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Dear readers,

I would like to present for your attention the second regular issue of the journal “Kazan University Law Review” in 2020.

The issue you are holding now has articles on vital questions of theory and practice of Russian and foreign law.

The issue starts with the article by Lecturer of the Institute of Human Resource Advancement of the University of Colombo Karawita Arachchige Akalanka Nuwan Thilakarathna «The Paradox of Diplomatic Immunity: A Comparative Approach with Practices from Sri Lanka, South Africa and India». In this article explores the historical development of the diplomatic immunity, the chronological order of the history of the Vienna Convention and its key provisions, the actual state practices, the instance of abuse, and possible reforms suggested in mitigating the abuse.

The issue is continued by the article of our colleague from Kazan, Doctor of Legal Sciences, Associate Professor, Dean of the Faculty of Law of the Kazan Federal University Liliya Bakulina, titled «Doctrinal characteristic of the theory of the contractual legal regulation». The author argues that the general theory of contractual legal regulation is defined as a system of theoretical views and initial scientific provisions, expressed in the categorical and conceptual apparatus of the general theory of law, which makes it possible to reveal the essence and content, functions and forms of manifestation, levels and types of impact on social relations using contractual regulatory means.

I am very pleased to introduce the research of Sergey Kurochkin, Candidate of Legal Sciences, Associate Professor of the Department of theory of State and Law of the Ural State Law University: «Goals of Civil Litigation: Finding of a Common Understanding to Ensure Litigation Efficiency». The article presents an analysis of existing views on the goals of civil proceedings, including based on methods of Law and economics; an attempt is made to synthesize a common understanding of the goals of civil litigation, which allows to give an objective assessment of its effectiveness. The main goal of civil litigation is considered the effective protection of the rights and legitimate interests of participants in legal relations, correlated with the actual results achieved and the costs of court proceedings.

The “Commentaries” section has interesting article by researcher from Krasnodar: Larisa Schennikova, Doctor of Legal Sciences, Professor, Head of the Department of Civil Law of the Kuban State University, titled «Theoretical basis of the social direction of civil legal regulation». The author dwells on the analysis of the norms of the constitutions of several dozen countries of the world in order to create a collective image of a modern social state. Taking into account the experience of social policy of the leading countries of the world, the author was able to draw the necessary conclusions, which are important to consider when targeting the modernization of civil law norms. In conclusion, the author notes that the goal of the sectoral civil legislation is to create a socially oriented economy, which implies equal opportunities for participants in civil life and allows for the welfare of individuals. The importance of giving a social function to the right of ownership is proved, the content of which must be ensured by the totality of property law norms.

The practical section of the current issue “Conference Reviews” concludes with the material of our colleagues from Kazan on the events, which was held at the Faculty of Law of the Kazan Federal University in the spring of 2020.

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

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ARTICLES

**KARAWITA ARACHCHIGE
AKALANKA NUWAN
THILAKARATHNA**

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Resource Advancement of the
University of Colombo

THE PARADOX OF DIPLOMATIC IMMUNITY: A COMPARATIVE APPROACH WITH PRACTICES FROM SRI LANKA, SOUTH AFRICA AND INDIA

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Abstract: There is a sharp distinction between the rationale for granting diplomatic immunity and the practices of abuse. These practices are not even remotely connected with the uplifting of the undermining rationale of granting diplomatic immunities. Immunities should be granted based on a functional necessity instead of the personal advantageous sought and gained through the process. While many countries have both signed and ratified the Vienna Convention on Diplomatic Relations of 1961, which is seen as an incorporation of the, then existed customary laws on the subject, there are some grey areas which have been continuously abused. The immunity granted for the diplomatic mission and for the diplomatic bag has been the most abused immunity found in the contemporary practices. While there has been suggested reforms that range from isolating abusive countries to creating a fund to compensate victims, at the practical level none of these solutions have worked and some have not even been tried out. While there are instances of abuse, no country has ever doubted the importance of the Vienna Convention on the subject and many are trying to lessen the abuse of diplomatic immunities. This article explores the historical development of the diplomatic immunity, the

chronological order of the history of the Vienna Convention and its key provisions, the actual state practices, the instance of abuse, and possible reforms suggested in mitigating the abuse.

Keywords: Diplomatic Immunity, Sri Lanka, South Africa, India, Vienna Convention.

Introduction

Satow¹, a leading figure on the literature of diplomacy practice defines diplomacy as «the application of intelligence and tact to the conduct of official relations between the governments of independent states, extending sometimes also to their relations with dependent territories, and between governments and international institutions; or, more briefly, the conduct of business between states by peaceful mean». While there is some confusion as to whether foreign policy and diplomats (or diplomacy) are synonymous, it has to be mentioned that, diplomacy is one of the main tactics used in foreign policy and that the two terms are not synonymous to one another. Laws and principles related to diplomacy go back thousands of years and are influenced from a broad spectrum of cultures and customs. The formal sending of envoys as representatives of nation states may be traced back to the practice of the Greek cities. The instances of breach of the rule were rare and seem to have always been followed by terrible reprisals. For instance, the outrage committed at Athens and Sparta on the Persian envoys of Darius where two Spartan nobles offered their lives in expiation to Xerxes².

Denza³ observes that, diplomacy was the means that was used to reach the ends of peace and harmony between states during times of turmoil where the diplomats acted on behalf of their respective states to put an end to the ongoing tensions by a way of negotiation and good office. The diplomats were considered to be sacrosanct, and by the time of the Congress of Westphalia in 1648, permanent legations were accepted as the normal way of conducting international business among sovereign states. Over the next century detailed rules emerged in relation to the immunity of ambassadors and their accompanying families and staff from civil as well as criminal proceedings. These rules included the inviolability of their embassy premises and their exemption from customs duties and taxes. Some rules of customary international law were described in detail by early writers such as Grotius (1625), Bynkershoek (1721) and Vattel (1758).

¹ *Ivor Roberts*. Satow's Diplomatic Practice (6th edn, OUP 2013). P. 1.

² *Eileen Young*. 'The development of the law of diplomatic relations' (1964) 40 BYBIL 141.

³ *Denza E*. 'Vienna Convention on Diplomatic Relations' [2009] 1(1) United Nations Audio-visual Library of International Law <http://legal.un.org/avl/pdf/ha/vcdr/vcdr_e.pdf> accessed 16 April 2019.

By the end of the seventeenth century, the broad outlines of the law of diplomatic thinking point relations had emerged as a result of three hundred years of state practice. The controversial areas, such as the granting of asylum in the embassy and the position of the suite, were also evident. The law, however, was entirely customary and very much subjected to political considerations. Although, these considerations tended to have the effect of extending immunity for fear of reprisals, particularly where the head of legation was concerned. The recent entry into force of the Vienna Convention on Diplomatic Relations marks the evolution to maturity of a branch of international law which derives from customs in existence three thousand years ago.

The first international instrument to codify any aspect of diplomatic law was the Regulation adopted by the Congress of Vienna in 1815. This regulation simplified the complex rules on the classes of heads of diplomatic missions and laid down that precedence among heads of missions should be determined by date of arrival at post. Codification among states of immunities and privileges of diplomatic agents did not begin until the Havana convention of 1928, drawn up among the states of the Pan-American Union. However, this codification did not well reflect current practice either in its terminology or its rules. More influential was the Draft convention drawn up in 1932 by the Harvard Research in International Law. The establishment within the United Nations framework of the International Law Commission opened the way to comprehensive codification to confirm what were accepted as well-established – if not universally respected – rules of international law¹. The preparatory work for the Vienna Conference followed the standard United Nations procedure for the codification of international law – applied in fields where there is already extensive state practice, precedent and doctrine. In 1952, Yugoslavia proposed that the topic should be given priority, and after discussion in the Sixth (Legal) Committee, the General Assembly requested the International Law Commission to undertake as a priority topic codification of the law of diplomatic intercourse and immunities.

The Commission appointed Mr. Sandström of Sweden as Special Rapporteur and his report formed the basis for the draft articles adopted by the commission in 1957. These articles were debated in the Sixth Committee of the General Assembly and sent to all members of the United Nations or any of its specialized agencies with an invitation to submit comments. Comments from 21 governments were considered by the commission who in 1958 prepared revised and extended articles and recommended that they should form the basis for a convention – a decision endorsed by the General Assembly. Eighty-one states took part in the conference held at Vienna from March 2 to

¹ Denza E. 'Vienna Convention on Diplomatic Relations' [2009] 1(1) United Nations Audio-visual Library of International Law <http://legal.un.org/avl/pdf/ha/vcdr/vcdr_e.pdf> accessed 16 April 2019.

April 14 of 1961, and the convention was signed on April 18. The convention entered into force in 1964 and had no fewer than 192 parties at the beginning of 2018, making it one of the most widely ratified international conventions.

In terms of near-universal participation by sovereign states, the high degree of observance among states parties and the influence it has had on the international legal order, the Vienna Convention on Diplomatic Relations may claim to be the most successful of the instruments drawn up under the United Nations framework for codification and progressive development of international law¹. Diplomats represent their state abroad, and in order to do so properly, should be free from concerns about harassment or arrest. For that reason, international law has long recognized that diplomats, their immediate families and others working in or at an embassy, enjoy certain privileges and immunities. Those rules, customary in origin, have largely been codified in the 1961 Vienna Convention on Diplomatic Relations. Further², Eileen observes that, 'the recent entry into force of the Vienna Convention on Diplomatic Relations marks the evolution to maturity of a branch of international law which derives from customs in existence three thousand years.

The success of the conference, and of the convention which it drew up, may be ascribed first to the fact that the central rules regulating diplomatic relations had been stable for over 200 years. Although the methods of setting up embassies and communicating with them had radically changed, their basic functions remained and remain the same up to date. These functions include representing the sending state and protecting its interests and those of its nationals, negotiating with the receiving state, observing and reporting on conditions and developments there. The institution of diplomacy has always been regarded as one of fundamental importance to the proper functioning of international relations. Despite the overwhelming advances in technology, which have changed the whole landscape of international relations, states remain firm in their belief that the exchange of diplomatic representatives is critical to the methodology of inter-state relations.

The success of the convention also lies in the fact that many states cooperated with one another regarding issues which were rather peculiar. One such pertinent issue was whether the use of transmitters could be allowed as a means of communication. Most of the countries who were unable to use this technology opposed the idea of granting the use transmitters as a means of telecommunication, as it would not be in their best interest to do so. This convention is seen as a codification of the existing Customary International Law which was well settled during

¹ Denza E. 'Vienna Convention on Diplomatic Relations' [2009] 1(1) United Nations Audio-visual Library of International Law <http://legal.un.org/avl/pdf/ha/vcdr/vcdr_e.pdf> accessed 16 April 2019.

² Eileen Young. *The Development of the Law of Diplomatic Relations*, 40 Brit. Y.B. Int'l L. 141 (1964) 7 Ibid.

the time of implementing the convention. Therefore, a compromise was reached on the basis that, not only should the sending state get the required permission from the receiving state to use transmitters in their communications, but it should also make proper arrangements for their use in accordance with the laws of the receiving state and international regulations.

Another issue was the inviolability of the diplomatic bag. Under the customary rules, it was permissible for a receiving state suspecting that a diplomatic bag contained material other than permitted (For instance official documents and equipment) to challenge the courier – upon which the sending state could either return the suspected bag unopened or submit it to inspection supervised by the authorities of both states. However, ultimately it was decided that although there was a duty on the sending state to use the bag only for diplomatic documents or articles for official use, the bag could not be opened or detained under any circumstances. Despite numerous amendments and arguments in the conference, this was the rule ultimately adopted in Article 27.

Diplomacy and diplomatic relations are underlined by the principle of reciprocity. As each state becomes both a sender and receiver state of diplomats, it would think more than twice before committing any wrong against a diplomat of another country as it would have to face up with the repercussions of doing so in the country to which the particular diplomat belongs to. Further, on the same footing, diplomats will also think twice before abusing their powers of diplomacy as they would also have to face up with the reciprocal duties casted upon them under this principle.

Leslie Shirin¹ observes that, there are three theories which try to explain the rationale behind diplomatic immunity. The purpose of these theories, however, has remained constant: to explain the need to give diplomats immunity⁹. The theories include, representative of the sovereignty, extritoriality and functional necessity. According to the representative of the sovereignty theory, it is claimed that, the representative's privileges are like those of the sovereign herself, and an insult to the ambassador is an insult to the dignity of the sovereign. However, this theory has not found much support due to the fact that, personification doctrine is too broad as it places the diplomat above the law of the host state and in the modern world, what king is the ambassador personifying is being seriously questioned.

The extritoriality theory is based on the legal fiction that a diplomat is always on the soil of her native country, wherever she may go. However, this theory has also been questioned on the notion that, not only is the doctrine a mere legal fiction, but dangerous consequences could result because it presupposes a theory of unlimited privileges and immunities which would go beyond those extended to diplomats.

¹ *Leslie Shirin Farhangi. Insuring against Abuse of Diplomatic Immunity, 38 Stan. L. Rev. 1517 (1986)*
⁹ *Ibid*

For this reason, commentators have generally rejected this theory as a basis for diplomatic immunity. Even the courts have vehemently rejected this theory¹.

The third theory which is based on functional necessity is the most accepted theory regarding the granting of diplomatic immunities. This theory is more pragmatic than the other two theories. This approach justifies immunity on the grounds that diplomats could not fulfil their diplomatic functions without such privileges. The Vienna Convention on Diplomatic Relations embraces the functional necessity theory and recognizes that ‘the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing states’². Ademola Abass³ also finds that, the rationale for extending immunity to diplomats and consular staff is generally accepted to be based upon the functional necessity theory. For officials in diplomatic and consular missions to fully perform their functions, immunities are applied.

Brief Overview of the Vienna Convention on Diplomatic Immunities

The main rationale of the Vienna Convention on Diplomatic Relations is set out in the preamble itself. The preamble declares that, ‘the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing states’⁴. However, it is exactly this purpose of the convention that has on many occasions been violated by most of the state parties to the convention. Article 01 of the convention contains the interpretation clause. However, the interpretation clause fails to interpret in detail some of the clauses mentioned therein. Specially the “family members” who are entitled to immunity are not clearly defined. Therefore, some countries like South Africa have given an interpretation to the meaning of the term ‘family members’ in their respective legislations.⁵ Article 02 makes it clear that Diplomatic Relations are made with the consent of the respective states, which underlines the sovereignty of the states. Article 03 of the convention sets out the respective functions of a diplomatic mission. These include *inter alia*, the functions of, representing the sending state in the receiving state, protecting in the receiving state the interests of the sending state and of its nationals within the limits permitted by international

¹ *Santos v Santos* 1987 (4) SA 150 (W)

² Preamble of the Vienna Convention on Diplomatic relations 1961

³ Abass A. *Complete International Law* (2nd edn, OUP 2014) 243

⁴ *Vide* Preamble of the Vienna Convention on Diplomatic Relations

⁵ *Vide* Section 02 of the Diplomatic Immunities and Privilege's Act No 37 of 2001

law, negotiating with the government of the receiving state, ascertaining by all lawful means conditions and developments in the receiving state, reporting thereon to the government of the sending state, promoting friendly relations between the sending state and the receiving state and developing their economic, cultural and scientific relations.

Article 04 makes it clear that any person sent by the sending state must be given the approval of the receiving state, and the receiving state is not required to furnish any reason whatsoever for rejecting a person nominated by the sending state for a post. Article 09 deals with the concept of *persona non grata* by which the receiving state could declare that any member of the mission including the head, is unacceptable. The receiving state does not need to assign any reasons for declaring anyone *persona non grata* as well. Article 14 of the convention declares that, there shall be no differentiation between heads of mission by reason of their class except as concerns precedence and etiquette. Therefore, whether the Heads of mission is an ambassador, envoy or a chargés d'affaires they all enjoy the same amount of privileges and immunities. Article 22 of the convention which can be said to be the most important and perhaps the most controversial. It deals with the inviolability of the diplomatic premises. Under no circumstances is it allowed to deviate from the general norm of inviolability.

Article 24 of the convention stipulates that, archives and documents of the mission shall be inviolable. Article 27 is yet another important and controversial provision regarding diplomatic immunity. It deals with the diplomatic correspondence and the diplomatic bag. These are also inviolable under any circumstances. Article 31 of the convention provides for a blanket immunity from criminal jurisdiction for the diplomatic agents and except for few exceptions they also enjoy a broad immunity from civil suits as well. According to the same Article he/she is also not required to give evidence in a Court of law. Article 32 of the convention allows for the waiver of immunity of a diplomatic agent by the sending state. Article 33 and 34 exempts a diplomatic agent from the social security provisions and taxes of the receiving state.

Article 41 obliges all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving state. They also have a duty not to interfere in the internal affairs of that state. The article also stipulates that; the diplomatic premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present convention or by other rules of general international law or by any special agreements in force between the sending and the receiving state. Article 42 stipulates that, a diplomatic agent shall not in the receiving state practise, for personal profit, any professional or commercial activity. However, these provisions have been seldomly invoked and they have been put to a state of mere decorations.

One appreciation of the convention has been its ability to gather a vast amount of states to become members of it. Even with all the limitations which the convention has, it has been acclaimed as one of the success stories coming under International Law. Many states have made domestic legislations to give effect to its obligations deriving under the provisions of the convention. Rosalyn Higgins observes that, 'it has frequently been observed that there is generally good compliance with the law of diplomatic immunity because here, almost as in no other area of international law, the reciprocal benefits of compliance are visible and manifest.'¹

Instances of Abuse Regarding the Vienna Convention of Diplomatic Relations 1961

Many instances could be put forward to showcase an unfortunate tendency on the part of diplomats to disregard the law of the receiving state and invoke their diplomatic immunity to escape liability. This is very much in contradiction to the functional immunity which is granted on the diplomats to discharge their duties without being subjected to the jurisdiction of the receiving state. The immunity is granted to be used as a shield and not as a sword, however, the experience has shown that it has always been tried to be used to cut instead to protect. The main reason for tolerating this kind of abuse lies in the reciprocity of the immunity granted. For an example, if the receiving state is to act against a person holding diplomatic immunity of a sending state, the receiving state may have to face up with difficulties regarding their own missions in the sending state. Therefore, retaliation prohibits and discourages against the taking of strong actions against abuse.

Higgins observes that, for about 15 years it was generally felt that the provisions of the Vienna Convention did indeed provide a fair balance between the interests of the sending and receiving states. But in many of the major capitals of the world, it came to be felt that diplomats were abusing the privileged status given to their vehicles, and in particular parking illegally, causing obstructions and failing to pay traffic fines.² Leslie Shirin finds that, 'abuses of diplomatic immunity fall into two broad categories: the use of the diplomatic bag to smuggle illegal goods into or out of the receiving state, and crimes committed by the diplomat's themselves.'³ Perhaps the most well-known is the shooting of a British policewoman in St. James' square by an unidentified assailant who was within the Libyan Embassy in London in April

¹ Rosalyn Higgins, 'The Abuse of Diplomatic Privileges and Immunities: Recent United Kingdom Experience' (1985) 79 (3), AJIL P. 641–651.

² Rosalyn Higgins, 'The Abuse of Diplomatic Privileges and Immunities: Recent United Kingdom Experience' (1985) 79 (3), AJIL P. 641–651.

³ Leslie Shirin Farhangi, *Insuring against Abuse of Diplomatic Immunity*, 38 Stan. L. Rev. 1517 (1986).

1984. There, protesters were demonstrating peacefully when submachine gunfire from the embassy killed British constable Yvonne Fletcher and wounded eleven others. The Libyans claimed diplomatic immunity for all embassy occupants; the British Government declared the diplomats' *persona non grata*, expelled them, and broke off relations with Libya- all that it could do under the Vienna Convention.

The Libyan experience caused outrage in the United Kingdom and raised many questions as to why the British authorities could not enter the Libyan embassy and search the premises. It was even argued that, as the act of shooting was inconsistent with the true spirit of the Vienna Convention on Diplomatic Immunities, that in such an instance the receiving state can act to protect its interest by entering the premises.¹ However, the British authorities stuck with the letter of the convention and it did what it could do, the maximum allowed by the convention as a method of reprisal and that was to name those diplomats as *persona non grata* and to terminate the diplomatic ties with the Libyan Government. In rejecting the view of allowing for exceptions on the inviolability of the diplomatic premises, Higgins also finds that, inviolability had to be absolute if the door was not to be opened to possible abuse by the receiving state.²

On November 4, 1979 the American embassy in Tehran was seized by armed students and the entire staff of the embassy was held hostage. The gunmen demanded that the United States ("U. S.") extradite the Shah and apologize for its involvement in internal Iranian politics over the past several decades. The Iranian government took no action to help gain the release of the hostages, and the last hostages were released after 444 days in captivity. The U.S. filed a claim before the International Court of Justice. In its judgment on May 24, 1980 the Court held that, 'the Government of the Islamic Republic of Iran shall afford to all the diplomatic and consular personnel of the United States the protection, privileges and immunities to which they are entitled under the treaties in force between the two states, and under general international law, including immunity from any form of criminal jurisdiction and freedom and facilities to leave the territory of Iran'.³

Another incident in Britain involved an ex-member of the former Nigerian government, Alhaji Umaru Dikko. In July 1984 Mr. Dikko was kidnapped from his London home, drugged, and put into a diplomatic crate bound for Nigeria. The crate also contained Israeli mercenaries who had helped in the kidnapping. The Nigerian government refused to cooperate, and again, all Britain could do was

¹ Rosalyn Higgins. 'The Abuse of Diplomatic Privileges and Immunities: Recent United Kingdom Experience' (1985) 79 (3), AJIL P. 641–651.

² Ibid.

³ United States Diplomatic and Consular Staff in Tehran (U. S. v. Iran), 1980 I. C. J. 3 (May 24).

expel the diplomats involved with the kidnapping. This was not the first time the immunity of a diplomatic “bag” was used for purposes of abduction.¹ In another incident, the customs authorities in Rome realized that a large diplomatic “bag” destined for Cairo was emitting moans. They seized and opened it and found that it contained a drugged Israeli who had been kidnapped.²

The United States has also had its share of incidents. In 1983 two Guatemalan diplomats helped kidnap the wife of El Salvador’s former Ambassador to the United States. She was taken from her Florida home and held for a 1.5 million dollar “war tax.” The two diplomats involved were taken into custody after the State Department, in an “unusual move,” successfully negotiated with the Guatemalan government for the waiver of their diplomatic immunity.³ Later that year Nam Chol, a North Korean diplomat, surrendered to American authorities. He had found sanctuary in the North Korean Embassy for ten months after allegedly sexually assaulting a woman in a park in New York. In order to force Mr. Chol out of the North Korean mission, the State Department threatened to expel Mr. Chol’s superior. Mr. Chol then surrendered to the authorities, who charged him with the crime and ordered him to leave the country.⁴ In another incident reported in November 1982, the grandson of the Brazilian Ambassador in Washington assaulted and shot an American citizen outside a local nightclub. The victim of the assault filed suit against the Ambassador and Brazil. These charges were dismissed on grounds of diplomatic immunity⁵.

Higgins observes that, the extent to which countries will avail themselves of the opportunities for lawful response to abuse of diplomatic immunities will depend in large measure upon whether that expatriate community is perceived to be at risk. That is something that the balanced text of the Vienna Convention cannot provide against and by the same token, any amendment of that text or withdrawal from its obligations would not change that reality.⁶ In all these situations the host government had an “alarmingly narrow” range of options.

Expulsion and a break in diplomatic relations were the only actions available. Because these actions were the most severe that could be taken under the Vienna Convention, there was great public feeling that injustice had been done.

¹ The Times (London), July 7, 1984, at 1, col. 2.

² Ivor Roberts, *Satow’s Diplomatic Practice* (6th edn, OUP 2013). P. 251.

³ N.Y. Times, July 16, 1983, at 2, col. 1.

⁴ N.Y. Times, July 22, 1983, at B4, col. 1.

⁵ *Skeen v. Federative Rep. of Brazil*, 566 F. Supp. 1414 (D.D.C. 1983).

⁶ Rosalyn Higgins, ‘The Abuse of Diplomatic Privileges and Immunities: Recent United Kingdom Experience’ (1985) 79 (3), AJIL P. 641–651.

In order to overcome some of the harshness provided by the Vienna Convention on Diplomatic Immunities, some countries have adopted their own local laws with such provisions which tries to limit the possible abuse of diplomatic immunities. These measures include, having a proper registry of the people enjoying immunity, having special insurance schemes to protect the local citizens from abuse, having good diplomatic practices abroad so as to provide good precedents for the diplomats of the hosting state, having clear definitions and interpretations as to respective privileges and immunities and having qualified personnel to the respective posts. Considering these practices, it becomes important to look at specific practices of states regarding diplomatic relations. Hence a thorough analysis of the state practices regarding South Africa, India and Sri Lanka is preferred here to get an understanding as to how states have designed their own legislations to both give effect to its international obligations arising out of the convention, and at the same time to protect its citizenry from possible abuse by having provisions to counter them while adhering to the true spirit of the convention.

South African Practice

Dugard¹ writing from a south African perspective observes that, the principles relating to diplomatic immunity are universally accepted and are most probably the oldest of all the principles in International Law. He finds that while political affairs are handled by the diplomats, the trade related aspects and commercial dealings are handled by the consular services. In 1951 South Africa enacted the Diplomatic Privilege's Act which accorded to the existing Customary International Law on the subject. In 1989 South Africa acceded to both the conventions on diplomatic and consular immunities and made legislative changes accordingly.

South Africa enacted the Diplomatic Immunities and Privilege's Act No 37 of 2001 to give full effect to the Vienna Conventions on diplomatic and consular relations. Section 02 of the act stipulates that, both the Vienna Conventions on diplomatic and consular relations forms a part of the South African Law if it is consistent with the act. Section 02 interprets a member of the family². Section 04 of the

¹ J. Dugard, *International Law: A South African Perspective* (3rd edn Juta 2005).

² 'member of a family' means— (i) the spouse; (ii) any [unmarried] dependent child under the age of [21] 18 years; (iii) any [unmarried child between the ages of 21 and 23 years who is undertaking full-time studies at an educational institution] other dependant family member, officially recognised as such by the sending state or the United Nations, a specialised agency or an international organisation; and (iv) [any other unmarried child or other family member officially recognised as a dependant member of the family by the government of the sending state, the United Nations, a specialised agency or organisation] the life partner, officially recognised as such by the sending state or the United Nations, a specialised agency or an international organisation, and [who is issued with a diplomatic or official passport], if applicable, 'spouses and relatives dependant' has the same meaning".

act provides that, a head of state, special envoy or representative from another state, government or organization is immune from the criminal and civil jurisdiction of the courts of the republic. The Minister of Foreign Affairs has the duty to notify in the *gazette*, those personnel who enjoys the diplomatic/consular immunities according to section 07 of the act. Further, section 09 provides that there should be a registry with the respective names of persons who enjoy such immunities from both criminal and civil jurisdictions of the country and the same section of the act requires that the names of such persons be put in the *gazette* annually.

According to section 10 of the act, if it appears to the minister that, the privileges and immunities granted in South Africa to a particular diplomatic mission of another state is greater than the privileges and immunities enjoyed by a South African mission in that state, the minister has the power to withdraw so much of the privileges to that mission as he/she deems adequate. This again reemphasises the duty of reciprocity regarding diplomatic relations. One key feature in the South African Act is the requirement to have liability insurance for persons enjoying immunity under the act or the convention. This requirement is laid down in the section 13 of the act. This can be seen as a very good initiative to protect the South African Citizens from abuse by the persons enjoying immunity whereby, the South African citizens will have a right to recoup any loss or damage from the insurance company and it will also help to keep the Vienna Convention as it is without being prejudicial to the rights and immunities enjoyed by diplomats and others alike¹.

The South African Courts have rejected diplomatic immunity based on the extraterritoriality theory. W J Van der Merwe³⁰ has succinctly pointed out that the theory is no longer supported in the South African context. This view was endorsed in the decision of *S v Mharapara*². Further in the decision of *Santos v Santos*³ the Court opined that; a marriage was invalid when solemnized in a foreign embassy by a person not recognized as a marriage officer under the South African Law. Referring to Michael Akehurst⁴, Groskopf J, observed that 'diplomatic premises are not extraterritorial; acts occurring there are regarded as taking place on the territory of the receiving state, not on that of the sending state.' The South African Courts in the case of *Portion 20 of Plot 15 Athol Ltd v Rodriques*³⁴ held that, a claim to immunity in respect of a real action relating to private property that was not used for the purpose of carrying out of diplomatic purposes or any other purpose related

¹ J. Dugard, *International Law: A South African Perspective* (3rd edn Juta 2005) 263 30 *Ibid* ft note 163.

² 1986 (1) SA 556 (ZS) at 558C mand 559B.

³ 1987 (4) SA 150 (W).

⁴ Peter Malanczuk (ed), *Akehurst's Modern Introduction to International Law* (8th edn Routledge 2002) 34 2001 (1) SA 1285 (W).

thereto, that such property nor the holder of such property even it be a diplomat would not enjoy the immunities which are otherwise applicable.

Before the enactment of the Diplomatic Immunities and Privilege's Act No 37 of 2001 there was a discussion as to whether a person enjoying such immunity could be detained or arrested under some circumstances. In the case of *Nkondo v Minister of Police*¹ Smuts J in his *obiter dictum* stated that, a diplomat may be arrested and detained for acts which endanger the state. However, Dugard² observes that, this cannot stand true after the implementation of the Diplomatic Immunities and Privilege's Act No 37 of 2001 which does not provide for such kind of exception to the general inviolability of diplomats who enjoy immunity from both criminal and civil jurisdiction of the domestic courts. The controversy surrounding this type of a situation arose once again when President Al Bashir of Sudan came to visit South Africa in 2015. When President Al Bashir visited South Africa for a summit he had an arrest warrant issued by the International Criminal Court. However, he was not arrested by the South African authorities. This was challenged in the case of *The Minister of Justice and Constitutional Development v The Southern African Litigation Centre*³⁴ where it was successfully argued that, in failing to both arrest and detain President Al Bashir, South Africa failed to meet its obligations imposed upon by the ICC statute. In its judgement, the Court cited the case of *Tachiona v Mugabe*³⁸ where the American Court opined that 'resort to head-of-state and diplomatic immunity as a shield for private abuses of the sovereign's office is wearing thinner in the eyes of the world and waning in the cover of the law'. Further, the Court held that, 'in the case of international crimes and South Africa's obligations to the ICC in terms of the Rome Statute, such immunity had been specifically removed in terms of section 10(9) of the Implementation Act (*International Criminal Court Act 27 of 2002*)'. (Emphasis added).

South Africa has also seen its fair share of abuse related to diplomatic immunity and regarding diplomatic asylum. Dugard⁵ provides several examples where the diplomatic mission and the inviolability thereof was used to give asylum to people who have breached the South African Law. In 1984 six members of the United Democratic Front sought refuge in the British embassy after they were found wanting for alleged breaches of the Internal Security Act. However, the British embassy refused to hand

¹ 1980 (2) SA 894 (O) at 900-2.

² J. Dugard, *International Law: A South African Perspective* (3rd edn Juta 2005) 264.

³ (867/15) [2016] ZASCA 17; 2016 (4) BCLR 487 (SCA); [2016] 2 All SA 365 (SCA); 2016 (3) SA 317 (SCA) (15 March 2016).

⁴ F. Supp. 2d 259 (S.D.N.Y. 2001).

⁵ Dugard P. 266.

these men over to the South African authorities. It was only after the men voluntarily decided to leave the diplomatic mission that they were arrested. In retaliation to this South Africa reneged their decision to hand over four South African citizens to stand trial in the United Kingdom for violating arms embargos. Similarly, in 1985, Klass de Jonge, a Dutch National retained under the the Internal Security Act managed to escape from the police custody and entered the diplomatic mission of Netherlands. The police entered the premises without the permission of the Dutch officials and apprehended the escapee. However, Netherlands complaint about the illegal entry into its premises and this was upheld. This led to Klass de Jonge being able to return to Netherlands without further calamity.

Things have changed from the situation that we found in the mid 80's and in 2017, former Zimbabwean first lady Grace Mugabe was denied diplomatic immunity for assaulting a South African model in a Johannesburg hotel. The South Gauteng High Court in Johannesburg in the case of *Democratic Alliance v Minister of International Relations and Co-operation and Others*¹ overturned a government decision to grant the wife of former Zimbabwean leader Robert Mugabe diplomatic immunity and stated that, 'If the minister makes such a determination, then she may confer such immunities and privileges on such a person or organisation. It is important to emphasise, however, that the discretion given to the Minister is not absolute. It requires the Minister to consider all the facts and circumstances and that her decision must be reasoned. In other words, her decision cannot be arbitrary; it must be rational. This is the test for the proper exercise of discretion in matters of foreign affairs (rationality). The Minister has accordingly considered all the facts and the circumstances at her disposal before coming to a determination.' Hence, it can be seen from the South African experience and context that it showcases a more pragmatic approach in both dealing and handling abuses of diplomatic immunities.

Indian Practice

India acceded to the Vienna Convention on Diplomatic Relations on October 15 1965. In order to give effect to the obligations arising out of the convention, India enacted the Diplomatic Relations (Vienna Convention) Act No 43 of 1972. Preamble of the act provides that, the objective of the act is to give effect to the Vienna Convention on Diplomatic Relations, 1961 and to provide for matters connected therewith. Section 2 makes it clear that the provisions of the convention which is given in the scheduled to the act will have effect irrespective of whatever is stated in the other laws. The schedule refers to some of the articles of the convention, namely Articles, 1, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40.

¹ (58755/17) [2018] ZAGPPHC 534; [2018] 4 All SA 131 (GP); 2018 (6) SA 109 (GP); 2018 (2) SACR 654 (GP) (30 July 2018).

Section 04 of the India Act mentions the restrictions that may be applied. Such restrictions include that if a particular state is in breach of its obligations under the Vienna Convention on Diplomatic Relations, that the Relevant Minister in charge of the subject, by notification in the Official Gazette, withdraw such of the privileges and immunities so conferred from the diplomatic mission of that state or from members thereof as may appear to the Central Government to be proper. This is something interesting to note as this particular provision goes beyond the general concept of reciprocity. The provisions allow the power to the Minister to act in the manner provided if any state is in breach of its obligations under the Vienna Convention on Diplomatic Relations, irrespective of the fact whether such breach is detrimental or is having any effect on India or not. The section also provides that if India is according more immunities to a diplomatic mission of a state, where such state is not according the same kind of immunities to the Indian mission there, then the minister can act as mentioned above. This is an example for the classical reciprocal duty which is envisaged in the convention. The Indian Act is not as comprehensive as the South African Act and it does not have a way to protect the interest of the Indian Citizens as in the case of South Africa which required embassies to have insurance policies. Further, the Indian Act does not make provisions to have a list of persons who are entitled to these diplomatic immunities as in the case of South Africa. The Indian Act reiterates the inviolability of the diplomatic premises in section 08 of the Act. This may be superfluous as the schedule to the act makes direct reference to Article 22 of the Vienna Convention on Diplomatic Relations¹.

There are several judicial opinions in which the issue of diplomatic immunity has been discussed in the Indian context. In the case of *Union of India v Bilash Chand Jain*² the issue in hand was whether diplomatic immunity could be claimed for commercial and/or private acts. In this case a suit was filed against Romanian as the second defendant for a principal sum of some Rs. 50 lacs, for services rendered to, and goodwill established on behalf of one Ice Chimica, but not paid for. The question that arose was whether the first defendant being a Romanian could claim diplomatic immunity. Secretary to the Ministry of External Affairs rejected the claim made by the appellants to execute a decree obtained by him under Section 86 Sub-section (3) of the Code of Civil Procedure. The Court made some interesting observations regarding the applicability of diplomatic immunity in India. First, the Court observed that, 'the law of diplomatic immunity has not developed any very much in India (*and that there is*) a host of cases are to be found decided in England

¹ G.P. Singh, *International Law* (1st edn EBC Publishers 2015) 233.

² (2001) 3 CALLT 352 HC.

and it is those cases which are still relied upon in India.¹ The Court opined that, the rationale behind diplomatic immunity lies in the fact that, 'one equal cannot have jurisdiction over another equal'.² The Court also found that, 'If the existence of the law of diplomatic immunity prohibits the grant of sanction for execution, as is the impression under which the Secretary seems to have laboured, then 'and in that event, no plaintiff with a decree will ever get a sanction for execution'.³ The Court made the following observation and declared that, diplomatic immunity also has limits which must be accepted.

*"Whenever and wherever a foreign state either acting by itself or through its agents or instrumentalities engages in ordinary or commercial transactions with parties or persons of another state, in all such cases, the sovereign comes down from his high pedestal. The sovereign engages in businesses and commerce and subjects itself to the ordinary incidents of commerce and industry and attempts at profit makings. In such cases there will be disputes, and resolution of disputes, and the necessity of the consequent satisfaction of the rights and liabilities arising either in favour of or against the foreign sovereign. The foreign sovereign might well have to sue in a foreign Court and might equally will be sued in a foreign Court. No principle of international amity or the maintenance of dignity of an international sovereign in the modern days requires that the Courts of law stay their hands against a foreign sovereign only because he is a foreign sovereign."*⁴

In this case, the Court in deciding on both sovereign immunities combined with diplomatic immunity decided that, diplomatic immunity is also subjected to the limitations of sovereign immunity that has developed over time. The Court in this case emphasised on the functional immunity of the diplomatic immunity instead of advocating for a blanket immunity to cover all incidents. This decision can be appreciated for the fact that it sets a good precedent against the abuse of diplomatic immunity in future cases.

In the case of ***Earth Builders v state of Maharashtra***⁵ the issue was whether access to the plaintiffs could be had through the Afghan consulate office premises. In considering the issue, the Court looked at both the Vienna Convention on Diplomatic and Consular Relations. The Court opined that, the acquisition of the property of the consulate for the purpose of providing an access to the landlocked property and declaring such access as a public street would qualify to be a public

¹ (2001) 3 CALLT 352 HC. Para 21.

² Ibid Para 17.

³ Ibid Para 20.

⁴ Ibid Para 26.

⁵ AIR 1997 Bom 148.

utility and, therefore, the consulate would not enjoy immunity from the jurisdiction of the Court.

India has also felt the abuse of diplomatic immunity by other states in its own territory. It was reported that the Consul General of Bahrain in Mumbai was accused of molestation of a 49 year-old woman working as a manager at a residential society where the diplomat also resided.¹ Although he was suspected for the crime of molestation, he was not arrested as he enjoyed diplomatic immunity. Similarly, in 2014 the Indian police filed a criminal case against certain diplomats of Israel for injuring an airport immigration official, though no action was taken against them.⁴⁹

India too had to face up with some of the issues related diplomatic and consulate immunity in foreign states. In one such incident, an Indian Devyani Khobragade who was the Deputy Consul General of the Consulate General of India in the United States was charged with making a fraudulent visa and for failing to pay the minimum wages to her domestic worker. For these charges she was arrested and strip-searched. The charges against her were shown to be true and in the mean time she was transferred to the United Nations mission in the United States. This was done in order to grant her with the full immunity which she would not have enjoyed as a consul. After her transfer to the United Nations the charges against her were dropped as she enjoyed full immunity from suit. This can be seen as an instance of India abusing her powers of diplomacy to protect one of its citizens which is contrary to the spirit and letter of the Vienna Conventions on diplomatic and consular relations.

In another incident, an Italian Ambassador to India signed as a guarantor for two Italian marines who had shot dead two Indian fishermen in February 2012, probably mistaking them to be pirates, and were being held in custody in India pending trial. The two sailors were given permission to return to Italy to celebrate Christmas with their families and return to India to continue their trial after the Italian Ambassador signed as a guarantor to ensure the return of the two marines. Once the marines reached Italy, it was announced that the marines will not return to India to stand trial. Prime Minister Manmohan Singh's fragile coalition was accused by the opposition of being too soft and for colluding with the Italians and pressure was brought to bear to insist on the return of the two marines. The Indian Chief Justice notwithstanding diplomatic immunity in the case of ***Republic of Italy and Others v Union of India and Others***² barred the Italian Ambassador from leaving the country. Though this was in contravention to the provisions of

¹ Sagar Rajput, 'Bahrain diplomat accused of abusing woman sent home' *Mid-Day* (Mumbai, 29 December 2013) <<http://www.mid-day.com/articles/bahrain-diplomat-accused-of-abusing-woman-sent-home/246384>> 49 India lodges criminal case against Israeli diplomats' (*Islamic Invitation Turkey*, 7 April 2014). <<http://www.islamicinvitationturkey.com/2014/04/07/india-lodges-criminal-case-against-israeli-diplomats/>>

² W. P. 135/ 2012 and SLP (Civil) 20370.

the Vienna Convention on Diplomatic Relations, Italy had to surrender the two marines to India to Stand trial.

Indian experience showcases that it has been an abuser and the abused. While the judiciary has made some inroads in trying to prevent the abuse of diplomatic immunities, the Indian Government being quite opposite to the same token has at times abused its powers of diplomatic immunities for which the Khobragade incidents provides ample evidence.

Sri Lankan Practice

As with many other international treaties¹ Sri Lanka is a state party to the Vienna Convention on Diplomatic Relations. Sri Lanka ratified the convention on 02 June 1978. However, it took nearly 18 years to implement enabling legislation regarding this Convention. It was in 1996 when Sri Lankan legislature enacted the Diplomatic Privileges Act, short title No. 9 of 1996. The preamble states that the act is enacted in order to, 'give effect to the Vienna Convention on diplomatic relations; to provide for the grant of immunities and privileges to officers, agents and property of certain international organizations; and to provide for matters connected therewith or incidental thereto.' Section 02 of the act provides that, subject to Section 03 of the act, the Vienna Convention on Diplomatic Relations is to have the full force of Law in the Country. The Sri Lankan Act is more achingly like the Indian Act than the South African one. Section 04 of the act speaks of the reciprocity as usually found in the respective legislations of India and South Africa. Section 03 provides that, if Sri Lanka is according more immunities to a diplomatic mission of a state, where such state is not according the same kind of immunities to the Sri Lankan mission there. Then the minister can by Order published in the Gazette, declare that such of the provisions of this act as are specified In such order shall, with effect from such date as may be specified in such order, cease to apply with respect to the mission of that state or to such categories of members of the mission of that state, as is, or are, specified therein. However, it has to be noted that, unlike the South African system, Sri Lankan system does not have a registry to identify persons enjoying diplomatic immunity nor an insurance mechanism to protect its citizens from abuse as in South Africa.

Ministry of Foreign Affairs in its website¹ specifically mentions that, according to the Vienna Convention, Diplomat and Diplomatic Organizations are exempted for the Civil and Criminal Jurisdiction of the receiving country to perform duties on behalf of the representing states. However, exemption from the jurisdiction will not be provided if any Diplomat or Non -Diplomat or any staff member of the Diplomatic

¹ <https://www.mfa.gov.lk/dpl-act/>

Missions are involved the following offences which includes, **Violation of Motor Traffic Rules** (The Ministry will not issue TPN in favour to a Mission if they violate the domestic motor traffic rules. I.e. Driving under the influence of alcohol etc and **Dispute on locally recruited staff members**). According to the Labour Ministry's law (EPF & ETF act), all Missions are required to comply with employer's contribution and employees' contribution to the Department of Labour on time. If the Mission has an alternative Employees' Right Protection Scheme, the concurrence of the Ministry of Labour and the Ministry of Foreign Affairs must be obtained. The site further states that, any dispute on locally recruited staff should be settled in accordance to the domestic law enforcement and any outstanding payments to locally recruited staff or other parties must be settled in accordance to the domestic law enforcement.

There have been several incidents in which the issue of diplomatic immunity has been dealt by the Courts in the Country. In the case of *International Water Management Institute v Kithsiri Jayakody*¹ the question to be answered was whether the appellant incorporated under the International Irrigation Management Act No. 6 of 1985, as amended by Act No. 50 of 2000 was entitled to diplomatic immunity under the provisions of Diplomatic Privileges Act No. 9 of 1996. The lower Courts have held that the best way to prove that the Appellant is entitled to prove of immunity is to produce the certification issued under the hand of the Secretary to the Minister in charge of the subject of the Foreign Affairs as specified under the act and since such was not produced it was not entitled to immunity. The Supreme Court in making its determination declared that, in looking at the immunity of the appellant, not only the provisions of the Diplomatic Privileges Act No. 9 of 1996 but recourse is also to be had to the Section 33 of the International Irrigation Management Act No. 6 of 1985, as amended by Act No. 50 of 2000 in determining whether the appellant is entitled to immunity as held that in considering the circumstances it was entitled to immunity. On the contrary in the case of *Ranasinghe v Minister of Foreign Affairs and Others*² the petitioner an English stenographer attached to the Sri Lanka Mission in Pakistan, on her return to Sri Lanka brought the van imported from Japan and used by her – as 'personal belongings' and complained that she was entitled to import the van 'duty free' but the customs had informed her she had to pay the import duties. However, the Court rejected this argument and held that, customary Laws based on the International Conventions have no application to the petitioner once she returns to Sri Lanka on termination of her duties as a non-diplomatic officer in a foreign mission abroad and she is subject to the laws of Sri Lanka – and is subject to the provisions of the Customs Ordinance and other laws

¹ SC Appeal No. 11/2011.

² 2010 (1) Sri L R 178.

of Sri Lanka. Hence it was held that the petitioner was not entitled to Diplomatic Immunity as she was no longer a 'diplomat'.

Before the enactment of the 'Diplomatic Privileges Act No. 9 of 1996 and even before the implementation of the Vienna Convention on Diplomatic Immunity in 1961, Sri Lanka too had to go through certain abuses of diplomatic immunity which were evident in the case of *Appuhamy v Gregory*⁵⁴ where the Court held that, under the rules of international comity, diplomatic immunity from judicial process is extended not only to a Minister or Ambassador but also to his family, suite and servants. An assistant to a military or naval attaché, if he in fact works in an embassy, is covered by the immunity. However, this case cannot be considered as good law since the Ministry of Foreign Affairs has made it clear that regarding issues pertaining to locally recruited staff members there are some restrictions on the applicability of the diplomatic immunities.

Maybe the most (in)famous case regarding the abuse of diplomatic immunity was the murder of Shirley Boonwaart in 1967² who was the wife of the Burmese Ambassador. Even with enough evidence to convict the Burmese Ambassador for killing his wife, Sri Lanka authorities were left with no option but to respect the diplomatic immunity enjoyed by the Ambassador and not to violate on the inviolability of his person or premises.

Recently there was an incident involving Brigadier Priyanka Fernando³ who made a controversial gestures at pro-LTTE demonstrators outside the Sri Lanka High Commission in London. For this incident the Westminster Magistrate's Court tried to issue a warrant against the officer. However, this had to be dropped later as it was found from the Commonwealth Office that the said officer was immune from the jurisdiction of the court as he enjoyed diplomatic immunity.

In commenting on the Sri Lankan situation, due to its lack of power in the international terrain and the judiciary being unable to bring clarity like its Indian counterpart, Sri Lanka could be a country which is more prone to be abused by the concept of diplomatic immunity.

Possible Reforms for Mitigating the Abuse of Diplomatic Immunity

While the fact that, diplomatic immunity in its totality has not been always used for its intended purpose, there is no universal consensus as to how the instances of abuse could be stopped. The main reason behind this could be linked

¹ NLR 235.

² <http://dailynews.lk/2019/01/25/features/175476/murder-enshrouded-diplomatic-immunity>

³ <http://www.sundaytimes.lk/190127/news/british-court-seeks-clarification-of-lankan-brigadiers-dpl-status333242.html>

to the reciprocity of the diplomatic immunity itself. If a country is going to be hostile towards another country, the fear of retaliation for its own people living in such a country to whom such hostilities are shown would be a real and imminent danger. Leslie observes that, there are five approaches which could be taken in order to stop the abuse of diplomatic immunity.¹ Firstly, countries which are continuously abusing diplomatic immunity could be isolated. Secondly, creating a separate fund to compensate victims of such abuse. Thirdly, to bring a suit against the abuser in his or her own country. Fourthly, to interpret the Vienna Convention in a restrictive manner to curtail the instance where the immunity would apply. Fifthly, amending the Vienna Convention.⁵⁸ However, these solutions are more paradoxical than pragmatic.

Considering the first solution in isolating Countries who are constant abusers, the Vienna Convention itself provides the necessary impetus for adopting such an issue. The convention allows each state to stop and cease its diplomatic missions of another country without assigning any reason. Article 02 and Article 09 of the convention when read together makes it clear that, as diplomatic relations between two states arise out of mutual consent and once the mutuality aspect is hindered, without assigning any reasons whatsoever, diplomatic relations could be terminated between two countries. This was the case with Libya where the United Kingdom terminated its diplomatic relations with the Libyan government after the shooting incident that took place in London. British government campaigned to gather support from other countries to put up sanctions against the Libyan government. However, this strategy has not been found to be a suitable solution as history has shown that in changing the behaviours of a country sanctions or isolations has not worked. The option of creating a separate fund to compensate the victims of the abuse of diplomatic immunity has found some acceptance in some countries. For an example, in the United States under the Diplomatic relations Act of 1978 requires the diplomats to obtain personal insurance. On the surface of idea, it seems like a good one. However, on a practical note, as the diplomatic relations carries with it a reciprocal duty, if one state imposes such an obligation against a diplomat of another country, the imposing country's diplomats would also be required to take out personal insurance in the corresponding country as well. As international relations are both power dynamic and unequal in terms of the respective authority of each and every country, the countries who are not so strong may be reluctant to take up such measures. Even countries who are strong in their wealth and power has found it difficult to have a good rate of compliance with these kinds of initia-

¹ Leslie Shirin Farhangi, *Insuring against Abuse of Diplomatic Immunity*, 38 Stan. L. Rev. 1517 (1986) 58 *Ibid*.

tives. The United States of America provides a classic example for being unable to successfully implement this policy of personal insurance schemes of diplomats¹.

Bringing a suit against the diplomat who has abused his or her immunities is a possible option though it might not always be the practical one. It would be not an option available for all the victims as the cost of litigation would not be bearable for many. Further, even if initiating such proceedings are possible, there would be no assurance as to the successfulness of such claims. Therefore, this solution, though is in theory is a possible solution is nevertheless cannot be said to be a practical one. Another solution which has been proposed is to interpret the Vienna Convention in a rather restrictive manner which will be helpful to limit the instances where the immunities will become applicable. However, most of the provisions in the convention are not unambiguous and therefore, it would not be an easy task to find their way around the provisions of the convention in order to interpret it in a manner which would be able restrict the diplomatic immunities and thereby to restrict the instances of abuse.⁶⁰ A rather radical approach in amending the Vienna Convention has also been suggested without much support as well. However, a renegotiation of the Vienna Convention would be a very difficult task. It must be remembered that, the implementation of the Vienna Convention did not happen overnight and that it took centuries to finally get down most of the states to an agreeable situation and thereby to finally affirm the customary practices relating to diplomatic immunities into a convention. Therefore, amending the convention does not seems to be a pragmatic option.

In the above analysis though there is a general understanding as to the need of preventing the abuse of diplomatic immunities, there seems to be no consensus on the exact measures to be taken in order to achieve the final endeavour of hindering the abuse.

Conclusion

The Vienna Convention on Diplomatic Relations is a classic example of a treaty that has codified the existing Customary International Law on the subject. It is considered as one of the most ratified treaties in the world with almost a universal acceptance. The true spirit of the convention is set out in the preamble itself which declares that the immunities granted to the diplomatic agents are so granted not for their personal benefit but only for them to discharge their duties properly. Further, Article 41 obliges the diplomatic agents to both respect and act according to the laws of the receiving state. However, many of the incidents associated with

¹ Leslie Shirin Farhangi, *Insuring against Abuse of Diplomatic Immunity*, 38 Stan. L. Rev. 1517 (1986) 60 *ibid*.

diplomatic immunity have been instances of gross abuse of the immunities and privileges which have been granted for those diplomatic agents. This has led many to question the validity of the rationale for providing such privileges and immunities to those diplomatic agents. The diplomatic mission has been the centre piece of abuse as it enjoys absolute inviolability. This has caused severe tension in some instances and the classic example is provided in the Libyan incident that took place in 1984. Though some have argued for certain exceptions to be made to these absolute provisions it has not found global acceptance as others are unable to see the benefits of such an initiation outweighing the possible repercussions which it may bring. Inviolability of the diplomatic bag has also caused many incidents of abuse and the reforms suggested for allowing for scanning the bags without opening it or detaining it has also met up with serious opposition.

As for the law that is applicable regarding diplomatic immunities and privileges the Vienna Convention on Diplomatic Relations has remained unchanged from its inception in 1961. In trying to battle the gross abuse of diplomatic immunities, states have tried to take some measures to protect its citizens from possible abuse. Some suggestions have also been made regarding the possible actions that could be taken regarding limiting the abuse, which includes isolating troublesome nations, creating a fund to compensate victims, bringing suit in the sending state, interpreting the Vienna Convention to provide a more restrictive diplomatic immunity and amending the Vienna Convention. While none of these schemes have found support in the existing practice, a solution in the form of requiring the diplomats to have mandatory insurance to protect the victimized citizens of the receiving state has found some support and South Africa is a good example for adopting such a measure.

In adopting measures which are suitable for stopping the abuse of diplomatic immunities recourse must be made to the enshrining the rationale for granting the immunities in the first place, which is not to make gains or to put the diplomats in an advantageous position. Instead the rational is to provide them with the necessary manoeuvrability for the proper discharge of their functions and duties. Whatever the decision or policy that is going to be taken regarding stopping the instances of abuse, it must be conditioned by the nature of reciprocity. Solutions should be pragmatic enough to be capable of working under such a condition. The best option would be the self-discipline of the diplomats themselves and the respective governments in selecting suitable posts for these diplomatic missions should be wary about this fact.

Diplomatic Immunity, even with its abuse and criticism, is a *sine qua none* for the smooth functioning of diplomatic relations under the rubric of international relations. While diplomatic immunities when abused would cause hardships to citizens of a country who are the victims of such abuse. On the same token, by

having diplomatic relations with another country the benefits and the advantages gained would be too greater cost to bear for most countries, who would try to think of retaliative methods in combating against the abuse of diplomatic immunities. Though there is a conundrum or a dilemma as there may be where, the paradox of diplomatic immunity has caused tensions which have undermined the rationale for the granting of such immunities. However, the states themselves are forced to accept the hard realities and proceed with the consequences, at times even unpleasant ones, due to the reality of international relations which are based on the power relationships of the states.

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DOCTRINAL CHARACTERISTIC OF THE THEORY OF THE CONTRACTUAL LEGAL REGULATION

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Abstract: The general theory of contractual legal regulation is defined as a system of theoretical views and initial scientific provisions, expressed in the categorical and conceptual apparatus of the general theory of law, which makes it possible to reveal the essence and content, functions and forms of manifestation, levels and types of impact on social relations using contractual regulatory means.

The doctrinal characteristics of the theory of contractual legal regulation within the framework of this article is revealed in three aspects: (1) the genesis of theoretical knowledge about contractual regulatory activities; (2) identifying the epistemological, ontological and axiological foundations of the theory of contractual legal regulation, (3) forming the structure of the general legal theory of contractual regulation.

Keywords: contract law regulation, general legal theory, doctrinal characteristic bases of the theory, the theory of the structure.

Introduction

The category of “contractual regulation”, despite its comparative novelty for the logical-conceptual apparatus of the general theory of law, has become quite widespread in sectoral legal disciplines. However, the systematization of the formulated provisions is complicated by the fact that these studies highlight only certain sectoral aspects of contractual regulation. Therefore, the formulation of a single, generalizing, general theoretical construct of contractual legal regulation is faced with certain difficulties both for the legislator and for legal theory.

In the conditions of the formation of a legal democratic socially oriented state in Russia, the very phenomena of legal regulation are changing. If historically the treaty was an institution of private law, then, in the public law sphere, this toolkit appeared in the era of the New Time. This marked the establishment of liberal values and democratic institutions: the theories of social contract, constitutionalism, parliamentarism and separation of powers were clothed in the legal form of an agreement between citizens and the power structures established by them.

The corresponding transformations in the development of public institutions in modern Russia, on a contractual basis, are very clearly reflected in the legislation of the political system, the local self-government, the status of state corporations, the provision of public services, the public procurement, etc. In recent years, new forms of consolidation and implementation of public interest have emerged – national projects, concepts, strategies, which also reflect the contractual nature of the regulation of innovation processes. On the other hand, the development of social ties brings to life fundamentally new areas of legal regulation – informatization, electronic document management, biotechnology, new types of communication and transport. These new areas inevitably presuppose the harmonization of public and private interests, where contractual tools are quite effective.

Research methodology

The construction of a theoretical system that integrally reproduces the essential aspects of contractual regulation is based: firstly, on the formation of a general theoretical and sectoral scientific base that contributes to the development of fundamental scientific and theoretical provisions, based on the methodology of post nonclassical rationality for the formulation of the problem of contractual regulation and determination of ways to solve it; secondly, on the empirical material of socially determined contractual and regulatory practice. At the general theoretical level, this led to a revision of the initial epistemological positions and principles of the study of legal matter, the advancement of new methodological approaches, the creation of fundamentally different categorical structures reflecting the complex process of functioning of the legal form. At the sectoral level, the general methodological reorientation of legal research has led to the transition from the study of the content originality of legal phenomena to the analysis of their functional manifestations in specific spheres of social relations.

The formulation of the conceptual provisions of the general theory of contractual legal regulation was carried out taking into account the methodological principles of the modern stage of development of science, based on post nonclassical rationality. The methodological toolkit for the formation of a general theory of contractual legal regulation is determined, first, by the general doctrine of legal

regulation; second, by extrapolating the instrumental and activity-based approaches to legal research; third, the inclusion of axiological aspects in the formation of modern legal theories based on the principles of post-nonclassical rationality.

Main results

The doctrinal characteristics of the theory of contractual legal regulation within the framework of this article involve the study of three main aspects: (1) the genesis of theoretical knowledge about contractual regulatory activity; (2) the identification of epistemological, ontological and axiological foundations of the theory of contractual legal regulation; (3) the formation of the structure of the general legal theory of contractual regulation.

1. As a theoretical and methodological “matrix” of research into the genesis of theoretical knowledge about contractual legal regulation, the proposed by V. S. Stepin identified the typology of scientific rationality and types of civilizations¹. This made it possible to determine the epistemological, ontological and axiological foundations of the theory of contractual legal regulation. This, in turn, made it possible to highlight the stages of formation and development of the theory of contractual legal regulation, due to the peculiarities of the formation of scientific and legal knowledge and legal practice.

Formation and development of the “jurisprudence of concepts” as a conditional first stage of formation of legal science, the meaning of which is to move from the casuistic analysis of the specific relationship of the individual types of contracts to conceptualize authoritative legal texts of the Roman canon law, the ordinary and the royal contract law by direct *s mov* scholasticism of the XII–XV centuries (grammatical, formal-logical, systemic interpretation), and then the humanistic science of the 16th century (historical and philological interpretation), covers Antiquity and the Middle Ages up to the Renaissance². Chronologically, this stage coincides with the classical period in the development of technogenic civilizations, when the mechanical picture of the world dominated as a general scientific research program, that had a significant impact not only on the study of natural processes, but also on the system of knowledge about man and society.

It should be noted that the formation of social and humanitarian knowledge in the Middle Ages was based not only on the methodology of scientific rationalism, but also on taking into account the prevailing theological and later metaphysical

¹ *Stepin V.* Theoretical knowledge: Structure, historical evolution, 2003 . 743 p. [См.: *Степин В. С.* Теоретическое знание. М.: Прогресс-Традиция, 2003. С. 18–29; *Он же.* Человеческое познание и культура. СПб., 2013.]

² *Atiyah, P. S.* The Rise and Fall of Freedom of Contract. Oxford: Oxford University Press. 1979.

worldview. It implied an appeal to religious and philosophical sources. The result of such a revolution in legal thinking was the doctrine of the contract. Its content was made up of the conceptual apparatus, principles of contract law, general provisions on the contract, classification of certain types of contracts, and determination of the place of the contract in the system of private law.

By the end of the classical period in the historical development of the social sciences, there was a break with the principles of mechanism, due to, according to V.S. Stepin, “paradigmatic grafts” from biology (as the ideas of evolution develop in it). Then, already in our century, the break came from systems theory, cybernetics and information theory. As a result, the formation of the conceptual foundations of contractual regulation at the second stage of development of legal science, which can be conventionally designated as “jurisprudence of interests”, was carried out within the framework of sociological directions of research of state and legal reality. In legal science, this led to the emergence of organic (biological) and psychological concepts of legal thinking to reach an understanding of the triune nature of man (psychological, motivational, volitional, behavioral aspects, affective states, genetic causes of offenses, anthropological trends in criminology, etc.). In Western European countries, the institutionalization of the idea of a contract took place, which received a philosophical justification in the theory of a social contract based on liberal values and normative consolidation as a civil legal category.

The non-classical stage in the development of scientific knowledge was characterized by the study of objects as complex self-regulating systems. Complex system objects appeared as process systems, self-reproducing as a result of interaction with the environment and due to self-regulation¹. Consequently, contractual legal regulation, as a complex polystructural object of research, involves the study not only of its constituent elements, but also the process of contractual regulation (contractual regulatory activity), its functioning as a structural component of another macro-system – legal regulation, and also its interaction with the environment through a system of direct and feedback.

Modern post-non-classical science develops and functions in a special historical era. Its general cultural meaning is determined by its involvement in solving the problem of choosing the life strategies of mankind, searching for new ways of civilizational development. The needs of this search are associated with the crisis phenomena with which civilization pushed at the end of the 20th century and which led to the emergence of modern global problems. Their comprehension requires a new assessment of the development of a technogenic civilization,

¹ Stepin V. Types of scientific rationality and the synergetic paradigm, 2013. P. 45–59. [См.: Степин В. С. Типы научной рациональности и синергетическая парадигма // Сложность. Разум. Постнеклассика. 2013. № 4. С. 45–59.]

which has existed for four centuries. Many of the values related to the attitude to nature, man, understanding of activities, etc., which previously seemed an unshakable condition for progress and improving the quality of life, are questioned today. The value system of an industrial society, oriented towards the ideals of consumption, creates an atmosphere of mega-risks. The modern world, which is largely a technologized space, transforms the very essence of man in the direction of technization¹.

As a result, new scientific approaches of the third stage of development of legal science, which can be conditionally defined as “jurisprudence of values”, are based on the idea of a harmonious relationship between people, man and nature, the priority of cooperation over competition, and the dialogic nature of cultures.

2. Formation of the theory of contractual regulation was prepared by significant changes in the problems of general theoretical and industrial research, and the turn of legal science to the knowledge of the dynamic, active-functional side of legal reality due to a new non-classical stage in the development of science.

In methodological terms, legal science in developing the problem of contractual regulation is based on the general doctrine of legal regulation², in which the process of organizing and ordering the impact of the law on social relations is reproduced in a strict logical-conceptual form.

In the middle of the last century, the formation and implementation of an instrumental approach to legal research took place. The instrumental approach, focusing on the functional, “service” role of legal phenomena, became the initial methodological basis for understanding the “technological” arsenal of contractual regulation as a manifestation of an active-effective side of legal reality. At the same time, the instrumental approach in itself is not capable of providing meaningful knowledge about contractual regulation. It only directs the researcher in a certain way. In fact, is a kind of “choice of an object”, the initial orientation of the cognizing subject to the study of one or another of its facets, a set of properties, its consideration in one or another plane³.

The end of the twentieth century was characterized by the introduction of active approach to law. The investigations have been concerned. The activity approach,

¹ *Stepin V.* Human knowledge and culture, 2013. 140 p. [См. подробно: *Степин В. С.* Человеческое познание и культура. СПб., 2013.]

² *Kazantsev M.* Legal contractual regulation: initial general theoretical questions, 2001. P. 249–258. [Казанцев М. Ф. Правовое договорное регулирование: исходные общетеоретические вопросы // Научный ежегодник Института философии и права Уральского отделения Российской академии наук. Екатеринбург: УрО РАН, 2001. Вып. 2. С. 251.]

³ *Sapun V.* Instrumental theory of law and human, 2013. P. 14–32. [Сапун В. А., Шундилов К. В. Инструментальная теория права и человеческая деятельность // Правоведение. 2013. № 1. С. 18.]

which takes conscious, purposeful human activity as the starting point for understanding legal reality, was the conceptual basis for building an integral model of contractual legal regulation as a unity of goals, contractual legal means and conscious-volitional activity and subjects for their application.

The beginning of the third millennium was marked by the inclusion of axiological aspects in the formation of modern legal theories. The development strategy of modern post-non-classical science is determined by the development of complex self-developing systems. These systems are characterized by openness, exchange of matter, energy and information with the external environment and the inclusion of human action in it, irreversibly changing its possible states, determined by V. S. Stepin as “human-sized” objects. The study of “human-sized” objects, which include contractual regulatory activity, directly affects humanistic values, which objectively presupposes the inclusion of axiological factors in the explanatory provisions of the general theory of contractual legal regulation.

The active development of contractual regulation in the branches of private and public law was reflected in the emergence of legal research, the purpose of which was to comprehensively comprehend the specifics of contractual regulation of a particular type of social relations. Trade developments have convincingly demonstrated the universality of the contract as a general legal structure used for the development and formal legal fixation of mutually agreed models of behavior, as well as the adaptation of the content, design parameters and regulatory properties of the contract to the specific specifics of private law and public law relations, their subject composition and expressed in their interests¹.

Generalization and comprehension of the richest empirical material within the framework of specific industry studies, revealing the specific features of individual contractual relations and the order of their regulation, yielded the following results. Firstly, it discovered the private and public law specifics of contractual regulation². Secondly, it showed a special procedure for the development and implementation of individual and normative (general) contractual models of behavior³. Thirdly, he revealed the features of the use of contractual legal means in procedural and

¹ *Melekhova A.* Types of administrative contracts, 2012. P. 70–73. [См., например: *Мелехова А. Ю.* Виды административных договоров // Административное право и процесс. 2012. № 1. С. 70–73; *Fried J.* Contract as Promise. A Theory of Contractual Obligations. N. Y., 1981. P. 3–58.]

² *Shershen T.* Private and public interest in the contractual regulation of family relations, 2002. 23 p. [См., например: *Шершень Т. В.* Частный и публичный интерес в договорном регулировании семейных отношений: автореф. дис. ... канд. юрид. наук. Екатеринбург, 2002.]

³ *Nurtdinova A.* Collective-contractual regulation of labor relations: Theoretical problems, 1998. 41 p. [См., например: *Нуртдинова А. Ф.* Коллективно-договорное регулирование трудовых отношений: теоретические проблемы: автореф. дис. ... канд. юрид. наук. М., 1998.]

material branches of law¹. Fourthly, it revealed the existence of intersectoral links in contractual regulation².

3. As the highest form of organization of scientific knowledge, which provides a holistic view of the patterns of development of a particular level of reality, scientific theory acts as a logically organized set of consistent statements about a certain class of ideal objects and their properties and relationships based on a system of principles and laws.

The following are the universal components of any type of scientific theories: (1) initial foundations (fundamental categories, principles, laws, axioms, etc.); (2) an idealized object (an abstract model of the essential properties and connections of the studied subjects); (3) the logic of the theory (a system of rules and methods of proof that can explain the structure and change of knowledge); (4) a set of statements, laws, etc., deduced as consequences from the main provisions of this theory; (5) philosophical attitudes and value factors³. In different types of theories, this structure can manifest itself in different ways and not all structural components can be explicitly defined.

From these positions, the formation of its structure becomes a necessary condition for the formulation of a general legal theory of contractual regulation⁴. The main elements of a general legal theory of contractual regulation are the following components:

1) The fundamental categories of philosophy, social sciences and humanities are the initial grounds for the formation of the categorical and conceptual apparatus of the general theory of contractual legal regulation. This apparatus is associated with the interdisciplinary nature of the constructed object of social and legal reality, respectively:

a) philosophy (classical, non-classical and post-non-classical type of rationality, methodology, ontological, epistemological, axiological foundations of the object of knowledge, human activity, principles);

¹ Antonov I. The regulations of agreement between defense and prosecution in criminal procedure: state and development perspectives P. 74–81.

² Mingazova A. Contractual regulation of investment activity, 2017. 26 p. [См., например: Мингазова А. М. Договорное регулирование инвестиционной деятельности: автореф. дис. ... канд. юрид. наук. Казань, 2017.]

³ Kokhanovsky V. Fundamentals of philosophy of science: a textbook for graduate students, 2008.- 603 p. [См., например: Кохановский В. П., Лешкевич Т. Г., Матяш Т. П., Фатхи Т. Б. Основы философии науки: учебное пособие для аспирантов. 6-е изд. Ростов н/Д: Феникс, 2008.]

⁴ Bakulina L. The structure of the general theory of contractual legal regulation. P. 161–165. [См.: Бакулина Л. Т. Структура общей теории договорного правового регулирования // Государство и право. 2019. № 10. С. 161–165.]

b) jurisprudence (action rights legal activist nost, legal regulation, Pravov s relations, the principles of law, legal means, mechanism of legal regulation, the effectiveness of law);

c) sociology (communication, social relations, relations of cooperation and rivalry, conflict, behavior, activity, individual);

d) psychology (will, consciousness, motivation, emotions, feelings, action, behavior).

In turn, the categorical conceptual apparatus of the theory of contractual legal regulation includes the following theoretical constructions that form conceptual series:

a) activity – legal activity – legal regulation (law-regulatory activity) – contractual legal regulation (contractual and regulatory activities);

b) Contractual regulatory activity unfolds in the following categories: subject, object, activity of the subject of activity; each of the named categories gets detailed in the conceptual series of the next level: the subject – respectively, in the categories of legal personality, purpose, means and result; object – the subject of contractual legal regulation, consciousness, will, expression of will, contractual legal relationship, behavior; activity of the subject – disclosed as a two-component system comprising a linguistic element (information influence language constructs) and registered member (Method contractual legal regulation, the methods of the contractual legal regulation to Zvolen, Bind prohibition);

c) contractual legal regulation as a structural and functional level of legal regulation is disclosed in the following concepts and categories: autonomous and centralized levels of legal regulation, general and individual sublevels of contractual legal regulation, systemic, including intersectoral relations;

d) principles – principles of law – principles of legal regulation – principles of contractual legal regulation;

e) means – legal means – means of contractual legal regulation – contractual and regulatory means;

f) the mechanism of legal regulation – the model of the mechanism of contractual legal regulation – the effectiveness of the mechanism of contractual legal regulation.

2) The idealized object of cognition is a constructed model of contractual legal regulation, presented as a complexly organized self-regulating polystructural multi-level complex, socially conditioned by a certain system of research coordinates.

3) The logic of the theory is due to pluralism, conventionality, “human dimension”, textuality, procedurality, constitutionality and other principles of the methodology of post-non-classical science. The use of these made it possible to use the heuristic potential of the activity approach, which conceptually formalized particular, including industry-specific, aspects of contractual-regulatory problems;

to identify the specific structural and functional dependencies and multidimensionality of its internal structure inherent in contractual regulation; to approach the solution of practical problems of the effectiveness of contractual legal regulation, taking into account the complex interaction of goals, means and results.

4) The construction of the theoretical system, the integrity of reproducing the essential aspects of the contractual legal regulation, based, in – the first, on empirical material socially conditioned contractual regulation of the practice, and secondly, on the formation of the general theoretical and industry-academic framework conducive to the development of fundamental scientific approaches to the problem of contract regulation and determination of ways to solve it.

5) Value factors in the structure of scientific theory have a dual meaning: on the one hand, values are the most important factors in achieving goals in research activities. On the other hand, the analysis of the axiological aspects of the object under study is associated with the application of modern methodology of post-non-classical rationality.

Conclusions

1. The general theory of contractual legal regulation is defined as a system of theoretical views and initial scientific provisions, expressed in the categorical and conceptual apparatus of the general theory of law, which makes it possible to reveal the essence and content, functions and forms of manifestation, levels and types of impact on social relations using contractual-regulatory means.

2. There were many reasons for the formation and development of the general theory of contractual legal regulation. First, the fundamental changes in the starting methodological and axiological attitudes of legal knowledge, taking into account the principles of post-non-classical rationality, the implementation of which provided a fundamentally new perspective on the properties of contractual legal regulation; second, the expansion of the sectoral boundaries of contractual regulation, which made it possible to comprehensively reproduce the basic properties and patterns of contractual regulatory activity, taking into account the private law and public law specifics of their manifestation; third, the expansion of the functional specialization of contractual regulation, which is associated with the introduction of decentralized principles into the legal regimes of the public legal branches; fourth, the complication of the hierarchical organization of contractual legal regulation, which includes two relatively autonomous, qualitatively unique subsystems (normative contractual and individual contractual levels), which in general reveals broad modification possibilities for adapting contractual and regulatory means to the specific needs of lawmaking and law implementation as in the private and public law spheres.

3. The proposed structure of the general legal theory of contractual regulation allows one to consistently identify the essential and substantive parameters of contractual regulatory activity as a complex and self-developing systemic phenomenon of social and legal reality ("human-sized" object of cognition); the formulated scientific provisions of the theory of contractual regulation, based on interdisciplinary empirical and theoretical material, allow for the possibility of wide application not only in the branches of private and public law, but also outside the legal regulation of public relations; The regularities, principles, and trends in the development of the contractual regulatory process derived as consequences from the main provisions of this theory open up new horizons in the study of different levels of activity of various subjects of social interactions in a new system of value coordinates of modern technogenic civilizations.

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GOALS OF CIVIL LITIGATION: FINDING OF A COMMON UNDERSTANDING TO ENSURE LITIGATION EFFICIENCY

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Abstract: Legal reforms that are regularly carried out in many countries of the world have put on the agenda the problems of efficiency of all types of legal activities. An important place among them is occupied by issues of efficiency of civil litigation. It is known that efficiency characterizes the implementation of the goals of civil proceedings. However, there is no single answer to the question of what the goals of the civil process are today. Researchers have expressed a variety of positions on this issue. The article presents an analysis of existing views on the goals of civil proceedings, including based on methods of Law and economics; an attempt is made to synthesize a common understanding of the goals of civil litigation, which allows to give an objective assessment of its effectiveness. The main goal of civil litigation is considered the effective protection of the rights and legitimate interests of participants in legal relations, correlated with the actual results achieved and the costs of court proceedings.

Keywords: efficiency, goals, results, costs, justice, civil litigation, civil process.

Local and large-scale legal reforms, regularly carried out in many countries, have put on the agenda the issues of legal provisions efficiency as well as the effectiveness of all types of legal activity. This is particularly true in the area of civil justice. In many countries, all aspects of judicial activity are subjected to critical analysis with a tenacity that deserves better application. In absence of a common understanding of civil litigation goals, as well as the category of judicial efficiency derived from them, many researchers and practitioners, however, actively use

them. It has become common to talk about the 'low efficiency' of civil litigation, to suggest procedural legislation changes that should solve all the problems of such 'inefficiency' at once.

The growing interest in the problems of efficiency of justice and its procedural form – civil litigation is due to the change of the civil procedure paradigm that occurred in the middle of the XX century. According to Vadim Abolonin, the modern civil process has appeared due to changes in the concept of law that occurred after the World War II, when natural law and human rights have been given a meaning that they never had before. ... The old paradigm of civil procedure aimed at protecting a subjective civil right no longer meets the requirements of the time, as well as the role of the court as a defender of this subjective right is changing before our eyes. Applying to the court for protection becomes one of the basic human and civil rights, which must be guaranteed by the State for all comers.¹ A natural result of expanding access to justice has been an increase of lawsuits' quantity. "Not ready for such changes, the judicial systems based on the model of traditional civil procedure faced an influx of civil cases, which they were obliged to consider and resolve in accordance with new human rights standards, including within a 'reasonable time'. This could not but cause a chain reaction in the form of increasing budget expenditures on the judicial system and raising questions about the effectiveness of the courts. Thus, the efficiency of the judicial system in the new paradigm has become key".²

Similar trends one can observe in Russia at the early 90s of the XX century. Therefore, according to prof. Yarkov, the withdrawal of almost all restrictions on jurisdiction led to a large-scale increase of the court caseload, because the judicial system was not able to 'digest' the huge number of cases that crumble on it. Therefore, one of the new trends of the Russian justice development since the mid-90s of the XX century has been its 'deritualization', a departure from the classic model of case resolution in civil and administrative proceedings.³ The demand to resolve a multiplying number of cases in a limited courts resource obviously results the simplification of civil procedure. Has this made civil justice effective?

Efficiency characterizes the actual achievement of the goals of civil litigation. We shall go further, it is the goal that becomes the starting point in evaluating the effectiveness of any system, the goal unites many elements with a single meaning.

¹ *Abolonin V.* On the development of civil procedure through a change in the basic paradigm, 12, Arbitration and civil procedure, 43, (2012). [*Аболонин В.О.* О развитии гражданского процесса через смену основной парадигмы, 12 // Арбитражный и гражданский процесс, 43 (2012).]

² *Ibid.* At 44.

³ *Yarkov V.* Project of procedural reform: quo vadis? 12, Arbitration and Civil Procedure, 10, (2017). [*Ярков В.В.* Проект процессуальной реформы: quo vadis? 12 // Арбитражный и гражданский процесс, 10 (2017).]

Systemic interaction must result in some goal or final state to be reached or some equilibrium point being approached.¹ Relations between the elements of the procedural system that generate a new systemic quality of integrity are aimed at achieving the goal. Efficiency is usually understood as a measure of the completeness and quality of the solution of the task set before the system, the fulfillment of its purpose.² Achieving a specific goal is the content and measure of performance in general and management in particular.³ It is obvious that approaches to assessing civil litigation effectiveness will differ depending on the understanding of its goals. At the same time, modern legal science does not demonstrate unity of views on the goals of legal proceedings, justice, civil and arbitral procedure.⁴ What are the goals of civil litigation today? This question may seem old and hackneyed at first glance, but the answer is not obvious at all.

Civil litigation is a procedural form of civil justice. The goals of civil litigation are derived from the general goals of justice. Let's say more, it is the implementation of justice that is the goal of civil litigation. Civil justice is a special type of social government, the imperious implementation of legal provisions by courts in the procedural form of civil cases resolution. While dispensation of justice, the court transforms legal prescriptions into actual statuses, protects rights and freedoms guaranteed by the State. The Constitutional Court of Russia indicated: "It is by resolving the case and rendering a judgment in accordance with the Law that the court administers justice in the proper way, which is the purpose of civil litigation, and thereby ensures rights and freedoms as directly applicable".⁵

Effective civil justice is a great value and a serious task for the modern society. The Supreme Court of the Russian Federation increasingly discusses the issue of the existence of the goal of effective justice.⁶ Its achievement is not limited to the legal sphere; it covers many socially significant areas of human activity and requires the

¹ Lars Skyttner, *General Systems Theory: Problems, Perspectives, Practice* 53 (World Scientific Publishing Co. Ltd, 2nd ed. 2005).

² *Mogilevsky V.*, *Methodology of Systems* 91 (Moscow 1999). [*Могилевский В.Д.* *Методология систем*, 91 (Moscow, 1999).]

³ *Mirzoev R. G., Kharchenko A. F.* *Basic procedures for systems research* 6 (Saint Petersburg 2000). [*Мирзоев Р.Г., Харченко А.Ф.* *Основные процедуры системных исследований*, 6 (Saint Petersburg, 2000).]

⁴ A detailed analysis of scientific views on the goals of civil proceedings is presented in the paper: *Малешин Д.Я.* *Гражданская процессуальная система России. A Doctoral Thesis in Law*, Moscow, Pp. 157–186.

⁵ Постановление Конституционного Суда РФ от 30 ноября 2012 г. № 29-П.

⁶ Определение Верховного Суда РФ от 30 декабря 2019 г. по делу № А40-308982/2018; определение Верховного Суда РФ от 23 мая 2019 г. по делу № А10-775/2017; определение Судебной коллегии по экономическим спорам Верховного Суда РФ от 17 октября 2019 г. по делу № А40-212163/2018; и др.

use of the whole palette of social research methods. A similar situation is observed abroad. The Supreme Court of the UK, for instance, defines the efficiency as one of the most important value of its activities.¹

The reference point in evaluating the efficiency of justice is its purpose. Genady Zhilin suggests that the ability of the court as a public authority to ensure the implementation of civil procedure goals, which express its social purpose, should be considered the effectiveness of justice.² Targets exist objectively as public needs and interests in the most optimal judicial procedure; they are usually expressed in legislation. Accordingly, only when comparing the result of case resolution with the procedural goals enshrined in the law can the effectiveness of civil procedure be assessed.³ Similar conclusions can be found in the books of other Russian researchers. By some estimations, the qualitative characteristic of civil justice is its effectiveness, the ability to ensure, under certain conditions, the achievement of socially significant goals, characterized by the ratio of the actually achieved result of consideration of a civil dispute and the legislatively fixed level of protection of the rights and interests of civil relations participants.⁴ Certainly, the system's ability to achieve socially significant goals reflects the social role of civil justice. However, the proposed idea of the effectiveness of justice is significantly narrowed. The ratio of the result achieved in the consideration of a particular case and the level of protection of the rights and interests of participants in civil legal relations established by law is the effectiveness of justice for parties, such effectiveness does not take into account all aspects of legal impact.

These circumstances determine the importance of correct setting the goals of justice and, as a result, selecting the optimal means to achieve them. Igor Petrukhin noted that the correct definition of the goals of justice, their separation from the goals of other systems of the State mechanism – a necessary condition for finding reliable criteria for assessing the quality of justice. Goals of justice defined too broadly make difficult to determine its effectiveness, since they involve not only the judiciary, but also other State bodies.⁵

¹ The Supreme Court Annual Report and Accounts 2018–2019, 16 (Crown Copyright, 2019).

² Zhilin G. Justice in civil cases: topical issues 121 (Moscow, 2010). [Жилин Г.А. Правосудие по гражданским делам: актуальные вопросы, 121 (Moscow, 2010).]

³ Ibid. P. 110.

⁴ Effectiveness of Civil Procedure in Russia: Institutional Analysis and Institutional Design 55 (Moscow, 2005). [Эффективность гражданского судопроизводства в России: институциональный анализ и институциональное проектирование, 55 (Moscow, 2005).]

⁵ Petrukhin I., Baturov G., Morshchakova T. Theoretical foundations of the effectiveness of justice 48 (Moscow 1979). [Петрухин И.Л., Батузов Г.П., Морщакова Т.Г. Теоретические основы эффективности правосудия, 48 (Moscow, 1979).]

In Russia, it is considered that the content of justice is law enforcement. Soviet legal science of the XX century mid-80's was marked by a discussion about whether law enforcement has its own goals that differ from the goals of the applicable rules of law. Some researchers believed that such own goals exist, and their achievement becomes a measure of the effectiveness of whole law enforcement, while other authors categorically denied setting goals for the law enforcement that differ from the goals of the applicable rules.¹ Undoubtedly, law enforcement activities are aimed at the implementation of legal norms. However, evaluating the effectiveness of such activities through the achievement of general regulatory goals often gives only a vague idea of law enforcement efficiency. The content of justice is broader than law enforcement; it has its own goals, which implementation is valuable to the State and society.

Prof. Bonner divided the challenges facing the justice system into two categories. The first group (which prof. Bonner conditionally called private tasks of justice) is formed by tasks that the court's activities are aimed at when resolving specific civil or criminal cases. The second group consists of the tasks facing the judicial system as a whole (or general tasks of justice). The tasks facing the court when considering civil and criminal cases are primarily to resolve them correctly and quickly. In this way, other private tasks of civil litigation are also carried out. This is the protection of legal rights and interests of citizens and other participants in specific civil and criminal cases, the elimination of violations of Law and the provision of pedagogical influence on citizens.² Prof. Bonner usually identifies the goals and tasks of justice, which allows to apply the cited theses in the analysis of the goals of civil litigation. Undoubtedly, the correct and rapid resolution of civil cases is the key to the effectiveness of the procedural form of justice, civil litigation, both in a particular case and in general.

The goals of civil litigation as a procedural form of civil justice are determined by the role that it plays in modern society. Today we can talk about two main concepts that reflect its place in the system of public relations. In the first, justice is seen as a service rendered by the State to the parties. As Elena Streltsova notes, justice (in the sense that developed by the mid – late XX century) within the framework of the *workfare state* concept ceases to be a function of the State. It becomes a service that the State can provide itself or delegate to any person.³

¹ About this discussion: Глазырин В. В., Никитинский В. И. Эффективность правоприменительных актов // Советское государство и право. 1984. № 2. С. 11 и далее.

² Bonner A. T. Justice as a type of state activity, Selected Works 175 (Moscow, 2017). [Боннер А. Т. Правосудие как вид государственной деятельности. Избранные труды, 175 (Moscow, 2017).]

³ Streltsova E. G. Privatization of Justice, 42 (Moscow, 2019). [Стрельцова Е. Г. Приватизация правосудия, 42 (Moscow, 2019).]

In Russia, this approach is reflected in the Concept of judicial reform of the RSFSR, where par. 13 sec. IV stated: “Judicial reform in the field of civil procedure should lead to a radical change in the view of its purpose. Having ceased to play the role of an instrument for the protection of ‘national’ property and the socialist system, it should become a service rendered by the State to the parties. Only in some cases (protection of honor and dignity, labor disputes, etc.) civil process should play the traditional role of defender of human rights and freedoms and legal entities by force of State coercion”.¹ The consolidation of the cited provisions in the Concept had a serious impact on changing views on the purpose of civil litigation and justice in general.

According to Prof. Yarkov, the main idea of the Concept of judicial was that civil litigation “should become a service rendered by the State to the parties»; it was most likely found to be erroneous.² Not all researchers, however, agree with such a categorical assertion. So, prof. Lazarev and prof. Fursov is convinced that the potential of the concept that the administration of justice is a form of service delivery should be fully realized. ... There is a need for courts within the framework of the law to be given the power to resolve specific cases taking into account the interests of the disputing parties, weighing their interests, specifying the framework rules.³ The resolution of specific cases, taking into account the interests of the disputing parties – is a serious bid to change the entire concept of civil justice. It should be noted that the court’s resolution of cases in the interests of the parties allows us to think about the efficiency of judicial activity first for them, and then about the effectiveness of the courts as State bodies.

Regardless of the recognition by individual researchers of the fallacy of the concept under consideration, it continues to develop and apply. Civil justice is often placed on the same level with ADR. In doing so, researchers inevitably qualify civil justice as a service rendered by the State to the parties, as one of the possible ways to achieve the goal. Even more pragmatic in their decisions are participants in civil turnover, who vote not for the ritual, but for the result. It is not surprising that the concept of civil justice as a service has spread among economists, who

¹ Постановление Верховного Совета РСФСР от 24 октября 1991 г. № 1801-1 «О Концепции судебной реформы в РСФСР» // Ведомости СНД и ВС РСФСР. 31.10.1991. № 44. Ст. 1435.

² Yarkov V. V. Project of procedural reform: quo vadis? 12, Arbitration and Civil Procedure, 10, (2017). [Ярков В. В. Проект процессуальной реформы: quo vadis? 12 // Арбитражный и гражданский процесс, 10 (2017).]

³ Lazarev V. V., Fursov D. A. Justice in the life of society 3, Bulletin of civil procedure, 16 (2019). [Лазарев В. В., Фурсов Д. А. Правосудие в жизни общества, 3 // Вестник гражданского процесса, 16 (2019).]

see it as “one of the discrete institutional alternatives created by society to resolve private conflicts arising over the use of certain resources”.¹

Of course, the thesis about justice as a service has cognitive value. Thus, the consideration of civil litigation from this point of view allows us to compare different ways to achieve the overriding objective – protection of rights, realization of legitimate interests, both in terms of the result and the cost of achieving it. It becomes possible to analyze justice in civil cases using tools designed to study economic concentration and monopolistic activity. Another aspect is the noted by prof. Lazarev and prof. Fursov possibility of resolving specific cases in the interests of the disputing parties. Civil litigation cannot be effective if it is effective only for the State. Private individuals have the right for effective civil procedure, and the State is the entity that ensures this right.

However, the simple model of justice as a service cannot be used as the basis for judicial activity. Justice protects not only private, but also public interests. “The public courts and judiciary may not be a public service like health or transport systems, but the judicial system serves the public and the rule of law in a way that transcends private interests”.² The second concept, which develops the ideas of Franz Klein, is more promising. It was Klein’s understanding that civil procedure realizes a “social function” (*Sozialfunktion*). Settling specific disputes is, therefore, not the sole purpose of civil procedure, it rather also serves (and fosters) welfare (*Wohlfahrtsfunktion*).³ Civil justice is considered as the most important social function of Law, a form of achieving social harmony. This role of justice and its procedural form (civil litigation) in public system is deeply rooted in Russian and European legal doctrine, shared by many classics and modern researchers.⁴ The goals of justice understood in this way are to ensure the protection of the rights and freedoms guaranteed by the State, they are implemented by the imperious application of legal norms by courts, by the transformation of legal prescriptions into actual statuses. The efficiency of justice as a social function is determined by

¹ The effectiveness of civil proceedings in Russia. At 7. [Эффективность гражданского судопроизводства в России. At 7.]

² Genn H. What is justice for? Reform, ADR, and Access to Justice // *Yale Journal of Law and Humanities*. Winter, 2012. P. 399.

³ Christian Koller, *Austrian National Report (including additional information on Germany)*. Civil Procedure in Cross-cultural Dialogue: Eurasia Context: IAPL World Conference on Civil Procedure, September 18-21, 2012, Moscow, Russia. Conference Book / Ed. by Dmitry Maleshin. 136, 137 (Statut, 2012).

⁴ This position is shared by: Рязановский В.А. Единство процесса. М., 2005. С. 36; Фурсов Д.А., Харламова И.В. Теория правосудия в кратком трехтомном изложении по гражданским делам. М., 2009. Т. 1. С. 114; Амосов С.М. К вопросу о целях правосудия // Российский ежегодник гражданского и арбитражного процесса. 2001. № 1 / под ред. В.В. Яркова. М., 2002. С. 10; и др.

the effectiveness of the protection of rights and freedoms in the procedural form of civil litigation. It is the goals of justice that should determine the goals of modern civil litigation.

Franz Klein's concepts are more than a century old, but researchers in many countries continue to rethink the place of civil justice in the social system. For example, in England, not only academics and practitioners but the whole society reflects about the role of civil procedure. "The formal promotion of mediation as a central element in the new civil justice system trivialised civil disputes that involve legal rights and entitlements and redefined judicial determination as a failure of the justice system rather than as its heart and essential purpose".¹ What are the goals of civil litigation today?

In Russia, in accordance with the Civil Procedure Code (art. 2), the purpose of civil justice is to protect violated or disputed rights, freedoms and legitimate interests of citizens, organizations, rights and interests of the Russian Federation, Federation entities, municipalities, and other subjects of civil, labor or other legal relations.² Fair public litigation, ensuring the necessary balance of procedural rights and obligations of the parties,³ strengthening legality and legal order, preventing offenses, forming a respectful attitude to the Law and the Court, and peaceful settlement of disputes are also considered as tasks (which are often identified with the goals) of civil procedure. The goals (objectives) of the procedure in commercial ('arbitrazh') courts are also to ensure the access to justice in the sphere of business and other economic activities; fair public litigation within a reasonable time by an independent and impartial court; strengthening the lawfulness and preventing offenses at the sphere of business and other economic activities; forming a respectful attitude to the Law and the Court; promoting the establishment and development of business partnerships, peaceful settlement of disputes, and the formation of business customs and ethics. In addition, when analyzing goals, along with tasks, Russian courts often use the somewhat vague term 'meaning of litigation'.⁴

Researchers have noted that in the civil procedure system, the goal belongs to a group of elements related to the doctrine. The goal is formulated only on the

¹ See more information: *Genn H. Op. cit.* P. 410.

² Определение Конституционного Суда РФ от 13 мая 2014 г. № 998-О.

³ Обзор судебной практики Верховного Суда РФ № 1 / утв. Президиумом Верховного Суда РФ 24 апреля 2019 г. (п. 12); постановление Пленума Верховного Суда РФ от 21 января 2016 г. № 1 «О некоторых вопросах применения законодательства о возмещении издержек, связанных с рассмотрением дела» (п. 11); и др.

⁴ Обзор судебной практики Верховного Суда РФ № 2 (2017), утв. Президиумом Верховного Суда РФ 26 апреля 2017 г. (п. 15); Обзор судебной практики Верховного Суда РФ № 4 (2015), утв. Президиумом Верховного Суда РФ 23 декабря 2015 г. (п. 4); и др.

basis of scientific ideas on this problem.¹ Following the Legislator, most Russian researchers are convinced that the purpose of civil litigation is to protect violated or disputed rights, freedoms and legitimate interests of citizens, organizations, rights and interests of the Russian Federation, Federation entities, municipalities, and other subjects of civil, labor or other legal relations. Thus, according to Genady Zhilin, the main final goal of civil litigation is to protect violated or unlawfully disputed rights, freedoms and legitimate interests of persons whose dispute is subject to resolution by the court.² According to Dmitry Mareshin, along with the general goal of civil procedure, namely the protection of violated rights, there are two intermediate goals: the resolution of the dispute and the actual recovery of the right.³

However, such an idea about the purpose of civil litigation is subject to fair criticism. Only real rights, freedoms and legitimate interests can be protected by court. Valeri Protasov noted, due to the fact that a protective relationship really might not be and that to establish the truth in relation to this circumstance also requires procedure the purpose of civil procedure is primarily to ascertain the presence or absence of a protective civil relationship, and then, in the case of a positive decision of this question, comes the implementation of a protective relationship.⁴

Another group of researchers considers the purpose of civil litigation the elimination of legal conflicts in society, abnormal manifestations of social relations. Thus, according to Elena Lukyanova, the 'material' goal of the procedural legal block, i.e. the result that the Legislator seeks when setting procedural norms, is to resolve and eliminate abnormal manifestations of public relations, protect social order, rights, freedoms and legitimate interests of citizens and organizations.⁵ In many aspects, the third group of opinions is similar, based on the recognition that the purpose of civil litigation is to maintain legality and legal order, the implementation of protective relations. Valentin Ryazanovsky noted that the implementation of material civil rights is an end in itself only from the point of view of individuals, while for the State it serves as a means of maintaining legality and legal order. And, therefore, when organizing the process, not only the interests of individuals and the properties of their civil

¹ *Малешин Д. Я.* Гражданская процессуальная система России. At 160.

² *Жилин Г. А.*, Ibid. At 55.

³ *Малешин Д. Я.* Методология гражданского процессуального права, 45–46 (Moscow, 2010).

⁴ *Протасов В. Н.* Гражданский процесс с позиций системного подхода (методологический аспект): автореф. дис. ... канд. юрид. наук. Саратов, 1979. С. 14.

⁵ *Лукьянова Е. Г.* Теория процессуального права, 109–110 (Moscow, 2003).

rights should be taken into account, but also the interests of legality and legal order, public interests.¹

The fourth group of views is based on the recognition of the purpose of civil litigation as the solution of a legal case, the resolution of a dispute. For instance, Elena Slepchenko is convinced that the purpose of judicial proceedings is to resolve the case on its merits.² Increasingly, the settlement of disputes is defined as the main goal of judicial activity. Thus, it is for the implementation of such a task of legal proceedings as the peaceful settlement of disputes that judicial reconciliation is used today.³ According to Prof. Nekrosius the hierarchy of goals of court proceedings, the goal of reconciliation of the parties generally occupies a leading position, and the resolution of the case on the merits and decision-making should be interpreted as secondary goals and applied only when it is no longer possible to reconcile the parties.⁴

Speaking about the purposes of the procedural activities of commercial courts as expressions of social challenges facing them, Malkhaz Pacacia offers to distinguish a universal goal, binding the courts of all instances, the overall goals of the appeal system and private objectives of a particular court instance. In his opinion, the universal goal of procedural activity is the protection of violated or disputed rights and legitimate interests, accessibility of procedural activity, its fairness and timeliness.⁵ Some modern Russian authors have proposed an additional goal that reflects the effectiveness of the procedural activity itself, regardless of the protection of subjective substantive law. It is proposed to consider 'effective judicial communication' as such a goal.⁶ A positive answer to the question whether it makes sense to evaluate the efficiency of civil litigation beside the protection of subjective right, and whether vague 'judicial communication' should be considered such a goal, is not obvious.

¹ *Ryazanovsky V. A.*, Ibid. At 36.

² *Слепченко Е. В.* Гражданское судопроизводство: проблемы единства и дифференциации. A Summary of a Doctoral Thesis in Law. Saint Petersburg, 2011. At 14.

³ Регламент проведения судебного примирения, утв. постановлением Пленума Верховного Суда РФ от 31 октября 2019 г. № 41.

⁴ *Некросиус В.* Цель гражданского процесса: установление правды или примирение сторон? // Российский ежегодник гражданского и арбитражного процесса. 2005. № 4 / под ред. В. В. Яркова. СПб., 2006. С. 12.

⁵ *Пацация М. Ш.*, Эффективность процессуальной деятельности проверочных инстанций арбитражного суда. A Summary of a Doctoral Thesis in Law. Moscow, 2010. At 12–13.

⁶ *Сухорукова О. А.* Эффективность гражданского судопроизводства: коммуникативный аспект. A Summary of a PhD Thesis in Law. Yekaterinburg, 2017. At 10, 17.

We can continue to itemize the views of Russian scientists on the goals of civil litigation. In other countries, researchers are also far from a common understanding of the goals. Obviously, approaches to evaluating the effectiveness of judicial activity will differ up to the understanding of its goals. The diversity of goals forces judges to think about the means and instruments to achieve them. If the purpose of civil procedure is a doctrinal product, then practitioners and legislators need the consent of scientific schools in its understanding.

A serious attempt to update the doctrinal goals of civil litigation was made during the IAPL World Conference on Civil Procedure “Civil Procedure in Cross-cultural Dialogue: Eurasia Context”, held in Moscow in 2012. For instance, prof. Remco van Ree mentions that within the circles of Dutch lawyers and legal scholars usually at least three goals are distinguished: a) the authoritative determination of rights recognized by private law and the provision of enforceable titles (judgments) (i.e. “deciding disputes”); b) demonstrating the effectiveness of private law; c) the development of private law and guaranteeing its uniform application.¹ Prof. Fu Yulin summarizes ‘tasks’ of civil procedure, mentioned at Chinese Civil Procedure Law, into two main goals of civil justice: (1) to protect parties’ rights; and (2) to maintain social order.... The courts, however, mainly focus on maintaining “social order” (instead of “legal order”).² “The goal of civil justice in Brazil is, according to most Brazilian legal writers (academics), to solve conflicts or disputes between A and B in accordance with the law. ... But in fact on many occasions civil justice has the goal of solving problems generated by inappropriate activity of the government”.³

Analyzing different approaches to determining the goals of civil procedure, Dmitry Mareshin notes: “given the priority of public interests over private ones, dispute resolution in collectivist societies is carried out only in accordance with public interests. ... The purpose of civil procedure under such conditions is not only to resolve the dispute between the parties, but also to protect public interests. In individualistic societies, on the contrary, priority is given not to public but to private interests. ... The purpose of civil procedure in this case is only to resolve

¹ Remco van Ree, *Dutch National Report (with some additional information on Belgium and France)*. Civil Procedure in Cross-cultural Dialogue: Eurasia Context: IAPL World Conference on Civil Procedure, September 18-21, 2012, Moscow, Russia. Conference Book / Ed. by Dmitry Mareshin. 196, 196-197 (Statut, 2012).

² Fu Yulin, *Chinese National Report*. Civil Procedure in Cross-cultural Dialogue: Eurasia Context: IAPL World Conference on Civil Procedure, September 18-21, 2012, Moscow, Russia. Conference Book / Ed. by Dmitry Mareshin. 164, 165 (Statut, 2012).

³ Teresa Arruda Alvim Wambier, *Brazilian National Report*. Civil Procedure in Cross-cultural Dialogue: Eurasia Context: IAPL World Conference on Civil Procedure, September 18-21, 2012, Moscow, Russia. Conference Book / Ed. by Dmitry Mareshin. 157, 157 (Statut, 2012).

disputes between the parties and protect their rights”.¹ Identifying the goals of procedure may be more challenging in some ways in the Common law world than in the Civil law world because, as is true in many ways, the procedure of the Common law world (like its substantive law) evolved organically and without any “founding principles”. ... Procedure also is measured importantly as it overlaps with or furthers the goals of substantive law; in this context, one may speak of the overall purpose of civil justice as depending on the effectiveness of compensation and the other features of any civil justice system.² The lack of a clear understanding of the goals of civil litigation makes it difficult, but not impossible, to assess its efficiency. A comprehensive analysis of the effectiveness of legal regulations through their application by courts allows us to make a step forward to assess the efficiency of legal proceedings, to abandon the practice of judicial organizations’ mechanistic appraisal.

Italy demonstrates another uneasy approach in defining civil procedure goals. According to Elisabetta Silvestri, in reality a more accurate analysis of the constant amendments to the rules governing adjudications show that the Lawmaker deliberately refrains from enforcing a specific concept of the goals civil justice is expected to attain.³ Perhaps this circumstance is the cause of the phenomena that allow Italian researchers (including Ms. Silvestri herself) to speak about the unbearable level of inefficiency of the Italian judicial process and its slowness.

The variety of approaches in determining the goals of civil litigation requires their systematization for evaluating efficiency usage. Prof. Uzelac says that two main goals of civil justice may be in the broadest sense defined as: (1) resolution of individual disputes by the system of state courts; and (2) implementation of social goals, functions and policies.⁴ Achieving these goals should ideally be a measure of the effectiveness of civil litigation. Prof. Nekrosius is sure that discussions about the goals of the civil process formed two or three main view: 1) material subject theory of right’s protection (where the main purpose of civil litigation is to protect right); 2) theory of protection of actual right (according to which the purpose of

¹ Maleshin D, *Civil procedural system of Russia*. A Doctoral Thesis in Law. At 161. [Малешин Д.Я. Гражданская процессуальная система России. A Doctoral Thesis in Law. At 161.]

² Richard Marcus, *American National Report*. Civil Procedure in Cross-cultural Dialogue: Eurasia Context: IAPL World Conference on Civil Procedure, September 18-21, 2012, Moscow, Russia. Conference Book / Ed. by Dmitry Maleshin. 227, 227 (Statut, 2012).

³ Elisabetta Silvestri, *Italian National Report*. Civil Procedure in Cross-cultural Dialogue: Eurasia Context: IAPL World Conference on Civil Procedure, September 18-21, 2012, Moscow, Russia. Conference Book / Ed. by Dmitry Maleshin. 187, 189 (Statut, 2012).

⁴ Alan Uzelac, *General report*. Civil Procedure in Cross-cultural Dialogue: Eurasia Context: IAPL World Conference on Civil Procedure, September 18-21, 2012, Moscow, Russia. Conference Book / Ed. by Dmitry Maleshin. 111, 114 (Statut, 2012).

civil litigation is to ensure the appropriate application and validity of substantive right); 3) the theory of conflict resolution (where the purpose of civil litigation is to remove a dispute that has arisen between individuals).¹ Right's protection, ensuring the application and operation of substantive right, resolving disputes of individuals – which of these alternatives should the judge choose when considering a particular case? The question looks rhetorical.

Can such ambitious goals become the basis for practical evaluation of the efficiency of, for instance, a particular civil case? Obviously, no, because individual disputes resolution by the courts is the function of the entire system as an institution, and the implementation of broadly formulated social goals, functions and strategies is its external effect. Evaluating the effectiveness of civil litigation requires to specify its universal goals. Prof. Uzelac proposed alternatives that reflect marginal approaches in goal setting: (1) Protection of individual rights *v.* Protection of the public interest. (2) Establishing the facts of the case correctly *v.* The need to provide effective protection of rights within an appropriate amount of time. (3) Proportionality between case and procedure. (4) Equitable results *v.* Strict formalism. (5) Problem solving *v.* Case processing. (6) Freely available public service *v.* Quasi-commercial source of revenue for the public budget.² European countries persist in demonstrating examples of practical implementation of such different approaches. It is truly surprising that the European Commission for Efficiency of Justice is able to compare the efficiency of European judicial systems designed with different goals. In our opinion, the choice of the optimal ratio of the proposed approaches determines the efficiency of civil litigation. Perhaps the ideal combination can not be achieved by legislative fixing of goals (in the clause of the procedural code). Namely it is the judge who, when resolving specific cases, can come as close as possible to the ideal of justice, find the *golden ratio* between these alternatives. In this case, the task of the Legislator is to rationalize the choice, to optimize the level of achievement of mentioned goals when considering cases by the courts. Here, in our opinion, there are broad prospects for the application of *Law and Economics*.

The diversity of views is evidence that while the law preserves the tasks of civil litigation, society sets new goals for the courts. Classic adversarial rules are supplemented by new forms aimed at achieving both strategic goals and solving tactical problems of court proceedings. There is not at least doubt that the civil litigation system today is not single-purpose or even dual-purpose. Civil procedure is a complex multi-purpose system, and its effectiveness cannot be a function of achieving one, even the most important goal.

¹ V. Nekroshius. The purpose of the civil procedure. P. 8. [Некрошиус В. Цель гражданского процесса. С. 8.]

² See more information: Alan Uzelac, *Ibid.* At 114 ff.

Anatoly Tsikhotsky is convinced that the goals of justice are consistent, they have a systemic property, which is manifested in the fact that the achievement of one of them ensures the achievement of all the others.¹ The proposed pattern is an ideal model rather than a realistic perception of reality. The goals of justice do not contradict each other, but the achievement of one of them does not always ensure the achievement of others.

Philosophers have debated whether a goal is an objective or subjective category. As noted by Dzhangir Kerimov, arising under the influence of certain conditions of objective reality, the goal is necessarily always realized in one or another material or spiritually tangible form, which in the end is the result of the realization of the need. ... Being the product of concrete conditions of social existence and ultimately determined by them, the goal is an ideal image of the results of the individual's actions, for which these actions are performed by him.² Legal proceedings are aimed to achieve the goal that is an ideal image of the results of such activities – effective protection of rights and freedoms.

Many researchers in the analysis of the goals of civil litigation pay all attention to the general goals, deduced from the conditions of social existence and determined by it. The implementation of such goals becomes the only measure of the effectiveness of civil procedure. Meanwhile, it is the private goals of parties that force them to apply to the court for protection of their rights. The ideal image of the future results of procedural actions is formed not in the law, but in the minds of persons applying for judicial protection. The private goals of the parties determine their actions and become the basis for evaluating the subjective efficiency of court proceedings.

From the standpoint of welfare economics, the efficient result (holding certain other factors equal) would be a system that minimized the sum of two costs – the costs of erroneous results (inaccuracy), on the one hand, and the costs of the applicable procedures, on the other.³ The main purpose of court proceedings is to protect the right, which is achieved by resolving the parties' dispute, eliminating legal uncertainty and compelling the obligated person. Civil litigation ensure this goal to be achieved with minimal risk of errors and optimal costs. Creating a set

¹ Tsikhotskiy A, Regulatory significance of the goals of justice in civil cases, Legal problems of strengthening Russian statehood, 241 (Tomsk, 2001). [Цихоцкий А. В. Регулятивное значение целей правосудия по гражданским делам // Правовые проблемы укрепления российской государственности, 241 (Tomsk, 2001).]

² Kerimov D, Methodology of law: subject, functions, problems of philosophy of law, 272 (Moscow, 2003). [Керимов Д. А. Методология права: предмет, функции, проблемы философии права, 272 (Moscow, 2003).]

³ Geoffrey P. Miller, *The Legal-Economic Analysis of Comparative Civil Procedure*, 45 Am. J. Comp. L. 905, 906 (1997).

of formal rules that structure the individual behavior (i.e., creating an economic institution) allowed this task to be solved. According to Prof. Maleshin, the goal determines the amount of financial costs for both the parties to the dispute and the State.¹ There is not at least doubt that the goal determines the acceptable costs of erroneous decisions, costs of the proceedings, as well as their ratio. In this context, the purpose of civil litigation defines the optimal level of costs that are taken into account when evaluating the efficiency of court proceedings.

Formal recognition of a right often has no real consequences in itself. A pathetic thesis about ‘the protection of rights’, without taking into account its economic component, regardless to the costs of such protection, stated as the purpose of civil litigation, is not a reliable basis for building a trial model. For parties, the right is inseparable from the good that is assigned to them by this right. As a consequence, the result of judicial protection is determined by the welfare increase of persons who have applied for such protection, and its tangible effect. The “wealth” in “wealth maximization” refers to the sum of all tangible and intangible goods and services, weighted by prices of two sorts: offer prices (what people are willing to pay for goods they do not already own); and asking prices (what people demand to sell what they do own).² The growth of total welfare becomes possible when goods are redistributed to those who use them effectively; both private and social benefits are compared, and intangible satisfaction of parties is taken into account.

Welfare is not just the sum of material goods. In theory, welfare is considered as the satisfaction degree of human needs, as in principle everything that has a subjective value for the individual.³ Satisfaction with judicial protection of rights, freedoms and legally protected interests is an important component of welfare, valuable not only for the individual, but also for the society. Academics use the category of welfare as «a set of economic goods available to people, i.e. goods that are not just of value to individuals, but are limited in volume (quantity) in comparison with their needs, as a result of which they become the object of turnover and acquire a certain exchange value (monetary value)». ⁴ The important thing to remember is that the list of economic goods is very wide today and includes many intangible values. The growth of so widely understood welfare determines the efficiency of judicial protection.

¹ Maleshin D.Ya., Civil procedural system of Russia. A Doctoral Thesis in Law. At 160. [Малешин Д.Я. Гражданская процессуальная система России. A Doctoral Thesis in Law. At 160.]

² Richard Posner, *The Problems of Jurisprudence* 356 (Harvard University Press, 1993).

³ Karapetov A. *Economic Analysis of Law* 118 (Moscow, 2010). [Карпетов А. Г. Экономический анализ права, 118 (Moscow, 2010).]

⁴ Ibid. At. 118.

Hereby, civil litigation have several goals, which achievement determines its effectiveness. The main purpose of civil litigation should be considered not just protection, but effective protection of the rights and legitimate interests of parties. Effective judicial protection is the application of appropriate legal norms to the parties' relations, correlated with the actual results achieved and the costs of court proceedings.

Effective judicial protection is not the only result of effective legal proceedings, just as ensuring the effective distribution of economic benefits is not the only economic task of dispute resolution. In theory, effective third-party enforcement is best realized by creating a set of rules that than make a variety of informal constraint effective. Nevertheless, the problems of achieving third-party enforcement of agreements via an effective judicial system that applies, however imperfectly, the rules are only very imperfectly understood and are a major dilemma in the study of institutional evolution.¹

Litigation is a *zero-sum game* from the parties' perspective. Its by-products, however, have value for society. The clarification of ambiguous laws, the interpretive coverage of omissions, and the resolution of contradictions between laws are undeniably desirable.² In Russia, the above-mentioned results of the trial are not evaluated as 'side' or 'inadvertent' effects. On the contrary, the Legislator has defined the strengthening of legality and legal order, the prevention of offenses, and the formation of respect for the Law and the court as the tasks of civil procedure or proceedings in commercial courts (Commercial Procedure Code, art. 2). This circumstance should be taken into account when evaluating the effectiveness of the courts and modifying civil litigation using institutional design methods. Court goals in civil proceedings can be described as multi-vector, but unidirectional.

The worth of effective judicial protection cannot be reduced to resolving a specific dispute and clarifying the meaning of legal provisions. Real possibility to apply to the court is a powerful incentive to comply with legal requirements for legal relations participants, as well as to make a rational choice of lawful, but not opportunistic behavior. As Richard Posner has pointed out, the higher the likelihood of a lawsuit, the greater the deterrent effect of a particular legal rule that will be invoked as a result of this process, and the less likely it is that potential defendants will engage in the wrongful conduct that creates the right to file a lawsuit.³ Note that in this situation, the Legislator is faced with a dilemma – to make the action to the

¹ Douglass C. North, *Institutions, Institutional Change and Economic Performance* 35 (Cambridge University Press, 1990).

² Nicholas L. Georgakopoulos, *Principles and methods of law and economics: basic tools for normative reasoning* 105 (Cambridge University Press, 2005).

³ Posner R. *Economic analysis of law*. P. 767. [Познер Р. *Экономический анализ права*. С. 767.]

courts simple and inexpensive, but to avoid abuse of the right to file a lawsuit and to maintain incentives for settlement. We are convinced that the found proportion cannot be universal for all categories of cases and should not become a freeze rule.

Economic analysis of law, which is very popular today, allows us to look at the civil procedure from a different angle. When should an aggrieved party be encouraged to use the *ex post* protection mechanism instead of taking additional (often excessive) *ex ante* precautions? The factor of applying to court with a claim is always discounted by the probability of such action, while taking excessive precautions can have the effect of a barrage rule. The need to regulate, rather than prohibit, process-related forms of activity generally determines the use of incentives to apply to court after a violation of a right or legitimate interest. We emphasize that the procedural form of court proceedings should not make the appeal to the court ineffective through unreasonable deadlines and excessive costs.

The analysis of courts' role in interpreting legal provisions and ensuring their uniform application is an important area of civil litigation effectiveness research. It is generally assumed that because every law leaves openings for interpretation, one of the services that litigation provides is interpretation. Laws can be interpreted consistently so that similar disputes obtain the same outcome. Otherwise, laws can be interpreted arbitrarily and similar disputes lead to dissimilar outcomes. Naturally, consistency is preferable but for consistency to exist, the legal system must provide some means for interpretation not to change, that is, for interpretation to solidify¹. Unified understanding of legal provisions meaning is necessary condition for their uniform application by courts dealing with civil cases. Consistency and coherence in application of rules established by the Legislator allows parties to predict the consequences of their actions, minimize their risks and refrain from opportunistic behavior. A predictable outcome of a trial is always a positive factor that becomes an important condition for the growth of both social and individual welfare. It is obvious that the task of the judicial system as an institution is not only to resolve private disputes, but also to ensure uniform interpretation and application of legal provisions. Prof. Lazarev noted that objectively, regardless of whether the subject of the application of law sought to do so or not, the law enforcement act contains provisions that are universal in nature and which, for this reason, cannot be ignored together with statutes in subsequent legal practice².

What procedural tools and rules help to solve this problem? Primarily, this is the entire complex of control proceedings – appeal, cassation and revision, as well

¹ Nicholas L. Georgakopoulos, *Ibid.* At 105.

² Lazarev V. V., Law enforcement acts and their effectiveness in a developed socialist society (theoretical research). [Лазарев В. В. Правоприменительные акты и их эффективность в условиях развитого социалистического общества (теоретическое исследование).]

as *exequatur* proceedings. The State and society set before the courts the task of ensuring uniform application of rules of law by non-governmental jurisdiction bodies, as well as protecting *ordre public* from possible distortions by foreign judgments and arbitral awards. In many countries, the primary role in solving this problem is assigned to the requirements of fixing the court's conclusions on the merits in the judgment. According to researchers, without written opinions, consistency of interpretation may be impossible. Consistency also requires repetition of prior interpretations.¹ In this context, the justifying part of a court judgment becomes not a prologue to the resolution on the merits, but an independent result of the trial, the benefits of which are received by the whole society. As noted by Valery Lazarev, the legal significance of the law enforcement act is not limited to its effect in relation to the addressees of legal norms that pass as subjects in this particular case. It covers everything that actually takes place and all possible effects of the act on the legal order.² Clarification of the legal provision and its application to the facts of the case established by the court is the most important element, which absence produce low efficiency of the legal impact. An attempt to cancel court obligation to make the justifying part of the judgment in favor of the notorious 'judicial load decrease' will increase such load in future. The lack of transparency of the court's conclusions on the merits of the dispute creates incentives for the parties to file new claims in an effort to update the established rule of law.

Who is responsible for achieving the goals of civil litigation? According to Gennady Zhilin, the effectiveness of such a social phenomenon as legal proceedings cannot be considered in isolation from the purposeful activities of the court and the activities of other subjects of the process controlled by it. The direction of their activities is determined by the goal-oriented principles of legal proceedings, which exist objectively as public needs and interests in the most optimal judicial procedure, expressed in legislation.³ Who is responsible for the effectiveness of civil litigation? Having studied the goals of civil justice from the position that they are determined by the State, Olga Shemenева comes to the conclusion that these are always public goals, which the court must first strive to achieve. In her opinion, individual goals of parties may differ significantly from them.⁴ It is difficult to accept this reasoning. A party is, first of all, an active participant in court proceedings, who is empowered by Law and who is provided with procedural means to achieve

¹ Nicholas L. Georgakopoulos, *Ibid.* At 106.

² Лазарев В. В. *Ibid.* At 15.

³ Жилин Г. А. *Ibid.* At 110.

⁴ A Summary of a Doctoral Thesis in Law. Voronezh, 2017. At 17. [Шеменева О. Н. Роль процессуальных соглашений в гражданском судопроизводстве.]

a certain goal in legal proceedings, to satisfy a certain interest.¹ Civil procedure unites purposeful activities. The legal status of each participant in the process and the provision of procedural means are determined in order for the joint procedural activity to be successful and for the common goal to be achieved. The parties can also pursue their own interests.

The challenge is to design a litigation system that reduces parties' litigation expenses and, ideally, eliminates them, while maintaining or increasing the benefits that society obtains from litigation.² The use of modern digital technologies that have proven themselves in many areas of human activity is considered promising. The widespread use of "electronic justice", modern systems of data transmission and storage, as well as the public posting of judgments will significantly reduce the trial costs of the parties, increasing the benefits that society receives from imperious implementation of legal provisions by the courts.

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¹ Problems of Judicial Law 47 (Moscow, 1983). [Проблемы судебного права, 47 (Moscow, 1983).]

² Nicholas L. Georgakopoulos, *Ibid.* At 108.

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COMMENTARIES

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THEORETICAL BASIS OF THE SOCIAL DIRECTION OF CIVIL LEGAL REGULATION¹

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Abstract: The constitutional reform carried out in our country, the new look of several dozen articles of the fundamental law indicate that the main vector of Russia's development over the coming decades is the implementation of the idea of a social state. The social orientation of constitutional norms obliges the branch sciences to also reflect on the problem of target regulation in the selected vector of social orientation. Thus, the social orientation of civil law regulation becomes an urgent task of civil science.

The article analyzes the origins of the ideas of the social orientation of legal norms contained in the works of the great humanists (T. More, T. Campanella). Even back then, it was clear that the satisfaction of human needs directly depends on a specially created and effective mechanism of legal regulation.

The author dwells on the analysis of the norms of the constitutions of several dozen countries of the world in order to create a collective image of a modern social state. Taking into account the experience of social policy of the leading countries of the world, the author was able to draw the necessary conclusions, which are important to consider when targeting the modernization of civil law norms.

In conclusion, the author notes that the goal of the sectoral civil legislation is to create a socially oriented economy, which implies equal opportunities for par-

¹ The study was carried out with the financial support of the Russian Foundation for Basic Research in the framework of the scientific project No. 20-011-00207.

ticipants in civil life and allows for the welfare of individuals. The importance of giving a social function to the right of ownership is proved, the content of which must be ensured by the totality of property law norms.

Key words: civil law, justice, common benefits, equality, welfare state, the goals of civil regulation, property, property relations

Love for our own good produces in us
love for our Fatherland.

*N. M. Karamzin*¹

The origins of the teachings in the writings of the great humanists

Historically, over the course of a century, the best people of different times have secretly and confidentially thought about the just structure of the state for their people. Five centuries ago, in 1516, the English lawyer and politician T. More wrote the “golden” pages of a science fiction story called “Nowhere” or “Utopia”². In the form of a story about unusual adventures in exotic countries, T. More described an ideal political system based on the principle of justice, where equality reigns and virtue has a special price. Since all posts are elective in a utopian society, all people work and complete democracy reigns. Social conditions of life in an ideal state, believed T. More, should create the conditions for the development of the human personality, its high moral qualities, while individual interests should be optimally combined with socially significant ones. According to T. More, it is mainly important for a well-arranged state to have highly educated and cultured people who know how to work and love to work, combining physical labor and mental labor. More was an extraordinary person who knew both the ups (he occupied the post of Lord Chancellor) and the downs (He was accused of treason and executed). His “Utopia” remains eternal, as a triumph of humanistic thought, which brought the author worldwide fame.

After 100 years, the experience of thinking about an ideal state was continued by Tomaso Campanella – a philosopher, poet and religious thinker. The son of the shoemaker T. Campanella dreamed of liberating Calabria from the yoke of the Spanish monarchy. In his homeland, he led an uprising with the aim of carrying out radical social transformations and creating a free state. In prison T. Campanella wrote his famous work “The City of the Sun”, outlining

¹ *Karamzin N.* Encyclopedia of Wisdom, 2007. P. 600. [*Карамзин Н.М.* Энциклопедия мудрости. М.: РОССКА, 2007. С. 600.]

² *More T., Campanella T.* Utopia, The City of the Sun [*Мор Т., Кампанелла Т.* Утопия, Город Солнца. М.: Алгоритм, 2014. 256 с.]

in it the author's social program¹. In his work, the image of a sailor who visited the island of Taproban (now Sri Lanka) was created. The main character talks about a completely unusual state in its structure. Labor is well organized in it, so its inhabitants labor with joy. They are not bound by the cult of things, and things simply satisfy their necessary needs. The social order in the city of the Sun is characterized by social homogeneity, and people who are not exhausted by harassing labor retain their individuality. At the heart of government is "wisdom and love." Change of managers is carried out at a national meeting, which is convened twice a month. The activities of the top four managers (metaphysics and its three assistants) are also subordinated to democratic principles. They undertake to give up their leadership positions if people see these are superior to their abilities and knowledge. The main characteristic in a well-organized society, according to T. Campanella, is people who do not need anything. This refers to people who are modest in their needs. What is most important for them is having free time for the development of both their abilities and occupations in various sciences. Having flipped through the pages of the works of the great humanists of his time, you come to the understanding that the "little man" in his state, namely, the so-called participants in civil law relations – citizens of pre-revolutionary civilists, really need the specially created law to be effective and scientifically based by the mechanism of accepted norms created the best conditions for satisfying his their needs, both material and spiritual. And here a special role cannot but be assigned to civil law, quite rightly called the law of realized needs.

The constitutional foundations of the social orientation of civil law regulation

Constitutions of different countries of the world are distinguished by the uniqueness of norms dedicated to the concept and features of a social state. Some of them have a centuries-old history, while others, although recently adopted, have original approaches. Therefore, their scientific analysis will obviously be fruitful. In the Republic of Azerbaijan in Art. 16 of the 1995 Constitution, sociality is correlated with an increase in the well-being of the people. And the main task of economic development is seen by the state (Article 15) in the development of a socially oriented economy. Thus, in this state at the constitutional level, the task of the social orientation of civil regulation is formulated.

The 1995 Constitution of the Republic of Armenia draws attention to Art. 84, in which the right of citizens to a dignified existence is explicitly noted². The legisla-

¹ Мор Т., Кампанелла Т. Утопия, Город Солнца. М.: Алгоритм, 2014. 256 с.

² Конституция Республики Армении // URL: <https://www.president.am/ru/constitution-2015>. [Constitution of the Republic of Armenia // URL: <https://www.president.am/ru/constitution-2015>.]

tor emphasized that every person in need and a person of advanced age has the right to receive support from the state. Thus, in this country, a special emphasis is placed on state care for the elderly, as the most important manifestation of the essence of a social state.

The Constitution of Argentina in 1853, as amended in 1860, 1866 and in 1898, despite its centuries-old history, compares favorably with the goals of the welfare state. Among them are highlighted, namely: strengthening justice, ensuring the protection of its citizens and promoting general prosperity¹.

In the Republic of Belarus, the 1994 Constitution in Art. 47 speaks of the special care of the state in relation to certain categories of citizens, namely: veterans of war and labor, as well as persons who have lost their health while protecting state and public interests². It is important to note that the Belarusian state takes care of the development of the state housing stock and establishes as a state obligation to assist citizens in acquiring housing. Thus, at the level of the constitutional norm, the civil law aspect of the manifestation of the sociality of the Belarusian state is traced.

In Brazil, the main law of 1988 sets the goal of building a solidarity society that is presumed free and fair (art. 3). Thus, the idea of solidarity, which assumes the unity of people, the achievement of their mutual understanding, is put at the forefront. This can be achieved, according to the legislator of Brazil, by eliminating poverty and reducing social and regional inequalities. Among the social components (Article 6) are also called security, health care, work, leisure and assistance to the poor. The constitution of this country guarantees a decent standard of living and sets a ban on wage cuts.

The Bulgarian Constitution of 1991, as emphasized in its preamble, expressing the will of the Bulgarian people, sets the task of building a social state³. The basic law of this country draws attention to article 47, which refers to the need for the state to create special guarantees of protection for women who are mothers. In addition, the uniform development of certain regions of the country seems significant, which ultimately should ensure, according to the legislator, the preservation of national and state unity.

¹ Конституция Аргентины // URL: <https://worldconstitutions.ru/?p=358> [Constitution of Argentina // URL: <https://worldconstitutions.ru/?p=358>.]

² Конституция Республики Беларусь // URL: <http://pravo.by/pravovaya-informatsiya/normativnye-dokumenty/konstitutsiya-respubliki-belarus>. [Constitution of the Republic of Belarus // URL: <http://pravo.by/pravovaya-informatsiya/normativnye-dokumenty/konstitutsiya-respubliki-belarus>.]

³ Конституция Болгарии // URL: <https://legalns.com/download/books/cons/bulgaria.pdf>. [Bulgarian Constitution // URL: <https://legalns.com/download/books/cons/bulgaria.pdf>.]

Venezuela (Bolivarian Republic of Venezuela) in the 1999 constitution proclaims that it is a social state based on the principles of law and justice. The highest value here is recognized as social responsibility and moral principles. In this case, social responsibility is associated with the need for citizens to comply with the rules, requirements and principles of joint dormitory, which is the opposite of chaos, self-will and arbitrariness.

In Georgia, at Art. 5 of the 1995 Constitution, the three principles of the social state are specifically designated – social justice, social equality and social solidarity¹. Sociality in this country is seen, inter alia, in the uniformity of socio-economic and demographic development throughout the territory, including high-altitude regions. The state of Georgia sets the task of providing not only a living wage, but also a decent home for a person. The creation of guarantees for decent housing obviously requires a social orientation of civil regulation in Georgia. It is also important in Georgia such a function of the social state as protecting the welfare of the family. Point 3 of Art. 27, enshrines the need for the state to ensure academic freedom and autonomy of higher educational institutions.

The state of Guinea also proclaims itself a social republic (Article 1 of the Guinean Constitution of 1990)². Interestingly, this normative act establishes the right for the people to fight oppression in order to preserve their dignity, culture and environment.

The fundamental law of Germany in 1949 in Art. 28 sees the importance of not only following the principles of a social legal state, but also observing its spirit³. In this country, basic importance is attached to the right of the people to elections, which must be universal, direct, free, equal and secret. Thus, at the constitutional level it is emphasized the importance of the universality of the democratic foundations of the functioning of the state.

Art. 1 of the Spanish Constitution of 1978 states that the state is legal, democratic and social⁴. The highest values of public policy proclaim justice, equality and political pluralism. Accordingly, justice can be considered as a requirement that fully extends to civil law relations.

¹ Конституция Грузии // URL: <https://matsne.gov.ge/ru/document/view/30346>. [Georgian Constitution // URL: <https://matsne.gov.ge/ru/document/view/30346>.]

² Конституция Гвинеи // URL: <https://worldconstitutions.ru/?p=239> [Guinean Constitution // URL: <https://worldconstitutions.ru/?p=239>.]

³ Основной закон ФРГ // URL: https://www.1000dokumente.de/?c=dokument_de&dokument=0014_gru&l=ru&object=translation. [The basic law of Germany // URL: https://www.1000dokumente.de/?c=dokument_de&dokument=0014_gru&l=ru&object=translation.]

⁴ Конституция Королевства Испания // URL: <https://legalns.com/download/books/cons/spain.pdf>. [Constitution of the Kingdom of Spain // URL: <https://legalns.com/download/books/cons/spain.pdf>.]

The principles of social policy are laid out in great detail in the Irish constitution, despite the fact that it was adopted back in 1937. These principles are established in Art. 45 of the constitution¹. According to the legislator of this country, everything should be based on two essential components – justice and charity. It is these moral requirements, emphasized in the constitution, that should inspire all other institutions of state life. The Irish Constitution details the objectives of social policy as follows: 1) the creation of such economic conditions by the state that citizens can, through their studies, provide for the maximum possible household needs; 2) the distribution of property between classes and persons, so that it contributes to the common good; 3) the inadmissibility of concentration of ownership and control in the hands of a few individuals; 4) the use of loans solely for the purpose of increasing the well-being of the people; 5) the protection of citizens from unfair exploitation, consisting in the need to do what is not suitable for their gender, age and strength; 6) finally, the final task of the Irish state is to ensure the economic well-being of as many families as possible, support for the weak, widows, orphans and the elderly.

Republic of Kazakhstan in the art. 1 of the 1995 constitution also proclaims itself a social state². In this regard, the legislator considers it important to achieve a social agreement, ensure economic development for the benefit of the whole people, as well as the establishment of Kazakhstani patriotism. The common good, as the goal of economic development, attracts attention and can be considered as an important idea for the development of national civil legislation.

The Kyrgyz Republic calls itself the social state in Art. 1 of the 2010 Basic Law. In Art. 5 of the constitution of this country emphasizes that state bodies serve the whole society, and not some part of it. The main attention is paid in Kyrgyzstan to social programs that are aimed at creating decent living conditions, free personal development and employment promotion.

The constitution of Mozambique of 1990 is also of interest for research³. The purpose of social organization in this country proclaims the achievement of social justice, where the material and spiritual well-being of citizens is ensured. So, the basic law linked the well-being of citizens with social justice, which also cannot but find the necessary reflection in the national civil law regulation.

¹ Конституция Ирландии // URL: <https://worldconstitutions.ru/?p=151>. [Constitution of Ireland // URL: <https://worldconstitutions.ru/?p=151>.]

² Конституция Республики Казахстан // URL: https://online.zakon.kz/document/?doc_id=1005029. [Constitution of the Republic of Kazakhstan // URL: https://online.zakon.kz/document/?doc_id=1005029.]

³ Конституция Мозамбика // URL: <https://worldconstitutions.ru/?p=69>. [Mozambique Constitution // URL: <https://worldconstitutions.ru/?p=69>.]

In the Principality of Monaco, the 1962 Constitution proclaimed the Monegasque social right to state assistance in case of need¹. Generally, these needs are linked by the constitution to illness, unemployment, disability, old age and motherhood. The conditions and forms of assistance are specified, including in the civil legislation of this country.

The importance of ensuring social progress is stated in Art. 1 of the Constitution of Malta 1964². This neutral state, actively striving for peace and security, sees its economic and political mission in ensuring social progress. It is interesting that in this country, the right to work is not only formally proclaimed, but this right is correlated with the task of the state to create such economic conditions that citizens can effectively realize it. Thus, the importance of the social orientation of the national civil law regulation is obvious here. Noteworthy, Art. 11 of the constitution refers to targeted assistance to students and families of students. Every citizen who is incapable of work and not provided with the necessary funds has the right to support and social assistance of the state in this country.

The state of Senegal calls itself a social republic. The constitution of this country establishes the motto: «One people, one goal, one faith»³. Fundamental values, in accordance with Art. 14 of the constitution of Senegal are considered marriage and family. To strengthen the family, as the natural and moral foundation of the country, the state has a duty to take care of its physical and mental health. The idea of the social orientation of strengthening the family is being developed, respectively, in the norms of the family legislation of this state. Also among the priorities for Senegal is the protection of young people, including from exploitation and moral neglect.

Research articles of social interest in the constitution of the United Arab Emirates are of interest. In particular, Art. 14 of the fundamental law, as development goals, it proclaims not only social justice, but also guaranteed confidence, security, as well as equal opportunities for its citizens⁴. Social principles are co-operation and mutual mercy (Article 14). The constitution calls the basis for

¹ Конституция Княжества Монако // URL: http://www.concourt.am/armenian/legal_resources/world_constitutions/constit/monaco/monaco-r.htm. [Constitution of the Principality of Monaco // URL: http://www.concourt.am/armenian/legal_resources/world_constitutions/constit/monaco/monaco-r.htm.]

² Конституция Республики Мальта // URL: <https://worldconstitutions.ru/?p=145>. [Constitution of the Republic of Malta // URL: <https://worldconstitutions.ru/?p=145>.]

³ Конституция Сенегала // URL: <https://worldconstitutions.ru/?p=72> [Senegal Constitution // URL: <https://worldconstitutions.ru/?p=72>.]

⁴ Конституция Объединенных Арабских Эмиратов // URL: <https://worldconstitutions.ru/?p=89>. [Constitution of the United Arab Emirates // URL: <https://worldconstitutions.ru/?p=89>.]

the well-being of citizens the natural resources located on the territory of each of the emirates, which are considered the public property of the people (Article 28). Society, in accordance with the norms of the constitution, is responsible for the protection and proper use of natural resources and wealth for the benefit of the national economy. The UAE proclaims that the personal benefit of citizens is clearly related to the common benefit of the whole society. Thus, in this country the connection between the constitutional and civil law regulation of a social orientation is obvious.

The 1997 Constitution of the Republic of Poland proclaims the principle of social justice as a guideline (Art. 2)¹. Interestingly, according to the Constitution of Poland in Art. 20 market economy is called social. It is based in this country on the letter of the basic law on the one hand on private property and free economic activity, on the other hand on solidarity, dialogue and co-operation of social partners. It seems that the idea of creating a social market economy is relevant not only for the civil regulation of Poland, but also for any other country.

1993 Constitution of Peru in Art. 43 declares that in this State any child, adolescent, mother or elderly person is protected.² Marriage and family are recognized as the natural and fundamental institutions of society. Art. 24 of the Constitution of Peru establishes priority over all other obligations of the employer to pay wages. Thus, in this country the need for civil regulation of the mechanism for the implementation of this social obligation is obvious.

In the Constitution of the Republic of Rwanda in 1991, the country is positioned as a social republic, since the principle "Government of the people led by people and for people" is the dominant one³. It seems that this motto can and should be implemented not only constitutionally but also industrially, including the civil law of this country.

The Singapore Constitution of 1963 sees the implementation of a national social security policy as the foundation of the constitutional order. It is based on the formation of funds (Article 145). For each Singaporean citizen, a central reserve fund is being formed; it is forcibly replenished by the citizen and its employer. On average, this is 37% of the monthly wage. Each part of this fund (protecting the family, getting an education, providing old age, medical care) provides a socially

¹ Конституция Республики Польша // URL: <https://legalns.com/download/books/cons/poland.pdf>. [Constitution of the Republic of Poland // URL: <https://legalns.com/download/books/cons/poland.pdf>.]

² Политическая Конституция Перу // URL: <https://worldconstitutions.ru/?p=534> [Political Constitution of Peru // URL: <https://worldconstitutions.ru/?p=534>.]

³ Конституция Руанды // URL: <https://worldconstitutions.ru/?p=266>. [Constitution of Rwanda.]

strategic part of a person's life. Thus, the idea of the social orientation of the constitution of this country is being successfully implemented in practice.

Turkish Constitution of 1982 in Art. 2 states that the state is democratic secular and social¹. The constitution of this country is based on the concept of public peace, which distinguishes the basic law of this country. At the same time, national solidarity and justice are called the principles of state activity. Social cohesion and its significance are referred to in Art. 49 of the constitution of Turkey. The priority direction for this state proclaims the protection of agriculture and livestock, as well as persons employed in these areas. It seems that the priority of agricultural development can be consistently carried out by civil law.

In the Swedish constitution of 1974, the main goal of the state proclaimed the personal economic and cultural well-being of private individuals (Act "On the form of government", art. 2)². The Swedish Constitution is committed to ensuring the right to work, housing and education for all citizens, as well as promoting social security and good living conditions.

Finally, let us focus on the text of the 1999 Federal Constitution of Switzerland, which established in its preamble that the strength of society is measured by the well-being of the weakest of its members.³ These words, it seems, can be the exact motto of any state that is really striving to become social. The provisions of the Swiss constitution speak of the importance of a spirit of solidarity, reciprocity, internal cohesion, openness and responsibility. The state is obligated to ensure equal chances for its citizens (clause 3 of article 2 of the constitution), setting very carefully the principles of its social policy (article 41).

The study of constitutional norms of a social orientation of almost three dozen states allows us to draw an ideal image of a modern social state. Firstly, it is a state that creates equal, including economic, opportunities for its citizens. Secondly, justice is at the heart of his work. Thirdly, the objective reality in this state is the responsible attitude of both the state and citizens to the implementation of their responsibilities. Fourthly, in a social state the satisfaction of the needs of all segments of the population is harmoniously combined. Fifthly, the social state ensures economic growth, since it has established a social market economy based on democratic principles of the interaction of labor and capital. All these characteristics can take on real value, being consistently implemented by the norms of the country's civil legislation.

¹ Конституция Турции // URL: <https://worldconstitutions.ru/?p=84>. [Constitution of Turkey.]

² Конституция Швеции // URL: <https://worldconstitutions.ru/?p=161>. [Constitution of Sweden.]

³ Союзная конституция Швейцарской Конфедерации // URL: <https://worldconstitutions.ru/?p=135>. [Union Constitution of the Swiss Confederation // URL: <https://worldconstitutions.ru/?p=135>.]

Success in the implementation of socially oriented ideas in the countries of the world and the lessons arising from them on improving civil law regulation

The quality of life of people in different countries of the world is evaluated both subjectively and by objective indicators included in scientifically-based methods. Among the indicators usually appear: 1) people's health, which is estimated by life expectancy; 2) family life, the stability of which is manifested in the level of divorces per thousand people; 3) social life, reflected, in particular, in trade union membership; 4) the level of material well-being, directly related to the size of GDP per capita; 5) job guarantees and, accordingly, the unemployment rate; 6) gender equality, which is proved by the ratio of the average wage of men and women. In addition, political stability, political freedom and security are considered important indicators. The twenty countries leading in the quality of life include, in particular, countries such as Austria, Australia, Great Britain, Germany, Denmark, Ireland, Norway, Singapore, Sweden, Switzerland. What is the secret to the success of social programs created in these countries of the world? Let us turn to the indicators of their socio-economic development, which provide a fairly high standard of living for citizens in these countries. So, Austria (the Republic of Austria) is a state located in Central Europe, is an industrial country with a dynamically developing economy. The volume of GDP per capita here is 50 thousand dollars, the economy is stable, and the standard of living, as of 2019–2020, is one of the highest in the world¹. The country has a low unemployment rate (4.3%). It is socially important that kindergartens for children from three to six years are provided for free. The average family income after paying all taxes is 30 thousand euros per year. The percentage of income tax depends directly on wages. Accordingly, the higher the earnings, the higher the amount of taxes, which reaches 55%. At the same time, with earnings below 11 thousand euros per year, citizens are exempted from taxes. A high level of taxes allows the state to provide support to various categories of citizens. In Austria, social benefits are paid to job seekers who take retraining courses. Moreover, additional payments are made for the distance to the place of work, as well as for partial retirement and, if necessary, temporary financial assistance. The country has a good environment, since the state is protected by natural resources, waste is being recycled, and the safety indicator reaches 80%. The minimum pension of an Austrian is 750 euros, and the maximum is 4000 euros. To receive a high pension, the continuous experience must be 15 years.

¹ Ease of Doing Business in Austria // URL: <https://www.doingbusiness.org/en/data/exploreconomies/austria>

Australia, being a country occupying the mainland of the same name, also provides its citizens with a decent standard of living, since over the past 23 years it has demonstrated continuous growth in GDP, an average of 3.3% per year¹. The pension system is at a high level here, since when retiring, citizens have the opportunity to receive monthly payments of \$ 2,000. The minimum allowance for retirees in this country is 1,200 Australian dollars per month. The average household income in Australia is \$ 650 a week. Students have the opportunity to receive \$ 300 per week. Since the state is involved in the organization of medical services, the provision of medical services and medicines to citizens is free. The government is adopting special programs to improve the living standards of citizens and reduce the gap between rich and poor. Agriculture is organized at a high level in the country, which is why food prices are affordable for everyone. Good ecology has made it possible to get rid of many diseases, such as asthma and allergies. In this country, the streets are clean, since the wages of garbage collectors equal the wages of ministers. Australia has a very high level of education, and therefore the diploma of an Australian educational institution is recognized worldwide.

Great Britain, an island nation in northwestern Europe, is believed to possess most of the attributes of a welfare state. Here, government spending on social protection of the population and maintaining the necessary level of individual incomes of citizens over the past decade has increased 18 times. The country's social costs account for 64% of the budget. With an unemployment rate of 4% (2020), the UK is considered one of the most prosperous countries in the world. The salary of citizens here is also one of the highest in Europe, the work of employees is paid at the hourly rate, and the minimum rate is 8.72 pounds². The Law on Contributions and Payments, adopted in 1992, established that all Britons, without exception, have the right to a pension, and its average figure is 3,000 pounds per month.

Germany, a state in Western Europe, is one of the most prosperous countries with a developed economy and a high level of social protection. The tax system of this country consists of more than 40 different taxes, ranging in size from 19% to 53% depending on the level of income. Thanks to tax policy, the state has the opportunity to carry out its social activities at a high level. The average income of an

¹ Household Income and Income Distribution, Australia // URL: [https://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/32F9145C3C78ABD3CA257617001939E1/\\$File/65230_2007-08.pdf](https://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/32F9145C3C78ABD3CA257617001939E1/$File/65230_2007-08.pdf); Ease of doing business in Australia // URL: <https://www.doingbusiness.org/en/data/exploreconomies/australia>

² NLW will rise to £8.72 in April 2020 // URL: <https://app.croneri.co.uk/whats-new/nlw-will-rise-872-april-2020>

ordinary German is 2500 euros per month. The most paid is the work of a doctor who receives up to 15,000 euros, as a result, this country has the highest population health in the world, which does not suffer from many diseases, including tuberculosis and malaria. The high level of development of medicine with clinics equipped with the latest technology facilitates diagnosis and therapy, alleviating the problems inherent in old age. The salaries of teachers who earn about 6,000 euros are also high in Germany. As for pensions, the average pensioner receives 1,441 euros per month. Much attention is paid to families with children, whom the state helps through a system of subsidies, allowances and tax deductions. Consumer goods, including food and clothing, can be found quite cheap here, since the economy is socially oriented. When releasing cheap goods, all necessary production standards are observed¹.

In Denmark, a Scandinavian state located on the Jutland Peninsula, social security financing accounts for a large part of government spending. Medical services are provided to citizens free of charge, significant cash benefits are paid in the country in situations where citizens lose their jobs, fall ill or dissolve marriages. The timing of payment of such cash benefits is not limited, they can be made until the recipient is able to provide for themselves or receive the right to a social pension. Assistance to families with children in Denmark is provided in the form of social services. It is guaranteed to get a place in a children's institution from the very first day of a child's life. During maternity leave, parents are entitled to unemployment benefits. In addition, the child can be placed on temporary or permanent residence in a foster family or boarding school. These measures have led Denmark to take one of the first places in the world in the number of working women. Pensions in this country are divided into pre-term and old-age pensions. They are appointed ahead of schedule when disability is limited due to physical or social reasons. The state gives the elderly people the opportunity to be at home, and not to move to a nursing home, as they are provided with assistance in cleaning the house, renting the necessary household appliances, as well as medical services. If an elderly person is not able to live independently, he is given the opportunity to settle in specially created centers where residents participate together in everyday activities².

Ireland, a state located in Western Europe, also holds a leading position in the standard of living of citizens. The average wage in Ireland is \$ 3,000 per month, the

¹ Earnings and earnings differences // URL: https://www.destatis.de/EN/Themes/Labour/Earnings/Earnings-Earnings-Differences/_node.html

² Report for Selected Countries and Subjects // URL: https://www.imf.org/external/pubs/ft/weo/2018/01/weodata/weorept.aspx?sy=1980&ey=2023&scsm=1&ssd=1&sort=country&ds=.&br=1&c=128&s=NGDP_RPCH%2CPPPGDP%2CPPPPC%2CPCPI%2CLUR%2CGGXWDG_NGDP&grp=0&a=&pr.x=46&pr.y=17

unemployment rate is 13%, and GDP per capita is \$ 78,765,000. Such sectors of the economy as pharmaceuticals, the production of medical equipment, and mechanical engineering are actively developing in the country. The amount of taxes in this country is determined by the level of income, and ranges from 20% to 42%. In the country, the family is protected by law, which is why divorce is prohibited by the constitution. In recent years, a number of regulations have been adopted aimed at equalizing women with men. Ireland has a national revival program, and the regulations adopted in its development are aimed at combating unfair dismissals and preventing labor conflicts. Homeless people are provided with free housing in Ireland.

Norway, a country located in Northern Europe, is one of the richest countries in terms of per capita income, with a GDP of 36 thousand conventional units. A significant contribution to budget revenues comes from agriculture. The main resource for the redistribution of funds in Norway is the state budget, which provides a fairly high level of social protection of citizens. The Norwegian government spends most of its money on healthcare (about 8%). The size of the pension varies from 800 to 1600 euros. When someone is unemployed, the state fully pays for their housing and communal services, electricity and transport. Unemployment benefits range from 600 to 1,500 euros¹. In total, social spending in Norway is about 40% of the budget. The existing insurance system allows you to pay 100% of the sick leave and to compensate for spa treatment for needy citizens. Thus, the state takes full responsibility for maintaining a high level of social life of citizens, entrusting itself with the provision of a wide range of social services.

Singapore is a city-state in Southeast Asia, a rich country with a high standard of living. A favorable environment for business has been created there. They have all the conditions for testing the latest technologies and business ideas. Interestingly, if a company's income is less than 10 million Singapore dollars, then it is exempt from taxes. There is barely any corruption in the country. Social programs are implemented at the expense of the central reserve fund, replenished by the citizen and its employer. In Singapore, a high level of development of medicine and doctors have achieved success in treating many diseases, including the treatment of diabetes, restoration of vision and hearing and rehabilitation after strokes. The country is characterized by low utility bills, as well as low crime rates².

In Sweden, a country located in Northern Europe, as in other Scandinavian countries, high social standards are set. An effective system of social support for

¹ Норвегия: нефть, вода и всеобщее благоденствие // URL: <https://carnegie.ru/2017/03/27/ru-pub-68404>. [Norway: oil, water and well-being.]

² Экономика Сингапура // URL: https://ru.wikipedia.org/wiki/Экономика_Сингапура. [Singapore Economy.]

citizens in all cases of life has been created in this country. State policy is aimed at ensuring that citizens' incomes are sufficiently homogeneous. It is legislatively established in this country that men in the event of the birth of a child must be on maternity leave for 60 days. This enables women to actively participate in the political life of the country. It is no coincidence that half of the size of the Swedish parliament and the cabinet are women. Swedish citizens are provided with decent housing, as the state purposefully supports housing construction with subsidies and loan guarantees. Private ownership of housing dominates only in rural areas. It is socially important that the law prohibits leasing to private homeowners under contracts a higher rent than in municipal houses. The Swedish state maintains a monopoly on the retail sale of alcohol and prescription drugs. Education is free in the country, including university education. Every Swedish citizen has access to private land, lakes, rivers and forests, regardless of who owns these natural resources. Accessible natural environment allows Swedes to lead a healthy lifestyle¹.

Switzerland, a country located in Central Europe, today is considered a mature and generous social state, which is characterized by a fairly high rate of economic growth. The development of the social welfare system began in this country in the 1970-1980s. A feature of the Swiss system is a wide network of private social non-profit and state-controlled institutions. Non-profit organizations, as part of civil society, come up with initiatives to adopt social programs to solve a particular problem, and subsequently receive funding from public authorities. Switzerland leads in the life expectancy of citizens among European countries, the highest level of development of medicine is here, since the state believes that it is more profitable to invest in medicine than in social payments for disability. Thanks to the developed social system, citizens do not have to endure the need in difficult situations, and social assistance is provided both in cash and in kind. At the same time, the Swiss, based on the local mentality, applies for social assistance only as a last resort, when all the opportunities to earn or get help from family or friends are exhausted².

The success indicators of the selected countries of the world allow us to learn some lessons, including for improving civil law regulation. 1. The state can be social if the economy is progressively developing in it. That is why civil law, the subject of which is normal economic relations, is obliged to take an active part

¹ Экономика Швеции. Основные черты шведской экономики и промышленности // URL: <http://www.ereport.ru/articles/weconomy/sweden.htm>. [The economy of Sweden. The main features of the Swedish economy and industry // URL: <http://www.ereport.ru/articles/weconomy/sweden.htm>.]

² Экономика Швейцарии // URL: <https://rustrade.ch/ekonomika-shvejcarii>. [Swiss Economy // URL: <https://rustrade.ch/ekonomika-shvejcarii>.]

in creating this objectively necessary foundation. 2. For a harmonious society, it is important that the state actively participates in socially significant areas of life: environmental protection, healthcare, and education. The success of the implementation of the social functions of the state in these areas also depends on the quality of civil law that mediates the provision of appropriate services. 3. The social state should orient its citizens to conscientious work and create the opportunity to use its results in case of disability, childbirth or reaching retirement age. 4. In a social state oriented towards the interests of society, including charity, there must be a business. And here, civil law norms governing entrepreneurial activity have certain opportunities for creating appropriate incentives. 5. The manifestation of sociality in practice is the provision of citizens with living quarters, respectively, all the institutions of civil law related to the realization of the right to housing should be necessarily socially oriented. Finally, in a market economy, there must necessarily be a state-controlled sector that ensures the production of goods and the provision of consumer services, which means that it is cheap and affordable for the majority of the population. Thus, for the organization of all of the above socially oriented activities, it is important to create mechanisms or incentives through civil law regulation.

In our country, the norm on the social state appeared in 1993 with the adoption of the current Constitution. Art. 7 called the Russian Federation a social state, since its policy is aimed at ensuring a decent life and free human development. In the same article of the Constitution, paragraph 2 focuses on: Firstly, the importance of labor protection and people's health. Secondly, guarantees of maintaining a minimum wage. Thirdly, state support for the most vulnerable segments of the population. Finally, the development of the system social services of the country. An analysis of this norm was reflected in the writings of leading experts in constitutional law. In their works, we find important ideas related both to the achievements of Russia in the construction of a social state, and to the identification of some shortcomings and the setting of promising tasks in the further development of the social characteristics of Russian statehood. So, the Chairman of the Constitutional Court of the Russian Federation V.D. Zorkin in his works emphasizes that the social state is called upon to help the weak, to influence the distribution of economic goods in order to ensure a worthy existence for every person. It is no coincidence that the Constitution of the Russian Federation speaks of the desire of the Russian state to maximize the possible and uniform promotion of the welfare of all citizens, which is the desire to provide every citizen with a decent person a living wage. At the same time, the scientist emphasizes that building a social state for Russia is only a goal, for our country is at the very beginning of the path to achieving it. What has not yet been created, according to V.D. Zorkin? Firstly, the necessary mechanisms of a market

economy have not been created. Secondly, new forms of social protection of citizens in the changed conditions were not found. As a result, the problem of poverty is acute in the country, the stratification of the population by income is increasing, and the problem of employment is becoming more complicated. It is important to note that V.D. Zorkin named the main reason for the inefficiency of Art. 7 of the Constitution. It consists, in his opinion, in the “complete absence of the social orientation of economic reform”¹.

An interesting analysis of constitutional norms on a social state can be found in the works of S. A. Avakyan. The scientist emphasizes that any state can be social, regardless of its economic and ideological essence. It is important to distinguish between a socialist state and a social state. The socialist state is paternalistic, that is, taking care of all citizens in their entirety. The modern state in Russia abandoned paternalism as its main function, and it is impossible in the conditions of dominance of private property and the predominance of the private sector of the economy. At the same time, the modern state, according to S. A. Avakyan, should actively influence the creation of new jobs and help reduce unemployment. In other words, it should purposefully promote the development of the economy. To achieve these goals, it is necessary to make very serious efforts. This is why in relation to the category of the social state, in the opinion of S. A. Avakyan, one can speak from the point of view of the due and the existing. The social policy in Russia, which includes to create a decent human life, is carried out. However, the difficulties of the economic situation, from the point of view of a scientist, distance our country from building a real social state. That is why Art. 7 of the Constitution, Professor S. A. Avakyan considered, is rather a strategic task for the next decade of state development².

A significant contribution to the development of the theory of the social state was made by M. V. Baglai. He emphasized that the social state is obliged to take care of the social justice, well-being, and social protection of its citizens. It is obliged to provide help, he believed, to people who are not entrepreneurial and people who are poor. At the same time, the social state is obliged to create conditions for providing citizens with care, redistribute income through the state budget, provide people with a living wage, help increase the number of small and medium-sized owners, and protect wage labor. The conclusion made by M. V. Baglai is

¹ Зорькин В.Д., Андриченко Л.В., Боголюбов С.А., Бондарь Н.С. и др. Комментарий к Конституции Российской Федерации (постатейный). 2-е изд., пересмот. М.: Норма, Инфра-М, 2011. С. 146. [Zorkin V., Andrichenko L., Bogolyubov S., Bondar N. and others. Commentary on the Constitution of the Russian Federation (itemized). 2nd ed., Revised. M.: Norma, Infra-M, 2011.P. 146.]

² Авакьян С.А. Конституционное право России: в 2 т. Т. 1. М.: Норма; Инфра-М, 2014. С. 383–384. [Avakyan S. Constitutional law of Russia: in 2 vols. T. 1. M.: NORM; INFRA-M, 2014.P. 383-384]

very important, which consists in the fact that the social state not only pursues a social assistance policy, it must make social the entire economic policy of its government. Moreover, according to M. V. Baglai, the structure of the state's social activity should be stable and not subject to change when changing governments. The scientist considered it insufficient to decipher the concept of "decent life" in the constitutional norm by listing the responsibilities of the state. The most important drawback of Article 7 of the Constitution of the Russian Federation, M. V. Baglay believed, was the lack of a formula for a socially oriented market economy. This led to the conclusion about the importance of finalizing the provisions of the domestic Constitution, which determine the social characteristics of the state from the point of view of the generally accepted theory and practice of developed countries¹.

The year 2020 was a turning point in the constitutional development of our country. At the initiative of the President of the Russian Federation, it was decided to introduce significant amendments to the Basic Law of the State. In general, the amendments are a significant contribution to the development of Russian statehood, since they affected about 40 articles of the Basic Law. A number of articles appeared new, including Art. 67.1, 75.1, 79.1, 92.1, 103.1. It is important to note that a significant number of amendments are related to the construction of the social state that we are studying. The directly new and qualitatively important characteristics of the social state are covered by five articles of the updated Constitution. The central place among the short stories can be attributed to Art. 75.1, which proclaims two very important principles: social partnership and social solidarity. At the same time, it is emphasized that conditions are being created in the Russian Federation for the economic growth of the country and increasing the level of well-being of citizens. The appeal of the constitutional norm to the need to create an atmosphere of mutual trust between the state and society is noteworthy. In addition to these general additions, the new provisions of the Constitution directly addressed the institution of the family, childhood, social assistance, pensions, remuneration, as well as education and health systems. So, Art. 72 (paragraph "ж") proclaims the direction of state policy to protect the family and marriage, as a union of men and women. The Constitution also attaches great importance to the creation of mutual, based on caring for each other, relations of parents and children. In paragraph 4 of Art. 67.1 of the Constitution of the Russian Federation it is incumbent on the state to create the conditions for the comprehensive development of children and educate them in the spirit of patriotism. In paragraph 7 of Art. 75 the importance of targeted social support for citizens, indexation of social benefits and other social benefits is

¹ Баглай М. В. Конституционное право Российской Федерации. М.: Норма, 2007. С. 136–138.
[Baglai M. Constitutional Law of the Russian Federation. M.: Norma, 2007. P. 136–138.]

emphasized. A novelty of the Constitution (Clause 6, Article 75) is the proclaimed principles of the functioning of the pension system, which include the requirements of universality, justice and solidarity of generations. The government sees its task in establishing the effective functioning of the pension system, including indexing pensions at least once a year. An important statement is in paragraph 5 of Art. 75, which refers to the protection of the labor rights of citizens. The Russian state assumes the obligation to create guarantees of a minimum wage, which should not be lower than the living wage of the country's able-bodied population. It is mentioned in the Constitution (paragraphs "с" of article 71) about the importance of creating and functioning a unified and continuous system of education and training, in other words the need for youth policy (paragraphs "ж" of article 72). Finally, the special words of the Basic Law relate to the domestic health care system (paragraphs "е", article 72). They proclaim the need for the state to provide affordable and quality medical care for their citizens. The jurisdiction of the Russian Federation includes the establishment of a unified legal framework for the functioning of the healthcare system. The Constitution proclaims a guideline for citizens to form a responsible attitude to their health and maintain a healthy lifestyle. Measures to strengthen the health system have been proactive and in fact have helped ensure the provision of quality medical care to citizens in the context of a coronavirus pandemic.

Ideas of a social orientation for their successful implementation should be reflected in the industry legislation of our country. And here, the leading position, it seems, should be with civil law. The well-being of Russian citizens directly depends on the quality of the civil law. Today, the subject of the industry is defined in the Civil Code of the Russian Federation, but the promising tasks of developing its public relations are not formulated. Meanwhile, it is well known that the development of any branch of law depends precisely on the statement of the problem. In our opinion, it is necessary to single out the fundamental goal of developing relations included in the subject of civil law and formulate the more specific tasks arising from it. By the way, there is experience in setting goals in the history of the development of civil legislation in our country. The preceding modern codification of Russian civil law differed favorably in this regard. It is enough to recall the preamble of the Civil Code of the RSFSR of 1964. It is thanks to the expanded text of the preamble in this codified civil law that Art. 1, entitled "Tasks of the Civil Code of the RSFSR." The leading civilists of our country, creating a civil code in the 20th century, tried in its preamble to answer many questions objectively, which was necessary for setting specific tasks of civil law regulation. Of course, now on the 21st century the new look of our country, in the conditions of market relations and the dominance of private property, implies the need for a significant update of the wording of the Civil Code in terms of setting goals. Nevertheless, it does not indicate their uselessness. How can the fundamental goal

Nevertheless, it does not indicate their uselessness. How can the fundamental goal of regulating property relations in our country be formulated? It is believed that, taking into account the world experience in legal regulation and the practice of its implementation, such a goal should be the creation of a social economy that creates equal economic and social opportunities for citizens of the country. First of all, the material and technical base must be created, which allows to ensure the welfare of individuals seeking a common good. The reservation for the pursuit of the common good will have a social connotation, since it presupposes the maintenance of a decent standard of living for the “weakest” members of society. It can be argued that modern civil law cannot be a haven of egoistic comfort for a few members of society. On the contrary, it must serve the fullest satisfaction of the needs of each and every citizen of Russia. Building a socially oriented economy also involves recognizing the social function of property. Thus, the entire system of corpus legal regulation, including the rules on the acquisition and termination of property rights and the content and burden of subjective property rights, should be a consequence of this central function of fundamental subjective civil law. A socially oriented economy will also presuppose the emergence of a new socially significant characteristic for entrepreneurial activity. In our opinion, charity should be such a qualitative characteristic. In order to develop comfortably in their own country, a business must have a socially comfortable environment, which is why not only the state, but also all business entities should be interested in solving social problems.

The general setting of the goal of civil regulation does not exclude the need for formulations of more specific tasks. Among these tasks it is worth highlighting: a) government leadership and support for socially oriented industries of production and provision of services; b) the uniform development of all forms of ownership; c) strengthening contractual discipline; d) improving the quality of products and services; e) state participation in providing citizens with housing. These and other tasks of a social orientation will have a promising impact on the entire set of civil law norms in modern Russia.

The great historian N. M. Karamzin at one time noted that love for our own good produces in us love for our Fatherland. It seems that the social orientation of civil regulation is a natural consequence of this aphoristically formulated wisdom.

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CONFERENCES REVIEWS

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SCIENTIFIC EVENTS OF THE FACULTY OF LAW OF KFU DURING THE CORONAVIRUS PANDEMIC

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Abstract: The article tells about the events that took place at the Law Faculty of Kazan (Volga Region) Federal University during the coronavirus pandemic. The leadership of the faculty made an important decision to hold all the traditional events for the Faculty of Law in a new, previously untested format. And the work highlights the holding of five events: the 15th Anniversary Model Judicial Process “All-Russian Judicial Debates”, an interdepartmental online round table: “Actual problems of business in connection with the COVID-19 pandemic”, a round table “Veterans of the Faculty of Law on the Way to Victory: Scientific and pedagogical heritage”, the Final scientific and educational conference of KFU students. The article reveals the scientific, educational and practical component of the activities. It also tells about the assistance of teachers, researchers and representatives of the judicial and law enforcement system in holding events that are significant for

the Faculty of Law. The work highlights the main stages of these events and their participants. The article reveals the topical issues of legal reality, touched upon in the framework of the events, and talks about the results that came when discussing these legal problems.

Keywords: coronavirus pandemic, scientific event, Faculty of Law of Kazan (Volga Region) Federal University

The infection of a new type called COVID-19 has infected the entire system of the social structure, affected all spheres of public relations, and has infiltrated the rule of law. Fortunately, ideas always triumph over adversity – the traditional events of the Faculty of Law do not stop working, and the organizers are successfully mastering the current facets of their formats.

The first experience was the holding of the XV Anniversary Model Trial “All-Russian Judicial Debates”, which took place from 23 to 27 April 2020 at the Faculty of Law of Kazan Federal University.

The year of 2020, for this project, became a double holiday. Firstly, it is an anniversary, and, secondly, this is the first experience of holding this event in an online format, which was dictated by the current sanitary and epidemiological situation. Of course, this format is interesting, progressive and brought an element of novelty, but the forced rejection of face-to-face battles leaves a certain imprint and does not allow you to fully experience the intensity of passions that annually accompanied all the battles. Here it is necessary to make a reservation why, nevertheless, this is a “double holiday”. The participants, coaches of the participating teams, judges and organizers managed to keep unchanged the highly qualified refereeing, the complexity of the cases under consideration and the high level of training of the participating teams, which, in total, determined the recreation of that unique atmosphere when the students-participants grow before our eyes, in one and a half hours increasing their skills and abilities in a real battle with a principled rival, ready to catch on every incorrectly spoken word, under the watchful eye of the judges, who, being longtime friends of the project, permanent arbiters and the color of the science of procedural law, know how to ask their question in such a way that teams have to at the same time eliminate the gap in their legal position and find a solution to how to be in this situation, taking into account the limitations of the memorandum. This will be remembered for a lifetime and will teach you to build your own line of defense and attack, but also to prepare back positions right away, so that the rest of the participants in the process are deprived of the effect of surprise and do not allow them to catch themselves by surprise. It is important to remember the motto of this whole project, which sounds short and succinctly in unison with all of the above: “Non scholae, sed vitae discimus” (We do not learn for school, but for life).

The distance format left some imprints, so the first meeting of the participants took place not before the first round, but before the final.

Before the final, the dean of the Faculty of Law of KFU, Doctor of Law L. T. Bakulina, Deputy Dean for Scientific Activity of the Faculty of Law of the KFU, Doctor of Law, Professor, Valeev D. Kh., Head of the Department of Civil Procedure and labor law of the Southern Federal University, Candidate of Legal Sciences Smagina E. S., as well as Head of the Department of Environmental, Labor Law and Civil Procedure of the Faculty of Law of the Kazan Federal University, Doctor of Law, Professor Safin Z. F spoke to the participants and guests of the event.

After the greetings, the first final battle began – in the section of the Civil Procedure. The judges were: Doctor of Law, Professor Valeev D., Chairman of the Judicial Panel of the Civil Collegium of the Supreme Court of the Republic of Tatarstan, retired, Candidate of Legal Sciences, Shakiryanov R., and the Chairperson of the Department of Civil Procedure and Labor Law of the Southern Federal University Smagina E.

The results of the “All-Russian judicial debates 2020” in the section “Civil proceedings” can be presented as follows:

1 place:

Team A 20-20, Moscow State Law Academy

Filipenko Viktor Alexandrovich,

Filinykh Tamara Andreevna,

Savishchev Petr Valerievich,

Ilyin Ivan Alekseevich.

2nd place: Team A-46-20, Financial University under the Government of the Russian Federation

3rd place: Team A-55-20 Moscow State Law University named after O. E. Kutafin (Moscow State Law Academy) and the French University College of Moscow State University named after M. V. Lomonosov

The second final was held in the section of Criminal Procedure, where representatives of the professional judicial community acted as judges: judges of the Supreme Court of the Republic of Tatarstan – candidate of legal sciences, Mardanov R., Migunova O. and Yarullin R., as well as the Chairman of the Tyulyachi District Court, Candidate of Legal Sciences, Bikmiev R.

The results of the “All-Russian judicial debates 2020” in the section “Criminal proceedings” can be presented as follows:

1 place: 01-20, Moscow State Law University named after O. E. Kutafin (Moscow State Law Academy)

Semovskikh Olga Igorevna

Martynov Alexander Vladimirovich

2nd place: Team B 32-20, Kazan Branch of the Russian State University of Justice

3rd place: Team B 37-20, Kazan (Volga Region) Federal University

The battle in the section of Constitutional Judicial Proceedings continued the series of final speeches, which was assessed by: Leading Advisor of the Scientific and Analytical Department of the Office of the Constitutional Court of the Republic of Tatarstan Sadykov R., Head of the Department of Constitutional and Administrative Law of the Faculty of Law of the Kazan Federal University, Candidate of Legal Sciences, Sultanov E., Lecturer of the Department of Constitutional and Administrative Law of the Faculty of Law of KFU, Candidate of Legal Sciences, Khurmatullina A., as well as a retired judge, Doctor of Laws, Professor of the Department of Constitutional and Administrative Law of the Faculty of Law of KFU, Gataullin A.

The results of the “All-Russian judicial debates 2020” in the section “Constitutional proceedings” can be presented as follows:

1 place:

Team C 10-20 Volgo-Vyatka Institute of MSLA

Kritskaya Anastasia Igorevna

Churakova Anastasia Igorevna

Prokosheva Irina Igorevna

Popova Alina Viktorovna

2nd place: Team C 34-20 of the National Research University Higher School of Economics-Perm

3rd place: Team C 13-20 Kursk State University

Team C 45-20 Volgo-Vyatka Institute of MSLA

The final part of the procedural law with a fight in the “youngest” section and the “youngest” type of legal proceedings – Administrative proceedings. The judges were: the head of the research work of the students of the Faculty of Law of the Kazan Federal University, the lawyer of the Chamber of Advocates of the Republic of Tatarstan Lukin Yu. and senior lecturer of the Department of Environmental, Labor Law and Civil Procedure of the Faculty of Law of the Kazan Federal University, Candidate of Legal Sciences Khasanshin R.

The results of the “All-Russian judicial debates 2020” in the section “Administrative proceedings” can be presented as follows:

1 place:

Team D 25-20 Southern Federal University

Kozhukhova Angelina Sergeevna,

Gureev Ivan Sergeevich,

Kostyukova Alina Alexandrovna,

Brovko Larisa Olegovna

2nd place: Team D 20-20 of the Higher School of Economics

3rd place: Team D 07-20 Middle Volga Institute (branch) VSUYu (RPA Ministry of Justice of Russia)

The event itself ended with a solemn closing with a summing up and announcement of the winners of the prize fund of the event, as well as parting messages from Valeev D. and Smagina E.

The experience of the new format was continued by the interdepartmental online round table: “Current problems of business in connection with the COVID-19 pandemic”, which was held on April 28, 2020 by the Department of Business and Energy Law of Kazan (Volga Region) Federal University.

The event was held on the Microsoft Teams platform. The round table discussed issues of business support during a pandemic: the specifics of rent, credit, housing and communal, contractual, labor relations, as well as certain aspects of bankruptcy and procedural legislation. At the round table, reports were made by:

- from the Department of Business and Energy Law, Head of the Department, Candidate of Legal Sciences Mikhailov A. V.
- “Review of measures to support business”, Candidate of Legal Sciences, associate professor Ivanishin P. Z.
- “Moratorium on the initiation of bankruptcy cases”, Candidate of Legal Sciences, associate professor Shpagonov A. N.
- “Rent during a pandemic”, Candidate of Legal Sciences, senior lecturer Khabibullina A. Sh.
- “Credit relations during a pandemic”, assistant RR Izmailov – “Certain aspects of protecting consumers of public services during a pandemic”;
- from the Department of Civil Law: Doctor of Law, Associate Professor F. I. Khamidullina – “Housing and communal relations during the period of self-isolation”;
- Candidate of Legal Sciences, Associate Professor K. V. Egorov – “The impact of the pandemic on the fulfillment of contractual obligations”;
- from the Department of Environmental, Labor Law and Civil Procedure, reports were made by: Candidate of Legal Sciences, Associate Professor Vasiliev M. V.
- “Topical issues of labor legislation”; Candidate of Legal Sciences, Associate Professor Sitdikov R. B. – “Procedural measures to support business”.

The third event of a modern format was the round table “Veterans of the Faculty of Law on the Way to Victory: Scientific and Pedagogical Heritage”, which took place on May 7, 2020 on the basis of the Faculty of Law of Kazan Federal University and was timed to coincide with the 75th anniversary of the Victory in the Great Patriotic War.

We always respectfully remember the ancestors of our unique law school, and each time with special gratitude to their memory we tell about outstanding

scientists who taught or studied at the Faculty of Law in different years of the Kazan University formation. During the Great Patriotic War, our faculty existed in the structure of the Kazan Law Institute, and only since 1952 was reborn into the Law Faculty of Kazan State University. In difficult years for the country and science, scientists taught and engaged in scientific activities at the department, who became real heroes of the Great Patriotic War, veterans, whose names the Faculty of Law will not cease to be proud of. However, in order to understand their feat, to feel responsibility and courage, to admire courage and dedication, we must remember! Moreover, the Faculty of Law tries to remember through its events.

As part of the round table, reports were presented by employees of the Faculty of Law on the employees and graduates of the faculty who took part in the Great Patriotic War and made an invaluable contribution to our common cause. Presentations were made by: Doctor of Law, Associate Professor, Dean of the Faculty of Law L. T. Bakulina, who addressed a welcoming speech and presented a video to the 75th anniversary of the Victory in the Great Patriotic War; PhD in History, Associate Professor, Associate Professor of the Department of Theory and Methods of Teaching Law, GA Valeeva, who spoke about “Kazan University during the Great Patriotic War”; Doctor of Law, Professor, Head of the Department of Environmental, Labor Law and Civil Procedure Safin ZF, who told about “R. S. Azhimov – a participant in the Great Patriotic War and a professor at Kazan University”; Doctor of Law, Professor, Professor of the Department of International and European Law Tyurina N. E. told about the “Great Patriotic War in the life and profession of Professor D. I. Feldman”; Senior Lecturer of the Department of Theory and History of State and Law Lukin Yu. M. spoke on the topic: “Zakharov N. S. – combat and scientific path”; Doctor of Law, Professor, Head of the Department of Criminal Law Talan M. V. presented the topic: “Professor B. S. Volkov – a participant of the Great Patriotic War and a scientist”; Candidate of Legal Sciences, Associate Professor, Head of the Department of Constitutional and Administrative Law Sultanov E. B. remembered “Azal Mirgalimovich Karimov – teacher and scientist”; Doctor of Law, Associate Professor, Head of the Department of Theory and History of State and Law Davletgildeev R. Sh. shared information about “Front roads and creative heritage of Irina Ardalionovna Emelyanova”; kyu.s., associate professor, head of the department of criminal procedure and forensic science Antonov I. O. introduced him to “Veterans of the Great Patriotic War – teachers and scientists at the Department of Criminal Procedure and Criminalistics”.

One of the most traditional spring events did not escape the online format. On May 12, 2020, based on the Faculty of Law of the Kazan Federal University, the Final Scientific and Educational Conference of KFU students was held. Leap year transformed our April conference into an online meeting and proposed its own agenda. The coronavirus pandemic is a challenge to humanity in the third

decade of the 21st century. A modern, parasitic challenge, but unique for the legal community. In addition, the topic of the Final Conference was chosen on the topic of the day – “Challenges to legal reality in the world and in Russia in connection with the COVID-2019 coronavirus pandemic.”

The work of the Conference was organized in the following areas:

- administrative law;
- civil, arbitration and administrative process;
- civil law;
- constitutional law;
- international public law, international humanitarian law;
- international private law, European law;
- business and energy law;
- family law;
- sports law;
- theory and history of state and law;
- theory and methods of teaching law;
- labor law;
- criminal law, penal law, criminology;
- criminal procedure, court and justice, criminalistics, prosecutor’s supervision;
- financial and tax law;
- environmental and land law.

The event was held in the format of an online plenary session. Welcoming remarks were made by the Deputy Dean for Scientific Activity of the Faculty of Law of KFU, Doctor of Law, Professor, Valeev D.Kh.; head of research work of students of the Faculty of Law of KFU, lawyer of the Chamber of Advocates of the Republic of Tatarstan, Lukin Yu.M.; Head of the Department of Environmental, Labor Law and Civil Procedure of the Faculty of Law of the Kazan Federal University, Doctor of Law, Professor Safin Z.F.; Head of the Department of International and European Law of the Faculty of Law of KFU, Doctor of Law, Professor Abdullin A.I.; Head of the Department of Business and Energy Law of the Faculty of Law of the KFU, Candidate of Legal Sciences, Associate Professor Mikhailov A.V.; Head of the Department of Theory and Methods of Teaching Law of the Faculty of Law of the KFU, Doctor of Pedagogy, Professor Ibragimova E. M.

Based on the results of the competitive selection, the authors of the best reports were given the opportunity to speak at the plenary session. They were: 2-year undergraduate student of the Faculty of Law Mamedova Sevil with a report on the topic: “Protection of human rights during the COVID-19 pandemic”; 2nd year student of the Faculty of Law Ignatova Arina and the topic of her work was: “Labor in the conditions of the COVID-19 pandemic: remote work, non-working days and unpaid leave”; 2-year undergraduate student of the Faculty of Law Aleksey Bilalov,

who speculated on the topic: “Digitalization of the civil process in a pandemic: hope for forced restructuring or collapse of the right to judicial protection?”; 4th year student of the Faculty of Law, Mukhamadeeva Alina with the topic of the report: “Evaluation of the effectiveness of regulation of rental relations during the spread of the COVID-2019 coronavirus pandemic”; 4th year students of the Faculty of Law Bariev Dinar and Minnebaeva Adelia, who presented a report on the topic: “On the issue of criminal liability for the dissemination of” fake “information about the coronavirus COVID-2019.”

After the speakers' speeches, the Conference participants were given time to discuss the problematic issues raised from different branches of law. The discussion of the reports was attended by Professor of the Department of Criminal Procedure and Forensic Science, Doctor of Law Muratova N.G.; Associate Professor of the Department of Criminal Law of the Kazan Federal University, Candidate of Legal Sciences Balafendiev A. M.

Ibragimova E. M. noted the good preparation of speakers in the context of limited resources to study law enforcement practice and wished speakers not to be afraid to refer to the opinions of masters of legal sciences and renowned practitioners. Safin Z. F. expressed gratitude to the students for their participation in the traditional April conference, pointed out the advantages and disadvantages of the presented studies and wished all participants to nobly respond to the challenge of the pandemic.

The conclusions of the scientific conference will not remain just a record on the online platform. Traditionally, it is planned to publish a collection of papers by the participants of the Final Scientific and Educational Conference of Students of the Law Faculty of Kazan (Volga Region) Federal University. It is noteworthy that the collection will be indexed in the RSCI, will be placed in electronic form on the resources of the faculty and published in hard copy. Everyone will be able to familiarize themselves with the reports of all conference participants and, perhaps, find ideas for their scientific research.

On May 22, 2020, a round table of students, postgraduates and teachers of the Department of Civil Law was held on the topic “Civil science and legal education in Tatarstan during the Great Patriotic War: pre-war, military and post-war periods”, which was devoted to the development of civilistic thought and education in Kazan in 30-50 y. XX century.

The Department of Civil Law of the Kazan (Volga Region) Federal University is currently respected in the scientific legal community, first of all, thanks to the outstanding civilian scientists who taught or studied at the Faculty of Law in different years of the Kazan University formation. Not only outstanding scientists, but also real heroes of the Great Patriotic War, veterans, whose names the Department of Civil Law is proud of today, taught and engaged in scientific

activities at the department. These include Doctor of Law, Professor R. S. Azhimov; the participant of the Great Patriotic War, who worked at the Department of Civil Law, V. S. Karavaev; Candidate of Legal Sciences F. Z. Kulbarisov and others. Thanks to the work and scientific research of these teachers and scientists, the Faculty of Law of the Kazan (Volga Region) Federal University today has authority in scientific civil law circles.

The moderator of the Round Table, KM Arslanov, spoke about the research of students, undergraduates, graduate students and teachers of the Department of Civil Law, devoted to the history of the development of civil law within the walls of Kazan University and Kazan Law Institute. Presentations were made by:

Makarov T. G. (Assoc.), Novikova I. I. (graduate) "Department of Civil Law in the 30-50s of the XX century";

Minnullin B. M. (studio) "R. S. Azhimov. A talent for foresight or a milestone in the history of Russian civil law?";

Boldyreva N. T. (asp.) "R. S. Azhimov as a representative of the Kazan law school: preconditions for the formation of a modern theory of obligations from causing harm within the walls of Kazan University": the life story of R. S. Azhimova. Biography and scientific teaching work of the scientist during the Great Patriotic War. The post-war life of R. S. Azhimova. Scientific achievements and pedagogical work of R. S. Azhimov as Dean of the Law Faculty of Kazan University and Head of the Department of Civil Law and Procedure. The main directions of scientific work of R. S. Azhimova. The development of the theory of obligations from causing harm to human life and health in the work of R. S. Azhimova and M. I. Nikitina. The relationship of scientific theories of R. S. Azhimova with the current legal regulation of public relations. The contribution of R. S. Azhimova in the development of modern science of civil law and the theory of obligations from causing harm to life and health.

Vasiliev E. E. (mag.) "Development of the doctrine of civil and commercial law at Kazan University during the work of Vasily Grigorievich Baryshnikov": this study is devoted to the activities of the Department of Civil Law of the Law Institute of Kazan University during the period of work as its head Vasily Grigorievich Baryshnikov. The author considers the accents of the scientific and educational directions of the department's activities in the 1930s, the period of the Great Patriotic War and the post-war period before the transformation of the institute into the Faculty of Law of KSU. Special attention is paid to the issues of understanding civil and commercial law in the Soviet legal system on the example of the works of V. G. Baryshnikov and his colleagues in the department.

Miftahutdinova D. R. (magician), Pugacheva A. S. (magician) "Scientific and pedagogical activity of the doctor of legal sciences, professor of civil law Sergey Nikitich Bratus": Bratus Sergey Nikitich is the author of more than 200 scientific

publications, including works and monographs on the fundamental problems of civil law. The scientist's scientific judgments were used in the preparation of the Fundamentals of Civil Legislation of the USSR in 1961 and the Civil Code of the RSFSR in 1964, in the development of which he participated as a member and leader of working groups. One of the first works of Bratus S.N. became an article "On the problem of economic and administrative law" (1930), which reflected the ideas of Pashukanis E.B. and Venediktova A. The. to a greater extent than the classics of Marxism-Leninism. Later, addressed to Bratus S.N. accusations of Trotskyism were brought forward, in connection with which he was forced to leave Kazan. The paper provides an overview of the work of 1941 "Some issues of the science of civil law and judicial practice in civil cases during the Patriotic War", as well as 1944 "Some issues of copyright and inventive law in the practice of the Supreme Court of the USSR".

Volkova S.S. (asp.), Kasimova A.E. (graduate) "Civilistic science during the years of evacuation in Kazan. S.I. Vilnyansky": during the Great Patriotic War, the TASSR was one of the key points of the country that received the evacuated population. During the war years, representatives of about 20 research institutes lived and worked in Kazan. Kazan University has become the center of academic life. From 1941 to 1944, the head of the Department of Civil Law of the Kharkov Law Institute S.I. Vilnyansky, who continued his scientific activities within the walls of Kazan University. During this period, one of his key works was written – "The value of judicial practice in civil law."

Khabirov A.I. (Assoc.) "Professor A.M. Vinaver in Kazan. Muses and Law": the first part of the speech is devoted to the story about Professor Alexander Markovich Vinavera and his years of life in Kazan, namely his vision and teaching of civil disciplines. The second part of the speech ("Muses and Law") – the relationship between law and creativity: Jaudat Faizi, Alfred Saydashev, M. Salimzhanov, B.L. Zheleznov, Z.M. Fatkhutdinov.

The event was held on the Microsoft Teams platform, which made it possible for everyone who was interested to learn about Civilistic science and legal education in Tatarstan during the Great Patriotic War to take part. The round table was timed to coincide with the 75th anniversary of the Victory and was aimed at replenishing information on the development of civil law in Kazan in the pre-war, war and post-war years.

Also, on May 22, 2020, the Fair of Student Video Projects, organized by the Department of TIMOP, was held. The fair program included: an interdisciplinary lesson in law for gifted students; a comparative analysis of the teaching methods of acting at the theater institute B. Shchukin and GITIS; a map of an individual educational route for parents of children with disabilities; COR on educational law based on innovative methodological tools.

The work was attended by teachers and lyceum students. N.I. Lobachevsky KFU, correspondence masters in all areas of preparation of classical jurisprudence.

The final event of the academic year was the scientific and practical conference “The place and role of Tatarstan in the formation and development of Russian statehood: history and prospects”, dedicated to the 100th anniversary of the Tatarstan. It took place on May 26, 2020 at Microsoft Teams.

The conference was moderated by M. Shchelkunov, Director of the Institute of Social and Philosophical Sciences and Mass Communications, R. Fakhrutdinov, Professor of the Department of Historical and Social Science Education at the Institute of International Relations. Scientists from Kazan University and students took part in the conference.

On this day, I. Tagirov, Professor-Consultant of the Department of National History of the Institute of International Relations of KFU, made a report on the topic “Education and Development of the Republic of Tatarstan in a Historical Retrospective”. Professor of the Department of Political Science M. Farukshin made a report “Relations between the Republic of Tatarstan and the federal center: loyalty and disagreements.” The topic of the report by Professor-Consultant of the Institute of Management, Economics and Finance V. Ivashkevich – “The role of KFU in the development and formation of science and education in the field of economics and finance in Tatarstan and Russia.” Head of the Department of Constitutional and Administrative Law of the Faculty of Law Yevgeny Sultanov read the report “The constitutional status of the Republic of Tatarstan as a subject of federal relations.”

Maria Eflova, Deputy Director for Scientific Activity of Institute of Social and Philosophical Sciences and Mass Communications told the KFU Media Communications Center that the 100th anniversary of the Tatar Autonomous Soviet Socialist Republic is a significant date. “It is also worth noting that during this period a high socio-economic standard of living of the population was formed, – said M. Eflova. – Speeches of historians, sociologists, political scientists, economists, lawyers are planned within the framework of the conference. Thus, the conference participants will learn about the role of scientists who have contributed to the formation of the republic, will emphasize the importance of the milestone”.

Traditional does not mean frozen, and tradition does not make an event uncompromisingly inflexible. Transforming in time is the goal and principle of people of science. Trials of time will always be an invaluable and tremendous experience for us. And our choice is to join the streams of change, to respond with dignity to all the challenges of our time.

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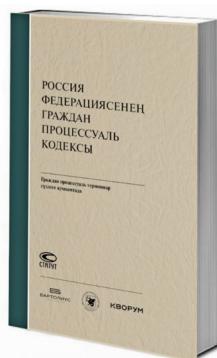
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Release of grant No. 18-411-160004 p_a «Implementation of the constitutional right to judicial protection in civil cases in the state languages of the subject of the Russian Federation»



A research group consisting of: Doctor of Law, Professor, Deputy Dean of the Faculty of Law of the Kazan (Volga Region) Federal University Damir Khamitovich Valeev, Candidate of Legal Sciences, Associate Professor, Chief of Staff of the Constitutional Court of the Republic of Tatarstan Anas Gaptraufovich Nuriev, Candidate of Legal Sciences, Associate Professor, Judge of the Supreme Court of the Republic Tatarstan, retired Rafail Valievich Shakiryanov, with the support of the Russian Foundation for Basic Research, the project “Implementation of the constitutional right to judicial protection in civil cases in the state languages of the subject of the Russian Federation” was implemented.

As part of the implementation of this project, a comprehensive study was carried out that reveals the potential of the state languages of the constituent entities of the Russian Federation in the law enforcement sphere using the example of civil proceedings. The functioning of the language was studied, expressed in the capabilities of the state language of the subject of the Russian Federation, not only as means of communication in regulatory material relations, but also as means of protection in controversial procedural relations.

The current federal legislation establishes a system of “language guarantees” provided by the Constitution of the Russian Federation. In the current procedural legal regulators, “language guarantees” are implemented in the following possibilities: administration of justice in the state language of a constituent entity of the Russian Federation (Art. 9 of the Code of Civil Procedure of the Russian Federation, Art. 12 of the CAS RF, Art. 18 of the Code of Criminal Procedure of the Russian Federation); using the services of an interpreter (article 33 of the Federal

Law on the Constitutional Court of the Russian Federation, article 9 of the Code of Civil Procedure of the Russian Federation, article 12 of the Arbitration Procedure Code of the Russian Federation, article 12 of the CAS RF, article 18 of the Code of Criminal Procedure). At the same time, the fixed “language guarantees” in the field of civil proceedings can be designated as guarantees of “general orientation” as there are questions regarding the normative certainty of the performance of certain procedural actions, the answers to which were formulated according to the results of the study:

- the possibility of producing the text of rulings in the state language of a constituent entity of the Russian Federation in civil proceedings;
- the possibility of drawing up and using procedural documents in the state language of the subject of the Russian Federation;
- determination of the professional competence of an interpreter in civil proceedings.

In terms of the practical implementation of the potential of the state languages of a constituent entity of the Russian Federation in civil proceedings, out of 85 constituent entities of the Russian Federation, 22 constituent entities have the status of republics (Art. 65 of the Constitution of the Russian Federation), which have the right to establish their own state languages. This opportunity was realized by all republics within the Russian Federation, with the exception of the Republic of Karelia. In this regard, within the framework of the study, a survey was conducted of the supreme courts of 21 republics within the Russian Federation, which have the potential, established by law, to consider civil cases in the state language of the subject of the Russian Federation. As shown by a survey of judicial authorities, the state language of a constituent entity of the Russian Federation in the field of legal proceedings has practical application in the territory of three constituent entities of the Russian Federation: in the Republic of Tatarstan, the Republic of Sakha (Yakutia) and the Republic of Buryatia.

So, according to the data presented by the district (city) courts in the Republic of Tatarstan for the period from 2010 to 2018, in the period from 2010 to 2018, the Tatar language was used in court proceedings when considering 117 civil cases. In these cases, 117 final decisions were made in the Tatar language on the merits of the stated requirements. The second subject on whose territory the possibility of judicial protection of rights in the state language of the subject of the Russian Federation was realized is the Republic of Sakha (Yakutia). For the period from 2010 to 2018, the Yakut language was used in the consideration of 2,669 civil cases. During the specified period, the final judicial acts in the Yakut language were issued in 805 civil cases. The third subject on whose territory the need arose to exercise the right to judicial protection is the Republic of Buryatia. The use of the state language of the subject of the Russian Federation was limited only by the

involvement of translators and the need to translate the texts of judicial acts into the Buryat language.

The remaining 18 constituent entities of the Russian Federation responded to the inquiry that the state languages of the constituent entities of the Russian Federation were not used when considering cases in court, despite the legal possibility. There are no problems in these subjects of the Russian Federation when conducting legal proceedings in the state language (Republic of Crimea, Republic of Khakassia, Republic of Altai, Udmurt Republic, Republic of Kalmykia, Chechen Republic). There is no need to consider cases in the state language of a constituent entity of the Russian Federation (Republic of Mordovia, Karachay-Cherkess Republic, Republic of Dagestan, Republic of Ingushetia, Kabardino-Balkar Republic, Republic of North Ossetia-Alania, Republic of Mari El). An important practical cut is the identification of the problems of using the state languages of the constituent entities of the Russian Federation in legal proceedings, highlighted by the judicial body:

- the lack of procedural legislation translated into the state language of the subject of the Russian Federation and the lack of an educational base for training in the specialty “jurisprudence” in the state language of the subject of the Russian Federation (Chuvash Republic);
- the lack of a unified legal terminology in the state language of a constituent entity of the Russian Federation (Republic of Tyva);
- the absence of a staff unit of an interpreter from the state languages of the subject of the Russian Federation (Republic of Sakha (Yakutia));
- the lack of knowledge of the state language of a constituent entity of the Russian Federation by judges and court secretaries (Republic of Bashkortostan);
- the lack of official translations of codes and other regulatory legal acts, including in the relevant legal information systems; lack of professional staff who know the state language of the constituent entity of the Russian Federation, lack of command of judges in legal vocabulary, legal terms in the state language of the constituent entity of the Russian Federation.

According to the results of the study, the Civil Procedure Code of the Russian Federation was translated into the Tatar language – the state language of the Republic of Tatarstan, and a dictionary of civil procedure terms in the Tatar language was compiled as an appendix to the published Code of Civil Procedure of the Russian Federation, published by the Statut publishing house (Moscow) this year. Accordingly, today, on the territory of the Republic of Tatarstan, uniformity has been established in the terminological, apparatus and lexical meaning when it is necessary to consider a civil case in one of the state languages of the Republic of Tatarstan – in the Tatar language.

The conclusions formulated by the authors of the team in the following scientific works are important for practical use:

1. Россия Федерациясенң Граждан процессуаль кодексы (25.10.2019 кадәр кәргән үзгәрешләр белән) [Civil Procedure Code of the Russian Federation (as of 10/25/2019)]. Граждан процессуаль терминнар сүзлегә. [Dictionary of civil procedural terms], 2020. – 272 p.

2. Valeev D., Nuriev A., Shakiryanov R. Practical and doctrinal problems of the use of state languages of the constituent entities of the Russian Federation in the procedural branches of law on the example of civil proceedings. 2020. No. 3. P. 16–23. 1. [Валеев Д. Х., Нуриев А. Г., Шакирьянов Р. В. Практические и доктринальные проблемы применения государственных языков субъектов Российской Федерации в процессуальных отраслях права на примере гражданского судопроизводства // Арбитражный и гражданский процесс. 2020. № 3. С. 16–23.]

3. Valeev D., Nuriev A., Shakiryanov R. The possibility of using procedural documents drawn up in the state language of the subject of the Russian Federation in civil proceedings. 2019. [Валеев Д. Х., Нуриев А. Г., Шакирьянов Р. В. Возможность использования процессуальных документов, составленных на государственном языке субъекта РФ в гражданском судопроизводстве // Российская Юстиция. 2019. № 2. С. 54–57]

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