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Research Article

SOME ASPECTS OF BRINGING TO ADMINISTRATIVE RESPONSIBILITY STAFF OF THE PROSECUTION OF THE RUSSIAN FEDERATION

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The article deals with the issue of the specifics of bringing prosecutors to administrative responsibility of bodies and institutions of the prosecutor's office of the Russian Federation. The main directions for improving the procedure and procedure for conducting an inspection (official investigation) of the fact that a prosecutor has committed an offense are considered. General scientific methods of cognition – materialistic and dialytic, method of analysis and synthesis, special legal methods: formal legal method and method of legal modeling. Based on an analysis of the judicial practice of bringing to administrative responsibility and the practice of bringing prosecutors to disciplinary responsibility in the framework of inspections (official investigations) in relation to prosecutors of bodies and institutions of the prosecutor's office of the Russian Federation. It is proposed to recognize, taking into account the prevailing practice, the existing mechanism for bringing prosecutorial employees of bodies and institutions of the prosecutor's office of the Russian Federation to administrative responsibility as having significant shortcomings, to make advising adjustments on the part of the Prosecutor General's Office of the Russian Federation in the form of methodological recommendations, to work towards improving the mentoring mechanism and organizing personnel work in this direction.

Key words: *responsibility, prosecutor, administrative responsibility, responsibility of prosecutors, office investigations*

Introduction

As part of the study of the institute of participation of the prosecutor in the proceedings on administrative offenses, several main areas of consideration of the prosecutor as a special subject of the said proceedings are traditionally distinguished. So the prosecutor can be considered in the aspect of his participation in the role of the supervisory authority in accordance with Art. 24.6 of the Code of Administrative Offenses of the Russian Federation, exercising 'supervision over observance of the Constitution of the Russian Federation and the implementation of laws in force on the territory of the Russian Federation in the proceedings on administrative offenses, with the exception of cases that are in the proceedings of the court' (Dobrorez, 2016). The prosecutor is considered as a participant in proceedings on cases of administrative offenses (Basov, 2015; Vinokurov, 2017; Islamova, 2015; Melekhin, 2016). Participation of the prosecutor in the proceedings on cases of administrative offenses, which are his exclusive competence in accordance with Art. 28.4 of The Code of Administrative Offenses of the Russian Federation also acts as a kind

of independent direction (Mamatov, 2021). The prosecutor, as a participant in the said proceedings, can be considered within the framework of the exercise of his powers in the field of bringing to administrative responsibility persons with a special legal status, enshrined in the Order of the General Prosecutor's Office of Russia 'On the procedure for the exercise by prosecutors of powers in the field of bringing to administrative responsibility persons with a special legal status' dated November 23, 2015 No. 645 (Shilyuk, 2014; Subanova, 2018). In addition to the above areas of scientific research, it seems fair to single out such a promising area as the responsibility of prosecutors for committing administrative offenses, when the prosecutor acts as the subject who committed the offense (Aslanov, 2017; Balakleets, 2018; Verstunina, 2008; Leshchina, 2019; Likhodaev, 2018; Potekhin, 2017; Osintsev, 2019).

The institution of bringing the prosecutor to administrative responsibility is one of the little-studied areas, and is often considered in fragments within the broad administrative and legal issues. However, modern realities require us to comprehensively study the problems that arise when prosecutors are brought to administrative responsibility.

The purpose of the study is to identify the existing problems in the practice of bringing prosecutors to administrative responsibility and consider options for resolving existing controversial issues for a possible detailed study of this issue in the framework of subsequent scientific research.

Results

As a result of the analysis of the practice of bringing prosecutors to administrative responsibility, it becomes obvious that there are a number of main areas for improving work in this area:

1. To issue guidelines at the level of the General Prosecutor's Office of the Russian Federation, in which to establish an approximate list of administrative offenses that, within the framework of an internal audit, can be qualified as disciplinary offenses indicating, respectively, acceptable and objective types of disciplinary punishment and provide for exceptional offenses for which disciplinary liability cannot be applied.

2. To carry out work on the development of a detailed mechanism for bringing prosecutors to administrative responsibility, the procedure and adopted acts in this area, with amendments to Art. 1.4 of the Code of Administrative Offenses of the Russian Federation.

3. To organize at the proper level informing the population regarding the prosecution of prosecutors, especially pay attention to offenses that have received wide publicity in the media.

4. Take measures to improve the work of the system of legal education, preventive measures and the application of comprehensive measures to prevent, detect and suppress the commission of administrative offenses and organize effective interaction with law enforcement agencies; pay due attention to the issue of modernizing the work of the mentoring institution, considering the issue of methods for its implementation and the possible need to develop incentive measures in this area.

Discussion

Special conditions for the application of measures to ensure the proceedings in the case of an administrative offense and bringing to administrative responsibility of prosecutors are established by the provisions of Part 2 of Art. 1.4 of the Code of Administrative Offenses of the Russian Federation, which has a reference norm to federal laws, and so Art. 42 of the Federal Law No. 2202-1 'On the Prosecutor's Office of the Russian Federation' defines the following features: the first is the existence of the exclusive competence of the prosecutor's office to verify the report of the fact of an offense committed by the prosecutor, and the second is special conditions for the application of measures to ensure proceedings in cases of administrative offenses in relation to prosecutors that 'detention, bringing, personal search of the prosecutor, search of his belongings and the transport used by him are not allowed, except in cases where this is provided for by federal law to ensure the safety of other persons and detention when committing a crime'.

If we speaking about the verification of the report on the fact of an offense committed by the prosecutor, it is worth noting that this verification is not a basis for his release from punishment, but only provides an opportunity to establish objective data in considering the issue of holding a prosecutor's office employee accountable and the presence in his actions of violations of the Code of Ethics of the Prosecutor's Office employee and grounds to apply disciplinary liability to the employee.

Verification of a report on the fact of an offense committed by a prosecutor is carried out on the basis of the provisions of the order of the Prosecutor General of the Russian Federation dated April 18, 2008 No. 70 'On conducting inspections (official investigations) in relation to prosecutors of bodies and institutions of the prosecutor's office of the Russian Federation' (however, there is judicial practice which reflects the fact of applying the provisions of the Instruction approved by the Order of the Prosecutor General of Russia dated April 28, 2016 No. 255 'On approval of the Instruction on the procedure for conducting internal audits in relation to prosecutors of bodies and organizations of the prosecutor's office of the Russian Federation' 'because they do not indicate that during the audit procedural violations were committed that led or could lead to an incorrect establishment of the circumstances of the misconduct'[1] the identification of these Instructions seems unreasonable) and acts as a factor guaranteeing the independence and autonomy of the prosecutor's worker, in order to protect him from unlawful influence or prosecution for decisions or actions that he takes in the performance of his duties within the framework of his work duties.

Speaking about the features of the application of the provisions of Art. 42 of Federal Law No. 2202-1 'On the Prosecutor's Office of the Russian Federation' it should immediately be noted that this category does not include prosecutors who have ceased service in the prosecutor's office – the provisions of Part 1 of Art. 42 of the Federal Law 'On the Prosecutor's Office' do not apply to them. So, A. A. Kopeikin appealed to the court with a complaint against the decision of the magistrate to bring him to administrative responsibility for hours.1 Article. 12.8 of the Code of Administrative Offenses of the Russian Federation, in which he asks to cancel the appealed decision and terminate the proceedings in connection with the fact that he is an employee of the prosecutor's office, from 03/02/1995 to 12/29/1997 he was a prosecutor, a decision was made in this case – to leave without satisfaction[2].

At the same time, if the person at the time of the commission of the administrative offense was an employee of the prosecutor's office, and before the consideration of the case on the merits, he was dismissed, in this case, the provisions of this article apply – Part 1 of Art. 42 of the Federal Law 'On the Prosecutor's Office'[3].

So there are a number of court decisions on recognizing a decision in a case of an administrative offense as illegal due to the fact that officials of law enforcement and regulatory bodies listed in Chapter 23 of the Code of Administrative Offenses of the Russian Federation 'Judges, bodies, officials authorized to consider cases of administrative offenses' independently initiate cases of administrative offenses against employees of the prosecutor's office, which, accordingly, violate the norms of the law and give rise to the practice of canceling such decisions by the courts[4].

For example, traffic police officers stopped the car in connection with the suspicion that the front windows of the car were tinted. The driver turned out to be an active employee of the prosecutor's office, which was reported to the traffic police, in violation of the requirements of the current legislation, a protocol on an administrative offense was drawn up against him under Part 3.1 of Art. 12.5 of the Code of Administrative Offenses of the Russian Federation, the vehicle was searched, a measure of administrative detention was applied to it and delivered to the duty unit of the Russian Ministry of Internal Affairs for the city of Smolensk, where it was also searched, in addition, special means were used – handcuffs. These actions were declared illegal[5], and later the employees were found guilty of exceeding their official powers, they were sentenced to imprisonment from 3.5 to 4 years probation with a 2.5 year ban on holding positions in the civil service.

If a person, in the proceedings on an administrative offense, hid or did not report that he was an employee of the prosecutor's office, in connection with this he was held liable on a general basis, subsequent complaints or protests from a higher prosecutor about violation of the procedure for bringing

[1] Decision Soviet District Court of Makhachkala (Republic of Dagestan) dated August 26, 2019 in case No. 2-4234/2019, available at: https://sudact.ru/regular/doc/pHP0Kxs126dn/.

[2] Decision Leninsky District Court (Republic of Crimea) dated May 8, 2018 in case No. 12-53/2018, available at: https://sudact.ru/regular/doc/kAfqfxkK2mHV/.

[3] Decision of the Surgut City Court (Khanty-Mansiysk Autonomous Okrug-Yugra) dated February 5, 2019 in case No. 12-46/2019, available at: https://sudact.ru/regular/doc/gggj99Oqvsr5/.

[4] Decision of the Ermakovskiy District Court (Krasnoyarsk Territory) dated August 26, 2019 in case No. 12-85/201, available at: https://sudact.ru/regular/doc/p4AwYW1EH5Y/; Decision of the Borisoglebsk City Court (Voronezh Region) dated July 3, 2018 in case No. 12-50/2018, available at: https://sudact.ru/regular/doc/7xOnvFjPek6M/.

[5] Decision of the Industrial District Court of Smolensk (Smolensk Region) dated September 12, 2016 in case No. 2A-3566/2016, available at: https://sudact.ru/regular/doc/1dG1RDPrIsgm/.

to responsibility with reference to part 2 Art. 1.4 of Administrative Code of the Russian Federation are not subject to satisfaction. For example, the Supreme Court of the Republic of Dagestan did not satisfy the protest of the Deputy Prosecutor of the Republic of Dagestan, citing the fact that he did not inform the traffic police inspector about his status as a person performing certain state functions, namely the position of the senior prosecutor of the prosecutor's office of the Chechen Republic[6].

A similar situation, but this time the employee was dismissed from service based on the results of an internal audit, when, having violated the Prosecutor's Oath, the requirements of the Code of Ethics of the prosecutor's employee, wanting to hide his place of service, in connection with the violation of the Traffic Rules, the assistant prosecutor I.A. Yagofarova misled the traffic police officers by hiding the place of service, which led to the police officers conducting, in fact, an illegal check and making an illegal decision[7].

From the above examples, we can conclude that the concealment of official position by prosecutors in the event of an administrative offense and subsequent attempts to cancel, in fact, illegal decisions will not be successful, which is confirmed by the above practice of court decisions. In this connection, the opinion of Osintsev D.V. regarding the fact that 'it is enough to mislead representatives of the administrative authorities... and using the status features to avoid administrative responsibility, retaining their official position, which can then be used to exert excessive influence, persecution and repression against... representatives of administrative bodies'(Osintsev 2018: 36) seems to be controversial.

From the provisions of Art. 22, paragraph 2, art. 25, art. 42 of the Law 'On the Prosecutor's Office', Art. 28.1, 28.4, 28.8 of the Code of Administrative Offenses of the Russian Federation, the presence of the powers of the prosecutor to issue a decision to initiate proceedings on an administrative offense against a lower-ranking prosecutor follows. So, upon completion of the verification of the report on the fact of the commission of an offense by the prosecutor's employee, if there are sufficient grounds and evidence, the prosecutor who conducted the internal audit issues a decision to initiate an administrative offense case on the day the prosecutor of the constituent entity of the Federation approves the conclusion of the audit, which is signed by the official who compiled it and the person – employee bodies of the prosecutor's office, in respect of which an internal check was carried out and in respect of which a case on an administrative offense was initiated, after which a copy of the decision is handed over to the prosecutor, in respect of whom it was issued, against signature. Further, I am based on Part 1 of Art. 28.8 of the Code of Administrative Offenses of the Russian Federation, the original decision, together with the materials of the official investigation, is sent to the judge, to the body, to the official authorized to consider the case of an administrative offense.

An analysis of judicial practice shows that a greater number of offenses are committed by employees of the prosecutor's office in the field of traffic, attention to this topic was also reflected in a number of studies (Afonin, 2020).

It is worth noting here that there are certain aspects of involving prosecutors in connection with the presence of the Administrative Regulations for the execution by the Ministry of Internal Affairs of the Russian Federation of the state function for the implementation of federal state supervision of compliance by road users with the requirements of the legislation of the Russian Federation in the field of road safety[8].

So, according to paragraph 291, in the event that an employee reveals sufficient data indicating the presence of an event of an administrative offense committed by a person who has presented documents confirming the performance of certain state functions (deputy, judge, prosecutor and other person), measures to ensure production are applied to the specified person in the case of an administrative offense and bringing to administrative responsibility is carried out in accordance with special conditions (in accordance with the provisions of part 2 of art. 1.4 of the Code of Administrative Offenses of the Russian Federation).

In accordance with paragraphs 303, 304 of the above Administrative Regulations, if sufficient data is found indicating the existence of an event of an administrative offense committed by a judge or a prosecutor,

[6] Resolution of the Supreme Court of the Republic of Dagestan dated May 14, 2014 in case No. 4A-80/2014, available at: https://base.garant.ru/124751456/.

[7] Ruling of the Supreme Court of the Republic of Bashkortostan dated March 17, 2016 in case No. 33-3960/2016, available at: https://sudact.ru/regular/doc/cMw7gAaRkMxS/.

[8] Order of the Ministry of Internal Affairs of Russia dated August 23, 2017 No. 664 'On approval of the Administrative Regulations for the execution by the Ministry of Internal Affairs of the Russian Federation of the state function of implementing federal state supervision over compliance by road users with the requirements of the legislation of the Russian Federation in the field of road safety'.

the officer draws up a report about this, which, along with other materials, is immediately transferred to the head of the traffic police unit for their subsequent forwarding to the prosecutor, superior prosecutor.

If there are sufficient grounds to believe that the judge or prosecutor, while driving a vehicle, is in a state of intoxication, the officer, in order to ensure the safety of other persons, takes measures to stop the further movement of the vehicle until the conditions preventing the further movement of the vehicle are eliminated, which is reported to the duty officer. department of the traffic police unit (on duty of the territorial body of the Ministry of Internal Affairs of Russia at the district level) to immediately inform the higher prosecutors.

According to statistics, 4,088 prosecutors were brought to administrative responsibility for committing administrative offenses in the field of traffic in 2019, and in 2018, 3,532 employees. This was paid attention to. As part of the verification of the report of the fact that an offense was committed by an employee of the prosecutor's office, in the manner prescribed by order of the Prosecutor General No. 70, 9 people were dismissed from the prosecutor's office in 2019, in 2018 – 7. So the assistant prosecutor of the Republic of Dagestan drove a car that was not registered, not having the right to drive a vehicle, at the same time he showed the traffic police officers who stopped him an official certificate of a prosecutor's worker; assistant prosecutor of the district of Chelyabinsk, Chelyabinsk region, driving a vehicle while intoxicated, hit a traffic police car and fled the scene. At the same time, in this direction, cases of violation by the traffic police, the Ministry of Internal Affairs of the Russian Federation of the procedure for bringing prosecutors to administrative responsibility are revealed, subsequently the prosecutors took measures to cancel unlawful decisions in relation to employees of the prosecutor's offices of the Leningrad, Magadan and Sakhalin regions.

Conclusions

As a result of the analysis of the practice of bringing prosecutors to administrative responsibility, it becomes obvious that the guarantees provided to prosecutors in the field of administrative responsibility are not their personal privilege.

The presence of a special procedure for bringing to responsibility for committing an administrative offense an employee of the prosecutor's office – conducting an internal audit, is more often not in a positive way in relation to the prosecutor's worker. There are cases when, in connection with an internal audit, an employee was dismissed from the prosecutor's office, but was not later held accountable in the case that became the basis for this audit or was acquitted. The very fact of conducting an audit against a prosecutor's worker indicates that the prosecutor, by his behavior, raised doubts about the conscientious performance of his official duties and may serve as a basis for dismissal in accordance with subparagraph 'c' paragraph 1 of Art. 43 of the Law 'On the Prosecutor's Office', regardless of the result of the audit.

At its core, this check is of a public law nature, providing increased legal protection of prosecutors precisely because of the publicly significant powers they exercise, contributing to the unhindered activities of the prosecutor's office, its independence and independence.

But it is worth noting that this mechanism inherently contradicts the principle of uniformity in the practice of administrative application and the principle of publicity in making decisions on administrative cases.

There is an opinion that the presence of a peculiar approach to holding prosecutors accountable contradicts the fundamental constitutional principle of the equality of all before the law, due to 'the impossibility of tracking the fate of an administrative offense and imposing a sanction for it is not presented to an unlimited circle of people' (Selivanov, 2019). The lack of adequate information to the public about the facts of bringing employees to administrative and disciplinary responsibility is a kind of flaw. At the same time, the presence of publications in the media regarding the commission of offenses by prosecutors arise upon their commission and are often very much discussed. In this connection, it seems fair to intensify work in relation to bringing information to the public regarding the prosecution of prosecutors, especially to pay attention to offenses that have received wide publicity. It seems logical to consider the issue of the possibility of publishing statistical data on these facts.

In particular, in order to streamline the practice of applying disciplinary punishments, it is advisable at the level of the Prosecutor General's Office of the Russian Federation to issue methodological recommendations in which to establish an approximate list of administrative offenses that, within the framework of an internal audit, can be qualified as disciplinary offenses indicating, respectively, acceptable and objective types of disciplinary punishment, as well as to determine possible exceptional compositions for which disciplinary liability is not applied.

An indication of a detailed mechanism for bringing to administrative responsibility these persons, the procedure and adopted acts in this area seems to be one of the main directions in improving the mechanism for holding prosecutors accountable, it is logical to clarify all special subjects of Art. 1.4 of the Code of Administrative Offenses of the Russian Federation with the introduction of appropriate amendments to the specified norm.

It should be noted that when conducting checks on specific facts of offenses by employees of the prosecutor's office, inadequate preventive and educational work of the direct supervisors of the offender is established as a reason contributing to their commission. What is the reason to believe that a properly built system of legal education, preventive measures and the use of comprehensive measures to prevent, detect and suppress the commission of administrative offenses, conduct lectures, talks, thematic audits initiated by the Prosecutor General's Office of the Russian Federation, as well as organize effective interaction with law enforcement agencies will serve as a solid basis for preventing the commission of further offenses by employees of the prosecutor's office. In addition to the issue of working with the management staff, it is logical to note the need to modernize the work of the mentoring institution, which today, although it is inherent in the bodies and organizations of the prosecutor's office, which is undoubtedly a positive moment, since this institution has long been lost in a number of state bodies, but there is an objective need to improve areas of mentoring, both in considering the issue of methods for its implementation and in the possible need to develop incentive measures in the work of this direction.

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Research Article

CHALLENGES OF JUDICIAL PRACTICE FOR LITIGATIONS RESULTED FROM FOREIGN ECONOMIC TRANSACTIONS

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A specific nature of foreign economic relations determines a need for the generation of a new approach to the structure of its legal regulation. Its specificity is that the legal regulation of the aforementioned relations is formed in the context of various spheres of public life and branches of law. Relevant issues of judicial practice regarding litigations resulted from foreign economic transactions are examined in the paper. The research is based on the objective dialectic method of cognition of legal phenomena and procedures related to the selected topic and of the examination of their interconnections. Besides, the research is based on general scientific methods: analysis, synthesis, historical and logical methods, generalization, abstraction, system analysis, modelling and others. Currently, the national economy obviously tends to develop in a sinusoidal manner. It requires considering the possibility (in the frameworks of development of the intersectoral institute of foreign economic law) of using a chance to improve the mechanism of legal regulation in the field of state control over the external economic activities with a focus on judicial practice. The conducted research develops and specifies a theory of intersectoral linkages in respect to the relations in question. As a result of the conducted research, a unique legal regime of intersectoral functional legal institute of foreign economic law is established to change more prominently with the transformation of legal and objective realities.

Key words: *foreign economic law, foreign economic activities, judicial practice for litigations resulted from foreign economic transactions, improvement of a mechanism of legal regulation of foreign economic activity*

The foreign economic activity is one of the priority areas of development for the Russian Federation in the 21st century. Foreign economic relations serve as a prerequisite of economic transformations that are largely carried out through imperative legal regulations.

Despite a well-developed significant legal and regulatory framework to regulate the foreign economic activity of legal subjects, regulatory changes occur regularly caused by the dynamic development of foreign relations and, primarily, foreign trade. These changes cause legal conflicts and legal gaps, interrupt the consistency of the legislation which consequently results in litigations in practice.

However, there are opportunities for the improvement of the legal regulation mechanism in the field of state control over the foreign economic activity in the Russian Federation caused by the following circumstances.

Firstly, participants of the foreign economic activity are various legal subjects (e.g., tax payers, such as legal entities of various structures, self-employed businessmen).

Secondly, foreign economic activity is subject to legal regulation of various branches of the Russian law, so the mechanism of legal regulation of the foreign economic activity includes the development trends of the national legal system.

Thirdly, many theoretical and practical issues regarding the improvement of the mechanism for the implementation of legal provisions in the field of state control of the foreign economic activity in the Russian Federation are hardly fully covered in the academic papers.

A more detailed analysis of the judicial practice for litigations resulted from foreign economic transactions is required to improve the mechanism of legal regulation in the foreign economic area.

In the framework of the conducted scientific research, some legal positions of courts of the highest resort shall be provided:

1. Restriction of declarant (payer) rights for the return of overpaid customs payments considering constitutional guarantees for the protection of the right for private property is neither legitimate nor permissible, as the goals of rational organization of state authorities' performance are not the grounds for the restriction of rights and freedoms of citizens and organizations. It results from a possibility of non-compliance with the principles of equality and justice, including those in the field of levying mandatory public charges to the budget[1].

Besides, the aforementioned position is based on the judgements of the Constitutional Court of the Russian Federation (Resolution No. 10-P dated February 15, 2019, No. 3-P dated January 17, 2018, and No. 3-P dated February 18, 2000).

2. Cl. 29 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 18 'On Some Issues of Customs Legislation Application by Courts' dated May 12, 2016 (hereinafter – Resolution of the Plenum No. 18) includes an explanation that an application for the return of overpaid customs payments shall be considered by the customs authority provided that the declarant has previously also advocated the introduction of changes to the Goods declaration, and the customs authority has provided the documents proving a need for the introduction of these changes.

3. Expiration of a period of the customs control started after the launch of goods shall not be considered the grounds for the dismissal of a decision on the return of overpaid customs payments and shall not lead to ensuing of negative consequences for the declarant (payer) who has applied to the customs authority complying to the deadline for the return of overpaid customs payments (3 years) established in P. 1 Art. 147 of Federal Law No. 311-FZ 'On Customs Regulation in the Russian Federation' dated November 27, 2010.

The aforementioned legal position is related to the situation: 'the corporation has sent an application regarding a need for the introduction of changes into the prices of goods declared in accordance with previous declarations for goods (143 pcs.), as well as an application for the return (credit for) of overpaid sums of customs fees to the customs authority. The customs authority refused to introduce any changes and/or to make additions to the data of 90 declarations out of 143, and announced that it was impossible to make a decision regarding the return of overpaid sums of customs fees, taxes and other funds in respect to that part of the corporation's declaration'[2].

The position of the customs authority is illegal, as the law shall not impose a duty to apply to the customs authority beforehand to introduce changes into the Goods declaration before applying for a return of overpaid payments on the payer.

Besides, the actions of the customs authority in such a situation lead to a reduction of the period of execution of the declarant (payer's) right for the return of overpaid customs payment compared to the legitimate term[3].

4. The fact that the supplied goods have been found defective after delivery to the customs territory is itself a basis to change the code of the goods' classification for the customs purposes given that a criterion of the goods classification is intended use, and there is no indication that the declarant has imported one good under the guise of another for further economy on customs payment[4].

5. A participant of the foreign economic activity has a right to sue for the recognition of respective amounts owed as non-recoverable and debt amortization, in case there are the grounds to suggest that their

[1] Resolutions of the Constitutional Court of the Russian Federation No. 10-P dated February 15, 2019, No. 3-P dated January 17, 2018, and No. 3-P dated February 18, 2000.

[2] Ruling of the Supreme Court of the Russian Federation No. 305-ES19-10801.

[3] Ibid.

[4] Cl. 41 of Judicial Review of the Supreme Court of the Russian Federation No. 2 (2020).

rights and legal interests are violated by the customs authority which continues to account for the debt after the expiration of the legal period of its recovery[5].

6. The position similar to the aforementioned one is regarding the tax payer's right to sue for the recognition of respective amounts owed as non-recoverable with respect to similar provisions of Subcl. 4, Cl. 1 of Art. 59 of the Tax Code of the Russian Federation is reflected in Cl. 9 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 57 'On Some Issues Arising during Application of the First Part of the Tax Code of the Russian Federation by Arbitration Courts' dated July 30, 2013, and it is uniform by nature[6].

7. 'The launch of goods for domestic consumption imported to the Russian Federation and originating not from the territory of the Eurasian Economic Union, in respect to which special rules for the confirmation of compliance of the products to the technical requirements in order to ensure their safety shall not be allowed without inspectorial control'[7].

Therefore, the Constitutional Court of the Russian Federation and the Supreme Court of the Russian Federation have manifested their legal positions in respective judicial acts regarding some controversial aspects of the foreign economic activity. Thereby, participants of the foreign economic activity and legal practitioners have received a legal benchmark which allows preventing litigations as well as resolving them in time.

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[5] Cl. 42 of Judicial Review of the Supreme Court of the Russian Federation No. 2 (2020).

[6] Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 57 'On Some Issues Arising during Application of the First Part of the Tax Code of the Russian Federation by Arbitration Courts' dated July 30, 2013.

[7] Cl. 43 of Judicial Review of the Supreme Court of the Russian Federation No. 2 (2020).

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Research Article

HUMAN RIGHTS AND CRIMINAL PROCESS: MODERN TENDENCIES

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The subject of the research is social relations in the field of ensuring and protecting human rights in the criminal process. The goal is to identify and to describe the factors that determine ensuring and protecting human rights in the criminal process. The hypothesis of the research suggests that there are positive and negative trends that influence ensuring and protecting human rights during criminal proceedings. Also, it is possible to identify basic components of these trends. General scientific methods (analysis, synthesis, a dialectical method) have been applied, as well as Hexagram – a categorical symbol-based approach. As a result, the main factors enabling ensuring and protecting human rights in the criminal process have been identified along with the main obstructions; correlations between them have been found and comprehended; a factor model has been designed to represent both factor groups comprehensively. Conclusions: the factors enabling ensuring and protecting human rights in the criminal process include proper substantiation of the circumstances of the committed crime; the priority of human rights in legal and law enforcement activities; protection of those categories of individuals who cannot pursue their rights to the full extent. The factors preventing ensuring and protecting human rights in the criminal process include a criminal-legal conflict, legislation drawbacks, flaws in organizing law-enforcement activity. Range of applicability of the results: the resulting factor model facilitates the search for a comprehensive solution to the problem of ensuring and protecting human rights in the criminal process.

Key words: *human rights, criminal process, criminal proceedings, procedural safeguards, function of criminal proceedings, principles of the criminal process, criminal procedural legislation, law enforcement practice*

Introduction

Human rights issues are invariably relevant in the criminal process, which, on the one hand, protects and restores the rights of crime victims and, on the other hand, restricts the rights of citizens – parties to the criminal proceedings. The limits of permissible human rights restrictions for proceedings in criminal cases as well as ways to restore the rights violated by a crime constantly cause some worries for legislators, are a matter of debate for practicing lawyers and a subject for academic research. Ensuring and protecting human rights in criminal proceedings plays an important part in making the right decision on a criminal case. Modern criminal proceedings systems in Europe and in the world establish and announce protection

of rights and freedoms of every person regardless of their nationality, ethnicity, religion, race or any other personal peculiarities. The international legal foundation for this can be found in numerous international documents related to protecting human rights and freedoms.

As an academic literature review shows, the research of almost any criminal process issue eventually leads to the problem of ensuring human rights one way or another. Therefore, a significant part of the scientific publications is dedicated to improving legislation and law enforcement activity in terms of human rights protection in the criminal process that are either not ensured properly or are violated. Academic research is focused on protecting the rights of certain parties to a criminal procedure, mostly plaintiffs and suspects (the accused); ensuring certain rights of parties to criminal proceedings (the right to defense, the right of access to the courts and others); ensuring human rights during enforcement actions; ensuring human rights at various stages or phases of proceedings in a criminal case, proceedings of certain investigative activities or other legal proceedings; ensuring efficacy of an investigation as a way to restore the violated rights of the victim, and in other aspects.

When academicians narrow the matter down to certain violations of human rights in criminal procedural legislation and law enforcement activity, they usually point at imperfection in the existing legislation and suggests that relevant changes should be made. Another area of the academic search is identifying organizational problems that adversely affect ensuring human rights during proceedings in criminal cases. However, when the issues of proper ensuring human rights during the criminal process are worked out, as a rule, certain factors that influence achieving this goal are considered, but the combination of these factors is never studied as a comprehensive problem.

Currently, it can be said that it is necessary to develop some perception of the factors that have a positive effect on ensuring human rights in the criminal process and of those that have a negative effect. The hypothesis of the research suggests that is possible to identify positive and negative trends in ensuring and protecting human rights during proceedings in criminal cases and to find out the most important elements of these trends.

In the course of this research, the academic papers specifically dedicated to exercise of human rights in the criminal process have been studied. Presentation of conclusions on the reasons for human rights violation in the criminal process and the factors enabling exercise of these rights served as the analysis criterion. Generally, the reference retrieval has shown that authors stand for the need to organize the criminal process so that it could ensure the rights and legal interests of a person without causing them any damage with its measures (Mel'nikov, 2010; Kornykov, 2014). That said, a few factors that influence ensuring human rights in the criminal process can be identified, including trends for humanization of criminal procedure legislation, the process of its improvement, elimination of flaws and contradictions existing in the legislation (Mel'nikov, 2010; Gurdin, 2016; Grigor'eva, 2020; Gavrilov, 2021); consolidation and exercise of safeguards for ensuring individual's rights (Davydov & Kachalova, 2018; Gavrilov & Malysheva, 2018); improvement in the quality of crime solution and investigation; proper substantiation of all the circumstances of the case (Bunin, 2010; Kornykov, 2014); improvement in institutional and judicial control and prosecutor's supervision over the preliminary investigation (Mel'nikov, 2010; Gurdin, 2016); improvement in the system of pre-trial and trial proceedings, organization of settlement arrangements between the victim and the offender, particularly for offenses of low-to-medium severity (Mel'nikov, 2010) and so forth. The researchers recite various violations of human rights in the criminal process in their works, but while noting the reasons of these violations they do not see their systemization as a goal. However, identification and systemization of the main factors that enable and prevent ensuring human rights in the criminal process will allow proper organizing of plans and measures for ensuring and protecting them.

The goal of this research is to design a model of factors that determine ensuring and protecting human rights in the criminal process. A special method applicable for generating the required factor model is Hexagram – a categorical symbol-based approach developed by V. I. Razumov (Boush, Razumov, 2021: 152–153). This method is applied in planning, since it allows taking into account both the components that ensure achieving the goal (in our case – ensuring human rights in the criminal process) and the components that prevent this. A prerequisite for applying the method is the possibility of identifying two opposite aspects of the studied object: progressive and regressive, while each of them can be represented by three components. Within this research, the group of factors that facilitate ensuring human rights and the group of preventing factors may be examined as these opposite aspects. In each aspect, the factors that

have the most significant influence on the exercise of human rights during proceedings in criminal cases can be identified within the groups of positive and negative factors. Therefore, we can draw a conclusion about the applicability of the aforementioned method to achieving the goal of this research.

Materials and Methods

The content and logic of the method implies (Boush, Razumov, 2021: 152–153):

1) identification of two opposite – progressive and regressive – aspects of the object;

2) decryption of each aspect with three components – identification of three major elements within each of them;

3) identification of the most progressive element of the 'positive' triad and the most negative element of the 'negative' triad;

4) comprehension and description of the resulting research model.

Results

It is suggested that the factors that have a positive effect on ensuring and protecting human rights in the criminal process should be considered the 'progressive' aspect in this research. The factors that affect these processes should be considered the 'regressive' aspect.

The next step in the method application is decryption of positive and negative trends that determine human rights in the criminal process with three components. To that end, the circumstances that have a positive and negative effect on ensuring, protecting and exercising human rights in the criminal process have been classified into two groups. Three circumstances having the most significant influence on the aforementioned processes have been identified within each group.

As for the circumstances that affect the exercise of human rights in the criminal process, it is the criminal-legal conflict causing the conflict of interest that should be noted primarily[1]. A criminal-legal conflict is the result of an infringement against social relations protected by criminal law and is usually already associated with the violation of citizens' rights. In the absence of a committed crime, there is no need to restore any violated rights. There is also no need to start a criminal procedure, to take any enforcement actions or to restrict the rights of citizens. This factor seems key, the most significant among the circumstances that affect ensuring and protecting human rights in the criminal process.

Another factor that negatively affects ensuring human rights during proceedings in criminal cases is imperfection of both criminal and criminal-procedural legislations. The overwhelming majority of researchers studying the issues of ensuring human and citizens' rights and freedoms point out the necessity of introducing some changes to the current legislation. These changes can take the form of consolidation of additional rights of citizens, safeguards for exercising these rights, making the national legislation consistent with international standards and so on.

The third factor on a par with the previous one is flaws in organizing law-enforcement activity that also negatively affect ensuring human rights in the criminal process. This factor encompasses special features of law enforcement that cause either a failure to respect or a violation of human rights in the criminal process. For example, a formal approach to explaining rights to the citizens, a failure to provide (or a delayed provision of) information about the procedure for protecting the violated rights to the parties to the proceedings, an unjustified refusal to satisfy petitions, a biased nature of investigation, violations of the law in the course of investigations or legal proceedings. In the academic and professional community, certain disputes often arise regarding the critical matter of procedure associated with legitimacy of the evidence required to conduct and complete criminal proceedings efficiently. Also, this legal issue generates great interest among the public at large (citizens) given that this legal issue is directly associated with the legal safety of citizens and law and order in general. The method of evidence collection as well as jurisdiction of the subjects (courts, public prosecution office, the police and other parties) depends on the

[1] On Observing Citizens' Rights during Criminal Proceedings: Headnotes for the Speech of the Human Rights Ombudsman in the Russian Federation at the All-Russian Conference 'The Criminal Process: Legitimacy, Objectivity, Justice' on May 28, 2019, RAS Institute of State and Law, available at: https://ombudsmanrf.org/news/novosti_upolnomochennogo/view/o_sobljudenii_prav_grazhan_v_ugolovnom_sudoproizvodstve.

investigation concept that defines the criminal procedural role of all subjects. Considering that in some cases investigative activities encroach on personal rights and freedoms significantly, the legislator has set strict legal rules that need to be complied with on a case-by-case basis. The legislator has practically prevented any arbitrary behavior by law enforcement agencies, provided a proper level of security in rights for citizens, i.e., for each and every person.

In the modern criminal procedural systems of the Anglo-Saxon type, two critical concepts of evidence legitimacy are recognized: the concepts of absolute and relative exclusion of illegally obtained evidence – for example, in the United States, there is the concept of absolute exclusion of illegally obtained evidence. When it comes to the European continental system of illegal evidence collection, there are different methods of evidence recovery. The European Convention for the Protection of Human Rights and Fundamental Freedoms and case law of the European Court of Human Rights in particular have established certain standards that are critical for the correct understanding of fundamental human rights and freedoms in the criminal process. That is why law enforcement organization based on any other principles leads to violation of human rights.

As for the factors that have a positive effect on respect for human rights in the criminal process, we assume that the most influential circumstance is proper substantiation of all the circumstances of the committed crime reflected in legally collected evidence. In our view, human rights cannot be protected properly in the criminal process if the committed deed is qualified inadequately, if the caused damage or the individual's guilt have not been established correctly. Even if there are no formal violations in a criminal case, improper substantiation of all the circumstances of the case violates the rights of either the victim or the person charged with a criminal offense.

We suggest that the priority of human rights and freedoms in legislative activity and law enforcement shall be considered another factor that has a positive effect on ensuring and protecting human rights in the criminal process. The trend for humanizing the criminal process in the 21st century is the result of modern human aspirations and the government's adequate response to crime in an attempt to restrict excessive application of various kinds of repressions (Simović & Karović, 2020). This means that the rate and efficacy of criminal proceedings should not cause any damage to human rights and freedoms.

Humanizing modern society includes humanizing criminal proceedings, so that now a legislator recognizes the importance of defending human rights and freedoms, as clarifying and solving certain criminal cases is directly determined by and associated with proper protection of human rights and freedoms. First and foremost, the rights of the suspect or the accused include humane treatment, while application of repressive measures and punitive actions should be kept to a minimum, which allows achieving a legitimate legal purpose. Use of repressive means, i.e., measures and actions, comes down to restrictive legal circumstances for the purpose of preventing any arbitrary behavior by law enforcers, as well as various kinds of abuse by public authorities. The procedural roles of the main and minor parties to the criminal process differ and can be achieved or ensured exclusively on the basis of consistent application of legal provisions regulating and establishing the standards for their roles in the criminal process (Karović & Simović, 2020: 61).

An efficacious and vigorous fight against all kinds of crimes forces the law enforcement agencies to meet the restrictive requirements of the legislation. Studying the criminal process through the lens of protecting human rights and freedoms, it is necessary to examine the use of investigative activities. There are two main legal systems in the world – the European continental legal system and the Anglo-Saxon legal system. However, the number of differences between the two legal systems is getting smaller over time, since certain legal decisions of procedural nature (the concepts of investigation, evidence, etc.) are becoming more and more general; they are adapting to the modern needs of crime prevention. The subjects of the criminal process should care about the proper application of the law and, therefore, about protecting human rights and freedoms at all stages of criminal proceedings. Protecting fundamental human rights and freedoms becomes especially obvious during the investigation and evidence collection, deprivation of freedom, investigative activities, detainment, exercise of the right for defense, application of means for legal protection and other procedural measures taken by competent bodies of criminal proceedings.

The third factor that has a positive effect on ensuring and protecting human rights in the criminal process is protecting those categories of individuals who cannot pursue their rights to the full extent. In the modern criminal procedural systems of the world, a legislator is particularly scrupulous about minors, i.e., children, on the part of subjects, i.e., law enforcement agencies, just because of their age. The criminal

status and the status of minors, i.e., children, can be viewed from three perspectives given that minors can act as crime perpetrators, as crime victims or they can be perpetrators and victims at the same time. In this connection, the legislator has used the protective model in modern criminal procedural systems with the clear intent to protect, i.e., a humane approach, attitude and treatment of subjects and law enforcement agencies in accordance with this very age group. When it comes to minors as perpetrators of some crimes, the legislator does not make punishment a priority, but treatment of minors should be primarily focused on ensuring adequate, i.e., proper development, resocialization, rehabilitation and social integration. Also, a legislator has made provision for application of diversionary or alternative measures in regard to minors in the modern criminal procedural systems – the measures that due to their nature suggest deviation from conventional criminal proceedings typical for persons of majority age that have committed criminal acts. Applying alternative measures that differ from country to country to the juvenile offenders, the legislator has expressed a special protective approach and attitude.

On the other hand, minors often serve as plaintiffs, i.e., crime victims, including cases when there is a whole series of criminal offenses with prominent destructive consequences (international human trafficking, drugs and other criminal offenses). In these specific situations, it is critical to emphasize the importance and significance of specialization of law enforcement agencies and agencies working with this age group. Lengthy negative consequences for minors as crime victims make specialized juvenile judiciary bodies (public prosecution office, court, police, social protection authorities and other agencies) act professionally and in a timely manner considering the age and individual features of minors.

Minors as a special age group deserve special attention from the academic and professional communities as well as of the public at large in terms of protecting fundamental human rights and freedoms when it comes to proper treatment and availability of specialized law enforcement agencies and structures in accordance with this particular category (Karović & Igrački, 2022: 84).

Discussion

Thus, the most important factors that influence ensuring and protecting human rights and freedoms in the criminal process are: commission of a crime and, therefore, initiation of a criminal-legal conflict, which causes violation of human rights; and proper substantiation of all the circumstances of the committed crime that enables restoration and protection of these rights. A crime is a socially dangerous act that violates the victim's rights, requires state response in the form of investigation and judicial examination of the criminal case with coercive actions intrinsic to the criminal process, charging the citizens with certain responsibilities and restrictions of their rights. The proper substantiation of all the circumstances of the committed crime in its turn leads to the scenario where the guilty is actually held liable for their actions, and the innocent is not charged with a criminal offense. Thus, the rights of both the accused (the suspect) and the plaintiff are respected and safeguarded to the fullest extent (Bunin, 2010: 247). These factors are antagonists. Raising the crime level leads to an increased number of cases when citizens' rights are violated, to a need for coercive actions and poses a threat to ensuring and protecting human rights. Only efficacious crime investigation and exposure of guilty persons can oppose this process. In its turn, the positive dynamics in the field of ensuring citizens' rights and freedoms will be enabled with efficacious crime prevention and simultaneous improved quality of investigation.

Two other groups of antagonist factors are the drawbacks of the legislation and law enforcement activity that negatively affect ensuring and protecting human rights, and legislation humanization along with a priority of human rights and protection of those categories of individuals that can not pursue their rights to the full extent that have a positive effect. Thus, legislation improvement and organization of proper law enforcement should be arranged towards humanization and the priority of human rights as well as protecting the most vulnerable categories of individuals (minors, people with special needs).

The resulting factor model allows consideration for major trends in observing human rights in the criminal process. For example, in our view, in terms of a balance between the objective of a crime investigation and ensuring rights and legal interests of parties to the proceedings in a criminal case (Mel'nikov, 2010: 32) the priority should still be given to the proper substantiation of the circumstances of the case, which is more important as the more progressive component of the system. A failure to substantiate or wrong substantiation of the circumstances that characterize the crime restricts the right of the accused to defense

and to a fair trial (Kornykov, 2014: 63). At the same time, the task of crime solution may not be opposed to the task of ensuring human rights in the criminal process, since proper crime solution is one of aspects of the issue of ensuring and protecting human rights during criminal proceedings.

In general, the obtained result is coherent with the existing scientific concepts of human rights in the criminal process; it complies with the suggested hypothesis and can serve as the basis for planning activities on ensuring human rights in the criminal process. Besides, the obtained result can serve as the basis for further theoretical research – identification of the most promising areas for improving legislation and organizing proceedings for criminal cases.

Conclusions

Thus, as a result of this research, a model of factors that determine ensuring and protecting human rights in the criminal process has been suggested that contributes to developing the theory of human rights in the criminal process. As a contribution to the methodology of legal research, the work presents intermediate deductions about the performance of categorial symbol-based methods for examining various aspects of the object of research as components of a single system that can be balanced by establishing a manageable and efficient balance between its 'progressive' and 'regressive' aspects.

When planning activities to ensure human rights in the criminal process, the practical value of the results can be seen in the possible consideration of obstacles preventing such activities and the priority development trends. The prospects for further research seem to lie in further decryption of the opposite aspects of the object with the purpose of identifying priority areas for legislation improvement, organization of law enforcement activities. The resulting factor model facilitates the search for a comprehensive solution to the problem of ensuring and protecting human rights in the criminal process.

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Research Article

CRIMINAL POLICY, LAW ENFORCEMENT PRACTICE AND DIGITALIZATION AS TOOLS FOR CORRUPTION PREVENTION IN JUDICIAL AUTHORITIES

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The goal of this paper is to describe some aspects of one type of corruption – judicial corruption – and to minimize it by introducing into practice new legal provisions and digital technologies. The experience of some states, including Kyrgyzstan, in the use of digital technologies for minimizing corruption has been summarized in the paper. Also, the reasons have been provided for active development of new areas for anticorruption efforts by introducing digital technologies. According to the authors, digitalization can increase openness, public disclosure and transparency significantly, reveal corruptogenic ties, schemes and relationships, and optimize the anti-corruption efforts by the state. The research materials can prove useful for law enforcement agents who are working in corruption prevention, as well as for the general public interested in corruption problems.

Key words: *corruption in the judicial system, digitalization, judicial authorities and anti-corruption practice, criminal policy and law enforcement practice*

Introduction

In this paper, the authors have attempted to examine the main stages of anti-corruption criminal policy in the Kyrgyz Republic, as well as to analyze some legal provisions on anti-corruption enforcement adopted by the state. In the Soviet period, the Kyrgyz SSR Criminal Code of December 29, 1960, did not even consider such a term as 'corruption', although it included a chapter on 'Official Misconduct'. These facts give reason to believe that there was no comprehensive approach to dealing with corruption and corruption deeds in the Soviet times, and the only term in use was 'bribery'. The chapter 'Official Misconduct' was dedicated only to the composition of crimes – abuse of official position, exceeding authority, and negligence, although the sanctions stipulated an extreme measure of punishment.

In this regard, the now independent young state started shaping its own anti-corruption policy with the issuance of Decree No. 388 of the Kyrgyz Republic President 'On Measures for Preventing Corruption within the Republic of Kyrgyzstan Civil Service System' dated December 18, 1992. In this process, special anti-corruption departments were established – Directorate for Combating Economic Crimes and Corruption (DCECC) of the Ministry of Internal Affairs and a SCNS Directorate for Combating Corruption and Smuggling (DCCS) (Sydykova & Sulaimanova, 2016).

Also, in 1997, a new Kyrgyz Republic Criminal Code was adopted where Art. 303 on 'Corruption' was clearly established. Then, with Decree of the KR President of January 25, 1999, the Coordination Council for Combating Corruption and Legal Offences was formed under strict control of the country's Prime Minister. Later, on February 21, 2001, the People's Congress of Jogorku Kenesh of the Kyrgyz Republic approved the provision 'On the Commission of the People's Congress of Jogorku Kenesh of the Kyrgyz Republic on the Issues of Combating Corruption, Shadow Economy and Organized Crime'. In 2003–2004, the state took some measures to set up the Advisory Council for Good Government, which was focused on analytical and coordination activities to prevent corruption. The following laws were passed: 'On Combating Corruption', 'On Civil Service', 'On Public Procurement', 'On Declaring and Publishing Data about the Income, Obligations and Property of the Individuals Holding Political and Other Special Official Positions as well as of Their Close Relatives'. The Kyrgyz Republic Government Republic adopted Resolution No. 469 'On the Progress of the State Program for Tightening Control over Corruption, Smuggling and Economic Crimes in the Kyrgyz Republic for 2001–2003' dated August 21, 2001) (Sydykova & Sulaimanova, 2016).

Despite the aforementioned measures of the criminal policy taken in order to prevent corruption, in the early days, Art. 303 'Corruption' of the Kyrgyz Republic Criminal Code remained a so-called 'dead article' and did not provide the desired results, which led to the fall of the existing political regime.

Materials and Methods

After the public and political events of spring 2005, the new head of the state shaped his own anti-corruption policy based on the UN Convention against Corruption ratified by the state. Thus, with Decree No. 251 of the Acting President of the Kyrgyz Republic dated June 21, 2005, a State Strategy for Preventing Corruption was established in the Kyrgyz Republic. The Kygryzstan Parliament ratified the UN Convention against Corruption signed on December 10, 2003, in Merida, Mexico, as No. 128 on August 6, 2005. The Kyrgyz Republic General Prosecutor's Office was made responsible for implementing the Convention. On October 21, 2005, Decree (UP No. 476) of the Kyrgyz Republic President 'On Immediate Measures for Preventing Corruption' was issued. The Commissioner of the Kyrgyz Republic National Agency for Preventing Corruption approved the Methodology for Corruption Examination and Assessment in the Kyrgyz Republic as No. 21 on September 4, 2006. On February 28, 2006, Regulation No. 132 of the Kyrgyz Republic Government 'On Approval of a Set of Measures of the Kyrgyz Republic Government for Executing the Action Plan on Implementing the State Strategy for Preventing Corruption in the Kyrgyz Republic and the State Program for Preventing Crime in the Kyrgyz Republic for 2006–2007' were approved. Aside from the aforementioned measures, the Kyrgyz Republic President and the Government adopted many other measures aimed at minimizing corruption in various areas of life of the country (Engvall, 2013: 48).

After the 2010 revolution, the newly elected President of Kyrgyzstan established the Anticorruption Service within the State Committee for National Security of the Kyrgyz Republic. Then, Decree (UP No. 26) 'On the National Strategy for Anticorruption Policy of the Kyrgyz Republic and Corruption Prevention Measures' was issued on February 2, 2012. Under the Decree, a special session of the Defense Council dedicated to corruption issues was held on November 4, 2013. Law No. 70 of the Kyrgyz Republic 'On Preventing Corruption' was passed, as amended on May 17, 2014. The public authority, Expert Council, a coordination meeting of law enforcement and other state authorities on corruption prevention issues under the Kyrgyz Republic General Prosecutor's Office, was founded. Decree No. 180 of the KR President 'On the National Strategy for Preventing Corruption and Eliminating Its Reasons in the Kyrgyz Republic for 2021–2024' dated September 25, 2020, was issued, etc.

After the events of October 2020, the Anticorruption Service of the State Committee for National Security was eliminated to be replaced by the Anticorruption Business Council that conducts all the necessary work in this area.

Thus, according to the Corruption Perceptions Index of 2020, Kyrgyzstan ranked 124th out of 180 countries. For comparison, Slovakia ranked 60th, Croatia – 63rd, Kazakhstan – 113rd, Ukraine ranked 117th (Kakeshov, 2014: 93).

It should be acknowledged that corruption has a particularly devastating social impact on all the state and judicial authorities, including elections of Parliament deputies. It is no secret that it was the corruption

elements that provoked massive upheavals of citizens and the eventual collapse of the existing political regime in 2005, 2010 and then in October 2020.

Additionally, corruption undermines judicial systems all across the world, denying citizens access to the law and violating one of the fundamental human rights, specifically, the right for a fair and just trial. In his time, the Ancient Greek philosopher Aristotle said that 'going to court means turning to justice'. Considering the aforementioned, a critical requirement for activities of the judicial system is justice.

That is why it is vital for the country and its proper development to make the judicial system a simple and comprehendible tool for every person to uphold their right and their human dignity. When people start to feel protected, they will trust the state, and once they trust the state, they will be able to feel responsibility for their own country.

There is just a single cause and effect chain that needs to be broken: a lack of justice – arbitrariness of the authorities – defenselessness – servitude, and another chain to be established: justice – trust in legal defense – human dignity – civic consciousness.

To that end, the Annual Report on the State of Corruption in the World as of 2007 prepared by Transparency International, a well-known international anti-corruption coalition, was dedicated to corruption in the judicial systems in various countries of the world. The topic of the report was not chosen by chance, but was determined by the incredible urgency of the problem (Kakeshov, 2014: 102).

Most countries in the world take relevant measures to combat corruption in the judicial system. Thus, it is impossible to imagine modern Europe without professional workers in the judicial system who, on the one hand, ensure functioning of the government machine and, on the other hand, serve as a guarantee of protection and enforcement of citizens' rights and freedoms, including their protection from power abuse by the officials of state and law enforcement authorities. Clear multistep action systems for raising the level of corruption prevention have long been placed in the judicial system.

The judicial system of Slovakia is similar to Kyrgyz justice and includes the Supreme Court, 8 regional and 55 district courts. In order to minimize corruption, the Ministry of Justice of Slovakia introduced an electronic information system for judicial procedures management based on Windows Server back in 2003 that allowed the judges to distribute cases randomly. The new system of judicial procedures management for criminal cases was designed to exchange data between the Ministry of Justice, the General Prosecutor's Office, the Ministry of Internal Affairs and the judicial system. Work on reforming internal procedures in the criminal courts has been completed. The information system for judicial procedures management was created to support further reforms of the judicial system. 'Prompt set-up of that system in a large number of courts allowed critical steps to be taken on the way to eliminating two key corruption sources: intentional assignment of certain judges to certain cases and trial delay'. Significant efforts were made to expand the state's opportunities in terms of criminal prosecution for cases associated with corruption of the court, including the establishment of a special court and a special authority to consider corruption-related cases (Kakeshov, 2014: 114)

In Croatia, the automated system of case management is being introduced in courts, which allows not only improving efficiency, but also obtaining the best statistical data required for monitoring performance results. Across the entire region, courts and ministries of justice have already created large-scale high-speed networks connecting courts and Internet webpages where laws, court schedules and court decisions on certain cases are published.

The leadership of Ukraine introduced official financial declaration for judges long ago – specifically, it covers real estate, the property of judges and all their closest relatives acquired over the last 10 years.

In Russia, Kazakhstan and Moldova, heads of the judicial authority primarily focus on corruption prevention as one of the critical matters to ensure anticorruption safety. The relevant law has been developed to ensure direct audio- and video-recording from the court hall (Alaukhanova, 2008: 48).

Results

The aforementioned measures for combating corruption taken in various countries as part of the judicial system are a critical component in developing the relevant recommendations for implementing the national anticorruption policy and consolidating statehood in general in Kyrgyzstan.

As we are aware, year 2020 was declared the Year of Development of Regions, Digitization and Support of Children in Kyrgyzstan. Also, in 2018, the National Strategy of the Kyrgyz Republic for 2018–2040

was approved in the framework of which 5 new codes and 2 laws were introduced in 2019. In particular, according to Cl. 3, Art. 280 of the Kyrgyz Republic Criminal Procedure Code dated February 2, 2017, 'the accused, the witness and the victim may be examined by the court using videoconference systems'. Nevertheless, this measure is not binding.

However, the state program 'Development of the KR Judicial System for 2019–2022' is being carried out in the Kyrgyz Republic Supreme Court. For the purposes of digitalization, the DPC (Data Processing Center) was introduced into the activities of the judicial system. The DPC ensures the organization of secure connection for information systems of a judicial authority with information systems of other state authorities, their integration with the Uniform Register of Crimes, the Uniform Register of Violations, bases of the State Registration Service, National Corrections Service, State Tax Service and other state authorities through Tunduk, a system of interdepartmental interaction. Also, the DPC includes central storage systems of automated information systems such as Court AIS, AIS–Register of Debtors, a system for storage and processing of statistical information of the judicial system (Kiizbaev, 2020).

Local courts in the country have AIS (Automatic Information System) installed and functioning; it is designed to automate of working procedures in courts of all instances. More than 60 first-instance courts are already connected and it is currently being introduced in second- and third-instance courts. In the Supreme Court, there is an operating module for automatic case distribution designed for the prompt distribution of cases between judges. Video records from judicial halls ensure transparency and minimization of corruption risks when judgments are handed down. This system has been installed in 80 courts of Kyrgyzstan.

Discussion

However, some judges continue to break the laws. For example, in February 2020, a judge was dismissed for driving under the influence. In March 2020, a judge from the Pervomaisky District was arrested for bribe solicitation, and so was a judge from the Kara-Suuisky District in September 2020. In October 2020, a judge from the Kara-Kul municipal court was arrested for abuse of official position. In December 2020, a Kyrgyz Republic Supreme Court judge was arrested for unlawful enrichment. This list can go on and on (Kiizbaev, 2020).

According to the Disciplinary Committee under the Council of Judges, 863 applications were submitted to them in 2020.

Where:

456 applications were returned by the decision of the Committee;

167 were denied in terms of disciplinary actions;

52 disciplinary sanctions were lifted.

It was noted that based on 50 claims considered, the following punishments were set:

warnings – 32;

comments – 11;

admonitions – 5;

early removal from office – 2;

agreement granted for criminal prosecution – 3.

Meanwhile, there is an anticorruption policy being implemented actively in our country, although the desired results in solving the problem in question have not been achieved yet. It should be understood that the age of information technologies, digitalization and automation gives the entire world, including our country, the chance to apply new methods of digitalization for combating corruption among some social groups.

As of now, such issues are relevant as complete conversion of interaction with other state authorities to electronic format, complete outfitting of judicial halls with systems of audio- and video-recording and improving court practice analysis.

As the Kyrgyz Republic Prime Minister noted: 'In 2021, all the components for digitalization must be integrated and introduced fully into operations in accordance with the relevant analytical systems. All the measures to digitalize these procedures need to be arranged promptly considering the importance of excluding corruption risks and increasing budget revenues, protecting good faith taxpayers and the

population from counterfeit goods, reducing the share of the shadow economy and expanding the range of electronic public services provided'.

Corruption is the moral decay of officials and politicians that manifests itself in unlawful enrichment, bribery, misappropriation and coalition with mafia structures (Ozhegov & Shvedova, 1997). The question is what can be done? (Mishin, 2001: 93).

Conclusion

The authors believe that for each unlawful action there is a legitimate counter-action. If a citizen of Kyrgyzstan follows the law to the letter in each instance, then it will be quite possible to get things moving.

It should be noted that the experience of Hong Kong and Singapore in combating corruption shows high results, and in this regard, the authors suggest that the following steps for combating corruption should be taken:

clear manifestations of corruption should be defined legislatively, those that people are held liable for;

the anticorruption authority should be subordinate directly to the Head of State by changing the recruitment policy: by hiring to the anticorruption authority competent employees without any corrupt clan ties to ensure independent control over the work of the anticorruption authority on the part of society, independent expert community and mass media;

special courts should be established to consider only the corruption cases where the most honest judges are elected directly by the population online to increase the openness and transparency of court proceedings and accountability of courts to the citizens;

a good level of payment with a minimal benefits package should be provided;

a mandatory standard of declaration should be introduced for a period of the last 10 years for the judges of all levels and their close family members;

the Council of Judges should shape independently the court budget to be generated and protected in the Parliament of Kyrgyzstan independently of the Government of Kyrgyzstan;

special trust phone lines and hot lines for preventing judicial corruption should be arranged;

court chairpersons should be freed from organizational and economic affairs to deal only with procedural matters. Organizational and economic, financial matters should be conducted by special judicial managers;

removal of limitations on conducting investigations regarding judges suspected of corruption crimes;

introduction of strict disciplinary responsibility (up to dismissal) for the judges' refusal to declare their property and income, for the failure to provide such data within the established deadlines, as well as for the deliberate misrepresentation of data;

a certain liability (specific) should be defined for missing deadlines for handing down a decision and presenting it to the parties;

the form of the annual report by the Supreme Court Chairperson to KR Jogorku Kenesh should be approved and published by mass media;

an annual report about its work and expenditures should be published, and judges should provide data about their property and income on the Internet;

preventive measures should constantly be taken in this area, etc.

Additionally, combating corruption requires courage, integrity, consistency, unavoidability of punishment and strict political will of the country's top leadership, since this is the only way to overcome this evil. Also, the level of corruption should be reduced: first, through stricter preventive punishment for corruption, second – which is more efficacious – through an increased level of morality by the citizens, and also through overall social and economic reform in the state. If citizens recognize that corruption is evil and no one, for example, accepts or gives bribes, then corruption will be reduced significantly soon. However, this is a difficult goal to achieve, since there will always be immoral people who will prevent this[1].

When implementing the set of the aforementioned measures, positive changes can be expected in the field of countering the crimes in question. Undoubtedly, the fight against growing corruption, particularly against court corruption, must become one of the priority areas of the anticorruption national policy in Kyrgyzstan, which we are currently observing in the actions of the country's current leadership.

[1] How Kyrgyz judges are punished – data from the Supreme Court, 2020, Sputnik, available at: https://ru.sputnik.kg/society/20200117/1046792738/kyrgyzstan-sudi-nakazaniya.html.

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DEPOSITION OF VICTIM / WITNESS TESTIMONY – A NEW INSTITUTION IN CRIMINAL PROCEDURE OF THE KYRGYZ REPUBLIC

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The paper examines the issue of victim / witness testimony, an investigative procedure introduced in the Kyrgyz Republic Criminal Procedure Code in 2019. It can be argued that this institution enables the development of the adversarial principle and the principle of equality of parties in pre-trial proceedings. The author points out that for the Criminal Procedure code of some former Soviet states, this institution is new, though it was first reflected in English law of the 19th century. The author notes the debatable nature of re-examining a victim / witness when the merits of the case are considered. In this regard, improvement in Art. 208 of the existing Kyrgyz Republic Criminal Procedure Code is suggested. Additionally, the article examines the issue of what a deposition is – an investigative procedure or an institution. The author states that deposition of testimony is an investigative procedure.

Key words: *deposition of victim / witness testimony, investigating judge, adversarial system and equality of parties, depositor, pre-trial proceedings, examination, interrogation*

Introduction

The new Kyrgyz Republic Constitution adopted in 2010 required improvement in the existing Kyrgyz Republic Criminal Procedure Code as part of the legislation.

In the framework of implementing KR Constitution provisions, with the Decree of the President of the Kyrgyz Republic 'On Measures Regarding Justice Improving in the Kyrgyz Republic' dated August 8, 2012, the 'Recommendations for Further Reforming the Judiciary of the Kyrgyz Republic' were approved where the issue of evidence deposition was covered. The new Kyrgyz Republic Constitution signed into law on May 5, 2021, required improvement in the legislation, including the Kyrgyz Republic Criminal Procedure Code.

From the perspective of the Russian language, 'deposition' means 'handing over for storage'.

Deposition (from Latin *depono – laying, storing*) means storage arrangement for something.

Deposition of testimony as a new institution is implemented in pre-trial proceedings in order to identify and secure evidentiary materials that will be later brought before the court as evidence.

Although in such countries as Georgia, Ukraine, Kazakhstan, Kyrgyzstan and Baltic countries where this institution has already been secured in the Criminal Procedure Code and considered new, as A.S. Gambaryan writes, 'that institution was essentially set forth in English law at least in the 19th century' (Gambaryan, 2018: 194).

Materials and Methods

Speaking of the current Kyrgyz Republic Criminal Procedure Code, it should be noted that Art. 205 of the KR CPC only covers the deposition of the victim / witness testimony.

Introduction of the entire deposition institution into the Kyrgyz Republic Criminal Procedure Code can be explained by the following facts.

First of all, when criminal cases are pursued, the courts face the problem of ensuring appearance by the witnesses to the court session.

We are all aware that the witnesses whose testimony is decisive for the case decision do not show up to court for various reasons. In such cases, the court postpones the examination of the case and re-sends summons to the victim and witnesses. This is not a guarantee of their next appearance though. The Kyrgyz Republic Criminal Procedure Code provides for another type of measures to ensure criminal proceedings in case of another non-appearance – attachment. However, this is arranged only when the relevant subjects do not appear in court without good reason. As a result, the terms of criminal proceedings can be prolonged for an uncertain and even lengthy period of time. This causes resentment and contradicts Cl. 2 Art. 23 of the Kyrgyz Republic Constitution, which sets forth human rights and liberties as the highest values.

Besides, the Kyrgyz Republic Criminal Procedure Code prohibits using attachment in respect to children under 14, pregnant women and ill people who cannot or shall not leave their place of residence for health reasons confirmed by a healthcare institution.

The summons to attend court and examination of victims' and witnesses' children is a psychologically traumatic and negative experience for them. In other words, while giving statements about the facts associated with the crime, they re-live the incident that causes emotional stress. All this has a negative effect on their moral and psychological condition.

Another circumstance underlying the introduction of the testimony deposition institution into the criminal proceedings is the fact that sometimes the judges face cases when the victims and witnesses examined during pre-trial proceedings do not confirm their testimony during the court session. This presents a challenge for the judges to assess the testimony of relevant subjects and does not allow them to be certain of the credibility and admissibility of the testimony received during the pre-trial proceedings to be used as evidence. These circumstances can eventually affect the legitimacy and fairness of the sentence given by the first-instance court regarding a criminal case.

Results

The International Covenant on Civil and Political Rights ratified by the Kyrgyz Republic sets forth with Cl. 3, Art. 14 that 'in the determination of any criminal charge against them, everyone shall be entitled to the following minimum guarantees, in full equality'. One these guarantees is the opportunity of the accused to examine the witnesses against him.

The current Kyrgyz Republic Criminal Procedure Code has expanded the effect of the adversarial principle and equality of the parties. Unfortunately, it should be said that the examination of a witness in pre-trial proceedings used to be dominated by prosecuting authorities (state authorities).

According to the Kyrgyz Republic Criminal Procedure Code, the defender of the accused could not examine the witness, but only move for examination. Here, this motion was not always granted. Even when a witness and victim were examined by the investigator, the accused and their defense counsel were deprived of the opportunity to examine them. An exception was made for such an investigative procedure as a face-to-face confrontation between the accused and the witness where the defender could pose questions to both the witness and the victim.

Therefore, witness and victim examination is conducted by the defense counsel in the course of judicial proceedings.

Discussion

The aforementioned proves that the examination by an investigating judge at the stage of pre-trial proceedings with the participation of the accused and their defense counsel is arranged with the introduction of the witness / victim testimony deposition. The institution of deposition of the victim / witness testimony has

been secured in many former USSR countries: Georgia, Kazakhstan, Ukraine, Moldova, etc. Introduction of this institution into the Kyrgyz Republic Criminal Procedure Code is reasonable. S.D. Shestakova and U.E. Imanalieva wrote in respect to this issue: 'The advisability and timeliness of introducing the deposition institution into the Kyrgyz Criminal Procedure Code should not go unnoticed, since it is necessary for comprehensive, full and objective examination of the circumstances of the case, rendering of legitimate and well-reasoned procedural decisions as well as for bringing the national legislation closer to the international standards of fair justice' (Shestakova & Imanalieva, 2022: 181).

Deposition of a witness and victim testimony is the examination of a witness or a victim by an investigating judge during pre-trial proceedings upon the motion by one of parties in order to ensure (preserve) judicial evidence in advance[1].

Subjects – deposition initiators – are the lawyer, the suspect, the investigator. Initiators move for the deposition of the victim / witness testimony. The executor of the deposition is always the investigating judge. A 'conserved' source of evidence is verified and assessed immediately during judicial consideration of the case. A special feature of testimony deposition is that further depositor examination is excluded. An exception is made as set forth in Part 2 of Art. 208 of the Kyrgyz Republic Criminal Procedure Code: re-examination of a victim or witness during judicial consideration is allowed in case it is necessary to refine their testimony or in case circumstances have been revealed that had gone unnoticed during the examination by the judge in the course of pre-trial proceedings.

In our opinion, this provision is problematic by nature. The law provides for permanent residence outside the Kyrgyz Republic as one of reasons for evidence deposition. In this case, an individual serving as a witness and residing outside the Kyrgyz Republic may avoid appearing in court. Additionally, the Kyrgyz Republic Criminal Procedure Code does not provide for cases of compulsory attachment under these circumstances. So, the investigating judge has to clarify all the circumstances during witness examination in the course of pre-trial proceedings.

Otherwise, we suggest that Art. 208, Part 3, should be supplemented and worded as follows: 'If a witness / victim stays or resides permanently outside the Kyrgyz Republic, admission in the pre-trial proceedings is arranged by the investigating judge online'.

A special feature of deposition of the victim / witness testimony is that depositor examination is conducted per the rules of judicial proceedings set forth in Art. 207 of the current Kyrgyz Republic Criminal Procedure Code.

It should be noted that the legislator has defined the victim / witness examination procedure during the court session as examination. Will this be an examination? To answer this question, first of all, we need to establish whether testimony deposition is an investigative procedure or an institution? To that end, the etymology of such categories as 'examination' and 'interrogation' needs to be understood. In the Russian language, 'examination' is interrogation of the accused or witness in order to identify something (circumstances of the case, crime) (Ozhegov, 2003: 223).

Interrogation is getting answers to some questions (Ozhegov, 2003: 583).

Based on the content of the two definitions, we can see that examination is procedural (judicial) by nature, while interrogation is collecting answers. Additionally, 'examination' is a broader term that embraces 'interrogation'. Therefore, an investigating judge examines a victim / witness in the course of pre-trial proceedings during evidence deposition.

From the procedural point of view, examination as a category is an investigative procedure (e.g., examination of a witness / victim during an investigation). The aforementioned allows us to state that victim / witness testimony deposition is a type of investigative procedure.

It should be noted that deposition of testimony is ensured by such guarantees as openness, participation by the parties, adversarial system and equality of the parties.

Data collection, data verification and further assessment made by an investigating judge in the process of deposition are arranged with the participation of the parties under the terms of the adversarial system and equality of the parties. Therefore, the system procedures are set to guarantee reception of relevant, credible and admissible evidence consistent with other evidence on the criminal case.

The specificity of an examination by the investigating judge implies reception and securing of the victim / witness testimony if it is reasonable to presume that further victim / witness examination might be

[1] Kyrgyz Republic Criminal Procedure Code, October 20, 2021.

required during pre-trial proceedings or during the court session. When the merits of the case are considered, it can become impossible for objective reasons. These include: a reason associated with a danger to life and health of the victim / witness; a severe disease of the victim / witness or their permanent residence outside the Kyrgyz Republic; prevention of psycho-traumatic impact on victims' / witnesses' children, witnesses.

Conclusion

Based on the aforementioned, the following conclusions can be drawn:

1) deposition of the victim / witness testimony proves the expansion of the adversarial principle and the equality principle of the parties in criminal proceedings,

2) deposition of victim / witness testimony is an investigative procedure,

3) a suggestion is made regarding improvement in Art. 208 of the current Kyrgyz Republic Criminal Procedure Code.

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Research Article

TRANSFORMATION OF PUBLIC AUTHORITIES – A WAY TO IMPROVE THEIR EFFICACIOUS PERFORMANCE

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The article reveals the relevance of the research topic taking into account the current international situation and the Russian political, legal and socio-economic reality. The objectives of the research are the need for scientific substantiation of the transformation of public authorities in order to ensure their organizational and legal unity and consistency as a condition for enhancing the effectiveness of their activities. The unfounded and flawed nature of the constitutional norm on the autonomous organization and functioning of state and local authorities is revealed. Proposals are proposed and substantiated on the need to include the principle of responsibility of heads of public authorities among other principles of responsibility. A proposal is made on the need to expand the range of subjects of legislative initiative in order to democratize the legislative process more. Logical, historical, comparative-legal, systemic and functional research methods are used.

Key words: *Constitution of the Russian Federation, public authorities, state authorities, local authorities, responsibility of officials, subjects of legislative initiative*

Introduction

In today's international context, when the collective West led by the United States openly confronts Russia and economic and political sanctions imposed on Russia are constantly reinforced, the need to improve the efficacious performance by public authorities – state and local ones – becomes more and more obvious. The solution to this problem is complicated by the multiethnic and multi-religious population of Russia, its large territory covering 11 time zones, differing backgrounds of the peoples living on its territory in terms of state legal structure.

The need for public authorities' performance enhancement is also justified by the current expansion of constitutional regulations and current statutory codes of a social nature. However, it should be kept in mind that constitutional obligations of the state in social matters, as it is correctly stated in the literature, are notable for the lesser degree of formal certainty than the obligations regarding enforcing civil and political rights and freedoms. There is a wider range of independent judgments by legislators and executive authorities the framework of which is established by the state of the economy, the unemployment level, the state of health care facilities and resources and other conditions (Ebzeev, 2016: 385). Also, it is quite obvious that to ensure fulfillment of the state's commitments not only the proper economic development of the country is required, but also the best possible organization of federal, regional and local authorities, the forms of their interaction.

Per the amendments introduced into the Russian Federation Constitution in 2020, the aforementioned authorities were unified into the definition of authorities included in the *single system of public authorities,*

which is quite logical and much needed in the context of the current political reality and weakened interaction between these authorities inevitably affecting the level of coherence, consistency and effective performance.

It should be noted that the term 'public authority' initially absent in the Constitution of the RF was first introduced by the Constitutional Court of the RF in its Order No. 17-P dated June 10, 1998. Subsequently, through a series of decisions, it conceived legal propositions that allowed speaking about the existence of such a public authority form as municipal authority along with state authority. In the Russian Federation Law 'On Amendments to Russian Federation Constitution' dated March 14, 2020, public authority is mentioned multiple times (Art. 71, 80, 131, 132) and included in the definition of the Federal Law 'On General Principles for Organizing Public Authority in Russian Federation Constituent Entities' dated December 21, 2021. However, it shall be emphasized that a lot of questions regarding public authorities arise, specifically on the public level. We will mention at least the most general and fundamental ones: whose interests does it serve? What stands behind the authority? What is the source of collective will? History has provided various answers – God, a monarch, the people (Tikhomirov, 1990: 5).

Materials and Methods

In terms of theory, one of the first works where the issues of organizing public authority are considered in a comprehensive manner is a famous collective monograph (Avakyan, 2014), where S.A. Avakyan, a constitutional scholar, quite reasonably assumes that 'public authority is represented by three organizational forms: a) state authority; b) public authority; c) authority of the local self-government. Registering the public authority as a separate form of authority is quite logical and can be argued by the fact that 'society still has a right to both independent 'being' and some influence on the state' that is difficult to argue with. Meanwhile, the subject of this research is the issues of state and local authorities as major forms of public authority. As V.E. Chirkin rightfully notes, having gained state authority, a sociopolitical stratum of society strives to change living conditions using this power – primarily for its own benefit. Yet, any sociopolitical stratum takes some measures to improve living conditions of the society in general, other strata as well. This is what its well-being and time in power depend on as well (Chirkin, 2013: 204).

Any forms of authority can be effective only when they have to rely on anything but force, and when they are legitimate, they demonstrate the greatest concern about members of society creating proper living conditions for them. It is the society itself that should compel the authority to do so, since it is the society that eventually defines its meaning and essence. Any attempts at seizing public power, bypassing the existing laws are illegal and may not receive any social support. As it was claimed long ago, 'whoever gets into the exercise of any part of power by other ways than what the laws of the community have prescribed hath no right to be obeyed... since he is not the person the laws have appointed, and, consequently, not the person the people have consented to' (Locke, 1988: 377).

Results

Thus, the following conclusion can be drawn: the more the authority relies on the laws, the closer it is to the people, and, therefore, the more legitimate it is. As the authors of the collective monograph note, out of three types of legitimate authority (or domination), it is an intricate symbiosis of elements of rational-legal, traditional imperial and charismatic dominance that is typical for the Russian constitutional system (Karasev, 2019). This can be indicated by the presidential election of Yeltsin in 1996. In our opinion, this is an objective reflection of the Russian reality when it is impossible to opt for any one type of legitimate authority exclusively.

When authority turns into intrinsic value, as this happened several times over the course of history, in our country as well, society will revolt against it sooner or later. Examples are near at hand. Our contemporary history is the evidence. Unfortunately, per the old Russian tradition, while fighting against the totalitarian authority of the Soviet times (which is not similar to a strong state authority!) we have rushed from one extreme to another. Many have turned their hatred to the old system into displeasure with the state. The pseudo-democrats have been particularly successful in this matter, since they have managed to shatter and weaken the state authority to the point where it is practically helpless.

Discussion

In their time, American and Western 'well-wishers' persuaded our newbie reformers (which was an easy thing to do considering their low level of professionalism and a lack of practical experience) that to democratize the country it was necessary to break the unified vertical power structure, so that local self-governing bodies could solve the issues of the local significance themselves without any pressure from above. And they actually managed to push through that provocative idea aimed at destroying the unified Russian authority on the level of constitutional legislation. Thus, Art. 12 of the Russian Federation Constitution secured the provision that 'local self-governing bodies are not included in the system of state bodies.' Commenting on this constitutional code, some authors wrote exciting things about demonstrating complete separation from the principle of 'democratic centralism' that made local soviets so-called 'agents' of a super-centralized state at the local level, the basis for the hierarchical pyramid of a unified state authority (Topornin, Baturin & Orekhov 1994: 103). However, the absurdity of that provision was obvious for all sober-minded and unprejudiced specialists, since the state authority was stripped of its footing, foundation – the local authority, and the latter was left without the relevant support of the state authority, which is the issue we have covered in our papers multiple times (Tsaliev, 2018) and where we were supported by some specialists and practitioners.

According to A. Tyazhlov, former Head of the Administration of the Moscow Region, this Federal Law was written and adopted at the request of the International Monetary Fund to destroy the system of government. For information purposes, it should be noted that there is a large department dealing with local self-government issues in the International Bank of Reconstruction and Development, and the Council of Europe that we joined, making a condition for Russia from the very start: to reform local self-government based on the 'Law On Local Self-Government', and which we were advised to adopt as soon as possible – in spite of the fact that we did not have our own experience in developing such legislation and practice of its application. I.V. Vasiliev, a well-known specialist in the field of local self-government, rightly notes: 'Striving to return to the civilized path of social life, the new Russian leadership made a strategic mistake in declaring the development of the institution of local self-government a goal for the nearest future, almost to the present day. The experience of foreign states was never taken into account despite all the irrevocable confirmations of the need for the gradual adoption of local self-government and for the involvement of the state in this process. Certainly, history has many sides, and many cases can be found where a state was built based on self-government structures, from below, so to speak. But such an experience was not for us. We build local self-government from above, and those historical examples of the conditions similar to ours are useful' (Vasilev, 2004).

However, we ignored the Russian historical experience of interaction between state and local bodies and to avoid it completely, the authors of the Russian Federation Constitution secured the provision that 'local self-governing bodies are not included in the system of state bodies' in Art. 12, Chapter 1 – Fundamentals of the constitutional system. And this is while the local self-government in the United States and many other countries, including European, were not separated from the state authority system. According to T. Dye, 'local self-government isn't mentioned in US Constitution... from a constitutional point of view, local government forms a part of the state authority' (Dye, 1973: 230) and it is directly subordinate to the bodies of state authority.

Meanwhile, advisors from the United States and Western countries literally imposed on us the idea of establishing autonomous local authorities and their independent functioning. And those authorities even believed that, and they acquired special ambitions about their status. In practice, independent forms of their activities imposed on us from the outside on the legislative level resulted in almost strange incidents. Thus, after yet another set of American sanctions, deputies from the Digora Settlement District (Republic of North Ossetia–Alania) delivered an indignant decision: *'To deny the entry of the President of the United States Barack Obama into the territory of the Digora District'.*

Our amusement aside, folk wisdom often proves the foolishness of the legislation, in this case – the disruption in state and local authorities secured in the previous constitutional legislation despite the common sense and historical experience of the Soviet period, when the bodies used to interact and to arrange their work based on the principle of democratic centralism. It was set forth in Art. 3 of the USSR Constitution of 1977, RSFSR Constitution of 1978 and meant the electivity of all the state authorities from the bottom

upwards; accountability of these bodies to the people; the binding nature of decisions by superior bodies for inferior ones; the combination of unified leadership with initiative and creative activities on the local level; responsibility of every state authority and every official for their entrusted work. Such a principle seems to correspond essentially to the democratic principles of organizing authority and the forms of its execution. It largely serves as the basis for establishing and functioning of authorities in democratic states as well. However, since public authorities of the Soviet State had functioned on its basis as well, it became subject to intentional, unreasonable and cynical criticism by the liberal democrats. RSFSR Supreme Soviet deputies fell for it as well and in April 1992, they excluded it from the Russian Constitution for no good reason.

We assume that the aforementioned principle of government and functioning of authorities is quite justified, since it combines the way authorities are elected by the people as the source of power and the vertical hierarchy of public authorities, so it cannot be rejected as a vestige of the Soviet past. In this regard, we would like to recall the opinions of President of Russia V.V. Putin that 'innovations are not about denying the past, but about its development'; 'we will inevitably turn to the experience of the national constitutional legislation to work out recommendations for building a legal state'. Still, in the Yeltsin's times, everything Soviet was rejected as the vestiges of the past, and the provision on the division of public authorities into state and local ones was secured as an innovation provided that the local authority would function almost autonomously, which resulted in weakening of the entire authority of the Russian Federation.

Recognizing the goals and objectives of the American and Western political and oligarchical elite allegedly concerned with the 'democratization' of our state and its government institutions, President of the Russian Federation V.V. Putin has made significant efforts in recent years in order to strengthen and enhance the performance of authorities for our country to reach the required rates of stable social and economic development and to ensure an adequate standard of living for its citizens. Undoubtedly, a lot has been done to that end, and the most prominent evidence is our successes in the military-industrial complex, international politics, the fight against the coronavirus and another quite dangerous social disease – terrorism. Still, the time has long since come to ensure the best possible organization of the very system of government. Today's efforts on organizing a unified public authority on federal, regional and local levels cannot be perceived as anything else. This is indicated by the proposals made by President V.V. Putin in 2020 for amendments to the Russian Federation Constitution regarding legislative and organizational and practical unification of state and local authorities in the framework of unified *public authority*.

As was rightly noted in the Opinion of the Constitutional Court of the Russian Federation dated March 16, 2020, 'The principle of unity in the public authority system suggests well-coordinated actions of various tiers of authority as a cohesive whole for the benefit of citizens'. It is set forth in Cl. 2, Art. 1 of the aforementioned Federal Law that for the implementation of this principle 'The President of the Russian Federation ensures well-coordinated functioning and interaction of bodies included in the uniform system of public authority in the Russian Federation'. Thus, on the one hand, all the public authorities report to the President of the Russian Federation, which increases his personal responsibility for the state of affairs in the society and state, and, on the other hand, the President receives supreme powers of authority regarding solution to foreign and domestic policy issues of Russia. As for the last aspect, according to the updated Russian Federation Constitution, the powers of the President of the RF have been broadened when it comes to solving organizational and personnel issues. First of all, this is about judicial and prosecutorial authority. Thus, in accordance with new amendments to the Constitution of the RF, the President of Russia presents to the Federation Council not only candidates for positions of judges of Constitutional and Supreme Courts, but candidates for positions of their heads – Chairpersons and their Deputies. Also, according to Cl. 3, Art. 83 of the updated Russian Federation Constitution, he is entitled to terminate the powers of the aforementioned officials.

As for the RF Prosecutor's Office, it should be noted that now its powers are set forth directly in Art. 129 of the Russian Federation Constitution, which is indicative of the significance of this government body and its functions in the government system. Consequently, the powers of the President of the RF regarding heads of the Russian Prosecutor's Office have been expanded as well. Now, they can be relieved of office by the President of the Russian Federation without any consultation with the Federation Council that is required when they are assigned to their positions.

Considering the status of the RF Prosecutor's Office, the requirements for prosecutors of the Russian Federation are higher as well. Thus, according to Part 2, Art. 129 of the Russian Federation Constitution, such a position can be taken by 'Russian Federation citizens who do not have citizenship of a foreign state or residence permit or other document certifying the right of a Russian Federation citizen to permanent residence on the territory of the foreign state. According to the procedure established by Federal Law, the prosecutors may not open and have accounts (deposits), store cash money and valuables in foreign banks located beyond the borders of the Russian Federation'.

One of prerequisites for efficacious performance by public authorities is the responsibility of officials and government agencies for the assigned matter. This issue is described quite thoroughly in the aforementioned Federal Law. Thus, basic powers of a senior government official in a Russian Federation constituent entity, in accordance with Art. 25, provide for the following rights: to issue a warning, to give a reprimand to the head of the municipal entity, the head of the local administration for a failure to properly fulfill their duties on ensuring that local self-government bodies exercise certain state powers delegated to the local self-government bodies by the federal laws and/or laws of the Russian Federation constituent entity; to remove the head of the municipal entity, the head of the local administration from office in the cases stipulated by law; to appeal to the representative body of the municipal entity with an initiative on the dismissal of the head of the municipal entity in some cases, including the systematic failure to reach the indicators required for assessing the efficacious performance of the local self-government bodies according to the procedure established by Federal Law 'On General Principles for Organizing Local Self-Government'.

Along with the powers of a senior government official from the Russian Federation constituent entity, Art. 29 of the Federal Law provides for liabilities as well. In particular, the President of the Russian Federation has the right to issue a warning, to give a reprimand to the senior government official from the Russian Federation constituent entity for the failure to properly fulfill their duties. The President of the Russian Federation also has a right to remove a senior government official of the Russian Federation constituent entity from office: due to a loss of confidence by the President of the Russian Federation; due to distrust expressed to them by a legislative body of the Russian Federation constituent entity; in case of non-compliance with a decision of the Russian Federation Constitutional Court, etc. It is even more surprising then that *none* of the 13 principles for the performance of the bodies included in the unified system of public authority in the constituent entity of the Russian Federation set forth in Art. 2 of the aforementioned Federal Law No. 414-FZ, *provides for responsibility for any violations of law, missteps and shortcomings in their performance*, although these are described in detail in the relevant articles of the law. It is quite obvious that it needs to be secured among the aforementioned principles. The more so, since responsibility, particularly its special legal forms, is a major prerequisite for the efficacious fulfillment of functions by the public authorities. Otherwise, they would not have been granted the relevant authority and liabilities.

To improve the efficacious performance of public authorities it is also necessary to define their objectives clearly in order to establish the number and types of the aforementioned authorities. All this will allow establishing the required scope and balance of powers for each authority, so that they could solve their institutional tasks. Currently, in accordance with Part 2, Art. 4 of the Federal Law, the system of state authorities in any Russian Federation constituent entity includes: the legislative body of the Russian Federation constituent entity, the senior government official of the Russian Federation constituent entity, the supreme executive body of the Russian Federation constituent entity, other state authorities of the Russian Federation constituent entity established in accordance with the constitution (charter) of the Russian Federation constituent entity. It should be noted that per the aforementioned Federal Law, a human-rights ombudsman of the Russian Federation constituent entity, a children's rights ombudsman of the Russian Federation constituent entity and a control and accounts body of the Russian Federation constituent entity supervising regional budget execution also qualify as other state authorities of the Russian Federation constituent entity. In the past, other state authorities of the Russian Federation constituent entities included constitutional (charter) courts, but they have currently been eliminated per the Federal Constitutional Law 'On Introducing Amendments to Certain Federal Constitutional Laws' dated December 8, 2020. In our opinion, the decision about eliminating the constitutional (charter) courts in Russian Federation constituent entities was made as a result of departmental and subjective interests in spite of the need for those courts in the society, which was noted several times in the press and at various

forums, as well as at the All-Russian Congress of Judges. Thus, it is noted in the Decree of the 8th All-Russian Congress of Judges 'On the Status of the Judiciary of the Russian Federation and Major Areas of Its Development in 2012–2016' dated December 17, 2016, that 'constitutional (charter) courts of Russian Federation constituent entities are undeservingly left unnoticed, although they serve as an extra guarantee for citizens' rights, including the right to judicial defense'. Elimination of constitutional (charter) courts hardly enables enhanced performance by state authorities. It was these courts that could be created by a Russian Federation constituent entity in accordance with Part 1, Art. 27 of the Federal Constitutional Law 'On the Judiciary of the Russian Federation' to consider the issues of conformity of laws of Russian Federation constituent entities, regulatory legal acts, state authorities of the Russian Federation constituent entity and local self-government bodies of the Russian Federation constituent entity with the constitution (charter) of the Russian Federation constituent entity as well as with the interpretation of the Russian Federation Constitution (Charter). The aforementioned issues are inherent to the nature of performance of any state authorities and they cannot be resolved once and forever. Authors and executors of the idea of elimination of regional justice understand this clearly, so instead of the constitutional (charter) court of the Russian Federation, they suggested establishing a Constitutional Council under a legislative body of the RF constituent entity, although its status and essence do not allow resolving the aforementioned issues of constitutional justice, because no one can guarantee the necessary validity of the laws and regulatory legal acts adopted in Russian Federation constituent entities that will not enable the efficacious performance of state authorities, legitimacy and construction of a law-governed state the critical principle of which is the division of the state authority into legislative, executive and judicial branches as set forth in Art. 10 of the Russian Federation Constitution. This principle of performance of the bodies included in the unified system of public authorities is also set forth in the Federal Law 'On General Principles for Organizing Public Authority in Russian Federation Constituent Entities' dated December 21, 2021.

Also, it should be noted that Part 2, Art. 11 of the Russian Federation Constitution states 'that state authority in Russian Federation constituent entities is exercised by state authorities established by these entities'. However, both this article and the previous article of the Russian Federation Constitution contradict the decision about eliminating constitutional (charter) courts of Russian Federation constituent entities as well as assigning peace justices to the federal level, although the name 'courts of Russian Federation constituent entities' remains. Loss by a Russian Federation constituent entity of almost all judicial authority not only contradicts Art. 10 and 11 of the Russian Federation Constitution and the Federal Law 'On General Principles for Organizing Public Authority in Russian Federation Constituent Entities' dated December 21, 2021, but also goes against the efficacious and legitimate performance by state authorities of Russian Federation constituent entities.

To enhance the performance of state authorities in Russian Federation constituent entities, the legislative process of the current regional practice needs to be improved and it is suggested that a prosecutor from the Russian Federation constituent entity be included in the list of subjects of the legislative initiative within the framework of this Federal Law. The Parliament of the Republic of North Ossetia – Alania has been ahead of the Federal Law in this regard for longer than ten years. Back in 2010, the aforementioned suggestion was secured in Art. 76 of the Constitution of the Republic of North Ossetia – Alania. We believe that the number of subjects in the legislative initiative should be expanded further. Thus, in accordance with Art. 5 of the Constitution of Ossetia dated 1918, legislative proposals for approval by the National Congress of the Ossetian people could be introduced not only by the Ossetian National Council, but by individual citizens as well as various institutions, after their preliminary consideration by the Ossetian National Council and its positive assessment. Unfortunately, the current Constitution of the Republic of North Ossetia – Alania as well as the main laws of the RF constituent entities do not consider citizens and their associations to be subjects of a legislative initiative.

In the Soviet period, in accordance with the Russian Constitution, constitutions (charters) of the Russian Federation constituent entities, the right to legislative initiative was also granted to non-governmental organizations. Currently, while the Russian Federation and its constituent entities, republics in particular, are called democratic states in their major laws, non-governmental organizations are deprived of a right to legislative initiative. It is quite obvious that in no way is this consistent with the process of democratization of public life, a constitutional provision claiming the people as the source of power.

Conclusion

Considering the aforementioned, it is suggested that the range of subjects of the legislative initiative should be expanded. This is quite consistent with the indicated recently adopted Federal Law. In accordance with Part 2, Art. 10 of this Law, Russian Federation constituent entities are given the opportunity to provide for the right for a legislative initiative in their constitution (charter) for other bodies, organizations, senators of the Russian Federation – representatives of legislative and executive authorities of this Russian Federation constituent entity and other officials, as well as for citizens living on the territory of this Russian Federation constituent entity. This provision is not imperative, but rather declarative by nature, so it cannot be used by all Russian Federation constituent entities. In my opinion, this leads to the violation of a critical constitutional provision about everyone's equality before the law and the court, regardless of their place of residence, social status, etc. However, the legislative trend towards broadening the range of legislative initiative subjects is obvious. Undoubtedly, this will enable the expansion of democratic procedures in the legislative process, greater involvement by citizens in the management of state affairs and establishment of institutions of civil society.

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Reviews and Comments

EURASIAN COURT JURISDICTION – A NATURAL STEP TOWARD IMPROVING THE PROCEDURES FOR CONTESTING EURASIAN PATENTS

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This paper includes a brief review of the systems for contesting decisions made by the Eurasian Patent Office regarding the issue of Eurasian patents for inventions – systems for administrative annulment of Eurasian patents for inventions and systems for invalidation of Eurasian patents for inventions by competent bodies of the Eurasian Patent Organization member states.

Based on the analysis of the two systems conducted by the author, the conclusion is drawn that it is reasonable to create a uniform regional court jurisdiction under which an efficient mechanism will be generated to appeal the decisions about issue or refusal of Eurasian patents approved by the Eurasian Patent Office, the body of the international inter-governmental organization.

Also, based on the statistics provided in the paper, the high quality of Eurasian patents for inventions issued by the Eurasian Patent Office as a result of carrying out a patent search across the global patent pool and an expert examination of Eurasian patent applications is summarized. A conclusion can be made about the need for the Eurasian Patent Office to participate in considering disputes associated with protectability of inventions protected based on the Eurasian patents that are contested in member states of the Eurasian Patent Convention. The goal of this participation will be to provide assistance to the patent owners in terms of protecting their interests regarding Eurasian patents for inventions.

Key words: *Eurasian patent, Eurasian court jurisdiction, Eurasian Patent Office, invention, appeal*

Introduction

The key task the entire intellectual property systems works on is to activate the civil circulation of the rights for results of intellectual activity.

And it is regional mechanisms for granting the rights to the results of intellectual activity, their consequent protection, including cases when the issued titles of protection are challenged by the third parties, that are critical here, particularly in the context of the common market that is currently being established within the Eurasian Economic Union.

Speaking about regional mechanisms of granting the rights to the results of intellectual activity, such an efficient mechanism was created on the territory of the Eurasian region more than twenty-five years ago based on the Eurasian Patent Convention signed in Moscow on September 9, 1994. It also embraces a mechanism for contesting decisions by the Eurasian Patent Office, which receives and considers applications for issuing Eurasian patents for inventions valid only given that there is a positive decision based on the examination results on the territory of the eight member states of the aforementioned international treaty. This paper covers their brief summary.

Discussion

It should be noted that nowadays, two systems for contesting decisions made by the Eurasian Patent Office regarding the issue of Eurasian patents for inventions are functioning: there is the system for administrative annulment of Eurasian patents and the system for invalidation of Eurasian patents on the territory of the Eurasian Patent Convention member states. The legal foundation for their existence was laid in Articles 13(1) and 19 of the European Patent Convention.

The differences between the two systems are fundamental. They manifest themselves in the bodies that adjudicate disputes regarding the protectability of inventions, in the terms during which the right for a dispute of the issued Eurasian patent can be exercised, in the applicable procedural norms, and in the legal position of a Eurasian patent in case the objection to its validity is satisfied.

In the framework of the administrative annulment procedure, a Eurasian patent for invention may be annulled in a centralized manner in all the Eurasian Patent Convention member states. To that end, an objection against issuing a Eurasian patent should be filed in the Eurasian Patent Office. The term for filing is within six months after the date when the information about the issuing the Eurasian patent was published.

Meanwhile, the norms secured in Rule 53 of the Patent Regulations under the Eurasian Patent Convention shall be considered applicable. Undoubtedly, this is a convenient system. Its main flaw in terms of protecting patent owners' rights is that the decision of the Eurasian Patent Office made based on the results of the objection consideration can be challenged only by filing an appeal with the Eurasian Patent Office itself. However, the decision made as a result of the appeal reviewed comes into force from the date it is approved by the President of the Eurasian Patent Office and it is not subject to challenge.

Within the procedure for invalidating a Eurasian patent, a Eurasian patent may be deemed invalid only on the territory of a specific state based on the results of the relevant objection considered by a competent body. The objection can be filed within the entire period of validity of a Eurasian patent, though according to Rule 54(1) of the Patent Regulations under the Eurasian Patent Convention, the norms secured in the national legislation of the relevant state, including the norms that give the right to appeal decisions made by the competent bodies judicially shall be considered applicable procedural standards.

The main drawback of this procedure is its intricacy: to contest the validity of a Eurasian patent on the territory of each Eurasian Patent Convention member state where it is in force and, therefore, to protect the rights for the patent during the dispute, one needs to appeal to the relevant competent body of each member state with an objection (application) and to undergo the procedure established by national legislation. However, a competent national body can overturn a decision by the supranational body the patent has been issued by – to deem the patent invalid or to keep its validation with an amended invention claim.

It should be said that in this case, there is no more talk about further uniformity of the Eurasian patent for an invention in terms of both its validation and the extent of protection it ensures.

The procedure for contesting decisions by the Eurasian Patent Office described above has existed for more than twenty-five years. However, the record shows the need for its further improvement, at least by establishing a uniform regional court jurisdiction within which an effective mechanism will be created to appeal the decisions made by the regional office.

It is worth emphasizing that a Eurasian patent is a patent of real validity issued based on a patent search across the global patent pool and an expert examination of Eurasian patent applications. However, in accordance with Article 15(7) of the Eurasian Patent Convention, a decision about issue or refusal of Eurasian patent shall be made by a panel of three experts who are citizens of different Eurasian Patent Convention member states. And they should be the best experts sent for work in the Eurasian Patent Office by Eurasian Patent Organization member states.

The high quality of Eurasian patents for inventions is confirmed by the statistics of applications for dispute.

As for the procedure of administrative annulment, on the average, only 0.1 % of all the Eurasian patents issued during a year are contested with an objection filed in the Eurasian Patent Office. For example, in 2021, only three objections against issuing Eurasian patents for inventions were filed in the Eurasian Patent Office. Over the first five months of 2022, only one objection was filed per the procedure of administrative annulment.

Eurasian patents for inventions are contested a bit more often in certain Eurasian Patent Convention member states, but not by much. In 2021, nine Eurasian patents were contested. Over the first five months of 2022, proceedings against three Eurasian patents were initiated.

In the period since 2017 till the present day, seventy-six objections (applications) against issuing Eurasian patents for inventions have been filed in Eurasian Patent Convention member states. Meanwhile, forty-five Eurasian patents were contested.

Eurasian patents are contested most actively on the territory of the Russian Federation. During the specified period, sixty-one objections (applications) against issuing a Eurasian have been filed in Russia. Eurasian patents are contested a bit less often on the territory of the Republic of Belarus and the Republic of Kazakhstan (in the period since 2017 to the present day, eight objections (applications) have been filed in each country).

In the Kyrgyz Republic, during the entire period of functioning of the Eurasian patent system, only one case over the dispute of a Eurasian patent for an invention has been initiated. As for other Eurasian Patent Organization member states, debates regarding protectability of the inventions protected with Eurasian patents have never arisen.

Out of forty-five Eurasian patents contested in the period since 2017 to the present day, sixteen Eurasian patents have remained valid, twenty-one Eurasian patents have been considered completely invalid, three Eurasian patents have been considered partially invalid. Five cases over Eurasian patents are currently under consideration by competent bodies (one case is in the Republic of Belarus, one – in the Republic of Kazakhstan, three – in the Russian Federation).

The analysis of practical consideration for objections resulting in invalidation of Eurasian patents by competent bodies of the Eurasian Patent Convention member states indicates the need for participation of the Eurasian Patent Office experts in considering these objections.

The reason is simple – a Eurasian patent is issued based on the regional legal norms, not national ones. Therefore, a dispute about invalidation of a Eurasian patent should be settled based on the substantive rules of the Eurasian patent law, and their application should be justified from a methodological point of view. There should not be different approaches to interpreting and applying regional legal rules on the territory of certain Eurasian Patent Convention member states.

Particular attention should be paid to these disputes in such a sensitive area as pharmaceutics. The dispute about Eurasian Patent No. 031260 for 'A Treatment for Arthritis-Caused Conditions' adjudicated on the territory of the Republic of Belarus can be cited as an example here. This Eurasian patent was deemed invalid under the pre-trial procedure in the Republic of Belarus, and currently the relevant decision by the Board of Appeals of the National Center of Intellectual Property is being appealed by the patent owner in the Supreme Court of the Republic of Belarus.

It should be noted that during the entire period of its existence, the Eurasian Patent Office as a body of the international inter-governmental organization has always adhered to the position of monitoring without direct interference into the proceedings over deeming invalid the Eurasian patents it has issued. The same position has been supported by the provisions of the national legislation of the Eurasian Patent Convention member states that do not require mandatory participation by the Eurasian Patent Office in the disputes adjudicated under the pre-trial procedure while providing judicial immunity to the Eurasian Patent Organization for the disputes adjudicated through judicial procedures.

A dispute about the application by PSK Farma Limited Liability Company regarding the refusal to extend the period of validity of Eurasian Patent No. 007251 for the invention '3-{(3R,4R)-4-methyl-3-[methyl-(7H-pyrrol[2,3-d]pyrimidine-4-yl)amino]piperidine-1-yl}-3-oxopropionitrile and its pharmaceutically acceptable salts' on the territory of the Russian Federation.

The essence of the dispute is as follows. The plaintiff considered extension of the period of validity of the indicated Eurasian patent by the Eurasian Patent Office illegal, since the validity period extension also covered the invention that went beyond the framework of the permit for application of the product protected by the patent issued by the authorized body of the Russian Federation. Without filing their own complaint regarding the dispute issue, the third party filed a request to terminate the proceedings on the case due to the lack of jurisdiction of the court for the dispute. According to them, the case was to be considered not by the court, but by the Eurasian Patent Office based on Rules 16(7) and 16(8) of the Patent Regulations under the Eurasian Patent Convention.

It should be noted that this dispute was adjudicated twice by the judicial panel of the Intellectual Property Court of original jurisdiction. For the first time, on May 26, 2021, the judicial panel of the Intellectual Property Court ruled the termination of the proceedings on the case, since the filed claim was not subject to consideration by the court according to the aforementioned rules of the Patent Regulations under the Eurasian Patent Convention. For the second time, on May 20, 2022, it adjudicated to reject the

claim by the plaintiff and to deem the previously made decision of the Eurasian Patent Office regarding extending the validity period of Eurasian Patent No. 007251 justified and legitimate.

Second trial for case No. SIP-1030/2020 by the panel of the Intellectual Property Court of original jurisdiction was determined by the decision made by the Intellectual Property Court Presidium as a result of considering the cassation appeal against the aforementioned ruling of the Intellectual Property Court regarding terminating the proceedings on the case.

In the judgment on the case dated November 22, 2021, the Intellectual Property Court Presidium, based on the provisions of Article 79 of the Constitution of the Russian Federation, noted that disputes of that category fell within the jurisdiction of the judicial authority of the Russian Federation. This position was based on the constitutional norm that did not allow executing the decisions of inter-governmental bodies within the Russian Federation made based on provisions of international treaties of the Russian Federation if interpreted in a way that contradicted the RF Constitution. As for the case in question, the Intellectual Property Court noticed a contradiction between the provisions of Rules 16(7) and 16(8) of the Patent Regulations under the Eurasian Patent Convention that provide for the administrative procedure exclusively to challenge the decision of the Eurasian Patent Office regarding extending the validity period of a Eurasian patent and Article 46 of the Constitution of the Russian Federation that guarantees judicial protection of everyone's rights and freedoms.

Aside from the aforementioned conclusion that had predetermined re-consideration of the dispute regarding Eurasian patent No. 007251 in the Intellectual Property Court of original jurisdiction, the Decree of the Presidium of the specified Court stated the conclusion that seemed no less interesting in the context of this review. The Intellectual Property Court summarized that the European Patent Organization, in accordance with cl. 7, Art. 2 of the Eurasian Patent Convention and Part 1 of Art. 251 of the Arbitration Procedural Code of the Russian Federation has judicial immunity as an international inter-governmental organization. Therefore, it may not act as a defendant or a third party in any cases associated with validity of Eurasian patents as well as with extension of their validity period.

Conclusion

Despite the conclusion provided as an example, substantiated by the legal norms and specified in the Decree of the Intellectual Property Court Presidium with regard to case No. SIP-1030/2020 dated November 22, 2021, the following is worth noting in conclusion.

Recent disputes regarding the issues of protectability of inventions protected based on Eurasian patents that had been adjudicated on the territory of the Eurasian Patent Convention member states, have shown the need for the Eurasian Patent Office to participate in their consideration. However, the Eurasian Patent Office operates on the premise of the need for active protection of the decisions it makes and for advocacy of patent owners. Therefore, it does not consider its involvement in the proceedings initiated to settle the aforementioned cases as a violation of its rights as a body of an international inter-governmental organization.

Besides, currently, the objective need for harmonizing practical application of the norms of Eurasian patent law (in particular, the norms that define protectability of inventions) by administrative and judicial bodies of the Eurasian Patent Convention state members has become urgent. It is assumed that this issue can be resolved only if the disputes regarding inventions and other item of commercial property protected based on the norms of regional law are handed over to be considered by one and the same supranational judicial authority, i.e., by creating a uniform regional court jurisdiction.

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