minutes, the documents will be delivered to the server of the system, registered automatically, reflected in the catalogue of arbitration cases on the card of the relevant case and become available for the judge.

It is obvious that at the stage of court hearings the court will examine not just the electronic copies submitted, but original copies of the documents as well.

The following step in the development of the system will become total scanning of all the incoming documents in the arbitration courts of all instances. In this way, along with the case file existing feasibly on paper, the electronic case will be automatically formed, which will avoid time spent in sending cases between the courts and identifying cases in the archive, as the judge will be able, if needed, to browse through the necessary case immediately and directly on his or her office computer.

It is also noteworthy that the e-justice system allows for effective and cost-efficient notification of all the parties to the proceedings of the date, time and place of court hearings. Even now, there is a mailing system through e-mail on the portals of the High Arbitration Court and one can download the mobile applications supporting PUSH notification of the new events and documents.

Wide-scale adoption of these information technologies into the work practice of the arbitration courts has another advantage as well: implementing information technologies in justice offers wide opportunities for court statistics to be automated and hence early detection of court red-tape and other procedural violations. When every judge of the arbitration court in Russia is under restrictions to provide in due time procedural documents and up-to-date information of the cases available on the servers of the system, the court judiciary and administration will become more responsible, and the performance discipline sustainable on the proper level.

The implementation in 2012 of the dramatically renewed summary proceedings system allowed the resolution of cases related to small claims without the parties being present, provided that the latter were granted access to all the case files by means of a special secured Internet page. In the course of trial
under summary proceedings, the parties thereto shall receive only one ruling by mail, which contains the access code to the case files in the previously mentioned system “My Arbiter”. The parties actually observe the same electronic case as the one on the judge’s office computer. Therefore, they do not need to appear in court, study and copy the case files. In the summary proceedings, there is no court hearing, while the judge passes the judgment on the basis of the materials submitted by the parties electronically.

The judge will always have an option to rule that the case shall be heard under general procedure by civil law or administrative proceedings, ordering the parties to appear in court for a hearing of the case.

Another substantial novelty in the arbitration system operating in Russia is consistent implementation of the transparency principle into the routine of the courts. A number of amendments introduced to the Arbitration Procedure Code have introduced mandatory audio recording of the court hearings, provided for the right of the parties to use audio-recorders freely and facilitated access to the courtroom. It is important to mention that in this case the principle of transparency of justice in the arbitration procedure is not contrary to the principle of protection of commercial secrecy. The parties submitting their commercial dispute for resolution to the arbitration court in good faith are not afraid of public disclosure as they are sure that they are acting in compliance with law and good business practices. Moreover, the existing laws of the Russian Federation provide other options for dispute settlement, specifically through the court of referees and mediation procedures. These mechanisms can be used by the parties to business transactions concerned about utmost protection of confidentiality.

The transparency of procedure in the state arbitration corresponds completely to the public nature of the arbitration court as a government institution.

Economic life in Russia today, maintaining sustainable commercial turnover and developing international business co-operation, would be impossible without the efficient operation of the arbitration courts. The growing amount of cases being resolved by these courts shows that individuals and entities, both residents and non-residents of Russia, have more confidence in the arbitration courts with regard to the settlement of a wide range of economic disputes.
RULES OF THE RUSSIAN FEDERATION
BORDER REGIME

Alexander Minaev, L. L.D., Head of Chair of the Criminal Law and Legal Proceeding Faculty of Law Tuva State University, Professor of the Military Science Academy

Abstract: This article examines changes in the regulatory legal acts of the Russian Federation concerning provisions regulating its border regime.

Keywords: state border, border zone, border regime.


The above-mentioned Rules consist of three parts:

1. Rules of the border regime in border zones, including the rules of entry (passage), temporary stay, movement of persons and means of transport, the rules of business, trading and other activities, and holding public socio-political, cultural and other events.

2. Rules of the border regime in the Russian parts of the waters of border rivers, lakes and other bodies of water, in internal sea waters and in the territorial sea of the Russian Federation, including the rules of recording and keeping of Russian small self-propelled and non-self-propelled (surface and undersurface) vessels (means) and ice vehicles, their navigation and over-ice movement.

3. Rules of trading, research, surveying and other activities in the Russian part of waters of border rivers, lakes and other bodies of water, in internal sea waters and in the territorial sea of the Russian Federation.

Considering that in Russia most offences happen in border zones on land, let us consider the first part in more detail.

The new rules of entry, temporary stay, movement of persons and means of transport in border zones establish specific contents, space and time limits of action and scope of persons to whom they apply.

The places of entry or passage in the border zones are set on the lines of communication and are designated with warning signs on which the telephone numbers of border control bodies are indicated.
The rules require that entry to the border zone of Russian and foreign citizens, persons without citizenship and means of transport is permitted with individual or collective passes issued by border control bodies of the FSB in constituent entities of the Federation or by subdivisions of border control bodies upon availability of identification documents. Such passes shall specify what persons specifically may enter or pass through the border zone, stay temporarily and move within it with such passes and identification documents in their possession.

The former Rules specified how to make applications and requests for the issue of passes, grounds were determined for refusal of their issue or for deferral of entry to the border zone to a later date. The new Rules have nothing of this, but two situations are covered when entry to the border zone is temporarily limited or forbidden. These are during search activities, border searches and operations or the announcement of a state of emergency or imposing martial law in the relevant area, as well as the legal regime of a counter-terrorism operation.

The new Rules specify a list of persons who may enter border zones, stay temporarily and move within border zones without such passes, but with identification documents. First, these are Russian citizens who hold state posts of the Russian Federation or its constituent entities, having documents on their persons that confirm their official position, as well as citizens with residence or temporary residence registration in localities in the territory of a border zone, and persons with residence registration in the Kaliningrad Region, in the period of special economic zone functioning there.

Of the persons having no temporary residence or residence registration in the district or urban district in the territory where a border zone is established, there are those who can enter with identification documents as citizens having their place of work or service in the border zone. These are law-enforcement and regulatory body officers, military conscripts, persons doing alternative civilian service, staff of organizations located in the border zone, and members of their families.

Students and pupils of educational institutions of professional, higher and postgraduate level, going to training places or host companies located in a border zone, can enter it upon availability of certificates or other documents issued by the their educational institutions and confirming their direction for practical training or probation.

A border zone may be entered by the staff of all means of public suburban and short-distance transport having regular traffic routes within the border zone as well as drivers of other means of transport having on their person an employment reference confirming the performance of their work or official duties on the routes located in the border zone.

Besides the persons registered in border zone localities, the right of entry without passes is enjoyed by the owners or users of land or accommodation facilities that are not their places of residence located in the border zone. They must have documents on their person that confirm their right of ownership, use and disposal of the said land or accommodation facilities, for example, membership cards of non-commercial horticultural, market-gardening or dacha-owner associations or other substituting documents.

The right of entry to a border zone is enjoyed by persons going to medical and sanitary institutions, sanatorium-resorts, recreation organizations, childrens'
sanitary institutions and childrens’ recreational institutions located in a border zone as well as organized tourists having proper agreements on them.

Persons entering a border zone in cases of critical condition of health or death of their close family members, relatives or other persons close to them living in a border zone, or in case of fire or other natural disaster they have suffered, may enter on condition of holding a telegram with a certified fact in it.

No pass is necessary for those who enter a border zone as far as a limited zone of five kilometres along the state border on land and the sea coasts of the Russian Federation, Russian banks of border rivers, lakes and other bodies of water and on islands on the said bodies of water, and also as far as the limits of engineering structures that are located beyond the five kilometre zone.

The first part of the Rules sets several prohibitions as well, such as, for example, against staying in a zone within 100 metres of the state border around the clock on land, and in the 100-metre zone adjacent to the Russian banks of border rivers, lakes and other bodies of water where the border regime is set, from the beginning of the night time. Without the permission of the head of the border control body it is forbidden to photograph and shoot video of border patrol units, border signs, engineering structures, other objects of border control bodies as well as to photograph and shoot video of adjoining state territory. It is forbidden to talk with persons in adjoining state territory, to receive from them and to pass to them any things, articles (cargoes) or signals etc.

The rules relating to business, trading and other activities, and running public socio-political, cultural and other events in the border zone specify that such activities, including hunting, livestock keeping and cattle tending within a five-kilometre zone, on islands and also as far as the limits of engineering structures are carried out with the permission of border control bodies or their subdivisions (except for works connected with relief of natural or manmade emergencies). In other parts of the border zone such activity may be carried out upon notification of border control bodies or their subdivisions.

In those cases citizens or organizations must notify in writing the border control body or its subdivision in the recommended form about their planned work or event no later than three days before it is due to start. It is necessary to report immediately about the works connected with relief of natural or manmade emergencies in a border zone by means of communication with subsequent notification in due order.

In cases of loss or spoiling of a licence for work or an event, the citizen should notify the nearest subdivision of the border control body.

It is specified that works and events within a five-kilometre zone, on islands or as far as the limits of engineering structures located beyond the five-kilometre limit, must be carried out in daylight hours.

The rules specify that works and events within a border zone can be temporarily limited or forbidden during border search activities and operations and measures of inquiry or in case of announcement of a state of emergency or imposing martial law in the application area, as well as of a legal regime of counter-terrorism operations.

The last part of the rules establishes a regime for the registration and maintenance of Russian small self-propelled and non-selfpropelled vessels and ice vehicles. It also regulates trading, research, and surveying activities in the
Russian part of bodies of water, in internal sea waters and in the territorial sea. This part amends the rules of registration and maintenance of Russian small vessels as well as the rules of their navigation and overice movement. Now they are to be registered in subdivisions of border control bodies before the beginning of exploitation (formerly it was within five days from the day of acquisition or individual construction). It is also necessary to give notice in writing about the change of stationing site, about the change of the owner and about termination of use of the vessel in connection with its unworthiness.

Appendices to the Rules present samples of necessary documents such as notification of business, trading and other activities, change of ownership of a vessel etc. as well as a sample of a warning sign set in places of entry to border zones.
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