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The development of social relations and information technologies has considerably changed the forms of a person’s scientific activities. Digital technologies have introduced many novelties without which it is impossible to imagine contemporary life. Those changes did not pass around science, publications and publishing houses as a whole. Today hardly anybody is ignorant of such products as Web of Science, or Scopus, which represent databases of scientific publications and, which is no less important, citation bases of scholars and researchers. As a result of these systems, conditionally speaking, the work of scholars all over the world become accessible, and the citation system makes it possible to easily reference other authors.

The other, no less important and significant, tool, is the system of providing scholarly works with updated and permanent references. In reality an article published on the internet often does not have a particular reference that distinguishes it from a paper source. If an article is removed or transferred to somewhere else, it is difficult to find a reference to it, and that leads to the emergence of plagiarism and unconscientiously matching content. This is why many authors today distrust the internet as a publishing source for their works.

This problem has been solved within the operation framework of the DOI system (technical details are available by following the link: www.doi.org).

**DOI** (*Digital Object Identifier*) is a special object identifier and, in this case, the identifier of a scholarly article. In point of fact, it’s the same as a URL address. But a DOI is unique in that it is permanent and unchanging. Having received a DOI for their article, an author in the future can always use that address to gain access to their article.
Who and how ensures accessibility of the DOI reference? It is the publishing house which enters into a contract with the CrossRef organisation, where DOI references from all over the world are kept. The CrossRef database now keeps almost 64 million DOI entries.¹

How does the DOI reference work? DOI is an ordinary Internet address that consists of 3 parts:

1st part: a permanent link with a DOI server for each DOI.
2nd part: the number assigned to the publishing house. Accordingly, within the framework of one publication (book, magazine etc.), it doesn’t change.
3rd part: directly characterises the article and is formed by publisher/author in free format using admissible symbols. In this case the publication is an English-language version of the magazine “Law and modern states” (en), the following characters are: year of publication (2013), then – the number (3), and the last one – the consecutive number in the table of contents (7). Accordingly, it is easy for an author published in the magazine “Law and modern states” to compile their own DOI using the aforesaid algorithm. Therewith, the DOI reference initially contains metadata on article, publication, publication number etc. Any DOI reference can be checked on the site http://www.crossref.org/. To do this, it is necessary to enter DOI reference in the Metadata Search entry box. For the example we reviewed above, the following results are indicated:

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¹ http://www.crossref.org/
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Alim Hidzev,
infotainment
ECONOMIC MATTERS

FACTORS OF THE FORMATION AND DEVELOPMENT OF HUMAN CAPITAL IN AN INNOVATION-BASED ECONOMY

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Antonina Sharkova, Doctor of Economic Sciences, Professor, Head of Economics of Organisations Chair, Financial University at the Government of the Russian Federation

Maria Merzlova, Doctor of Economic Sciences, Professor at Economics of Organisations Chair, Financial University at the Government of the Russian Federation

Summary. This article considers the principal factors influencing the formation and development of human capital in an innovation-based economy. The most significant factors are determined by means of correlation and regression analysis. Given an estimate with an account of the innovation-driven growth of economy.

Keywords: human capital, education, factors, innovation-based economy, specialists, management, investment.

Competition for human capital (HC), being the basis of the innovation-driven growth of economy of any state, is crucial in the modern world. Innovation-driven growth requires training of new-generation personnel at various levels due to large-scale assimilation of the latest technologies: skilled labour for knowledge-intensive and high-quality productions; multidisciplinary specialists capable of combining technical specialisation with the functions of managers, analysts, consultants, and scientific personnel. Innovative orientation of the economy is associated with investment projects, and in those conditions the need arises for economists specialising in problems of the measurement of innovative investment processes. The circumstances indicated are of paramount importance when making grounded decisions in strategic planning within the scope of an individual enterprise as well as on the national scale.

In those conditions the national interest and the state interest are exactly in provision for a person of maximum opportunities for self-realization and the most comfortable living environment. If it is not so, the state undermines its own security.

Economically developed countries ensure high rates of economic growth

through the quality of their human capital to a considerable degree. The modern Russian economy has a substantial deficit of personnel capable of efficient work with the technological renovation of the economy, and this requires the state to create special conditions for the formation of human capital. In connection with that, special attention of modern science, of domestic practical science persons is concentrated at exposure of factors of growth of human capital. The Human Development Index (HDI), calculated by taking into account three kinds of indices, is used as major indicator of human capital level.

It was thought for a long time that a 1% growth of investment in HC leads to a 3.81% growth in the productivity of labour, and to acceleration of the rate of growth of per capita GDP by 3%\(^1\), and that the growth of human capital is connected most of all with growth of GDP and is determined by it. But the latest scientific research data reported in the UN Human Development Report 2010 and based on a study of 40 year’s world practice, demonstrates that any correlation between growth of income and changes of HDI is extremely negligible for most countries. In addition, a study of the Life Expectancy Index, Education Index and GDP Index for Russia, with the help of correlation and regression analysis, has shown that the force of influence of the GDP Index on HDI is stronger than that of the influence of the Education Index and Life Expectancy Index, and the factors themselves act in the same positive direction. The influence of the GDP Index on HDI is 1.98 times stronger than the influence of the Life Expectancy Index, and 1.83 times stronger than the influence of the Education Index\(^2\). An evaluation of the influence of the factors, using elasticity coefficients, has confirmed that the most important influence on HDI is exerted by the GDP Index, which demonstrates the primary importance of economic development for the formation of human potential in the country.

At the same time, the advantages of the economy and its innovative development under modern conditions are determined using human potential. It is people, with their education, qualifications and experience, who determine the limits and possibilities of the economic modernisation of society. The modern period, however, is characterised by an imbalance of the labour market and professional education. Accrued quality human capital, in the form of scientific achievements, discoveries and inventions, is the basis of the formation of an innovative economy, and defines HC as an intensive factor in the development of the economy. Consequently, the notions of an innovative economy and human capital are inseparably associated.

Development of an innovative economy is impossible without an expansion of human capital and without use of his own potential by a person. Crisis periods have given new milestones in the development of the economy and the creation of human capital. As a result of companies being understaffed with personnel of the necessary qualifications, there is a need to attract foreign specialists.

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Fig. 1. Staffing level of companies with specialists of the required qualifications (according to data from RUIE in 2012)\(^1\)

More than a third of managers note the lack of all categories of staff. The major share of the deficit is accounted for by highly qualified personnel – specialists with the top level of professional qualifications, and as a consequence, there has been substitution by foreign specialists with those qualifications (Fig. 2).

This situation shows that the process of creating an innovative economy for Russia is a most complex social and economic task. Until that task is complete it is hard to plan for a dynamic growth of GDP, or stability and sustainability in the development of state and society.

Effective management of the innovative development of the Russian economy will be helped by the solution of two important problems.

1. **Absence of adequate infrastructure for the management of human capital.**
   In recent times much attention has been paid to the creation of an innovative infrastructure, but an innovative infrastructure is the means of translating innovations to economy. Certainly under an innovative economy it is necessary to manage human capital, and that includes not only using a person’s intellectual abilities but activities of formation, development, and accumulation of intellectual potential, and the provision of society with quality human capital as a strategic resource for the country, and its effective use. A solution of the indicated problem is possible through the creation of institutes of effective management of the formation of a national HC.

2. **Existing concept of management on the level of enterprises.**
   Innovations are novelties in the sphere of organisation of labour and also the management of the workforce, that is human capital. Under an innovative economy, a change from the authoritarian concept of management for a democratic one is necessary in order to bring to the forefront a person’s creative

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\(^1\) Glukhova M. Corporate management in Russia: Is there any progress? // Promyshlennik Rossii. 2012. № 11.
potential, their professionalism and erudition.

The second most important feature of the management of human capital in the modern productive process is the transition from the idea of profit by means of cuts in spending to the idea of investment in human capital. Investment in human capital, being a mechanism of the formation of human capital, must considered a priority, and be ahead of investment into equity.

It is explained by the fact that economic processes, including those accompanying crisis developments, require constant actualisation in the management of HC. Knowledge of personnel wears out quicker than in other periods of development of economy. Investment in an individual will encourage a rise in labour productivity, improvement of product quality, the use of automatic means of management, the rise of a corporate culture and other indirect factors leading to the growth of a company’s profit. This is why expenditure on the improvement of the quality of human capital can be considered an investment: current expenditures should be made bearing in mind the with higher returns and higher profits in the future.

In the process of the development of national human capital it is necessary to unite the efforts of state and private sectors. Human capital is simultaneously a factor in the development of the state as a whole, and an individual enterprise, which is exactly why joint activity towards its increase is necessary. In the 21st century the quality of human capital in a country will be its advantage in the world market of innovative economies. The innovative development of Russia in the next decade is possible only on the condition of investment in human capital, and without which the investment in innovations will not meet expectations.
References


SOCIAL AND ECONOMIC METHODOLOGY
FOR ASSESSMENT OF COMPENSATION FOR MORAL
DAMAGE TO VICTIMS OF CRIME IN RUSSIA:
PROBLEM STATEMENT

Sergey Vorobyov, LLD, Associate Professor, Chair of Theory of State and Law and International and European Law at the Academy of Federal Service for Execution of Punishment in Russia

Summary. The article is devoted to problems of the assessment of compensation for moral damage to victims of crime, calculated using socio-economic indices and depending on the social danger level of the moral damage. Attention is focussed on the degree of physical and moral suffering connected with individual peculiarities of the harmed person, and the introduction of differentiated rates of compensation for moral damage to the injured party, depending on the offence committed by the guilty person and the harmful consequences, is offered.

Keywords: moral damage; injured persons; compensation; suffering; danger level.

Compensation for moral damage to an injured person in Russia must be efficient and be performed preventive and compensatory function, taking into consideration all social consequences of the offence. This is because the suffering of an injured person may be associated for them with additional social ills connected with medical treatment, loss of their job, and/or permanent disablement. In addition, the compensation awarded for moral damage must be realistic as regards the amount of its payment on the part of the guilty person. More than that, the amount of compensation must have a legislatively limited threshold and differentiate between the way harm was caused (crime, administrative offence, civil tort, labour offence) to the injured party and its consequences. That's why in setting a legislatively limiting threshold of amount of compensation of moral damage regard is to be had to way of causing of harm to injured person differentiated by social danger level and character of occurring consequences as well as adverse effect on injured person.

We thus propose to set differentiated amounts of compensation for moral damage to injured parties depending on the offence committed by the guilty person and the resulting harmful consequences. To do this, it is necessary to supplement the Civil Code of the Russian Federation (CCRF), submitting substantial corrections to provisions of the corresponding articles, namely:
Part 2 Art. 151 CCRF to be amended to read as follows: «Assessing the amount of compensation for moral damage the court takes into consideration the degree of the offender’s guilt and other circumstances worthy of note. The court must also take into consideration the degree of physical and moral suffering connected with individual peculiarities of the harmed person and the data of expert examination acquired during carrying out statutory forensic medical and psychological expert examination»;

Part 2 Art. 1101 CCRF, to be amended to read as follows: «The amount of compensation for moral damage is determined by the court depending on the character of physical and moral suffering inflicted upon the injured person, the degree of guilt of the harm-doer in cases when guilt is grounds for compensation for harm, as well as takes into consideration the data acquired from the statutory forensic medical and psychological expert examination. During determination of the amount of compensation for moral damage, demands of reasonableness and justice must be taken into consideration».

The amount of compensation for moral damage must be based on the findings of medical and psychological expert examinations of the injured person determining the state of their physical health and psychological happiness, interior constituents of their moral and physical suffering, their character and degree. The data acquired during the expert examination will be direct evidence of moral damage inflicted on the injured person as a result of the offence by the guilty person.

The amount of compensation for moral damage is to be determined, in our opinion, on the basis of the degree of physical and moral suffering connected with individual peculiarities of the harmed person, taking into consideration the provisions of Art. 151 CCRF. Statutorily, the meaning of ‘characteristics of degree of suffering’ is not disclosed, however, and in this connection it is possible to suppose that this requirement indicates the danger of suffering for the injured party. Its degree, as a result of moral damage inflicted, would be different and individual for every person. The suffering indicated in Art. 151 CCRF, taken into consideration in determination of the amount of compensation of moral damage, is identical to characteristics used by law-makers in construction of the determination of moral damage. The special traceable aspect in that case makes it possible to affirm that the degree of moral and physical suffering must determine the level of danger of moral damage. Consequently, it is necessary to enact into law the levels of danger of moral damage, on the basis of which differentiated amounts of compensation will be determined.

The level of danger of moral damage is understood to be an accumulation of adverse physical and psychological changes of the injured person’s state of health caused by infliction of physical and moral suffering on them as a result of an offence committed against them, the consequence of which is moral damage. The level of its danger is a quantity directly proportional to the individual drama of the (injured) person because of adverse consequences suffered by them and caused by the crime (offence).

Taking into account the foregoing, we propose to make changes in the provisions of Art. 151 CCRF, within the frame of which it is desirable to set the levels of danger of moral damage and the amounts of its compensation. The basis of the delimitation of moral damage danger level must, from our point of view, be
the medical and juristic characteristics used for determination of a person’s state of health in the case of damage inflicted, namely – the gravity of the damage caused to health. When determining danger levels of moral damage it is necessary to proceed on the basis that intangible benefits undergo the biggest substantial changes as a result of a crime committed. When constructing the definition mechanism for the amount of compensation for moral damage it is necessary to have regard for characteristics of the constituent elements of the offence as provided for by Arts. 111, 112, 115 of the Criminal Code of the Russian Federation. Taking into account the legislative distinctions of those constituent elements of offence, we suppose that the amount of compensation for moral damage can be determined with the following formula:

\[
ACMd. = \frac{\text{N.d/l} \times \text{MRLP}}{\text{life expectancy}},
\]

ACMd. – amount of compensation for moral damage;
N.d/l – number of deprivation of liberty years for commission of offences provided for by Art. 111, 112, 115 of Criminal Code of the Russian Federation;
MRLP – Minimum Rate of Labour Payment;
We define the average level of life expectancy in the country by life span of men observed in 2011, because it is less than that of women (men in Russia live now 64,3 years, and women – 76,1 years)\(^1\).

Knowing the indicated values we can calculate the amount of compensation for moral damage in the commission of an offence, e.g. that provided for by Part 1 Art. 111 of Criminal Code of the Russian Federation:

\[
ACMd. = \frac{8 \times 5,205}{64,3} = 647,500 \text{ roubles},
\]

8 – number of years of imprisonment set as the punishment by Part 1 Art. 111 of Criminal Code of the Russian Federation;
5,205 – minimum rate of labour payment in Russia from 01.01.2013;
64,3 – demographic index of average standard of life of Russians in 2012.

Accordingly, if moral damage danger levels are directly connected with the injured person’s state of health, it will be desirable for a law-maker to enact into law three moral damage danger levels (the first level of its danger depends on indicators of grave bodily injury; the second level of danger on indicators of moderate bodily injury; the third level on indicators of minor bodily injury).

Consequently, the foregoing methodology for calculation of the amount of compensation for moral damage and classification of levels of its danger will make it possible for the court to determine more sensibly the amount of compensation for moral damage, and to assess compensation taking into account the consequences of the crime as well as socioeconomic and demographic indicators.

References
Svetlana Boshno, Doctor of Legal Sciences, Professor, Head of Chair at the Russian Presidential Academy of National Economy and Civil Service

Summary. The author examines concepts, views, goals and ways of interpreting the law, and gives the definition and implementation of the rules of interpretation regulations. Provides that the interpretation of the law refers to activities aimed at establishing their content, to the disclosure of the will ruling social forces expressed in them. Special attention is given to the judicial interpretation and its role in ensuring the consistency of enforcement, as well as the problem of interaction of legislation and judicial practice.

Keywords: interpreting the law, judicial interpretation, judicial practice, legislation, consistency of enforcement, interpretation regulations.

1. Concept of the interpretation of legal provisions

Interpretation of the law means realising and explaining it. Reasons for interpreting legal rules are various: a need for uniformity in the application of the same law by different people; the complexity and ambiguity of regulations; and contradictions between laws and other features of legislative texts. Shortcomings in legislation and defects in texts are also reasons for interpretation.

The interpretation of legal provisions has to serve the purpose of a correct and uniform understanding and application of the law, and of identifying the essence of what is contained in the legislator’s verbal formulation.

Interpretation is necessary to promote identification of the exact sense of legal provisions.

Interpretation combines clarifying (for the interpreter) and explaining (for others) the sense of a law. Clarification and explanation are interconnected parts of the process of the interpretation of the law. Interpretation can begin as clarification but move on to explanation. The person who carries out the interpretation is called an interpreter.

Interpretation of the law involves the process of thinking in order to establish the content of legal provisions, by finding out the meaning and sense of terms and expressions (the signs of a natural language) contained in regulations. Interpretation is an internal process of clarification that does not go beyond the consciousness of the interpreter. This characterises the gnoseological (informative) nature of interpretation. Clarifying legal provisions requires creative, intellectual and determined activity by the interpreter. The effect of the realization of the interpretation depends in many respects on the correctness, completeness
and legal accuracy of the explanation of the law.

All legal provisions may be subject to interpretation as clarification, but the difficulty of this kind of interpretation depends on the individual legal knowledge and the interpreter’s level of legal understanding. The less noticeable the interpretation is, the better the legal training of the person concerned. Therefore, general erudition, level of professional training and acquired skills and abilities to work with legal matters have an impact on interpretation. Clarification inevitably accompanies the process of studying legal provisions. It can be carried out by any person regardless of his education, job or legal understanding, or of the purpose of the interpretation.

Interpretation as explanation is the activity of stating and explaining the sense of a law to other people. An explanation embodies previous informative activity in the form of judgements, concepts and conclusions. The purpose of an explanation is to establish, verbally, the sense of legal provisions. An explanation can be oral or written. Explanations include judgements and assessments of the content of legal provisions. A legal comment, a judgement, a lecture or another form of interpretation of a law can be the result of an explanation.

Taking into account the above information, interpretation of the law can be presented as an intellectual and determined activity to clarify and explain the meaning of legal provisions so that they can be fully implemented. Understanding the sense of the law, interpreting and justifying the law in the form of concretising concepts and making judgements on the original will of the legislator are carried out during interpretation.

The purpose of the interpretation of laws is the disclosure of the true sense of legislative norms, each of which represents the thoughts of the legislator expressed in words.

Before starting to interpret a rule, an interpreter has to find out whether the law has received an earlier binding explanation. In the absence of a binding explanation, the interpreter will be engaged in researching the sense of the norm by themselves.

The interpreter must establish belonging of a rule to the legislator. For example, if we are dealing with a regulatory legal act published as a part of a collection or as a separate brochure (unofficially), it is necessary to reconcile the text with the official. Such is the document in the publication of «Assembly of the Legislation of the Russian Federation», “Rossiyskaya Gazeta,» Parliamentary Newspaper «or on the official website www.pravo.gov.ru. It is not excluded, that mistakes of the unofficial edition will be found out.

Interpretation is carried out using the following rules:
1) Rules must be interpreted using internal sources;
2) If the rule is still unclear, then it is necessary to clarify its meaning through external sources (such as the dictionary of terms, special literature).

The interpretation of rules of law is thus understood as the job of state bodies, officials, and individuals, and is aimed at establishment of the content of the rules of law, to reveal the underlying will of social forces at power.

2. Methods of Interpretation of the Rules of Law

Methods of interpretation of the rules of law are special techniques, regulations and tools of knowledge acquisition in the sense of rules of law used by the interpreter, consciously or intuitively, to obtain clarity on legal phenomena.
Let's consider the most widely used methods of interpretation. The systematic method involves understanding the sense of the rule of law by comparing it with other rules, and the identification of its relationships in the common system of legal regulations or the law system. This method examines the system-forming relationships of the law: subordination, coordination, management, origin, etc. Contradictions (conflicts) between rules and acts are identified and eliminated using the method.

The philological (language or grammatical) method represents consideration of a verbal shell of rule of law. The essence of this method is to ascertain the sense of a rule of law, by means of the grammatical analysis of the text of the regulation. The content of the philological interpretation is a set of cogitative operations allowing, by grammatical analysis of the written speech of the legislator, the elimination of possible contradictions of the sense of the rule or between rules, to find out the meaning of separate words and the text as a whole. Thus, the role of conjunctions, prepositions, commas, etc. is defined.

The verbal method comprises several elements: lexical, syntactic, logical, stylistic.

The lexical element represents consideration of each word of a rule separately, i.e. the text is divided into words and each of them is considered separately.

The lexical element is studied with the help of dictionaries, containing and capturing the meaning of words. The same word can have a different meaning in ordinary and special/legal senses.

The syntactic element represents an analysis of words in a sentence. The order of words in a sentence, the way of combining them, is analysed.

A logical element includes an analysis of relationships between elements of the sentence. Thus, some words cause the meanings of others, in phrases and for different purpose, to change. For example, the word «ownership» changes its meaning depending on the context.

The stylistic element includes the style and phraseology of contexts of statutory acts. In general, application of the given element should be limited to the general requirement of expressive neutrality of the law language and the overall style of the legislation. Nevertheless, the style and phraseology of different laws have certain differences. Thus, the style of criminal legislation is much more certain and precise in comparison with the language of civil legislation.

Here are some rules of verbal interpretation. For example, if the law specifies a meaning in which the word is used, then the given meaning should be understood as such. The rule becomes ineffective, if in any particular case it is obviously revealed that, contrary to its own definition, a legislator has given the known word a different sense.

If the meaning of the word is not clearly defined in the law, it should be specified based on a comparison of parallel usage.

Words of rules should be given the sense in which they were used at the time of publication.

Words of the law should be understood in the sense they are used in the local language or a dialect from which they are borrowed. Words can reflect originality of a certain district, or a nationality.

Words should be given a meaning associated with a certain group of people.
This rule is related to the fact that the meaning of the word depends on its addressee. For example, the meaning of the term “security” changes, depending on the situation and the addressee.

Each rule, taken as a whole, must be given the meaning corresponding to its syntactic structure.

Historical method means that the interpretation takes into account the historical conditions of the publication of the statutory act. The history of the adoption of rules, goals, and motivation, leading to its adoption, and the socio-economic and political factors of law-making is explored. The method is important for understanding those rules that have been adopted for a long time and cannot be understood without special efforts. Preconditions of historical interpretation exist also in the fact that in many countries rules that apparently have become outdated are not revoked.

The logical method of interpretation of the law consists of the use of means of formal and dialectical logic in learning legal phenomena. Separate words are not an object of research but internal relationships between portions of the document, the logical structure of legal instructions. Thus, the logical and language analysis is combined. Logical operations such as deduction, the transition from the general to the special, cause and effect, and comparison of concepts on volume and others are most demanded.

3. Official Interpretation

Official interpretation represents an explanation of sense of rules of law, proceeding from a body of the government, local self-government, the official, and having a binding character for all subjects, whose relationships are regulated by the rule explained. Official interpretation sometimes refers to legal, i.e. based on the law, mandatory.

Official interpretation is in its turn divided into some subtypes: standard (normative) and non-regulatory (causal).

Normative interpretation is an explanation of the sense of law, with respect to a wide range of social relations and designed for repeated use. It is not personally identified in respect to subjects and public relations.

Standartization of interpretation of the law should be understood:
- as state obligatory of explanation;
- as a possibility of its numerous applications;
- as raising awareness for a wide range of public relations.

Those statutory acts that, from the point of view of the certain authority, require additional explanation due to detected difficulties, wrong or controversial practice of their application, ambiguity of their text or to any other reasons, are exposed to normative interpretation. The goal of interpretation is to eliminate wrong and controversial practice of enforcement, ensuring its consistency. Any body having the right for normative interpretation, within the limits of the competence, is not limited nor in the motives or reasons explaining rules of law.

Normative clarification does not contain and should not contain separate rules, they only update, explain and specify the provisions of the interpreted act. Thus, clarification can explain who normative instructions may effect, the rights and duties of subjects of law, what specific rules of law require, or under what conditions a law should be implemented. Interpretation may not make amendments and changes to the existing rules, distort or supplement the legal
will of the legislator. Obviously, normative interpretation cannot be carried out in isolation from its environment, but it should not mean that during the interpretation process, under the pretext of changing conditions or needs of political and economic development, it is possible to deviate from the exact meaning of the rule of law, to include in the rule, content that is at variance with the intention of the legislator.

Law-making and interpretation are different concepts. The interpreter does not create law, but merely identifies, establishes the will expressed in the regulatory act. Law-making is the creation of a new rule of law.

Normative interpretation has no independent meaning, cannot be applied independently and separately from the interpreted Act and fully shares its fate. It is in force there and then, where and when the statutory act is in force. In particular, cancellation or modification of the statutory act automatically cancels its normative interpretation.

Authentic interpretation is the explanation of the law proceeding from the body that earlier has issued explanatory provisions. «Authentic» means valid and original, based on the primary source. Acts of authentic official interpretation are statutory.

Casual interpretation of the law is clarification of the sense of rules individually to specific public relations, explanation of law in relation to a specific life event. More often, such interpretation of law is given by judicial and other competent authorities on legal cases being considered by them. Casual interpretation acts have single value, but made on basic cases and, especially, in conditions of a gap in the law, acquire the value of precedent.

As a result of casual interpretation, a precedent interpretation appears- a model developed by law enforcement practice, that is a standard of required understanding and application of any rules of law, formulated when considering a particular legal case which has received a recognition in legal science.

4. Informal Interpretation

An informal interpretation is an explanation of the law, which has been provided by non-authorized specifically bodies and individuals for it, and has no binding character. It does not generate mandatory legal consequences and is made, for example, by lawyers, scientists, individual citizens. Its meaning is defined by authority of subjects, their special knowledge and persuasiveness of the form in which interpretation is carried out.

Types of informal interpretation – doctrinal and scientific, ordinary and professional - specified by subjects of interpretation.

Ordinary interpretation is made through the understanding and clarification of the law by citizens, who are not specialists in jurisprudence. It is reflected in respect to law, justice, legality and other verbal expressions of legal validity understanding. Ordinary interpretation generally has an oral form.

Lawyers are subjects of professional interpretation. Professional interpretation differs in completeness, and systematic nature. A lawyer views any rule of law in the context of the system of law. Interrelations of the interpreted rule with other rules are obvious for a lawyer.

Individuals with the scientific degrees of candidates and doctors of sciences in the field of law are subjects of scientific interpretation. As a rule, these are employees of scientific research and educational institutions. Scientific
interpretation can have both oral (lectures), and the written form (books, articles, etc.). Depth, motivation, and completeness are peculiar to scientific interpretation.

Doctrinal interpretation is given by competent persons in authority. Such interpretations have great persuasiveness, and deep reasoning. They have a huge impact on public relations, although they do not carry an official nature. Feature of doctrinal interpretations is that they do not reflect the position of a single specialist, but the established opinion, school, objectively existing situation. Thus, the doctrinal interpretation is scientifically sound, almost valuable, trusted judgment on legal phenomena.

5. Types of Interpretation on Volume

Classification of the interpretation may be made depending on the volume. This is due to the fact, that in certain situations a person interpreting a rule turns out to face the need to understand it already or, conversely, broader than it can be seen at the first sight from the text of the law. This led to the emergence in the theory of law an expansive (liberal), restrictive and literal (adequate) interpretation.

The literal interpretation is that understanding of the sense of the interpreted rule of law is fully in line with the text of the source of law. The result of such interpretation is adequate to the verbal form of enactment.

Expansive (liberal) interpretation takes place there where the valid sense of rule of law is beyond its textual form.

A restrictive interpretation is expressed in such a result of the interpretation, when a true sense of rule of law should be understood in a restrictive manner, i.e., as it is expressed in the verbal text.

6. Acts of Interpretation

The act of interpretation of the law is the act of explaining how to understand and enforce laws. Acts of interpretation of law represent a multilevel system of legal acts with different legal efficacy, practical significance or legal properties.

Acts of official interpretations represent a system of subsidiary legal acts, serving as an important tool for the proper and effective implementation of the law by establishing institutional support rules of understanding and the application of existing legislation. Acts of official interpretations have the following characteristics: 1) State mandatory; 2) they correspond to the competence of the issuing authority; 3) they have a form similar to other legal acts; 4) they are organised in a hierarchical system. 5) they have a purposive character; 6) they serve as the legal guarantee and basis of law and order.

A form of interpretation law acts is a critical issue. As a rule, acts of official interpretation are published in the form of legal documents. Often, requirements for the name and content of these documents are established by legislation.

Special attention should be paid to acts of judicial interpretation. They can be of a casual character, if given in a particular case. Such interpretations are found in court decisions, sentences, definitions. These acts are law enforcement.

The role of reviews of judicial practice is somewhat different. They must ensure the unity of law enforcement in the state. Reviews are of a general nature and contain recommendations to address any category of cases. These documents help provide general management within the judicial system.

However, such explanations are state binding power, authority of the highest judicial organ and have a direct impact on the entire governing judicial practice. Failure to do so leads to the abolition of judicial acts rendered without regard to
the provisions contained in the official explanations of highest courts. They have a significant impact on the entire system of legislation and are taken into account by law-making bodies when updating legislation.

7. Judicial Interpretation and Law-making

Judicial interpretation has a varied influence on the formation and development of the law. It ranges from persuasion to binding.

The influence of judicial practice is the impact of the established line of law enforcement on the process of creation of regulation acts by law-making bodies. As a result of the impact in the system of legal acts, changes occur in terms of modification, addenda or repeal.

Two systems – judicial practice and legislative acts – are in constant interaction. The nature of this interaction depends on the type of legal system and the type of legal consciousness of the state concerned. Anglo-American and Romano-Germanic legal systems essentially differ in assessing the interaction of judicial practice and legislation. Romano-German legal doctrine does not recognise judicial practice as the source of law, and does not classify courts as a law-making body. Anglo-American legal doctrine considers judicial precedent as a source of law and judicial interpretation as a law. These differences in legal systems are the basis for understanding the interaction between judicial and legislative powers, magisterial law and legislation. In the Anglo-American legal system, there is no reason to talk about the impact of judicial practice on law-making because these concepts are the same (law and precedent). In the Roman-Germanic legal system, interaction of precedent and legislation is a critical issue. Let’s cover some of the most acute problems in interpreting and law making.

The type of legal consciousness is also important. For a sociological understanding of the law, the problem is irrelevant, since law manifests in judicial practice. Indeed, one cannot have influence on themselves: law on law. This type of legal consciousness involves an ascending line, from practice to law-making. The positivist model of legal consciousness only allows the influence of a judicial interpretation of law on legislation.

The interaction of rules of legislation and practice occurs continuously. Statutory acts consist of abstract formulas. A legislator creates it as construction, which should in future give rise to massive public relations, i.e. rules of law claim to typicality in the future. The advanced knowledge of a legislator can justify itself, but may not take place. It is practice, including judicial, that provides the evaluation of the application of abstract rules to real-life relationships.

Influence of judicial interpretation on legislation and law-making has a number of forms: 1) formation of legal provisions, 2) addition of legislation, 3) change of the sense of legislation in the law enforcement process.

The perception of judicial practice by a legislator is a kind of direct impact. In this scenario of impact, there are two possible effects: in the first case, a legislator takes into account the results of consideration of particular cases by courts in law-making. It is a means in which a legislator is acting based on the situation (case). In the second case, the legislative body elevates established practice to the statutory act, a line of law enforcement, identified on its initiative.

Individual law enforcement acts may be received in the legislative process. In this case, a court actually replacing a legislator creates rules in law enforcement acts. A solution to the issue is then fixed in the common rule of law. This
mechanism has major defaults. In this case, the legislative body is being replaced by the judicial. Single episodes of judicial activity, as reflected in decisions on individual cases, should not be used directly by a legislator, because they make their decisions vulnerable. Only the established line of law enforcement practice should be received by legislative bodies.

Judicial practice may change the understanding of the sense of a rule of law. A court, in the course of its activity, changes legislative provisions. The results of judicial understanding and interpretation add to, or change, specific structural elements of existing rules of law – disposition, hypothesis, and the authorisation of a rule, and then, getting a great value, almost transformed into a rule of law.

In the Roman-Germanic legal system, it is preferable to improve the legislation in the course of the law-making procedure.

The direct impact of judicial practice on law-making appears to be unacceptable to Romano-German States since judicial activity develops into legislative, and acts of judicial power become a form of law. Romano-Germanic doctrine could not recognise the acts of courts (precedents) as a form of law.

Judicial interpretation has an effect not only on the normative legal acts. It also affects traditions, doctrine and other forms.
Abulfaz Guseinov, Doctor of Legal Sciences, Associate Professor, Faculty of the Theory and History of State and Law, State University of Baku.

Summary. The author analyses trends in developments in the field of law in post-industrial societies, such as the unification of the law based on a global phenomenon of acquiring values rooted in other cultures, known as acculturation, the standardisation of legal life across society, and legal integration. This last example means that an intrastate legal framework enters into an alliance with international legal frameworks. The article emphasises that a post-industrial future of the law requires us to reconsider some concepts, to specify notions, and to solve new problems such as, for example, that of an obligatory narrowing of different legal frameworks. It also highlights the need to consider the law with due account for changing reality and the trends of the future, to expand the scope of problems to be researched, and to develop an adequate methodology.

Keywords: law of the post-industrial society, standardisation of the law, legal acculturation, pluralistic law, unification of the law.

One of the major trends in the evolution of the law in post-industrial societies is its unification, which dates back to the twentieth century. A modern understanding of legal acculturation in the context of globalisation also contributes to the unification of the law. What we face is adoption, i.e. elements of a well-developed legal framework are transferred into a less sophisticated framework, and thus the follow-up process can be considered as reintegration. At this time, legal acculturation is acquiring a global dimension, which means that legal developments in an individual country obey internationally active principles of the evolution of the law. There are several directions for this interaction, namely the reception of ideas, notions, juridical constructions, institutions, etc.\(^1\)

Such acculturation leads to legal unification. For example, the dominant streams of economic exchanges are ruled by international trade conventions and international norms. Accordingly, to meet their requirements it is necessary to apply unified laws, and to standardize law-making and law enforcement in the corresponding areas of legal life in these countries.

However, the process also implies that certain legal complexities appear; these are caused by the simultaneous existence of unified norms and national

norms. The process also results in the manifestation of some contradictions attributable to the traditional model for the perception of the nature of the national law, and, to a certain degree, to a persistence in the interpretation and understanding of the national law.

Standardisation in legal life is also taking place. New standards apply in various spheres of legal regulation. First of all there are international legal standards related to individual rights and freedoms, and then there are standards that determine the functioning of mechanisms in the fields of justice, entrepreneurial business, finance, etc. Along with this, legal integration is taking place. One aspect of legal integration is reflected in the fact that various legal frameworks start to interrelate, so that we observe complex and manifold two-way relationships between state and regional, domestic and regional, and domestic and international legal frameworks. Amendments or transformations to one of the legal frameworks result in the alteration or transformation of those legal frameworks with which it is associated. Another aspect of legal integration is manifest in the creation of “global” or “world” law. Legal integration takes one of the leading positions in the infrastructure of incorporating processes.

Juridical science recognises that a post-industrial future of the law requires us to reconsider concepts, specify notions, and solve new problems. This applies, for example, to the sources of law. Due to globalisation, we need and are obliged to enable a rapprochement between different legal frameworks, and this in its turn will require a narrowing of the sources of law and a search for new regulators for social relations.

There are also essential changes in the relationship between public and private law. The old approach, which consisted of a clean-cut separation of public and private law, also proves to be non-viable in the context of globalisation. “In the long run globalisation, being a powerful tool for establishing far and wide principles of integration, universality and shifting, is able to turn around the nature of the private in society. In anticipation of this complete change academic efforts are made to develop the concept of ‘public order’, which will allow us in years to come to obviate the conceptual necessity of separating private and public law.”

Another vital question raised by globalisation is about the way state sovereignty is defined and perceived. Previously, the dominant belief was that the further we move towards globalisation and a world that is integrated over the whole planet, the less sovereignty states will have. Now we see more and more plainly the need to retain, secure and protect our own identity through maintaining and strengthening the institutions of state sovereignty.

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4 Pravovaja sistema Rossii v uslovijakh globalizatsii i regionalnoi integratsii (Obzor materialov kruglogo stola) [Legal System of Russia in the Context of Globalisation and Region Integration (Survey of Materials of the Round Table)] // Gosudarstvo i pravo 2004. No. 11. p. 102.
All over the world we can observe the creation and development of international rules that are considered to be the worldwide standards for the right or wrong behaviour of states and institutions; these rules (as tools) are aimed at creating standards in international law and building up mechanisms that enable adherence to these standards. As part of this process we can also witness the establishment of a number of international organisations, including those attached to the UN, and regional associations of states, which was predetermined by geopolitical and socio-cultural factors.

In the global legal system of post-industrial societies that is being formed, there appear to be two more important components, the legal nature of which stirs up a number of disputes. I refer to the so-called transnational law and supranational law. The essence of transnational law is that parties in international relationships generate standards of behaviour on their own that exist outside the framework of either domestic or international law. Supranational law in its turn manifests itself when states are called to obey certain norms that were created or that apply to them without their consent.

One of the trends in making decisions in the global post-industrial world is a shift from unilateral acts to bilateral acts, and from bilateral acts to plurilateral and supranational acts. This happens more and more often, and can also be described as a change from “soft” law to “hard” law, i.e. from the primacy of domestic law in many cases to the superiority of international law. Thereby, according to G.V. Maltsev, one may state that in the context of globalisation we can see the establishment of “the global legal system, in which the international law and national legal systems turn into multilevel ‘branches’ and institutions, whereas the social system of human civilization as a whole appears to be subject to regulation. Among other things it shows that the law, being extracted from the context of the socio-normative culture, starts playing an unusual role in modern processes. The legal situation in the world where research and technology dominate is unprecedented regarding its complexity, its rate of change and the uncertainty of its future development.”

It is widely recognised that globalisation in the state and legal context suggests that new rules should be generated and that sovereign states should be subject to these new rules. International and transnational associations such as the EU, the IMF, the Southern Common Market MERCOSUR and other interstate organisations create the basis for globalisation, and dictate rules of conduct for sovereign states.

It should be pointed out that a wider social basis, one that takes into account new challenges, will serve as the foundation for the law in the post-industrial future. In order to solve the new problems, some legal forms should be applied, which in turn will suggest that corresponding legal mechanisms should be generated. Creating new legal mechanisms proves to be necessary because of the very nature of the situation, with its implicit complex interaction between the interests of the participants, which will differ fundamentally from the traditional interactions between interests.

Owing to the rapid developments in information technology and the

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2 Ibid. p. 107.
3 Ibid. p. 108.
appearance of new realities, we may expect that legal regulation in the fields of information and electronic media will be growing. Global informational processes and systems have a significant effect on the legal and political systems of most countries. It is now evident that global informational processes are to be subject to legal regulation. According to O.A. Stepanov, if we do not analyse the trends in the developments in the high technology field today, tomorrow we will face the commencement of irreversible destructive changes connected with the collapse of society in general\(^1\). For this reason, one of the objectives that legal science must deal with at the present time is building up the legal basis for technological development in the sphere of information and electronics.

Globalisation brings the risk that the gap between positivism and idealism will grow wider and wider, in proportion to the extent of standardisation and globalisation among political and legal institutions. According to H.J. Berman, the law becomes more and more pragmatic and political\(^2\). Fast developments in setting standards will also result in the said gap becoming deeper and wider. Under these conditions it would be appropriate to combine setting standards with natural legal concepts. On the other hand, “the juridical doctrine in the twenty-first century should be based on the paradigm of the modern normative understanding of the law”\(^3\).

One more tendency in developments in the law, which could easily have been predicted and which has already shown itself, is pluralisation. The Chinese researcher An Vej puts emphasis on the fact that the pluralisation of global legal entities led to the pluralisation of subjects of law, the pluralisation of subjects of law led in its turn to the pluralisation of values that are subject to the law, and the pluralisation of values that are subject to the law is the cause of conflicts that emerge between the values that are subject to the law. Discrepancy between legal values can only be resolved when pluralism of legal values receives public attention\(^4\).

Prognostic activities, i.e. making forecasts, will become one of the significant trends in legal science in the future. Thus, legal systems will be able to adapt effectively to new terms, and to use adequate legal regulation mechanisms and tools in various spheres. In order to develop the legal groundwork for globalisation processes, legal science should be anticipatory, not merely opportune. According to I.V. Zakomorny, the potential of scientific prediction serves as the basis for state policy in general and legal policy in particular. A forecast, including a juridical one,

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\(^4\) An Vej, footnote 3 above, p. 168.
should therefore specify several possible options. Obviously, juridical forecasting will be effected at the junction of different methods and sciences, with the latter growing new branches.

The challenges of the time can be summarised as follows: legal science, which used to deal predominantly with issues that stay within the framework of individual national legal systems, is now required to consider the law with regard to an ever-changing reality and the trends of the future, to widen the scope of problems under study and to create an adequate methodology.

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THE NOTION AND INDICATIONS OF LAW ENFORCEMENT TECHNOLOGY

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Irina Kolesnik, LLD, Ass. Professor at Civil Law Chair, Rostov Branch of the Russian Academy of Law

Summary. The subject of this study is the genesis of law enforcement technology as a type of legal technology or a subtype of law enforcement technology (or technology of making individual acts). Law enforcement technology may exist as a separate entity having specific indications and elements segregating it to a special legal technology system.

Keywords: legal technique, law enforcement technology, legal technology, legal technology system, legal technique tools.

It was not long ago that law enforcement technology began to distinguish itself as a separate entity with specific indicia and elements segregating it as a special independent legal technology system as an independent type of legal technology. In particular, N.A. Vlasenko’s works distinguish between norm-setting, law expository, systematisation, and science application technologies as well as the technology of preparation and adoption of individual acts1. Some scholars, such as V.N. Kartashov and S.V. Bakhvalov, separate law-making, interpretative and law systematisation technologies2, others, such as T.V. Kashanina, include technology in the structure of legal technique, also separating, based on that criterion, law-making technique, technique of publishing of statutory acts, technique of statutory acts systematization, interpretative technique and law enforcement technique, corresponding with which are the same types of technologies3, the “not splitting” techniques and technologies in those legal situations.

It is worth noting that in his classification of legal technologies according to types of legal activity, V.N. Kartashov not only separates law enforcement technology into a distinct type as other scholars do, but names that technology “law enforcement (law realization)”. He doesn’t include the technologies of law

Some scholars, such as S.S. Alekseyev and R.A. Romashov, include law enforcement technology under the category of another technology which is more extensional in content.

Professor S.S. Alekseyev, classifying legal technique (a component element of which is technology as an aggregation of ways of use of tools of legal technique) by types of legal acts made with the help of its instruments, separates only two types of techniques: legislative (law-making) and the technique of individual acts\(^1\), in which he includes the development of law enforcement acts, that is, law enforcement technique and technology.

At the same time R.A. Romashov separates four basic technological structures of law: technologies of formally legal and socially legal law-making, and technologies of regulatory and protective law enforcement. The basis of his classification, as well as of aforementioned scholars’ classifications, are the types of legal activity served by legal technology instruments – those of law-making and law enforcement. By ‘formally legal law-making technology’ R.A. Romashov means the initial laws making expressed as the adoption of regulatory legal acts, and by ‘socially legal’, derivative law making consisting of the issuance of acts of law enforcement\(^2\).

In this way Romashov practically considers law enforcement technology to be a component part of law enforcement technologies, in the structure of which he includes various legally-technological tools that are qualified by us as components of law enforcement technology. These are “practices of collection and analysis of factual materials, a selection of rules liable to be used in a specific case, taking a law enforcement decision and ensuring realization of that decision by those to whom it is addressed”\(^3\). Here the author simply enumerates technologies separated by some scholars in legal science as functional stages of law application, the last of which is usually not included in the composition of functional stages but considered a procedural stage.

In the separation of law enforcement technology as a type of legal technology or subtype of law realisation technology (or technology of making individual acts), the possibility is recognised of the existence of law enforcement technology as a separate entity, having specific indicia and elements segregating it into a specific legal technology system.

The question also arises of the major classification criteria of law enforcement technologies. We suppose that the major criteria at a given stage in studying the problem, must be a classification criteria determined by the specifics of the law enforcement activity itself. Of course, it is possible to classify law enforcement technologies according to indicia determined by the distinctions of technology itself: by the degree of normative regulation of structural elements content, by volume, by degree of stability (temporary and long-term technologies), by degree


\(^{3}\) Ibid. P. 94.
of individualisation (general and particular, individual) etc. For classifications of that sort more particular thematic legal technology material is necessary, and this is as yet incomplete or not enough.

So far as is evidenced by the functional direction and purposes of creation of legal technology and its law enforcement, the major classification criterion must be the types of law enforcement activity for which the law enforcement technology was created. Let us thus consider the types of law enforcement activity that can serve as criteria for the construction of various typical classifications of law enforcement technology.

In particular, law enforcement activity, as was noted, is specific and non-uniform, and the legal science separates, according to the way of use of law, the following kinds of law application: operative, executive and law-enforcement; regulatory and law-enforcement; controlling and affirmative, law-enforcement and jurisdictional; executive and permitting (regulatory and acknowledging and law-enforcement), incentive and jurisdictional; permitting and administrative (operative and executive), controlling and supervisory and jurisdictional; positive and jurisdictional; executive and administrative and law-enforcement; judicial, regulatory and administrative etc.

As seen from the above (far from complete) list of various types of law enforcement activity by the way of its realisation, there is no united position on this issue at a doctrinal level. A comparison of the classifications shows that scholars for the most part separate jurisdictional (sometimes included in law enforcement), permitting and administrative (or, as it is sometimes called, executive and permitting, operative and executive, incentive, regulatory), and law enforcement (sometimes included in executive and permitting and controlling and supervisory ways) law application.

Since that criterion, in our opinion, is the basic one in the classification of legal activity into types, because the peculiarity of the type of classification of legal activity created that way “is conditional upon peculiarities of competence of subjects to law and specifics of legal procedure, in the form of which the activity itself is executed”, we suppose that it can be taken as a basis for the classification of law enforcement technologies.

Taking into account the specific character of law enforcement we suppose that within the frame of law enforcement technology it is also necessary to construct a classification of technologies determined by the subject of law application, because the composition of legal technology tools used in any type of law enforcement activity depends largely on the competence of the subject of

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The specifics of law enforcement activities are its tough procedural and processual organisation. The whole process of law enforcement is carried out not arbitrarily, on the subjective judgment of law enforcers, but in specially set processual and procedural forms, using procedures and tools permitting people to take in the factual situation in detail, separate legal facts, construe them properly and, using the specific provision of law, determine properly, and formalising in the act of law enforcement, the obligations and responsibility of the subjects of jural relation being in place. As a result of law enforcement, particularisation of the provisions of legal rules, transfer of rather general legal instructions and models on direct participants of factual relations in exactly stipulated in individual law enforcement act and binding enactments are carried out. Appreciating the necessity of law enforcers observing the principles of legality, responsiveness and efficiency of law enforcement activity, the rule prescriber produced a procedure determining the order of exigencies for the transfer of legal rules at the level of particular holders of rights and legal obligations. In connection with this, the law enforcement process becomes task-oriented and less influenced by random factors, and this assists in the consolidation of legality and legal order in society, providing protection for a person’s interests1.

In other words, an additional obligatory structural element of all types of law enforcement technology is procedural form, the components of which are, among other things, procedural stages – stages of law enforcement activity consolidated by a common purpose.

Law enforcement technology at each of those stages is distinguished by a specific set of rules, exigencies, and procedural instruments used for the purposes of accomplishing the tasks of each such stage.

Law application, as any process, is subdivided into separate stages that are relatively independent procedures (types of activity) performed by cognizant officers and directed to the solution of a particular law enforcement task. Stages of law enforcement characterise logics and the sequence of actions during the consideration and resolution of a legal case.

Division of the law enforcement process into stages is primarily of special interest to academic theory, because it assists a deeper understanding of the essence of law enforcement as a whole, facilitates theoretical analysis of law enforcement activity, promotes scholarly research, with which it creates the possibility of the most effective use of scholarly developments and makes recommendations for the practical activities of law enforcement bodies. Each stage, being a relatively separate element and part of law enforcement activity, is strongly interrelated to the others. Only the consecutive and correct performance of each part of the aggregation of homogeneous law enforcement actions guarantees effectiveness of law enforcement as a whole.

Legal science distinguishes two groups of such stages: functional and procedural. The functional stages involve phases of the development of law

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enforcement activity in its intellectual-volition aspect directed at the solution of a particular law case. The procedural stages involve phases of performance of material, actively transforming law enforcement activity directly into the law enforcement process.

In the theory of law the issue of the composition of the functional stages of the performance of law enforcement activity is still a matter of discussion. It is necessary to point out that from the perspective of sectoral sciences, in particular, of the science of criminality, criminal procedure and civil procedural law, the law enforcement process amounts to real stages through which the legal case passes in its development, from the moment of making decision on its initiation (e.g., in criminal process, initiation of a criminal case, case referral under jurisdiction, preliminary investigation or inquiry, preliminary hearing, judicial investigation, oral statements of the parties, sentencing etc.).

The general theory of law, for its part, considers the stages of the law application process as a logical sequence of actions for rendering law enforcement. One thus ought to agree to a suggestion to consider the law enforcement process from both objective and subjective sides. On the objective side it is the process of legal case examination, from the system of interconnected law enforcement activities, and on the subjective side it is the process of logical change of activities necessary for the purposes of law enforcement which makes it possible to follow up the sequence of intellectual-volition activities of a law enforcer on legal qualification of the case and making a decision. The objective and the subjective sides of the law enforcement process consubstantiate inseparably and constantly.

At a doctrinal level the following functional stages are distinguished: findings of the facts of the case, determination of legal basis of the case – selection and analysis of legal rules, solution of case and documentation of the decision taken; findings of the factual circumstances of the case, formation of the legal basis of the case, ruling of the case, state-forced realisation of the law enforcement act (additional stage); findings of factual circumstances of the case, selection of legal rules and legal qualifications of the case, assessment and interpretation of the legal rule, solution of the case, controlling and executive stage; etc.

The above lists all include three functional stages of law enforcement activity: findings of the factual basis of the case, determination of the legal basis for the case and making a decision. The stage of execution of taken decision and control over that execution is not included in functional stages by all scholars, and it mostly corresponds to the essence of the functional stages which represent the stages of development of the intellectual-volition activity of a law enforcer on the decision of a particular legal situation.

According to our reckoning, this point of view seems to be the most feasible one. The separation of law enforcement into stages, such as the verification of legal

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1 See: Alekseyev S.S. Gosudarstvo … [State…]. P. 127.

rule, its action in time, space and the scope of persons, as well as interpretation of the legal rule used is not entirely reasonable. Without verification of a legal rule and its interpretation, legal qualification of a case is impossible, and it is thus more correct to consider those stages not as independent but as making a stage of determination of a case’s legal basis.

To understand the issue correctly, it should be borne in mind that particular law enforcement processes differ from each other in the composition of participants as well as in legal forms of organisation and ways of execution. In some cases, as alleged by A.S. Kategov, law enforcement looks at a simple non-recurrent act of an office holder, as an action not requiring special procedure for the learning circumstances of the reality situation considered and finding its correct legal solution. In some other cases law enforcement appears as a complicated, continuously developing series of law-exercising actions and the acts of its various participants, in which organisation and the power-wielding actions and acts of state body office holders determine its emergence, course and conclusion. The actions indicated are based on legislative mandates and concretised in the form of corresponding documentary acts. The legal form regularises the actions of law enforcing subjects, confers legal definiteness on them and provides strict consistency of their realisation.

From a general theoretic point of view, as stated above, it is more reasonable to separate the three basic stages of the law enforcement process. But at that a connection is not negated between first and second stages, as well as between second and third ones – they determine one another and can’t be executed one without the other.

The first stage of law enforcement is the stage of determining the factual basis of the case. Depending on its complexity and the factual circumstances, is the facts are determined by various persons, and the process of their determination is an activity varying in its complexity. Legal facts differ according to the sphere of social relations of their origin and entail various consequences. Some are of positive meaning and value, and others are negative.

Any legal facts must be determined accurately. If they are not determined in full or cause doubt, law enforcement will be unfounded and unlawful, in consequence of which someone may undeservedly obtain benefits, and someone else lose them undeservedly. A.F. Cherdantsev correctly says that “determination of facts cannot be compared with setting of pillar from horizontal position to

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2 A number of scholars have highlighted the still deeper, complicating and enriching nature of law application in the process of which a law enforcer simultaneously turns to factual circumstances, and to the legal framework of case; it results in rather a difficult delimitation, in practice, of the time limits for the establishment of facts and actions of selection and analysis of legal rules, as well as with the direct interdependence and interconnection of law enforcement with legal consciousness and lawmaking. For further details see: Alekseev S.S. Op. cit., 2006. P. 536; Ershov V.V. Teoreticheskie i prakticheskie problemy pravoponimanija, pravotvorchestva i pravoprimenenija [Theoretical and practical problems of legal consciousness, lawmaking and law enforcement] // Teoreticheskie i prakticheskie problemy pravoponimanija [Theoretical and practical problems of legal consciousness: collection of articles]. M., 2009. P. 30; Vlasenko N.A. Logicheskie osnovania juridicheskoj kvalifikatsii [Logical basis of legal qualification]. LLD Thesis. M.; 2011. P. 60–63.
vertical one. Determination of facts is nothing short of the collection of information on those facts, proving their existence or absence”. But it is necessary to note that completeness and authenticity are often of judgemental and relative nature. Facts that are to be determined lay often in the past. The term “fact” is often used for a segment of reality limited by space and time, as well as authentic knowledge reflecting that reality.

Discovering the objective truth of a case is closely connected with proof. Finding proof comes down to the following actions: a) the detection of evidence; b) collecting and preserving information, that is documentation; c) the analysis of evidence in its totality, that is the determination of its sufficiency for the certification of facts that then will be taken as the basis of a decision.

For some decisions the law demands deduction of evidence with an explanation of why some evidence was accepted and some not. That said, conclusions about the proof of circumstances and reliability of evidence require disclosure of the factual evidence on which the decision is based.

The Decree of Plenum of RF Supreme Court “On judicial judgment” of April 29, 1996 No 1 directs: “giving evidence on the basis of which the court is satisfied that those circumstances were or were not in evidence in reality, it is necessary not just to list that evidence which, in the opinion of the court, confirms some circumstances or other, but also to embody factual evidence contained in testimony of witnesses, accused persons, injured persons, and other evidence”. Deduction as part of a decision based on evidence with an explanation of reasons that some is the basis of conclusions and others are rejected, is a necessary condition of the decision’s motivation; “law demands that evidence be provided, at that decision must explain not only why some evidence was rejected, but why other evidence was accepted as trustworthy”. Special attention must be paid to motivation of decision when using rules stipulating reasons for the choice of decision: “at the discretion”, “in cases of necessity”, “with regard to the circumstances of the particular case”. All the indicated actions serve one purpose – the correct qualification of facts.

The next stage is determination of the case’s legal basis, that is: finding a legal rule to fit the factual circumstances of the case, check its authenticity and legal force, the actions in time, in space and scope of persons, as well as interpretation of the legal rule used.

This stage is separated from the preceding stage in a creative way. In practice they are interconnected and appear united. Factual circumstances are never determined without conviction of their legal importance. Consequently, even before its final determination, the fact itself is valued from the point of view of law. The choice of legal rules or legal qualifications of the case can progress in the process of further fact finding.

Correct legal qualification as logical valuation activities directed at exposure

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of the legal nature of factual circumstances in accordance with the system of operative rules, predetermines successful consideration and adjudication of the case. Just as it is impossible to reach the objective truth in law application when the factual circumstances of a case are not exposed with necessary completeness and authenticity, so is impossible to get them, when having necessary facts a qualification error is made. To correctly determine the legal importance of a case’s circumstances, a law enforcer must picture the law system in its totality and unity, have possibility of choice of just the legal rule (or rules) that stipulates that case, is meant for it. Incorrect legal qualification in most cases entails incorrect adjudication. Each case on facts of legal importance must be resolved by the subjects of law enforcement on the basis of law, not on the basis of subjective discretion, otherwise law enforcement will not achieve its purpose.

It is important to note that laws and other statutory acts are valid for a significant amount of time, in which they may be supplemented, amended or repealed, and law enforcers are required to carefully follow the development of legislation, each time during an adjudication making certain the legal rule chosen is currently valid, its text corresponds with the original, and it extends its force over the persons in relation to whom the law is being enforced.

In the process of legal qualification it is also necessary to gain insight into the text of a legal rule, to make its content clear, otherwise the possibility is consciously accepted that an erroneous decision not corresponding with the will of the law-maker will be taken. Interpretation of legal rules is a special intellectual-volition activity of subjects for determination of genuine content and realisation order of subjective rights and legal obligations of participants of legal relations. That intellectual-volition process consists of the clarification of a legal instruction and its further explanation. Explanation is a special activity for certain bodies and persons, the purpose of which is the provision of correct, uniform execution of legal rules, and the disposal of ambiguities and possible mistakes in its use. “Necessity of interpretation of legal rules is determined by their attributes, peculiarities of forms of external expression and functioning, external appearance of legal rules, their logico-linguistic and legal forms.” In the course of interpretation, with the help of special interpretation rules, general and abstract instructions are transferred in the plane of particular statements facilitating the correlation of legally important attributes of a single case with attributes provided for by hypothesis of a particular rule. There is thus a transition from ambiguity in the legal treatment of this or that situation, to legal accuracy.

The essence of the second stage of law enforcement is correlation of the real situation with a particular legal rule (or legal rules), which by necessity includes checking the authenticity of a legal rule as well as its clarification by a law enforcer and, if necessary, explanation to persons interested.

The third stage of the law enforcement process is making a decision on

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1 See: Vlasenko N.A. Logical... P. 36–38.
a case and the delivery of the administrative act. It is a final and, together with that, basic stage, while all previous stages prepare preliminary conditions and materials for final disposition. In it the acting of the rule used is power-wieldingly extended on fact, rights and obligations of particular subjects are determined. If preliminary legal treatments serve as a means of promoting findings and are liable to the use of legal rule, then the final qualification serves as a basis for taking law enforcement decisions and is fixed in the official acts of state bodies. That is just with taking into account final (general) qualification that individualization of subjective rights and legal obligations takes place.

The decision on a case is accompanied by the delivery by a law enforcer (in written or other form) of the ad hoc regulation being legal fact and serving as a basis of creation, change or termination of the relationship.

But enforcement of a judgment is an actively transforming activity and must be qualified as a procedural stage of the law enforcement process.

On the basis of this, we suppose that processual stages can also be used as a criterion of the classification of law enforcement technologies, because each of the functional or procedural stages has its own specifics. Technologies of law enforcement differ at each stage in composition of legal technological means united in them, which is determined by the scope of jurisdiction and authorities of each subject of law enforcement activity separately, and set of procedural stages of that subject's law enforcement activity fixed in the corresponding procedural legislation.

Law enforcement technology is thus a system of knowledge of the optimal use of legal technique tools, within the framework of definite strategy, tactics, methods, ways, principles, and techniques used in the activity of application of legal rules for achievement of desired result. The separation of law enforcement technology as a type of legal one offers an opportunity for recognising the existence of law enforcement technology as a complex legal process having specific attributes and elements separating it into an independent legal-technology system. That said, law enforcement technology at each such phase or stage is distinguished by a specific set of legal technique tools used for the purposes of achieving the goals of a particular stage.

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A Rights Activist an Agent or Not? Impartial Glance from Within

Summary. The article attempts to examine the situation formed in Russian society after acceptance of Amendments to a Federal Law, On Non-Commercial Organizations, providing for additional requirements to non-commercial organisations performing the functions of foreign agents. Special attention is paid to illustrating the positions of the parties to the conflict, whose justifiability of arguments, it appears, must play a decisive role in the consideration of debatable provisions with respect to their constitutionalism.

Keywords: NCO, foreign agent, non-commercial organisation, political activities, foreign source, rights activist, Human Rights Commissioner, constitutional court.

In summer of 2012 the Federal Law of the Russian Federation 12.01.96 № 7-FZ On Non-Commercial Organisations (hereinafter – Law on NCO) was substantially amended (with amendments coming into force on November 21, 2012), and separated Russian society in two parts.

The apple of discord was the introduction of special legal regulation of the activities of some non-commercial organisations, and their designation as «organisations performing the functions of foreign agents».

According to Clause 6 of Article 2 of the new version of the Law on NCO, a non-commercial organisation performing the functions of a foreign agent, is understood to be a Russian non-commercial organisation receiving monetary funds and other property from foreign states, their state bodies, international and foreign organisations, foreign citizens, persons without citizenship or persons authorised by them and/or from Russian legal persons receiving monetary funds and other property from the indicated sources (with the exclusion of open joint-stock societies with foreign participation and their subsidiary companies) (hereinafter foreign sources), and taking part, including in the interests of foreign sources, in political activities executed in the territory of the Russian Federation.

Non-commercial organisations, except for political parties, are acknowledged as taking part in political activities performed in the territory of the Russian
Federation if independently of purposes and tasks indicated in its constituent documents, it takes part (including by way of financing) in the organisation and hosting of political actions with the aim of influencing decisions taken by state bodies directed at a change of the policy pursued by them, as well as in forming public opinion for the indicated purposes.

Position of legislators and their adherents

The Russian authorities claim that the amendments introduced in no way prohibit the activities or impinge on the rights of a non-commercial organisation being directed at organisation of proper control, they are designed to provide for publicity for their activity connected with politics and to make that information generally accessible. An organisation acting within a legal framework has no need to conceal information about itself. The law is designed to provide Russian society with adequate elements of control over the activities of non-commercial organisations financed from foreign sources and pursue those with political aims, including those with aims in the interests of their financial donors.

It is even more so because the notion of “agent” is not new in modern Russia. Civil legislation has used that term very successfully for many years now, without generating a negative attitude (Chapter 52 of CC RF).

In addition, the norm of the law accepted in 2012, defining some non-commercial organisations as “foreign agents”, is just an analogue of the American norm of the FARA. n the USA a similar norm on foreign agents was adopted long ago, in a 1938. The law requires that foreign agents representing foreign governments in American politics, as well as foreign physical and legal persons, disclose their occupations and sources of financing.

Position of opponents of the “agent” law

Special discontent about NCO representatives is caused by the term used to refer to them as an «organisation performing functions of foreign agent» due to its negative acceptance by society. In justification of their assertions they refer to the semantic aspect as well as to the definition of the term in civil legislation.

In the applicable Russian legislation the term “agent” is used to designate a person who has accepted an obligation to perform, for remuneration and on the instructions of another person (principal), legal and other activities, that are in the interests of the principal. NCOs, by their status, cannot act at the discretion of other persons and cannot pursue their aims towards public benefit (Part 2 of Article 2 of the Law on NCOs).

In addition, the organisations accused of “agentship” and their supporters think that the major difficulties of law enforcement practice are caused by a definition of the notion “political activities”, as well as of types of financing that can be associated with receiving monetary funds and other property from foreign sources.

A very eloquent confirmation of this resulted in the conclusions of the Istra town prosecutor’s office of Moscow region made following the results of check of activities of Regional Public Organisation of the Moscow region Help to Diseased with Cystic Fibrosis directed at protection of rights and legal interests of the

1 Sidyakin A.G. The only source of civil society in Russia is its multinational people // Official site of the fraction «United Russia» at The State Duma of the Federal Assembly of Russian Federation. URL: http://www.er-duma.ru/press/54726.

invalids diseased with cystic fibrosis and members of their families. Their activities
in the part of direction by them of appropriate offers to the bodies of state authority
and upholding of interests was recognized as political.

For the reason of absence of particularities, in the affair of attribution of
money from abroad to being funded from a foreign source, any foreign financial
receipts to banking account of an organisation can be recognized as such,
including receipt of single premium for some old services, not presupposing
anything in exchange, as well as transfer of negligible sum (1 US dollar) by any
person with a foreign connection including bipatrides. This in turn produces fertile
ground for all kinds of provocations on the side of roguish competitors and ill-
wishers.

Under circumstances of legislative uncertainty no non-commercial
organisation can, with a sufficient degree of rationality and caution, foresee the
consequences of its activities in order to avoid administrative proceedings with
serious sanctions (from 300 thousand to 500 thousand roubles\(^1\)), which would be
enough to potentially bankrupt it.

As to the American practice of using the FARA law, according to expert
opinion, a foreign agent in America is considered to be a person (physical or
legal) who acts «on the order, at request, under command or under control of
a foreign principal» and pursues «political activities in the interests of a foreign
principal». The law was introduced, primarily, as part of the struggle against
propagandist activities of pro-Nazi organisations on the eve of the Second World
War. Some post-war amendments, especially those of 1966 and later, changed
the understanding of FARA, converting it from an instrument of struggle against
propagandist activities to an instrument of struggle against the lobbying of foreign
economic and properly political (state) interests in Congress. It was achieved,
primarily, owing to the fact that the law concentrated on agents working «in the
interests or on behalf» of a concrete «foreign principal» – i.e. for conviction under
law it had to be proven that the organisation was protecting the concrete interests
of a concrete subject. After adoption of the Law on Lobbyism of 1995, the law
was narrowed and now concerns lobbyists who advocate the political interests of
foreign governments, whereas economic lobbyists are registered under the Law
on Lobbyism\(^2\).

It should be noted that when adopting changes under consideration the
legislator made provision, excluding from its scope of action activities in the sphere
of science, culture, art, public health service, prophylaxis and health protection of
the citizens, social support and protection of the citizens, protection of motherhood
and childhood, social support of disabled persons, healthy lifestyle promotion,
physical training and sports, protection of plant and animal life, charitable activity
as well as activities in the sphere of assistance to charity and voluntary work.
Either consciously or accidentally, human rights work was not included, which,
together with a lateral understanding of political activities, has practically made
human rights organisations the main candidates for the role of «foreign agents».

\(^1\) At the time of putting this article to bed it is equivalent to about 9.5 thousand. – 15.5 thousand US
dollars, accordingly.

arousing strong indignation in the public.

**Solution to the problem**

The unrest and adversarial positions have somewhat reposed in connection with the interference of the Human Rights Commissioner for the Russian Federation, who after several complaining NCOs turned to the Constitutional Court of the Russian Federation in the beginning of September.

There is hope that the Constitutional Court will solve this conflicting and very complex situation. We shall await, with impatience, the decision of the Russian High Court.

**References**


ON THE QUESTION OF THE RELIEF OF MINORS FROM PUNISHMENT THROUGH PLACEMENT IN CLOSED FOSTERING INSTITUTIONS: SOME ASPECTS OF JUVENILE CRIMINAL POLICY IN RUSSIA

Vladimir Zubenko, Senior Lecturer at Chair of Theory of State and Law, International Institute for State Service and Management of Russian Presidential Academy of National Economy and Public Administration, Officer of Administration of Commissioner for human rights in Russian Federation.

Summary. This article concerns deliberations on the legal nature of using enforcement measure of educational influence by way of placement in closed fostering institution with regard to minor offenders, analysing role of legal discretion in taking decision on relief of minors from such a punishment and considering problem of the continued existence of relationships between children and parents when minors are otherwise isolated from society.

Keywords: minors, crime, relief from punishment, legal discretion, enforcement measures of educational influence, closed fostering institutions, relationships between children and parents.

The problems connected with offences and crimes of minors and the questions of juvenile criminal policy in Russian Federation are very serious. In accordance with the Criminal Code of the Russian Federation (hereinafter – CCRF), a custodial sentence may be given to convicted offenders who have committed a non-grave or average gravity crimes for the first time crimes before the age of sixteen (minors), for a term of not above six years. Punishment for minors having committed exceptionally aggravated criminal offences, as well as for other convicted offenders, is given for terms of not above ten years and is carried out only in juvenile correctional facilities1.

If a minor is sentenced to imprisonment for the commitment of a crime, including an exceptionally aggravated criminal offence, the court has a right, on the basis of Part 2 of Art. 92 CCRF, with the exclusion of persons specified in Part 5 of Art. 92 CCRF, to adjust their punishment to placement into a Special Closed Fostering Institution of an Agency of Education Administration (hereinafter – also SCFI).

In other words, the court has a right to free minors from punishment with

1 See.: Part 6 of Art. 88 CC RF. Persons are considered to be minors if at the age of committing the crime they were at least fourteen, but had not attained eighteen years of age (Part 1 of Art. 87 CC RF).
placement in a special closed fostering institution. In this article the terms "closed fostering institution" and "special closed fostering institution of agency of education administration" are used synonymously\(^1\). The term "closed fostering institution" does not coincide with the notion "juvenile correctional facility", because juvenile correctional facilities are correctional facilities for the execution of punishment in the form of deprivation of freedom relating to minors (Art. 58 CCRF). For this reason use of the phrase "closed fostering institutions" with respect to a special closed fostering institution appears to be justifiable (legally valid)\(^2\).

Placement in SCFI is used as a «compulsory measure of educational influence for purposes of correction of a minor needing special conditions of education, studies and requiring special pedagogical approach» (Part 2 of Art. 92 CCRF)\(^3\).

In this case evaluating notions are used:
1) minors «needing special conditions of education, and studies»;
2) minors «requiring a special pedagogical approach».

The provisions of Part 2 of Art. 92 CCRF are a source of judicial discretion. Discretion is provided by the authority vested in a judge:
a) at their discretion (as they think fit) to determine: whether a minor needs special conditions of education and studies and whether they require special pedagogical approach for attaining the purpose of correction;
b) at their discretion (as they think fit) to set a term for which a minor can be placed in that institution\(^4\).

Authorisation of the court to take decisions on the relief of a minor from punishment with placement in a SCFI is one of the manifestations of a court's discretionary authority necessary for the course of justice. A court solves that problem by taking into consideration the factual situation: personality of a minor offender, characteristics of their parents (legal representatives) and other factors. The imposition (appointment) of a particular term of placement of a minor offender in SCFI is a judicial discretionary authority realised by taking into consideration reasonable requirements and in accordance with the principle of best serving the

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1 Terminology of that kind is used nowadays by some authors and was used earlier as well – in studying problems of the functioning of special fostering institutions (training colleges and special schools) of the closed type. For example: «closed secure fostering institutions» or «closed educational institutions executing measures alternative to criminal punishment in the form of deprivation of freedom» are closed special vocational schools (See: Tishchenkova S.A. Problemy funktsionirovaniya spetsialnykh professionalno-tekhnickikh uchilishch [Problems of functioning of closed special vocational schools] // Trudy akademii MVD [Problems of improvement of legal basis of the execution of a punishment bodies activities]. М., 1995. P. 104; Tishchenkova S.A. Pravoje regulirovanie porjadka i uslovij soderzhanija uchachshikhsja spetsproftekuchilich [Legal regulation of order and conditions of keeping of special vocational students]. LLD Thesis. М., 1993. P. 194).

2 It should be noted that juvenile correctional facilities are under the jurisdiction of the Federal Service for the Execution of Sentences (FSES) of Russia, and SCFI – under the jurisdiction of the agency of education administration.

3 A minor can be placed in the indicated institution until reaching the age of 18 years, but for no more than three years (Part 2 of Art. 92 CCRF).

Two possible variations by the court in solving that problem are interesting (to say the least).

First variant. The term of placement in SCFI coincides with the term of deprivation of freedom appointed by court sentence or does not differ substantially.

Second variant. The term of placement in SCFI is substantially higher than term of deprivation of freedom appointed by court sentence.

In special scientific-methods literature the authors discuss as real (typical) the indicated (second) variant. So in Methodological recommendations (by E.L. Voronova and S.S. Shipshin) the following variation of the court’s sentence is offered (extracted):

«The Judge of [Blank] district court...
Adjudged: … in recognition of the gravity of the offence as well as the socially dangerous situation in which the juvenile found himself, the court determines that he needs special conditions of education, study, and a pedagogical approach. [Full name] (accused) is to be freed from punishment and be directed to a special fostering institution…

Sentenced: to adjudge [Full name] guilty of committing the crime as provided for by clause «c» Part 2 of Art. 161 CCRF, and inflict a penalty of 2 (two) years deprivation of freedom.

On the basis of Part 2 of Art. 92 CCRF, free [Full name] from the inflicted punishment, placing him in a special closed fostering institution for 3 (three) years».

In real law enforcement practice, it is appropriate to turn attention to the Generalization of judicial practice of criminal trials by federal judges and justices of the peace of the Volgograd region of criminal cases against minors in the first half of 2008 where there is the following example of judicial practice (stylistics and orthography are kept).

«Sentence concerning F.Yu. born in 1993 by which he is convicted according to clause «c» Part 2 of Art. 158 CCRF to one year of deprivation of freedom. In accordance with clause «c” of Art. 92 CCRF he is released from service of sentence and placed in special closed fostering institution for a term of two years, because before that he was engaged in vagabondism, studied nowhere, is inclined to committing crimes, got out of mother’s control, and also needs special conditions of education, study, requires special pedagogic approach»

So in this case 1 (one) year’s deprivation of freedom serving the sentence

1 See: Part 1 of Art. 3 of UN Convention on the Rights of the Child.

2 The discussion of the second variant appears to be very actual, particularly because isolation from society always has consequences, including negative ones.


in a juvenile correctional facility is exchanged for compulsory measures through educational influence in the form of placement in a SCFI for a term of 2 (two) years.

It is important to note that making a decision about the concretely closed fostering institution to which the minor will be directed, pertains not to the competence of the court, but to the competence of agencies of education administration.

In accordance with clause 14 of the «Standard statute of special fostering institution for children and juveniles with deviant behaviour», special conditions for keeping minors in closed fostering institutions provide for the «isolation of educatees excluding the possibility of their exit from the territory of the institution of their own free will»\(^1\). The scope for restricting a minor’s basic rights in SCFI is generally similar to the scope for restriction of rights in juvenile correctional facilities.

United Nations Rules for the Protection of Juveniles Deprived of their Liberty\(^2\) direct the following:

«The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority» (subclause «b» clause 11).

Taking into account the foregoing, the conclusion appears to be that keeping a minor in a closed fostering institution (SCFI) is, legally and strictly speaking, deprivation of freedom. Alongside this, the use of that compulsory measure of educational influence is not a criminal punishment and does not entail a criminal record.

It is appropriate to note that the national juridical science has many different definitions of the notion "deprivation of freedom". For example: «placement of a convicted person for a specified period in a special institution with security set there and isolation from society created on its basis»; «compulsory isolation in correctional labour institutions especially designed for that»; «deprivation of freedom consists of the most substantial limitation of complex of constitutional rights and liberties of a convicted person executed by way of isolation, i.e. by placing him in a special institution»\(^3\).

Closed fostering institutions (SCFI) are accommodated in the territory of the country irregularly. For this reason minors in those institutions are kept from

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various constituent entities of the Federation including remote ones. Juvenile correctional facilities are also placed irregularly.

The factors indicated negatively reflect on the preservation of the child-offender’s family connections. Parents (legal representatives) often experience major problems in visiting their child (in order of realization of right of meetings).

Estrangement from family (society) starts, and then (at the end of the period) – social alienation damaging personality, and physical and mental health. It can also be the cause of second offences.

In view of the aforesaid, it appears appropriate, when making decision on the relief of a minor from punishment by placement in a closed juvenile correctional facility to make a prognosis about a child's future as far as preservation (sustainment) of relations between child and their parents in the period of their isolation from society.

It is also appropriate to take into consideration the opinion of the parents (legal representatives) and to take into account the opinion of the adolescent. We think that such an approach corresponds with the principle of the best provision for a child’s interests.

It is important to note that when used in respect of research problems ‘legal discretion’ has a special social and legal meaning, the discretionary authority of a judge is a substantial factor in juvenile crime policy.

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1 So, for example, a sentence can been given in punishment in the form of 3 years deprivation of freedom, with release from punishment and placement in closed juvenile correctional facility (CJCF) for a definite period. Variations are possible, for example: a) with direction to CJCF for a period of 2 years (CJCF is located either in the territory of the «native constituent entity» of the Federation, at a «sensible distance» from place of residence or at a substantial distance from place of residence, far from parents (legal representatives); b) for a period of 2 to 3 years (CJCF – at a «sensible distance»); b) for a period of 2 to 3 years (CJCF – «at a substantial distance»).


Legislation Abroad

Anti-Corruption Policy and Legal Regulations for Counteracting Corruption in Georgia

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

Summary. The paper looks at the anti-corruption reforms in Georgia, reveals the legal framework for the counteraction of corruption in the country, gives an assessment of the reforms being implemented and their conformity with international rules and principles, and performs an analysis of the measures that are aimed at optimising the anti-corruption mechanism in the context of a particular state.

Keywords: corruption, Georgia, legislation, anti-corruption reforms, anti-corruption policy.

Legislators, politicians, and the general public have lately been paying more and attention to the search for new models for an effective struggle against corruption. In this context, the author has selected Georgia as the subject for his research, since in recent years this country has been displaying a pronounced tendency towards taking a strong position to counteract corruption. According to the non-governmental international agency Transparency International, which was organised to fight corruption and to research corruption levels in states all over the world, Georgia’s anti-corruption score, based on the corruption perception index (CPI), increased significantly during the past decade. In 2004 the country was ranked 133, but in 2012 it was ranked 51, which meant that Georgia had drawn ahead of such states as the Czech Republic and Turkey (which share 54th position).

An organisation called the Group of States Against Corruption, GRECO, has been established by the Council of Europe. In a number of this organisation’s reports concerning Georgia over the period from 2006 to 2013, it is stated that GRECO’s experts deeply appreciate the anti-corruption initiatives and measures taken by the Georgian authorities. For example, GRECO’s report for 2011...
covers the process of the implementation into the country’s legislation of certain regulations, namely, Articles 1(a, c), 2-12, 15-17 and 19 of the Convention on Criminal Responsibility for Corruption (ETS No. 173), which was signed by Georgia in 1999 and ratified in 2008. In the report, the experts positively characterize Georgia’s long-term work in this field, present key statistical figures in the area of countering corruption, and give recommendations (as it is traditional for GRECO to do). According to the GRECO report for 2013, all the recommendations were implemented and properly reported².

According to annual research conducted by the World Bank Group in the framework of its “Doing Business” reports from 2009 to 2013, Georgia was ranked among the top twenty countries in the rating of states with a favourable entrepreneurial climate. Moreover, in 2013 the country swept into the top ten (9th place) in the rankings, having drawn ahead of such states as Australia and Finland (10th and 11th places respectively). These reports present the results of annual research aimed at evaluating the ease of doing business on the basis of key aspects of the yearly cyclic business processes. The regulatory and legal framework that regulates entrepreneurial business proves to be an important evaluation criterion. The Ease of Doing Business Index indicates that the regulatory environment is beneficial for entrepreneurial activities.

The Organisation for Economic Cooperation and Development (OECD), in its evaluation report for 2010, stated that Georgia had shown significant progress in the area of countering crime and corruption. This progress was reflected in normative acts and amendments to these acts that were passed in recent years in order to ensure compliance with appropriate international rules and standards³.

In the last decade Georgia has shown a steady tendency to provide support to entrepreneurial businesses and to make reforms that exert a healthy influence on business. In my judgment, the fact that Georgia rates so high among other countries according to the Doing Business reports for 2013 is directly linked to the anti-corruption policy of the Georgian authorities in recent years, which affects all aspects directly connected with entrepreneurial activities. The effective reform of the system of the Georgian Ministry of Internal Affairs, which prioritised the fight against corruption in the scope of all state activities, played a dominant role in achieving this result.

Considering the legal framework that forms the basis of the anti-corruption policy in Georgia, and relying on reference data, it should be noted that the Constitution of Georgia⁴ is of prime importance in the administration of the country. Notwithstanding the fact that the Georgian Constitution does not contain such concepts as “corruption” or “bribe”, the Constitutional Law of Georgia stipulates the fundamental principles of the administration of the state, which are fixed so that nobody can act outside them, and this is followed in the norms of other laws.

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However, we should start by specifying the legal framework that provides the context in which anti-corruption reforms can be carried out in Georgia. When the President of the country enacted Decree No. 550 dated 24 June 2005 “On Adoption of the National Anti-Corruption Strategy”¹ and the Action Plan on the implementation of this strategy, this proved to be the turning point in creating a legal mechanism for carrying out the anti-corruption policy in Georgia. These regulatory legal acts were generated with the direct involvement of the civil society and in cooperation with a number of international agencies that were present in Georgia. Since the Government of Georgia², considered the National Anti-Corruption Strategy and the Action Plan to be efficient instruments for preventing corruption, these documents have required constant explanation and regular updating in the course of their implementation. For example, in 2007 modifications to the Action Plan were introduced.

The Acts mentioned above are no longer effective. They were replaced by the National Anti-Corruption Strategy of Georgia for 2010-2013 which was enacted on 3 June 2010³.

The government was given the task of identifying “sensitive to corruption sectors and the typology of corruption actions spread in these sectors in order to avoid cases of taking bribes, embezzlement, blackmail, abuse of power, secrets of state revelation, infringement of national security, etc”⁴.

The main directions for anti-corruption policy in Georgia for the period from 2010 to 2013 were as follows:
- enhancement of the efficiency of the public sector and the eradication of corruption;
- growth in private sector competitiveness and release from the grip of corruption;
- improvement in public justice activities;
- legislative development in the field of anti-corruption legislation;
- prevention of corruption;
- funding for political parties⁵.

The legal regulations for the institutional foundation of the anti-corruption policy played a significant role in counteracting corruption. Before 2005, several organisations alternated in playing the coordinating role for the Georgian anti-corruption policy. For example, in 2005 the Office of the State Minister was in charge of coordinating the reforms relating to this task, and in 2008 a decision was made to create a single-purpose body, namely the Interagency Anti-Corruption Council, to coordinate the anti-corruption policy.

We are already able today to sum up some results of the anti-corruption

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⁵ See footnote 9.
reforms in Georgia, and it is worth reviewing the changes to the legislation in Georgia that have been caused by these reforms.

First of all, we will consider the legislation that directly concerns the reforms in the Ministry of Internal Affairs of Georgia. Among the first acts taken to transform the framework of the Ministry of Internal Affairs in Georgia was the adoption of a law related to the State Traffic Inspectorate (which is abbreviated in Russian to GAI); today this agency is called the Patrol Police. The measures covered by the Law “On Patrol Police” could in fact be considered to be thoroughgoing, since in one day 15,000 police officers, or in other words all the regular staff members of the Georgian GAI, were dismissed. This radical measure was aimed at bringing to an end the practice of bribery among departmental officers. Arrests of GAI officers continued until they stopped taking bribes, and that was the result the Government of Georgia initially intended to achieve. “The prison population increased fourfold – from 5 to 20 [persons]”¹. The Patrol Police, being a new agency, was formed from a combination of the traffic police and the field service. In the course of this reform a total of about 35,000 departmental officers were dismissed². According to other sources, out of 70,000 departmental officers in the Criminal Police, only 16,000 kept their jobs. In addition, the authorities abolished the procedure of technical checks and raised wages by a factor of between 10 and 20 for new officers, who were enlisted in open competition; they also included the State Security Ministry and the Ministry of Emergencies (which is abbreviated in Russian to MChS) into the structure of the Ministry of Internal Affairs³. In the context of these reforms the Police Academy of Georgia was also established.

One of the bright innovations that were introduced in Georgia was “transparency in a literal sense of the word. The building of the Ministry of Internal Affairs of Georgia in Tbilisi looks like an enormous glass wave. Inside there are large windows from floor to ceiling with no curtains, no blinds. All police stations look no less transparent and open”⁴.

Reforms in the governmental agencies of the Ministry of Internal Affairs were fluently transformed into alterations of the criminal legislation and the procedural criminal law.

First and foremost we should note changes in the Criminal Code of Georgia⁵, which is the basic document of penal law. The Criminal Code of Georgia currently in force was signed by President E. Shevarnadze on 22 July 1999. It has been in operation since 1 June 2000, having succeeded the Criminal Code of the Georgian Soviet Socialist Republic.

In the context of the anti-corruption reforms, an emphasis was laid on

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Amendments related to the elements essential to the corruption offences, and on the introduction of tougher sanctions for such offences. Thus, when elements suggesting bribery were found, materials concerning officers of the Ministry of Internal Affairs of Georgia were transferred to the Procuratorate, and criminal suits were initiated regardless of the rank or honours of the offender. Penalties became more severe. For example, if a police officer was offered a bribe, and he or she just refused the bribe but did not arrest the person offering the bribe in accordance with his or her duty, the police officer could no longer serve in the police. In the context of the amendments adopted in November 2011, the legislators significantly expanded the list of those who could be held responsible for socially dangerous acts associated with corrupt practices. “Members and employees (regular staff) of single-purpose parliamentary committees, parties to the electoral process (natural persons), as well as members of the jury and arbitral bodies of foreign courts that perform their functions under the law of foreign states” were included in the list of people who could be guilty of taking bribes.

In addition, the requirement of “double criminalisation” in regard to crimes committed by citizens of Georgia when abroad was annulled; at the same time this jurisdiction was expanded and it now also covers foreign citizens who exercise their ex officio power on behalf of Georgia and commit a crime in the territory of another state.

In 2005 the President of Georgia, Mikhail Saakashvili, signed a brave law called “On Organized Criminality and Racketeering”. This law challenges organised crime and aims to counteract organised crime, racketeering, and mafias, as well as to protect private, public and state interests.

Articles 1-4 of this law, for example, define racketeering, criminal groups, the criminal underworld, a ‘criminal-in-law’, members of their families and close relatives. Article 5 deals with the issue of stolen property and describes procedures to confiscate it and transfer it to back to its lawful owner in a way that will satisfy this person’s legitimate interests; if it proves to be impossible to determine the rightful owner, the property is transferred to the state. Article 6 establishes the responsibility of members of the criminal world and ‘criminals-in-law’.

After the adoption of this law, legislators amended Georgia’s Criminal Code. Among other amendments, changes were made to Article 223 of the Georgian Criminal Code, which provides for between three and eight years in prison, with or without the confiscation of property, for those who are members of the criminal world (Part 1). If the alleged offender is proved to be a criminal-in-law, his or her term of imprisonment can be increased to between five and ten years with or without confiscation of property (Part 2).

Since May 2005 the Code of Criminal Procedure of Georgia has also been subject to amendments that can be summarised as follows:

- any information concerning the fact that an offence has been committed is now to result in the launch of a preliminary investigation;
- the Procurator General’s Office can now exert closer control over preliminary investigations so as to eliminate cases of the violation of human rights;

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- the period allowed for conducting a preliminary investigation is reduced from 9 to 4 months, and the period for detention in custody is reduced from 24 to 12 months;
- the accused party has a right to call in evidence two witnesses for any investigation, and to organise his or her own investigation; and
- there is introduced an institution of procedural transactions 1.

Assessing the results of Georgia’s anti-corruption policy as a whole, and considering the anti-corruption reforms in the Ministry of Internal Affairs in particular, it should be noted that one of the principal factors, which contributed to the rapid change in the struggle against corruption, was that Georgia appeared to abandon the ethnic-tribal principle in social development. So far Georgia has been the only Caucasian republic that has managed to cross the barrier erected by the ethnic-tribal approach. A distinguishing feature of corruption in the Caucasus is its “crony” or “clannish” character. This means that specific groups of citizens promote their kinsmen rather than more experienced and better qualified candidates. Another essential factor that helped to achieve positive results was the intention of the ruling coalition to counteract corruption in all its manifestations and in all sectors. Key roles in this success were performed by a new regulatory and legal framework created by introducing radical changes into laws, and particularly into the Criminal Code, by establishing the rule of law, and by the complete elimination of double standards that implied the existence of immunity for certain persons.

The Georgian criminologist Georgij Glonti wrote that “the Georgians automatically resist law in any form”2. However, anti-corruption reforms in Georgia affected not only the Ministry of Internal Affairs, but also the very system of the national administration, thus demonstrating that Glonti’s opinion has no basis whatsoever. Apparently, ethnic identity and political culture are variable rather than invariable values. Therefore, we should recognise that these anti-corruption reforms have not only changed the social structure in an individual but have also broken the stereotype that the vice of corruption in Georgia is ineradicable because it is alleged to be deeply rooted in Georgian culture.

At the same time, an analysis of the results of the anti-corruption policy in Georgia gives evidence that it was the concept of tightening the penalties that formed the basis for its legal regulation. On the one hand, Georgia achieved excellent results in its struggle against corruption, and this is reflected by the way the country is positioned in the standards and ratings systems of international organisations. On the other hand, we can see that there has been an excessive tightening of criminal legislation, since, for instance, petty theft and taking bribes are now punished by long-term prison confinement.

On the whole, the analysis of the anti-corruption reforms and their legal reasoning demonstrates that tough and radical measures with regard to the state system of government have produced the intended effect.

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**Antonina Sharkova, Maria Merzlova. Factors of formation and development of human capital in innovation-based economy.** The article considers principal factors influencing the formation and development of human capital in innovation-based economy. By means of correlation and regression analysis the most significant factors are determined. They are given an estimate taking into account innovation-driven growth of economy.

**Keywords:** human capital, education, factors, innovation-based economy, specialists, management, investment.

**Sergey Vorobyov. Social and economic methodology for assessment of compensation for moral damage to victims of crime in Russia: problem statement.** The article is devoted to problems of assessment of compensation for moral damage to victims of crime calculated using socioeconomic indices and depending on social danger level of moral damage. Attention is directed on revelation of degree of physical and moral suffering connected with individual peculiarities of the harmed person, and it is offered to introduce differentiated rates of compensation for moral damage to the injured party depending on offence committed by guilty person and occurring harmful consequences.

**Keywords:** moral damage; injured persons; compensation; suffering; danger level.

**Svetlana Boshno. Interpretation of rules of law.** The author examines concepts, views, goals and ways of interpreting the law, and gives the definition and implementation of the rules of interpretation regulations. Provides that the interpretation of the law refers to activities aimed at establishing their content, to the disclosure of the will ruling social forces expressed in them. Special attention is given to the judicial interpretation and its role in ensuring the consistency of enforcement, as well as the problem of interaction of legislation and judicial practice.

**Keywords:** interpreting the law, judicial interpretation, judicial practice, legislation, consistency of enforcement, interpretation regulations.
Abulfaz Guseinov. Some development trends in the law domain in post-industrial societies. The author analyses such development trends in the domain of law in post-industrial societies as unification of the law based on a global phenomenon of acquiring values rooted in other cultures called acculturisation, standardisation of legal life of the society, and legal integration. The latter means that intrastate legal framework enters into alliance with international legal frameworks. The article emphasises that a post-industrial future of the law requires us to reconsider some concepts, specify notions, and solve new problems, for example, the one of obligatory closing-in different legal frameworks. It also highlights the necessity to apprehend the law with due account for changing reality and trends of the future, to expand the scope of problems to be researched, and to develop adequate methodology.

Keywords: law of the post-industrial society, standardisation of the law, legal acculturisation, pluralistic law, unification of the law.

Irina Kolesnik. The notion and indicia of law enforcement technology. The subject of this study is the genesis of law enforcement technology as a type of legal technology or a subtype of law enforcement technology (or technology of making individual acts). The possibility is admitted of existence of law enforcement technology as a separate entity having specific indicia and elements segregating it to a special legal technology system.

Keywords: legal technique, law enforcement technology, legal technology system, legal technique tools

Viktor Mikhailov. Rights activist is he agent or not? Impartial glance from within. This article attempts to examine the situation formed in the Russian society after acceptance of Amendments to a Federal Law «Concerning Non-Commercial Organizations», providing for additional requirements to non-commercial organizations performing functions of foreign agents. Special attention in the work is paid to illustration of positions of the parties to the conflict, whose justifiability of arguments, as it would appear to be, must play a decisive role in consideration of debatable provisions with respect to their constitutionalism.

Keywords: NCO, foreign agent, non-commercial organization, political activities, foreign source, rights activist, Human Rights Commissioner, constitutional court.

Vladimir Zubenko. On the question of relief of minors from punishment with placement of them in closed fostering institutions: Some aspects of juvenile criminal policy in Russia. The article is devoted to deliberations on legal nature of using enforcement measure of educational influence by way of placement in
closed fostering institution with regard to minor offenders; the role of legal discretion in taking decision on relief of minors from such a punishment is analyzed; the problem is considered of continued existence of relations between children and parents in the period of isolation of minors from society.

**Keywords:** minors, crime, relief from punishment, legal discretion, enforcement measures of educational influence, closed fostering institutions, relations between children and parents.

**Alexei Ivanov.** **Anti-corruption policy and legal regulation in counteracting corruption in Georgia.** The author gives consideration to the anti-corruption reform in Georgia, reveals legal framework in the field of the counteraction of corruption in the country, gives an estimate of the reforms being implemented and their conformity with international rules and principles, performs analysis of measures aimed at optimising the anti-corruption mechanism in the context of a particular state.

**Keywords:** corruption, Georgia, legislation, anti-corruption reforms, anti-corruption policy.
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