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Dear readers,

I would like to present for your attention the first regular issue of the journal "Kazan University Law Review" in 2025.

The issue you are now holding in your hands contains articles on topical issues in the theory and practice of Russian and foreign law.

The issue starts with an article by Enow Godwill Baiye, PhD in Mining Law, LLM in Business Law, MBA in Logistics and Transport Management, Lecturer, Department of English Law, University of Bertoua, Cameroon, "A legal examination of stabilisation clauses in petroleum contracts in Cameroon". The author of the article examines the character of the legal analysis of stabilization clauses in oil contracts in Cameroon. Stabilization clauses, the scientist notes, are fundamental to protecting the interests of foreign investors in oil contracts. These clauses act as a shield for investors, as they protect oil companies from attempts by the host government to modify the agreement through subsequent changes in legislation. Their legal force in Cameroon's oil industry is guaranteed by the country's Petroleum Law. However, the study's findings indicate that the applicability of these provisions remains uncertain, as the Cameroonian government may carry out nationalization and expropriation on grounds of public benefit, security, or national interest, provided that appropriate compensation is paid. In the study, the author logically concludes that there is room for legislative action by the government to amend oil contracts. This undoubtedly carries certain legal implications, as discussed in the article.

The issue continues with a study by Yuriy Lukin, Senior Lecturer of the Department of Theory and History of State and Law, Kazan (Volga Region) Federal University, Chairman of the Law and Facts Bar Association of the Republic of Tatarstan, "The issues of limitation of actions in cases of bringing to subsidiary liability". The author of the article considers general provisions on statutes of limitation of action, focusing the readers' attention on the peculiarities of their application in isolated disputes on bringing the persons controlling the debtor to subsidiary liability in cases of insolvency (bankruptcy) of legal entities. Subjective and objective statutes of limitation of action are specified, the grounds and conditions for restoration of missed periods are analyzed in detail. Special attention is paid to the legal positions of the European Court of Human Rights, the Supreme Court

of the Russian Federation and the Constitutional Court of the Russian Federation. Problematic aspects of the application of different versions of bankruptcy legislation in time and the influence of factual circumstances on the beginning of the statutes of limitation of action are analyzed. It is concluded that the current regulation of the statutes of limitation of action in bankruptcy cases is generally effective, but a number of issues related to the transitional provisions of the legislation remain debatable.

The next research is presented by Arsen Balafendiev, Candidate of Legal Sciences, Associate Professor, and Elmir Namazov, Third-year Candidate student of the Department of Criminal Law of the Kazan Federal University, "Retrospective analysis of criminal liability for terrorist offenses". The article is devoted to the retrospective analysis of terrorism as a social phenomenon and criminal-legal norms establishing responsibility for various forms of its manifestations in the sources of law of medieval Russia, the Russian Empire and the USSR. The authors note that during the formation of the legal system of tsarist Russia the norms on criminal liability for committing crimes of terrorist orientation were not distinguished from the general normative material, were dissolved in crimes against the state; this provision was preserved in the legislation of the Russian Empire. The legislator responded to the growth of crime by expanding the range of offenses establishing liability. The authors examine the category of "terrorist act", which first appeared in the Criminal Code of the RSFSR of 1960, where it was understood as the murder of a statesman for political reasons.

With best regards,
Editor-in-Chief
Damir Valeev

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ARTICLES

Enow Godwill Baiye

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A LEGAL EXAMINATION OF STABILISATION CLAUSES IN PETROLEUM CONTRACTS IN CAMEROON

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Abstract. *The aim of this study is to shed light on the legal examination of stabilisation clauses in petroleum contracts in Cameroon. Stabilisation clauses forms one of the pillars in protecting the interest of foreign investors in petroleum contractual arrangements. These clauses act as a shield to investors as they protect oil companies from attempts by the host government to modify the agreement through subsequent changes in legislation. Their legal validity in the Cameroonian petroleum industry has been guaranteed by the Petroleum Law of the country. However, the findings of this paper reveals that the applicability of these clauses remains questionable as the Cameroonian government can implement nationalisation and expropriation on the grounds of public utility, security or national interest, subject to appropriate compensation. Furthermore, the study reveals that the Cameroonian government can introduce new legislative or regulatory changes in the petroleum contracts, the terms of which must be agreed by both parties. In case where an agreement is not reached, the matter will be referred to arbitration. This study concludes that the State can continue enacting new legislations, and in some arbitration cases to breach an agreement, which defeats the essence of stabilisation clauses in petroleum contracts.*

Keywords: *stabilisation clauses, petroleum contracts, legal examination, nationalisation, expropriation, compensation.*

1. Introduction

Cameroon is a midsized, lower-middle-income country endowed with substantial natural resources. Cameroon has natural resources that include oil, gas, coal, minerals, a large hydroelectric potential, and an excellent condition for forestry and agriculture[1]. The presence of these resources especially oil has a great role to play in the economic development of the country. To attain this growth, there is a need for the country to put in place policies aimed at attracting foreign investors who can finance its future oil projects. The relations between oil producing countries and oil companies, especially international oil companies (IOCs) are often contained in long-term agreements. As with the case of Cameroon, these agreements are in the form of concessions, production sharing contracts, risk service agreements and joint venture agreements[2]. It is worth noting that even though the Petroleum Law in Cameroon makes no reference to joint venture contracts, these contracts have been in practiced in the country over the years. In this light, a joint venture contract covering the management of the Kombe-Nsepe petroleum block was signed in 2008 between SNH and Perenco oil and gas (Cameroon) and Kosmos Energy (Cameroon)[3].

These agreements are high-risk, capital intensive and long-term, involving activities of the investor in the host country, from exploration to the development and finally decommissioning of oil fields. The risks involved in upstream petroleum exploration include the geological, commercial, technical, managerial, natural disaster risks and political risk[4]. The risks involved in exploration and production of hydrocarbons necessitates host governments to provide incentives to IOCs. One of such incentives is the insertion of stabilising and renegotiating clauses in the petroleum contracts in order to attract foreign direct investment. These clauses serve as a contractual risks management tool to protect oil companies from attempts by the host government to modify the agreement through subsequent changes in legislation. The clauses provide that, neither party may change the terms of the agreement without the consent of the other. However, in a situation where changes are irresistible, the parties to the contract may also accept readjustment of the original contractual provisions to permit both parties fulfill their respective obligations in the contract.

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[1] World Bank Group, (2022), Creating Markets in Cameroon: Unleashing Private Sector Growth, Washington DC. 136 p.

[2] Section 15, 16 and 18 of Law no. 2019 /008 of 25 April 2019 to Institute the Petroleum Code of Cameroon.

[3] www.respurcecontracts.org // [Electronic resource]. — URL: https://www.respurcecontracts.org/content/ocds-591adf- (date of address: 08.09.2024).

[4] *Newcombe A.P.,* (1999). Regulatory Expropriation, Investment Protection and International Law: When is Government Regulation Expropriatory and When Should Compensation Be Paid?, A Dissertation Submitted in Partial Fulfillment of the Requirements of an Award of a Master's Degree at Law at the University of Toronto, p. 93.

These clauses further protects the multinational oil companies, as private investors by restricting the legislative or administrative power of the host state, as sovereign in its country and legislator in its own legal system, from amending the contractual regulation or even to annul the agreement[1]. Developing countries like Cameroon also offer stability provisions to attract investment in the oil sector, whereby contractual stability is used as a bargaining chip to increase the country's credibility in international markets and to compensate for existing risks[2]. To guarantee their effective implementation in the Cameroon's oil sector, they have been articulated in the petroleum laws of the country.

In this light, the Petroleum Law adumbrated that, petroleum contracts may provide for special regimes with regard to the stabilisation of economic conditions, particularly where conditions for execution of the said petroleum contract are aggravated by the introduction, in the Republic of Cameroon, of laws or regulations after its effective date[3]. This article is focused on the rationale of stabilisation clauses in petroleum contractual arrangements, the types of stabilisation clauses practiced in petroleum contracts in Cameroon, the legal status of such clauses in Cameroon, the approaches to interpretation of Stabilisation clauses in petroleum agreements and the intricacies with the application of stabilisation clauses in Cameroon.

2. Meaning and Rationale of Stabilisation Clauses

2.1. Meaning of Stabilisation Clauses

Stabilisation clauses are specific commitments by the host State not to alter the terms of the international petroleum agreements by legislation or other means, without the consent of other contracting parties. Stabilisation clauses are designed to shield foreign investors from, political risks and, in particular, subsequent adverse legislative or regulatory change in a host State[4]. They are found in investment contracts, and are a common device in respect of significant natural resource and energy projects.

Stabilisation clauses are provisions inserted in international petroleum contracts to restrain a host government from exercising state power to abrogate or otherwise intervene in agreements concluded with foreign companies. Such clauses aim to insulating the relationship from changes in the content of the law of the host

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[1] *Bernardin A., et al*, (2012). Oil Wealth in Central Africa: Policies for Inclusive Growth. IMF Working Paper, p. 102.

[2] Ownership of mineral resources in sub-Saharan Africa // [Electronic resource]. — URL: https//www.sovereignt (date of address: 01.10.2021).

[3] Section 124 of the 2019 Cameroonian Petroleum Code.

[4] *Maniruzzann A.,* (2008). Damages for Breach of Stabilisation Clauses in International Investment Law: Where Do We Stand Today? // International Energy Law and Taxation Review, Vol. 12, p. 251.

country. By agreeing to the insertion of a stabilisation clause, the host state makes a commitment to refrain from unilateral actions that may modify the terms of the agreement entered into with a foreign investor[1]. It is essentially a popular risk management tool that can create some feeling of security when faced with adverse governmental measure that purports to alter international contracts.

Stabilisation clauses aim to protect the IOCs, by restricting the legislative or administrative power of the host State, as sovereign in its country, from amending the PSC or even to annul the agreement. The long duration of investment contracts makes them susceptible to political and economic influences which may not be foreseeable when the contract was concluded, but which can affect the terms of the contract. It is for this reason that IOCs seek reassurances that the host state are willing to abide by the sanctity of contract[2].

One commentator has traced the origin of stabilisation clauses to the period between World War 1 and World War 2 when US companies began to include them in concessionary agreements because of nationalisations in Latin America[3]. In his separate opinion in the *Government of the State of Kuwait v. the American Independent Oil Company*,[4] Sir **Gerald Fitzmaurice** pointed out that, during this period, there were increasing instances where foreign investors with concessionary contracts had their investments taken over by host governments, especially in Latin America. He therefore explained:

It was specifically in the light of those occurrences that stabilisation clauses began to be introduced into concessionary contracts, particularly by American companies in view of their Latin American experiences, and for the express purpose of ensuring that concessions would run their full term, except where the case was one for which the concession itself gave a right of earlier termination.

Stabilisation clauses, however, became popular from the late 1960s following several high-profile international arbitrations triggered, in particular, by various acts of nationalisation and expropriation of petroleum industry assets by some oil producing nations who wanted to benefit from the rise in oil prices. Stability clauses may cover a broad range of host country laws including, among others, those relating to: labour; the environment; government control over production decisions and share participation; the obligation to provide local infrastructure; and the possibility of nationalisation.

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1 *Macedo J.,* (2011). From Tradition to Modernity: Not Necessarily an Evolution-The Case of Stabilisation and Renegotiation Clauses // Oil and Gas Energy Law, Vol. 2, Issue 1, p. 119.

2 *Nwaokoro J.,* (2010). Enforcing stabilization of international energy contracts // Journal of World Energy Law and Business, Volume 3, Issue 1, March 2010, p. 103.

3 *Bishop R.,* (2008). International Arbitration of Petroleum Disputes: The Development of a Lex Petrolea // Foundation of International Energy and Minerals Arbitration Law Series 2, Issue18, p. 1133.

4 (1982), ILM, 976, 1005/1006.

2.2. Rationale of Stabilisation Clauses

The inclusion of stabilisation clauses in petroleum contractual arrangements can be looked upon from the State and investors angles. Stabilisation clauses aim at rendering an agreement and a project's physical term immune from any subsequent adverse act of the government, whether administrative or legislative[1]. Thus, ensuring that the law of the host State, in so far as it impacts on economic and financial performance of an investment venture, remains unchanged throughout the duration of the investment venture is based on the agreement between the parties[2]. Similarly, the interest of oil and gas investors depends not only on the level of tax, but also on the extent to which the government shares the project's risks, though companies, unlike governments, have the means to diversify certain levels of risk. Governments, however, can minimise one important risk-that is the fiscal risk-by providing fiscal stability.

A tax system subject to continuous tinkering tends to undermine investors' confidence in government policy, resulting in a higher discount rate to compensate for increased risk, thereby reducing the value placed on future income streams and increasing the barriers to investment[3]. Investors attempt to neutralize these uncertainties by putting in place stabilisation clauses; these come in different forms, but their main objective is to lock in fiscal terms for the duration of a project. The term stabilisation refers to the attempt to avoid potential conflicts or risks with respect to the alteration of the regime in which the project takes place[4].

Long term resources and energy projects such as oil and gas exploration and mining have a serious need for stability that goes beyond short-term projects. It would seem that major financial requirements of these investors consist of swift investment recovery through step-up depreciation and pay-back, long loss carry-forward periods, reasonable royalty rates receptive to the mineral prices and a flexible system of income or cash flow-based taxation generated merely after investment recovery[5]. To therefore be sure that their investment will be secured, there is the need for stability clauses.

Furthermore, the involvement of the State as the sovereign owner of the resource and as a contracting party in a petroleum contract always raises the possibility of unilateral change or premature termination, by virtue of the State's sovereign legislative

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1 *Maniruzzann A.,* (2008), Op. cit., note 8 (p. 122).

2 *Mukwasa M.,* (2010). When is Compensation Payable for Breach of Stabilisation Clauses the Case For the Cancelled Mining Development Agreement in Zambia // A Dissertation Submitted in Partial Fulfillment for the Requirements of the Award of a Master's Degree of in Law, University of Pretoria, p. 16.

3 *Nackhle C.,* (2016). Fiscal Stabilisation in Oil and Gas Contracts: Evidence and Implications // OIES Paper, SP 37, p. 6.

4 *Sornarajah M.,* (2012). The International Law on Foreign Investment, 3rd Ed., London, Cambridge University Press, p. 101.

5 *Hadiza T.,* (2012). Role of Stability and Renegotiation in Transnational Petroleum Agreements // Journal of Politics and Law, Vol. 5, p. 34.

power[1]. Although the principle of *pacta sunt servanda*[2], or strict sanctity of contract, is widely accepted, under no legal system has the principle been found to be absolute, and contractual rights can be expropriated[3]. In an attempt to neutralise the political risk, investors typically push for a legally binding guarantee, in order to safeguard the terms that were originally agreed upon for the duration of a project and to protect their investment from the unilateral exercise of state power aimed at changing the terms of the contract by legislation or administrative discretion.

A stabilisation clause is a contractual risk-mitigating device to protect investments from variations in the legal environment. This would include risks deriving from a possible exercise of host State sovereignty such as: expropriation, the obsolescence bargain, or any other change which the government might utilize in order to impose new requirements on investors[4]. The stabilisation clause is essentially a phenomenon of long-term state contracts, in contrast to private contracts, commercial contracts and short-term state contracts, which are not usually vulnerable to political or regulatory risk[5].

Stability provisions are vital to the petroleum industry; without them, the scope and effectiveness of petroleum agreements are often limited. Oil companies are so vulnerable to potential changes in fiscal terms that they behave much more conservatively if they cannot limit this risk. Conversely if they can mitigate, reduce or eliminate certain elements of risk they can be more aggressive in their investment efforts.

3. Types of Stabilisation Clauses in Petroleum Contractual Arrangements in Cameroon

There are different types of stabilisation clauses. The four principal categories of stabilisation clauses namely: freezing, prohibition on unilateral change, balancing and allocation of burden are of importance in this article[6].

3.1. Freezing clauses

The freezing stabilisation clause also referred to as stabilisation clause *stricto census* is a quite common occurrence in older petroleum arrangements. It constitute a classical form of stabilisation clause. These clauses ordinarily preclude the host

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1 *Faruque A.,* (2006). Validity and Efficacy of Stabilisation Clauses: Legal Protection vs. Functional Value" Journal of International Arbitration, Vol. 23, Issue 4, 12 p.

2 Pacta sunt servanda is a fundamental principle of law, whereby contractual obligations must be respected.

3 *Daniel F., et al*, (2008). Sovereignty over Natural Resources Versus Right under Investment Contracts: Which one Prevails? // Transnational Dispute Management Journal, Vol. 5, Issue 1, p. 14.

4 *Emeka J.,* (2008). Anchoring Stabilizing Clauses in International Petroleum Contracts, Int'l Law, Vol. 42, Issue 4, p. 1317.

5 *Faruque A.,* (2006), Loc. cit., note 18 (p. 335).

6 *Cameron P.,* (2010). International Energy Investment Law: Pursuit of Stability, OUP Catalogue, p. 62.

State from changing its legislation. It is designed to restrict the legislative and administrative powers of a host State to take unilateral action to the effect of altering or annulling the provision of the oil agreement[1]. A fiscal freezing stability clause will usually cover all tax policy changes that could affect the tax situation of a project, whether such taxes are included in the contract or are externally determined[2].

Although freezing stability clauses are still been used today in some host state's, their popularity has substantially waned due to the criticisms that has been raised in regards to the effect they have in limiting the HC's power[3]. They are criticised as an encumbrance on the host state's sovereign legislative prerogative and the permanency of sovereignty over its natural resources[4]. It has come under scathing attacks from civil society organisations and is frowned upon by most governments. In the alternative, any changes in host state legislation subsequent to the petroleum agreement do not apply to the specific project. PSA terms take precedence in the event of a conflict with new legislation.

3.2. Prohibition on unilateral changes

They are commonly dubbed intangibility clauses. It is sometimes considered as a sub-category of the freezing clauses. These clauses freezes the contract rather than the law[5]. It is built on the premise that the terms of petroleum agreements may not be modified or abrogated except with the contracting parties' mutual consent[6]. Instead of indirectly restraining the State's legislative capacity to intervene at a later date by freezing the law applicable at the time of the contract signature, this form of stabilisation tries to limit the state's capacity directly by requiring mutual consent to contract changes[7]. By requiring mutual consent, this approach has the advantage that it establishes a procedural framework mechanism for discussion and most likely negotiation between the parties about the future for discussion.

3.3. Balancing clauses

The modern alternative to freezing clauses is economic equilibrium clauses. They are commonly dubbed the economic stabilisation clauses or economic equilibrium

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1 *Tshegofatsa M.,* (2017). Fiscal Stability Assurance in Petroleum Agreement: Finding the Best Practice Model for the Modern Fiscal Stabilisation Clause: A Thesis Submitted in Partial Fulfillment for the Requirements of an Award of a Doctoral Degree in Law, University of Pretoria.

2 *Nackhle C.,* (2016), Op. cit., note 15, p. 14.

3 *Adams K.,* (2018). Contract Drafting: Revisiting Materiality-The Ambiguity at the Heart of a Fundamental Concept, 4th Ed., Illinois, Defending Liberty Pursuing Justice Press, p. 57.

4 Ibid.

5 *Peter D. Cameron* (2020). Stabilisation clauses: Do They have a Future? // Bahrain Chamber of Dispute Resolution International Arbitration Review, Vol 7, Issue 1, pp. 109–132.

6 *Adams K.,* (2018), Op. cit., note 27.

7 *Peter D. Cameron* (2020), Op. cit., note 29.

clause[1]. This clause seeks to address more deftly the issues concerning the exercise of the sovereign authority by the host State by allowing the host State retain full authority to enact new laws that may impact the project but at the same time, keeping the same financial position of the investor as provided for under the contract on the date it was signed[2]. So the new law will apply to the projects but the investor will be compensated. This law did not aim to freeze law but aim to maintain the economic equilibrium of the project[3].

They provide for automatic adjustments or negotiations to restate the initial economic balance of the PSA should legislative changes be introduced after signature. Such clauses allow for the application of new laws, regulations and interpretation to the petroleum agreement with proviso that the investor will be compensated for or indemnified from the cost of complying with them[4]. This is achieved through the use of a number of various mechanisms such as automatic adjustments, renegotiation and adaptation. In Cameroon for instance, the Petroleum Code provides for special regimes with regards to the stabilisation of economic conditions, particularly where conditions for the execution of the said petroleum contract are aggravated by the introduction, in the Republic of Cameroon, of laws or regulations after its effective date[5].

The automatic economic balancing provides for automatic adjustment of the contract terms in a stipulated manner. This can be achieved, for example, by a way of specified percentage readjustment of profit petroleum split in the case of production sharing agreement[6]. The negotiated economic balance (NEB) requires that the parties to come together to negotiate and agree to the amendments to the contract[7]. The economic balance clause can be an effective tool in extending the life of the petroleum agreement by giving the agreement a degree of flexibility to deal with changing circumstances. In this regard,

Maniruzzann posit:

The breach of freezing clause may result in only lump sum damages, which could be far below what the company considers, would be necessary to keep it whole. Under an economic balancing clause, however, the government would have to indemnify on an ongoing basis[8].

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1 *Garcia-Amador F.,* (1993). State Responsibility in Case of Stabilisation Clauses // Journal of Transnational Law and Policy, Vol. 2, Issue 23, p. 30.

2 *Daniel V.,* (1990). Petroleum Development Agreements: Forms and Drafting // Journal of Energy and National Resources Law, Vol. 8, Issue 1–4, p. 248.

3 *Lauterpatcht E.,* (1990). Issues of Compensation and Nationality in the Taking of Energy Investments // Journal of Energy and National Resources Law, Vol. 8, Issue 1–4, p. 241.

4 Ibid.

5 Section 124 of the 2019 Cameroonian Petroleum Code.

6 *Maniruzzann A.,* (2008), Op. cit., note 8.

7 Ibid.

8 Ibid.

The clause allows the parties to modify the agreement instead of terminating the relationship considering changes which could happen during the life of the contract-particularly the NEB clause which could bring both parties to the negotiation table with the view of working harmoniously and in a collaborative manner to reach beneficial equilibrium. The NEB clause can be utilized to ensure the equality of treatment of both parties in respect of economic balance of the contract by allowing for renegotiation in cases where not only the interests of the investor has deteriorated, but also in instances where the host State has negative impacts on itself[1]. For example, if the tax rate goes up, the investor's interest will deteriorate whereas, if the tax rate goes down, the investor's profit will improve[2]. In the latter instance the NEB clause would allow the host State to negotiate an amendment to secure the same result as if the tax rate not gone up.

Generally, this technique is costly since achieving economic equilibrium of the parties involves financial considerations in the form of damages, compensation[3], and specific performance. Further, failure to come to a mutual agreement, may lead to dispute before the international tribunals on ground of impossibility of performance.

3.4. Allocation of burden

These clauses seek to allocate the fiscal and related burdens created by a unilateral change in the law. It is common for the resultant burden to be borne by the National Oil Company or the state[4]. In the Egyptian model concession agreement for instance, it exempts the NOC and the foreign investor from all taxes and duties[5], except for income tax, which the NOC pays on behalf of the foreign investor[6]. The above clauses can be sub-categorized into full stabilisation clause and limited stabilisation clauses depending on the scope of laws covered. Full stabilisation clauses apply to all laws and actions impacts the provisions of the petroleum agreement while the limited stabilisation clauses focus on specific laws and actions to the exclusion of others[7].

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[1] *Cotula L.,* (2008). Reconciling Regulatory Stability and Evolution of Environmental Standards in Investment Contracts: Towards a Rethink of Stabilisation of Stabilisation Clauses // Journal of World Energy and Business, Vol. 1, Issue 2, p. 158.

[2] *Tshegofatsa M.,* (2017), Op. cit., note 25.

[3] The breaching party is required to pay damages equal to the full value of specific performance measured by the profits expected had the agreement not been breached. Refer to Goldenberg claim (Germany vs. Romania) 2 R. International Arbitration 901 (1928).

[4] *Paasivirta E.,* (1989). Internationalisation and Stabilisation of Contracts vs State Sovereignty // The British Year Book of International Law, Vol. 60, Issue 1, p. 315.

[5] Article XVIII(c) of the Egyptian Model Concession Agreement.

[6] Article III(g) of the Egyptian Model Concession Agreement.

[7] *Blitzer C., et al*, (1985). An Analysis of Fiscal and Financial Impediments to Oil and Gas Exploration in Developing Countries // Energy Journal, Vol. 6, p. 72.

4. Legality of Stabilisation Clauses in Petroleum Contractual Arrangements

4.1. Legal dimensions of stabilisation clauses in petroleum contractual arrangements in Cameroon

The legal value of stabilisation clauses has generated heated debate over the decade. To answer the question of how valuable these clauses are, commentators have focused on two key aspects: the validity of stabilisation clauses under domestic law and its validity under international law. Many host State claim to have their sovereign legislative power encumbered by stabilisation clauses whereas others have been amenable to the demands of foreign investors to include these in petroleum agreements.[1] The consuses amongst different scholars is that the contractual assurance of stability contained in an investment agreement between the host State and an investor will be valid under that state's domestic laws if the legislative power and constitutional framework provides for them[2]. The validity of stabilisation concluded outside the parameters of that State's legal framework will undoubtedly be invalid.

Clauses negotiated under the shadow of ultra vires and constitutional invalidity cannot generate rights simple by appearance or legitimate reliance on the State agency's contracting parties. Even if a stabilisation clause is concluded in observance to all perquisite legal requirements, it must be borne in mind that every country will retain its sovereign authority to enact laws that will triumph previous laws in spite of existing laws or agreements to the contrary[3]. This authority could be used to render the stabilisation clause invalid *ex post facto* in terms of domestic law. The United Nations Guiding Principles are a significant step toward a full integration and application of stabilisation clauses in contractual arrangements. Through the principle of Responsible contract, contractual stabilisation clauses if used, should be carefully drafted so that protections for investors against future changes in law do not interfere with the State's bona fide efforts to implement laws, regulations or policies in a non-discriminatory manner in order to meet its human rights obligations[4].

The validity of stabilisation clauses have been upheld in the Cameroonian Petroleum Code. In this light, the Code provides that: *Petroleum contract may provide for special regimes with regard to the stabilisation of economic conditions, particularly where conditions for the execution of the said petroleum contract are aggravated by the introduction, in the Republic of Cameroon, of laws or regulations after its effective date*[5].

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1 *Kakembo D.,* (2014). Stabilisation Clauses in International Petroleum Contracts Illusion or Safeguard? // Deloitte Working Paper, p. 10.

2 *Bartels M.,* (1985). Contractual Adaptation and Conflict Resolution, 1st Ed., Netherlands. Kluwer Publishers. 187 p.

3 Ibid, p. 215.

4 Principle 4 of the United Nations, Principles for responsible contracts, 25 May, 2011.

5 Section 124 of the 2019 Cameroonian Petroleum Code.

This has been purported by the Mining Law which holds that*; the stability of the tax and customs regime shall be guaranteed for legal persons holding industrial mining and quarry operation licences and permits for a limited period…and during this period, the amounts, rates and base of taxation specific to the sector, especially fixed fees, State land concession fees or area based royalty, ad valorem tax and the extraction tax, as well as tax and customs benefits on imports granted, and no new levy or tax whatsoever shall be applicable to permit or licence holder or beneficiary during this period*[1].

It is worth noting that the Cameroonian Model Production Sharing Contract gives the oil contractors two months from the date of a significant modification of the contractual terms to address to the Minister in charge of hydrocarbons written notification stating that the legislative or regulatory change in question would have a significant detrimental effect on contractor's economic equilibrium as guaranteed in the contract[2]. Within a two month period starting from receipt of the contractor's notice, the Minister in charge of hydrocarbons may either: accept in writing the reasons of the contractor and make arrangements so that the legislative or regulatory provision in question no longer applies to the contractor nor to any entity comprising contractor or reject in writing the contractor's justifications[3].

If the Minister in charge of hydrocarbons cannot make arrangements within stated time, the parties will endeavor to make such readjustments to the contract as to reestablish the economic equilibrium of the contract as it had been agreed to on the effective date, taking into account the new legislative or regulatory provision in the notice. The parties will make their best efforts to agree upon revisions to be made to the contract within ninety days as from the notification of the rejection of the above-mentioned request by the contractor[4]. The revisions to be made to the contract may not in any event diminish the rights or increase the obligations of the contractor as had been agreed to as of the effective date. If agreement cannot be reached between the parties within the time frame provided, the dispute may be submitted by either party to the arbitration procedure.

The Chad-Cameroon project is one of those contracts where stabilisation clauses were instituted. This project was governed by several agreements. However, for the purposes of this study, the four key documents are the 1988 Convention Agreement, the 2004 Convention Agreement replacing it, the 1997 COTCO Convention of establishment (COTCO-Cameroon)[5], and the TOTCO Convention

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[1] Article 149(1)(2) of Law no 2023/014 of 19 December 2023 relating to the Mining Code in Cameroon.

[2] Section 29(2) of the 2007 Cameroonian MPSC.

[3] Ibid, Section 29(3).

[4] Ibid, Section 29(4).

[5] Convention of Establishment between the Republic of Cameroon and the Cameroon Oil Transportation Company (hereinafter referred to as Cameroon-COTCO Convention).

of establishment (TOTCO-Chad)[1]. The stabilisation clauses in these agreements differ in the way in which they are drafted. However, each contains a combination of stringent freezing and economic equilibrium clauses protecting the investors for the entire duration of the project[2]. The governments in the project agreed that, they shall not modify such legal, tax, customs, and exchange control regime in such a way as to adversely affect the rights and obligations of the investors[3]. In addition, no legislative, regulatory or administrative measure, which is contrary to the provisions of the Convention, shall apply to the investors without their prior written consent.

4.2. The approaches to interpretation of stabilisation clauses in petroleum agreements under international law

One of the contentious matters in international investment law surrounds the validity and construction of the stabilisation clauses in the petroleum agreements. This has been subject to litigation before the international tribunal where host states changed laws regardless of the existing stabilisation clauses, and thereby causing financial loss to the investors. Generally, this point is addressed under two distinct approaches. The first approach is based on theory of internationalization of stability contract, which argues that presence of stability clause gives it an international character. This signifies capitalist school of thought on validity of stability clauses[4]. It holds that states are bound by stability clauses which are concluded under valid states' authority and governed by either international law or domestic law. The host state is estopped from repudiating its signification of consent to be bound.

The above legal position was substantiated in the case of *Texaco Overseas Petroleum and Others v. the Libyan Arab Republic*[5] whereby it was held that reference to general principles of law in the international arbitration context is a sufficient criterion for the internationalization of a contract, and thus private contracting party was protected against unilateral and abrupt modifications of law in the host state. Thus, nationalization of Texaco's properties according to Libyan law was unlawful. Consequently, Libya's defense based on lawful sovereign act was refused by the International Court of Justice (ICJ) on ground that it was bound to observe contractual obligations in good faith in accordance with both national and international laws.

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1 Convention etablisséments between the Republic of Chad and the Chad Oil Transportation Company (TOTCO), 10 July 1998.

2 The duration of each agreement and contract is between 25 and 35 years with option of renewal for the same period.

3 Article 24.2 COTCO-Cameroon Convention.

4 *Faruque A.,* (2006), Op. cit., note 18.

5 17 I.L.M 1 (1977).

The similar decision was also observed in the case *of Libyan American Oil Co. (LIAMCO) v. Libya*[1] whereby it was held, inter alia, that the right of a State to nationalize was held to be sovereign, subject to indemnification for premature termination of concession agreements. Further, nationalization of concession rights, if not discriminatory and not accompanied by a wrongful conduct was not unlawful, but constituted a source of liability to compensate the concessionaire for said premature termination of the concession agreements. Thus, though the concession agreements were to be governed by and interpreted in accordance with the 'common principles of Libyan and international law', it was observed that any part of Libyan law in conflict with the principles of international law was to be excluded. Apart from judicial precedents, the internationalization of contract approach is accommodated under a number of international law instruments.

The Vienna Convention on the Law of Treaties, 1969 (to be referred to as VCLT) requires the state to observe terms and conditions of an agreement in good faith, also known as *pacta sunt servanda*[2]. This means that States and investors should be bound by the letters of the agreement no matter how cumbersome it may prove to be. It means Cameroon ought to be bound by provisions of the stability clause in the existing petroleum agreements regardless of their fairness and validity, and that using internal amended law to avoid liability cannot be justified[3]. However, States may be precluded from performing the contract containing stability clause due to valid grounds. The first ground is fundamental change of circumstances (*rebus sinc stantibus)* of the contract[4]. Here, a State may request for renegotiation of contract as a result of change of conditions that existed at the time of conclusion of an agreement, which were not foreseeable by the parties. Such conditions must have been regarded by the parties as essential basis of consent and the change should radically affect the nature of obligations under the contract. Secondly, the state may seek for renegotiation on ground of impossibility of performance of contract due to permanent disappearance or destruction of the object considered essential for performance of contract[5].

However, the State should not have actively caused or influenced the impossibility of performance, and such impossibility should not be of a temporary character. In the latter case, a State may suspend the contract subject to lawful procedure, inter alia, giving three months' notice in writing to the other party[6].

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1 17 I.L.M 3 (1978).

2 Article 26 of the Vienna Convention on the Law of Treaties, 1969.

3 Ibid, Article 27.

4 Ibid, Article 62.

5 Article 61 of the Vienna Convention on the Law of Treaties, 1969.

6 Ibid, Articles 65 and 67.

Likewise, the sanctity of stability clause is guaranteed under the UNIDROIT Principles of International Commercial Contracts (hereinafter referred to as UNIDROIT Principles) which applies in agreements between states, and agreements between states and investors[1]. It states that; a contract validly entered into by the parties is binding, and that it can be modified or terminated in accordance with its terms or by agreement. This suggests that States and investors are bound by the stability clause in a contract which may be changed subject to renegotiation clause. Consequently, States and investors are obliged to act in good faith and fairly in accordance with international trade[2].

However, parties may be discharged from contractual liability on reasons of hardships and force majeure, which impede performance of the contract[3]. This same position has been held in Cameroon in the Indian production sharing contract between the Republic of Cameroon and Kosmos Energy Cameroon PLC which provided that no party shall be liable for the non-performance or the partial performance of its obligations, if the responsible party is prevented by reason of force majeure[4]. Thus, the capitalist approach regard stability clause to be a valid instrument of securing investors' interests against sovereignty prerogatives of States.

Unlike the Capitalist approach, the sovereignty approach which is based on "relocalisation of contracts" argues that states have inherent and unrestricted powers to control the exploitation of resources located within their territories. Hence, stability clause should be interpreted and construed in accordance with national law of the host state. Consequently, if the stabilisation clause provides for matters that contravene fundamental principles of the host state, such clause will have no legal effect. The, the purported freezing effect of the stability clause will not be regarded as manifestation of the host state's intention to provide immunity to the investors' operations. This approach requires an investor to make thorough appropriate due diligence and feasibility study before it makes decision to invest[5]. It is always assumed that investors subject themselves to political risks, including change of political environment and laws, which are usually addressed through risk insurance.

The logic behind this approach is that most aspects of petroleum agreements are governed by the law of the host State, for instance, matters of recruitment of

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[1] Article 1.3 of the UNIDROIT Principles of International Commercial Contracts, 2016, These Principles are not binding provisions but they are regarded as lex mercatoria.

[2] Ibid, Article 1.7.

[3] Ibid, Article 7.1.7.

[4] Article 24 of the Indian Production Sharing Contract Between the Republic of Cameroon and Kosmos Energy Cameroon PLC.

[5] *Katja Gehne, Brillo Romulo*. Stabilisation Clauses in International investment Laws: Beyond Balancing and Fair and Equitable Treatment, Swiss National Centre of Competence in Research, Working Paper No. 2013/46 of January 2014, p. 25.

expatriate staff, employment of local labour, customs and exchange regulations, income tax and other forms of charges, and regulation of capital flow[1]. Consequently, the stability clause which to a large extent addresses the above matters should be construed in accordance with the law of the host State. The stability clause in an international contract which contravenes a "rule of internal law of fundamental importance" will be regarded as invalid, hence unenforceable[2]. Accordingly, the host State has competence to enact laws on regulation of aspects covered by the stability clause, provided the State acts fairly, reasonably and equitably[3]. It is important to note that regardless of the approach taken, the host State and the investors need to come to terms through renegotiation of the contracts.

Usually, the concern of the parties during renegotiation process is maintaining an economic equilibrium of the parties. Where the host State and investors are unable to arrive at mutual agreement, it becomes a dispute which should be addressed through agreed appropriate forum. The general law and practice on investment matters is such that disputes should be determined through arbitration or reconciliation by an umpire, and using the agreed law (international law or national law). Regardless of the law applicable, a harmonized interpretation of the stabilisation clauses should be sought in order to balance the investors' interests and national interests.

5. Intricacies Associated with the Application of Stabilisation Clauses in Petroleum Contractual Arrangement in Cameroon

United Nations General Assembly (UNGA) Resolution No. 1803 (XVIII) not only recognises the rights of peoples and nations to permanent sovereignty over their natural wealth and resources, it further declares that nationalisation and expropriation can be implemented on the grounds of public utility, security or national interest, subject to appropriate compensation[4]. This has been buttressed by the preamble of the Constitution which holds that; *the State has resolved to harness our natural resources in order to ensure the well-being of every citizen without discrimination, by raising the living standards, proclaim our rights to development as well as our determination to devote our efforts to that end and declare our readiness to co-operate with all States desirous of participating…with due respect for our sovereignty and the independence of the Cameroonian State*[5].

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1 *Faruque A.,* (2006), Op. cit., note 18.

2 *Katja Gehne, Brillo Romulo*, (2006), Loc. cit., note 73.

3 *Maniruzzann A.,* (2008), Op. cit., note 8.

4 UNGA Resolution 1803 (XVIII) 14 December, 1962.

5 Law no.96-06 of 18 January 1996 to Amend the Constitution of 2 June 1972.

Similarly, the Petroleum Law firmly affirms that, *all deposits or natural accumulations of hydrocarbons located within the soil or sub soil of the territory of Cameroon, whether or not discovered, are and shall remain the exclusive property of the environment and the State shall* exercise sovereign rights over the entire territory for the purpose of petroleum operations[1]. The intricacies with the readings of the above provisions are: what do we consider as public utility, security or national interest? To answer this, a major setback with our national laws is that it does not define the terms, leaving authorities with significant discretion. This lack of clarity can only increase nationalisation and expropriation.

Another complexity with the application of stabilisation clauses in relation to the above provisions is: can the Cameroonian government to still go ahead to nationalise and expropriate the property of oil companies in spite the presence of stabilisation clauses in their contracts? If the answer is in the affirmative as held by the author, then, stabilisation clauses can therefore not abrogate the State's sovereignty over her natural resources. Thus, the State can continue enacting new legislations, and in some arbitration cases to breach an agreement, without compensation. Arbitrations like *Aramco and Agip*[2] reflect the view that a State exercises its sovereignty when it binds itself with clauses in an investment agreement[3]. Similar cases where seen in the Libyan expropriation cases of BP Exploration, Topco and Liamco[4], *Aguaytia Energy, LLC (AEL) v. Republic of Peru*[5] *and Duke Energy International Peru Investments No 1, Ltd v. Republic of Peru*[6]*,* where the presence of Stabilisation Clauses cases though held to be valid did not stop the various government from acting contrary to the Stabilisation Clauses which was the reason for the case.

Furthermore, the insertion and application of stabilisation clauses has resulted to human rights violation in many circumstances. Human rights groups have voiced concerns that Stabilisation clauses in the Baku-Tbilisi-Ceyhan (BTC) and the Chad-Cameroon pipeline project hinders the rights of HC's to meet their international human rights obligations and limit the application of new laws protecting human rights[7]. This phenomenon is in contradiction with the Cameroonian Constitution

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1 Article 3(1) (2) of the 2019 Petroleum Code.

2 21 ILM 735.

3 Saudi Arabia v. Arabian American Oil Company (1958) 27 ILR 168; Agip v. Popular Republic of Congo (1982) 21 ILM 735.

4 BP Exploration Company (Libya) Ltd. v. Government of the Libyan Arab Republic 53, I.L.R.

5 ICSID case No. Arb/06/13 p. 41–43 and 53–54. (Award dated 11 December 2008).

6 ICSID case No. Arb/03/28 227. (Award dated August 18 2008).

7 They are grave concerns that the agreement between (BP) the pipeline consortium leader and the Turkish government creates a huge disincentive for Turkey to protect human rights because Turkey has agreed to pay compensation if pipeline construction or operation is disturbed. Amnesty international warns that this could mean 40–60 years of serious risk to human rights of those who protest. The SC

which provides that every person shall have a right to a healthy environment… and the State shall ensure the protection and improvement of the environment[1].

6. Conclusion

Given the pressures on developing countries especially Cameroon to attract foreign investors in their oil industry, it becomes imperative for them to offer clauses that seek to stabilise a bargain struck with international investors. These clauses will shield investors against host countries who might attempt to change legislations and as a result lose attractiveness for foreign investors. From the discussions of this study, stabilisation clauses have a legal validity under the Cameroonian petroleum law. These clauses can take the traditional or modern forms. However, the applicability of these clauses in the Cameroonian petroleum industry is faced with several complexities. The findings of this paper has revealed that the applicability of these clauses remains questionable as the Cameroonian government can implement nationalisation and expropriation on the grounds of public utility, security or national interest, subject to appropriate compensation. Furthermore, the study has revealed that the Cameroonian government can introduce new legislative or regulatory changes in the petroleum contracts, the terms of which must be agreed by both parties. In case where an agreement is not reached, the matter will be referred to arbitration. This study concludes that the State can continue enacting new legislations, and in some arbitration cases to breach an agreement, which defeats the essence of stabilisation clauses in petroleum contracts.

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THE ISSUES OF LIMITATION OF ACTIONS IN CASES OF BRINGING TO SUBSIDIARY LIABILITY

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Abstract. *The article studies general positions on limitation periods and peculiarities of their application in isolated disputes on bringing the persons controlling the debtor to subsidiary liability within the framework of cases on insolvency (bankruptcy) of legal entities. The article considers subjective and objective limitation periods, their specifics, as well as grounds and conditions for restoration of missed periods. Special attention is paid to the legal positions of the European Court of Human Rights, the Supreme Court of the Russian Federation, and the Constitutional Court of the Russian Federation. Problematic aspects of the application of different versions of bankruptcy legislation in time and the influence of actual circumstances on the beginning of the limitation period are analyzed. It is concluded that the current regulation of the institute of limitation in bankruptcy cases is generally effective, but a number of issues related to the transitional provisions of the legislation remain discussable.*

Keywords: *bankruptcy, subsidiary liability, limitation period, persons controlling the debtor, isolated dispute, restoration of the term, objective term.*

In legal literature, the limitation of action is understood as a period established by law for the judicial protection of a violated right[1]. The limitation of action in the objective sense is a civil law institution, i.e., a system of legal norms regulating relations concerning the period for the protection of civil rights. In the subjective

[1] *Kirillova M. Ya.* Iskovaya davnost [Limitation of action] // Grazhdanskoe pravo [Civil Law] / Pod obshch. red. T. I. Illarionovoy, B. M. Gongalo, V. A. Pletneva. M., 2001. P. 257.

sense, the limitation of action refers to the right of a person whose interests have been violated to use this period to protect their infringed civil rights[1].

The legal definition of the concept of "limitation of action" is provided in Article 195 of the Civil Code of the Russian Federation, according to which the statute of limitations on actions is defined as the period for the protection of a right by means of a claim brought by the person whose right has been violated.

The limitations on actions encourage participants in civil legal relations to timely exercise the protective function of substantive legal norms. This institution prevents uncertainty in relationships between the subjects of civil law. It eliminates situations in which a person whose right has been violated might exert pressure on the violator without applying to the court for protection of their infringed rights. Moreover, after a lengthy period, collecting the evidence necessary for the effective administration of justice becomes increasingly difficult. Thus, by encouraging participants in civil legal relations to seek judicial protection of their violated rights in a timely manner, the statute of limitations on actions safeguards both private and public interests.

Based on the position of the European Court of Human Rights, statutes of limitations on actions protect potential defendants from outdated claims and relieve courts of the need to render decisions based on evidence that, over time, has become uncertain and incomplete. The right to defend one's interests in court would be compromised if courts were to render decisions based on an evidentiary foundation that has become deficient due to the passage of time (see the Resolutions of the Court dated 22 June 2000 in Coeme and Others v. Belgium, and 7 July 2009 in Stagno v. Belgium).

As a general rule, the statute of limitations on actions is three years (Article 196 of the Civil Code of the Russian Federation) and is calculated from the moment when a person became aware or should have become aware of the violation of their right and of the person who is the proper defendant in a claim for the protection of that right (Article 200 of the Civil Code of the Russian Federation).

Meanwhile, Article 197 of the Civil Code of the Russian Federation provides that special statutes of limitations on actions, either shorter or longer than the general period, may be established by law for certain types of claims. The legal mechanism for holding persons controlling the debtor subsidiarily liable is no exception in this regard. The Federal Law "On insolvency (bankruptcy)" provides for a special period for filing an application with the arbitration court.

Nevertheless, the provisions of Chapter 12 of the Civil Code of the Russian Federation are, for the most part, applicable to such special periods as well. When addressing issues related to a statute of limitations on actions that differs from the general period established by Article 196 of the Civil Code of the Russian Federation,

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[1] *Kirillova M. Ya., Krasheninnikov P. V.* Sroki. Iskovaya davnost [Statute of Limitations. Limitation of action] // Grazhdanskoe pravo [Civil Law] / Pod red. red. B. M. Gongalo. M., 2016. 80 p.

one must be guided not only by the relevant special provisions but also by Article 195, Paragraph 2 of Article 196, and Articles 198-207 of the Civil Code of the Russian Federation.

Since a claim for imposing subsidiary liability is independent and regulated by a separate chapter of the Federal Law "On insolvency (bankruptcy)", the legislator has included a separate provision in the law concerning the application of the statute of limitations on actions in such isolated categories of disputes.

In accordance with Paragraph 5 of Article 61.14 of the Federal Law "On insolvency (bankruptcy)", as currently in force, an application for imposing liability on the grounds set out in Chapter III.2 may be filed within three years from the date when the person entitled to file such an application became aware or should have become aware of the existence of grounds for imposing subsidiary liability, but no later than three years from the date of the debtor's declaration of bankruptcy (termination of the bankruptcy proceedings or return of the application for declaring the debtor bankrupt to the authorized body), and no later than ten years from the date on which the actions and/or omissions serving as grounds for liability occurred.

According to the 2 Paragraph of the same provision, if the time limit for filing an application was missed for a valid reason, it may be restored by the arbitration court, provided that no more than two years have passed since the expiration of the period specified in the first paragraph of this item.

Paragraph 5 of Article 61.14 of the Bankruptcy Law establishes a special statute of limitations on actions applicable within insolvency proceedings involving a particular person. In this regard, it is important to note that the legislator links the commencement of the statute of limitations on actions to the moment when the person whose right was violated became aware or should have become aware of the grounds for filing the relevant application with the arbitration court.

The Bankruptcy Law separately identifies three grounds for imposing subsidiary liability on persons controlling the debtor, which differ in terms of their substantive legal character, the subject of proof, and other characteristics.

Accordingly, it is advisable to consider matters related to the statute of limitations on actions in cases concerning the imposition of subsidiary liability on persons controlling the debtor in the context of the specific grounds for liability provided by the Federal Law "On insolvency (bankruptcy)".

Currently, when adjudicating cases concerning the imposition of subsidiary liability on persons controlling the debtor, courts should take into account that four distinct limitation periods on actions coexist under the current legislative framework[1]:

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[1] *Dobrachev D. V.* Problemy sudebnoy praktiki privlecheniya k subsidiarnoy otvetstvennosti kontroliruyushchikh dolzhnika lits v protsedure bankrotstva [Issues of judicial practice of bringing debtor's controlling persons to subsidiary liability in bankruptcy proceedings]. M.: Infotropik Media, 2019. P. 92.

1) Paragraph 5 of Article 61.14 of the Federal Law "On Insolvency (Bankruptcy) establishes a subjective limitation period, which is three years and is calculated from the moment the claimant became aware or ought to have become aware of the grounds for bringing the claim;

2) The same provision also sets out an objective three-year limitation period, which limits the time for filing a claim based on the date the debtor is declared bankrupt, the proceedings are terminated, or the application for declaring the debtor bankrupt is returned to the authorized body;

3) Paragraph 6 of Article 61.14 provides for another objective three-year limitation period, which is calculated from the date of completion of bankruptcy proceedings, applicable to persons who became aware or ought to have become aware of the grounds for the claim only after the conclusion of such proceedings;

4) Paragraph 5 further introduces a ten-year objective limitation period, which runs from the date of the actions (or omissions) of the defendant that form the basis for holding the controlling person subsidiarily liable.

It should be emphasized that the distinction between the subjective and objective limitation periods was incorporated into Russian legislative practice based on foreign jurisdictions' positive experience in regulating this issue.

The first legal instrument to articulate this approach was Information Letter No. 126 of the Presidium of the Supreme Commercial Court of the Russian Federation, dated 13 November 2008, "Review of Judicial Practice on Certain Issues Related to the Vindication of Property from Unlawful Possession". In this document, the highest judicial authority stated that, under Article 195 of the Civil Code of the Russian Federation, a limitation period is defined as the period within which a claim may be brought to protect a right that has been violated. At the same time, judicial protection is unavailable as long as the person whose right is violated is unaware of the identity of the violator — the potential defendant. Thus, although the owner lost possession of the property in 1997, the limitation period for the claim to recover it began to run only from the moment the claimant learned of its possession by the defendant.

Despite the fact that the division of the statute of limitations on actions into subjective and objective periods has taken root in Russian legal practice, its practical application is only possible from September 1, 2023, as explicitly stated by the Supreme Court of the Russian Federation in Paragraph 12 of Resolution of the Plenum of the Russian Federation No. 43 dated 29.09.2015 "On Certain Issues Related to the Application of Norms of the Civil Code of the Russian Federation on limitations on actions".

Bankruptcy cases, combining private principles with the presence of a public interest — characterized, among other things, by the large number of parties involved — rightly fall into the category of cases of increased complexity. In this

regard, issues related to the calculation of the limitation of action, particularly those connected to the knowledge of various circumstances, are especially complex.

In examining the problematic aspects of the limitation of action, including those associated with the number of persons involved in bankruptcy proceedings, I. V. Garbashev rightly concluded that a claim for holding a person controlling the debtor subsidiarily liable is, as a rule, indirectly collective in nature[1].

Given the varying levels of creditors' awareness of the debtor's activities prior to the initiation of bankruptcy proceedings, the question of whose knowledge is taken into account for the commencement of the limitation period remained debatable for some time.

It appears that this issue was resolved with the adoption by the Supreme Court of the Russian Federation of Resolution of the Plenum of the Russian Federation No. 53 dated 21.12.2017 "On Certain Issues Related to Bringing Debtor's Controlling Persons to Liability in Bankruptcy". Paragraph 59 of this resolution provides clarifications stating that, as a general rule, the limitation period for a claim to hold a party subsidiarily liable is calculated from the moment when either the trustee in bankruptcy acting in the interests of all creditors or an independent creditor entitled to file such a claim became aware or ought to have become aware of the existence of grounds for bringing a person to subsidiary liability — namely, the combination of the following circumstances:

1) the identity of the defendant (the controlling person);
2) his unlawful actions;
3) the insufficiency of the debtor's assets to satisfy all creditors' claims.

The mechanism developed by the legislator, which allows a person whose claims against the debtor have been confirmed by a judicial act that has entered into legal force to join an application for holding the persons controlling the debtor subsidiarily liable, in conjunction with the provisions of Article 225.16 of the Arbitration Procedural Code of the Russian Federation, excludes the possibility of subsequently bringing claims against the same defendant on the same grounds by a creditor who has not exercised this right[2].

It is also noteworthy that the Supreme Court, in the final paragraph of Paragraph 59 of Resolution of the Plenum No. 53, provided for the possibility of

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[1] *Garbashev I. V.* O nekotorykh materialno-pravovykh aspektakh privlecheniya k subsidiarnoy otvetstvennosti v razyasneniyakh VS RF [On certain substantive legal aspects of bringing to subsidiary liability in the clarifications of the Supreme Court of the Russian Federation] // Vestnik grazhdanskogo prava [The Bulletin of Civil Law]. 2018. No. 4. Pp. 154–202.

[2] *Altukhov A. V., Levichev S. V.* Protsessualnye osobennosti rassmotreniya zayavleniy o privlechenii kontroliruyushchikh dolzhnika lits k subsidiarnoy otvetstvennosti pri bankrotstve [Procedural peculiarities of consideration of applications for bringing persons controlling the debtor to subsidiary liability in bankruptcy proceedings] // Sudya [Judge]. 2018. No. 4. Pp. 27–32.

restoring the rights of creditors in the event of bad faith conduct on the part of the trustee in bankruptcy acting in the interests of the person controlling the debtor. The restoration of such violated rights is ensured by excluding the period during which the dishonest trustee exercised their powers from the calculation of the limitation period.

Subparagraph 2 of Paragraphs 5 and 6 of Article 65.14 of the Federal Law "On Insolvency (Bankruptcy)" provides for the possibility of restoring a missed procedural deadline for filing an application for bringing controlling persons to subsidiary liability, provided that the delay occurred for a valid reason. However, such a deadline may only be restored within two years from the expiry of the period provided for in Paragraph 1.

Paragraph 62 of Resolution of the Plenum No. 53 of the Supreme Court of the Russian Federation clarifies that the limitation period may be restored for the bankruptcy trustee and for creditors who are legal entities or entrepreneurs only in exceptional cases, when they were genuinely deprived of the opportunity to timely apply to the court due to reasons beyond their control.

At the same time, the three-year and ten-year limitation periods — calculated from the date of recognition of the debtor as bankrupt (termination of the bankruptcy proceedings, return of the bankruptcy petition to the authorized body), or completion of receivership, or from the commission of unlawful acts (or omissions) that caused harm to creditors and led to subsidiary liability — are not subject to restoration[1].

Pursuant to Paragraph 2 of Article 199 of the Civil Code of the Russian Federation, the statute of limitations shall be applied by the court only upon a motion of a party to the dispute made prior to the issuance of the court's decision. In the context of a separate dispute on holding the person controlling the debtor subsidiarily liable, such a motion must be made by the controlling person before the issuance of a procedural act suspending the proceedings — where the court finds grounds for imposing liability — or before the issuance of a ruling or decision imposing such liability.

An important issue, along with others, is determining which version of the Bankruptcy Law should be applied by the court when resolving whether the statute of limitations on actions for filing a claim with the commercial court seeking to hold the persons controlling the debtor subsidiarily liable has been missed. This issue arises due to the legislator's significant change in approach to the statute of limitations on actions applicable to this category of cases. Previously, the rules

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[1] *Bykov V. P., Chernikova E. V., Markelova I. V.* Privlechenie kontroliruyushchikh dolzhnika lits k subsidiarnoy otvetstvennosti za nepodachu (nesvoevremennuyu podachu) zayavleniya o bankrotstve dolzhnika [Involvement of persons controlling the debtor in subsidiary liability for failure to file (late filing) a bankruptcy petition of the debtor] // Sovremennoe pravo [Modern Law]. 2018. No. 7–8. Pp. 61–68.

on subsidiary liability were governed by Article 10 of the Bankruptcy Law, which provided for a one-year statute of limitations on actions.

To resolve the issue of whether the law in this case should have retroactive effect, it is necessary to determine whether the statute of limitations on actions is governed by substantive or procedural rules.

According to the legal position of the Constitutional Court of the Russian Federation, granting retroactive effect to a law is an exceptional form of its temporal application, which lies within the exclusive prerogative of the legislature. Retroactive application is allowed only when expressly stated in the text of the law or in the legislative act governing its entry into force. When exercising this prerogative, the legislature must take into account the specific character of the legal relationships subject to regulation. Retroactive effect is typically permitted in legal relations between individuals and the state — primarily in the individual's favor (e.g., in criminal or pension law). In private relations between individuals or legal entities, retroactive application is not permitted, as the interests of one party to the legal relationship cannot be sacrificed to the advantage of the other party who has not violated the law (Decision of 1 October 1993 No. 81-p; Rulings of 25 January 2007 No. 37-O-O, 15 April 2008 No. 262-O-O, 20 November 2008 No. 745-O-O, 16 July 2009 No. 691-O-O, 23 April 2015 No. 82-O, and others).

This position was subsequently reaffirmed in Resolution No. 3-П of the Constitutional Court of the Russian Federation dated 15 February 2016 "On the case concerning the constitutionality of Part 9 of Article 3 of the Federal Law "On Amendments to Subsections 4 and 5 of Section I of Part One and to Article 1153 of Part Three of the Civil Code of the Russian Federation,' in connection with the complaint of citizen E.V. Pototsky".

Paragraph 57 of Resolution No. 53 of the Plenum of the Supreme Court of the Russian Federation dated 21 December 2017 "On Certain Issues Related to Holding Controlling Persons of the Debtor Liable in Bankruptcy" clarifies that the grounds for claims for subsidiary liability — claims that require substantiating the status of the controlling person — are understood not as references to legal norms but as factual circumstances forming the basis of the creditors' demand for compensation against a specific individual.

Thus, the circumstances listed in Paragraph 4 of Article 10, which set forth substantive presumptions, may themselves serve as independent grounds for holding a person subsidiarily liable.

Based on the above legal position, the presumptions set forth in Paragraph 4 of Article 10 of the Bankruptcy Law are of a substantive character.

In Paragraph 2 of the Information Letter of the Presidium of the Supreme Arbitration Court of the Russian Federation dated 27 April 2010 No. 137 "On Certain Issues Related to the Transitional Provisions of Federal Law No. 73-ФЗ dated 28 April

2009 "On Amendments to Certain Legislative Acts of the Russian Federation", it is clarified that the provisions of the Bankruptcy Law as amended by Law No. 73-ФЗ (in particular, Article 10) regarding subsidiary liability of relevant persons for the debtor's obligations apply if the circumstances constituting the grounds for holding them liable (e.g., issuance of instructions to the debtor by a controlling person, approval of a transaction by the controlling body, or conclusion of a transaction on behalf of the debtor) occurred after the effective date of Law No. 73-ФЗ.

If such circumstances took place prior to the effective date of Law No. 73-ФЗ, then the provisions of the Bankruptcy Law regarding subsidiary liability for the debtor's obligations in the version effective prior to the entry into force of Law No. 73-ФЗ (in particular, Article 10) shall apply, regardless of the date on which the bankruptcy proceedings were initiated.

Thus, the applicability of a particular version of Article 10 of the Bankruptcy Law (or Articles 61.11 and 61.12 of the Bankruptcy Law) to the regulation of substantive legal relations depends on when the factual circumstances that form the basis for holding the debtor's controlling person subsidiarily liable occurred (Determination of the Supreme Court of the Russian Federation dated 06 August 2018 No. 308-ЭС17-6757 (2,3) in case No. A22-941/2006).

When applying the statute of limitations on actions to the relevant legal relations, the courts justify their conclusions regarding the applicable version of the law, inter alia, based on the moment when the person entitled to file a claim became aware or should have become aware of the real opportunity to bring the claim, even without waiting for the exact amount of subsidiary liability to be determined (Ruling of the Arbitration Court of the Ural District dated 21 August 2019 No. Ф09-4388/15 in case No. A60-28614/2011).

Thus, the legal institution of the statute of limitations on actions in isolated disputes concerning the imposition of subsidiary liability on persons controlling the debtor — aimed at safeguarding the rights of such persons and ensuring legal certainty — is currently regulated by the legislator in a sufficiently effective manner. However, the issue of which version of the Bankruptcy Law should be applied in determining the limitation period remains unresolved, resulting in a lack of uniform judicial practice among arbitration courts on this matter.

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RETROSPECTIVE ANALYSIS OF CRIMINAL LIABILITY FOR TERRORIST OFFENSES

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Abstract. *The article is devoted to the retrospective analysis of terrorism as a social phenomenon and criminal-legal norms establishing responsibility for various forms of its manifestation in the sources of law of medieval Russia, the Russian Empire and the USSR. In the period of formation of the legal system of Tsarist Russia, the norms on criminal responsibility for committing crimes of terrorist orientation were not singled out from the general normative material, were dissolved in crimes against the state; this provision was retained in the legislation of the Russian Empire. The social processes of XIX gave rise to a wave of political crime, the Decembrists and, later, the member of Narodnaya Volya, expressing their protest against serfdom and tsarism, committed a number of high-profile assassination attempts against prominent state officials. The legislator responded to the growth of crime by expanding the range of offenses establishing liability. The Code of Criminal and Corrective Penalties of Russia 1845 contained chapters "On crimes against the sacred person of the sovereign emperor and members of the imperial house", "On rebellion against the supreme power and treason". During the establishment of the USSR, terror was considered by the Bolsheviks as a permissible means of class struggle. In domestic criminal legislation, the category of "terrorist act" first appeared in the Criminal Code of the RSFSR of 1960, where it was understood as the murder of a state official for political reasons.*

Keywords: *terrorist act, terrorism, history of terrorism, history of terrorist crimes, member of Narodnaya Volya, "Red terror".*

The fight against terrorism in Russia has a long history, and legal regulation of terrorist activity as a criminal offense has always been used as the main tool. In the development of the institution of responsibility for crimes of a terrorist character, three stages of formation can be conditionally distinguished: the pre-revolutionary (Tsarist), Soviet, and post-Soviet periods.

Initially, the relevant legal norms were embedded within the general body of law and were not allocated to a separate branch. Prohibitions primarily concerned property rather than public interests and were enforced through the imposition of property-related sanctions. The sources of law included customary practices, the legislative activity of princes, treaties, veche resolutions, Byzantine ecclesiastical law, and khan's decrees.

With the development of society and the state, the process of unifying legislation began in the late XV century. This was reflected in the court charters of the free cities of Pskov and Novgorod, and later in the Moscow Law Codes of 1497 and 1550[1], which did not abolish previous statutory charters but functioned alongside them. The Law Codes established legal responsibility for offenses against the state and public interests but did not include provisions for crimes against the life, health, or inviolability of the sovereign.

The Council Code of 1649, issued by Tsar Alexei Mikhailovich, was the culmination of economic, political, and social development. This landmark of criminal law recognized the public danger posed by crimes against the state and established the death penalty as punishment for offenses against the sovereign, state integrity, treason, skopa, and conspiracy[2].

During the reign of Peter the Great, the Tsardom of Russia was transformed into the Russian Empire. By royal decree on April 26, 1715, the Military Article was introduced, establishing criminal responsibility for serious state crimes.

In the criminal law of the Russian Empire, there was no legislative distinction between terrorist and extremist acts. Terrorism and extremism were viewed as part of a single concept. Criminal acts containing elements characteristic of terrorism were equated with crimes against the state.

During the Patriotic War of 1812, the Decembrist movement emerged in Russia. It advocated a radical overthrow of the feudal order through a military revolution[3]. The Decembrist uprising on Senate Square on December 14, 1825, involved a plan to seize power by taking Emperor Nicholas I and the Senate hostage and to compel

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[1] Khrestomatiya po istorii gosudarstva i prava Rossii: ucheb. Posobie [Chrestomathy on the History of the State and Law of Russia: textbook] / sost. Yu. P. Titov. 2-e izd. perab. i dop. M.: TK Velbi, Izd-vo Prospekt, 2008. Pp. 34–47.

[2] Polnoe sobranie zakonov Rossiyskoy imperii s 1649 g. Tom 1, sobranie 1 [Complete Collection of the Laws of the Russian Empire since 1649, Volume 1, Collection 1]. SPb., 1830. P. 35.

[3] *Semenova A. V.* Vremennoe revolyutsionnoe pravitelstvo v planakh dekabristov [The provisional revolutionary government in the Decembrists' plans]. M.: Mysl, 1982. P. 176.

them to publish a "Manifesto to the Russian People". The manifesto proclaimed the abolition of autocracy and estates, the end of serfdom, the establishment of democratic freedoms, and the transfer of supreme power to the people. The authorities ultimately suppressed the rebellion. Nicholas I, fearing popular unrest, pursued a policy of strengthening autocracy. He expanded the powers of the secret police, whose responsibilities included gathering information on unreliable individuals. The press was subjected to censorship, and private correspondence was subjected to perlustration. Priority in combating political dissent was given to the special services, which carried out preventive measures in this area, rather than to economic and social reforms that could have improved the quality of life for individuals and society as a whole. To consolidate and uphold the regime, under the leadership of M. M. Speransky, the Complete Collection of Laws of the Russian Empire covering the years 1649 to 1826 (published in 1830), and the Code of Laws of the Russian Empire (1833) were compiled. The main shortcoming of the legislative approach was the attempt to unify legal provisions from eras that were fundamentally different in character, which resulted in poor legal technique and internal contradictions[1].

In the Code of Criminal and Correctional Punishments of 1845, the offenses that contain signs of terrorist nature include section three "On crimes of state", Chapter One "On crimes against the sacred person of the sovereign emperor and members of the imperial house".

Section Three "On state crimes", Chapter One "On crimes against the sacred person of the sovereign emperor and members of the imperial house", Chapter Two "On rebellion against the supreme power and treason" may be referred to as crimes containing signs of terrorist character.

The law of March 27, 1867 "On illegal societies" prohibited all secret societies, as well as any circles, meetings, artels and others with harmful purposes for the Empire. The founders of secret societies — in the dissemination of doctrines aimed at changing the state structure — were punished by deprivation of all rights of status and exile to hard labor in mines from 12 to 15 years[2].

The described period falls on the reign of Tsar Alexander II, who took the course of liberalization and adopted 19.02.1861 "Regulations" and "Manifesto" on the abolition of serfdom[3], which was a necessary condition for maintaining social

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[1] *Belogrits-Kotlyarevskiy L. S. i dr.* Kratkiy kurs russkogo ugolovnogo prava [Short course of Russian criminal law]. Kiev, 1908. P. 37

[2] Polnoe sobranie zakonov Rossiyskoy imperii, sobranie 2. Tom 42, otdelenie 1 [Complete Collection of Laws of the Russian Empire, Collection 2. Vol. 42, Branch 1]. SPb, 1871. Pp. 329–331; *Kochina Z. S.* Vologodskaya khronika i Rossiyskie zakony XIX vek [Vologda Chronicle and Russian Laws of the XIX century]. Vologda, 2006. P. 44.

[3] Polnoe sobranie zakonov Rossiyskoy imperii, sobranie 2. Tom 36, otdelenie 1 [Complete Collection of Laws of the Russian Empire, Collection 2. Vol. 36, Branch 1]. SPb., 1863. Pp. 218–231.

stability under the growing revolutionary threat. Dissatisfaction and social injustice activated social movements. In the period of 1861 and 1862 there appeared the organization Zemlya i Volya (Land and Liberty) (the main ideologists A. I. Herzen and N. G. Chernyshevsky), which aimed to eliminate autocracy and the establishment of democratic freedoms through a revolutionary uprising. The destruction of the existing state system[1] was to lead to communal socialism and equality of people, bypassing capitalism. After the arrests of activists, the organization ceased to exist. The processes that had been set in motion were already irreversible. Criminal law prohibitions could not stop the new wave of Narodnik terror. Revolutionary hotbeds flared up in different parts of Russia, and targeted attacks on officials began. The revival of Narodnik ideas, known as the "Going to the People" movement (1873–1875), was characterized by peaceful agitation and the education of peasants and factory workers. The Narodniks[2] believed that the people wanted land redistribution, and their main political slogan was the peasants' right to land. However, the Narodniks failed to resonate with the peasants due to the latter's strong belief in the "good tsar". The people lacked a revolutionary spirit. The alien ideas of socialism and revolution found no support, and it all ended with the mass arrest of the Narodniks[3].

The Narodniks had a clear program of action. They carried out peaceful agitation, published and distributed various anti-government publications, proclamations, and leaflets. Within this environment, ideas emerged about liberating Russia from autocracy by organizing assassinations of high-ranking state officials and committing serious and especially grave crimes.

These circumstances led to a split within the organization into two factions: Black Repartition and People's Will. The former rejected terror as a tactic and continued propaganda efforts among workers and rural residents.

Terror was not proclaimed as the sole method of struggle by the socialist party; the primary goal was to change the existing state system and social order through a coup[4].

The Law of May 19, 1871, "Rules on the procedures for the actions of gendarmerie corps officials in investigating crimes"[5], abolished the investigative

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[1] *Gorev B. I.* Revolyutsionnoe narodnichestvo semidesyatykh godov [Revolutionary Narodnikism of the seventies]. M., 1928. P. 20.

[2] Members of a populist movement in 19th-century Russia advocating agrarian socialism and peasant-based reform (Editor's Note).

[3] *Itenberg B. S.* Dvizhenie revolyutsionnogo narodnichestva [The movement of revolutionary Narodnikism]. M., 1965. P. 200.

[4] "Narodnaya volya" v dokumentakh i vospominaniyakh ["People's Will" in documents and memoirs] / pod red. A. V. Yakimovskoy-Dikovskoy; M. F. Frolenko; I. I. Popova i dr. M., 1930. Pp. 41–43.

[5] Polnoe sobranie zakonov Rossiyskoy imperii, sobranie 2. Tom 46, otdelenie 1 [Complete Collection of Laws of the Russian Empire, Collection 2. Vol. 46, Branch 1]. SPb., 1871. Pp. 591–594.

commissions for state crimes and transferred the investigation of political cases to the gendarmes.

To prevent courts of general jurisdiction from handing down lenient sentences, the law of June 7, 1872, approved a new version of the Statute of Criminal Procedure. Under Articles 1030–1061, cases concerning the judicial structure for state crimes were to be considered by the Special Presence of the Governing Senate[1].The actions of the radical Narodniks were directed against the government, and the injured party was to be recognized as an interested party, acting not out of moral conviction but on the basis of government orders[2].

In order to suppress crimes against public officials, committed under the influence of socio-revolutionary ideologies aiming to change the state system and the form of government, the government decided to transfer jurisdiction over state crimes to military courts (Law of August 9, 1878)[3]. These courts handled all cases of political assassinations and other acts of violence against officials, which had previously been tried by jury courts. Initially, gendarmes conducting the inquiries transferred to military courts only those cases in which individuals were accused of armed resistance. The law of April 5, 1879, granted governors-general broad discretion to transfer cases of state crimes to military courts[4].

A series of unsuccessful assassination attempts against Tsar Alexander II were organized by the Narodniks, most notably the explosion in the Winter Palace in St. Petersburg. On February 7, 1880, the Executive Committee of the "People's Will" issued a proclamation claiming responsibility for the attempt on the tsar's life. It expressed sorrow over the deaths of unfortunate soldiers of the imperial guard and stated that, as long as the army remained a bulwark of tsarist despotism, such tragic clashes would be inevitable[5].

On March 1, 1881, in St. Petersburg, Alexander II was fatally wounded by an explosive device; 20 people were injured, and one child died. The emperor's death did not rouse the masses or lead to the expected popular uprising. His successor, Alexander III, embarked on a course of counter-reforms and halted

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[1] Polnoe sobranie zakonov Rossiyskoy imperii, sobranie 2. Tom 47, otdelenie 1 [Complete Collection of Laws of the Russian Empire, Collection 2. Vol. 47, Branch 1]. SPb., 1872. Pp. 808–809.

[2] *Troitskiy N. A.* "Narodnaya volya" pered tsarskim sudom, 1880–1891 gg. ["People's Will" before the Tsar's court, 1880–1891.]. Saratov, 1983. Pp. 144–145.

[3] Polnoe sobranie zakonov Rossiyskoy imperii, sobranie 2. Tom 53, otdelenie 2 [Complete Collection of Laws of the Russian Empire, Collection 2. Vol. 53, Branch 2]. SPb., 1880. Pp. 89–90.

[4] Polnoe sobranie zakonov Rossiyskoy imperii, sobranie 2. Tom 54, otdelenie 1 [Complete Collection of Laws of the Russian Empire, Collection 2. Vol. 54, Branch 1]. SPb., 1881. P. 289.

[5] "Narodnaya volya" v dokumentakh i vospominaniyakh ["People's Will" in documents and memoirs] / pod red. A. V. Yakimovskoy-Dikovskoy; M. F. Frolenko; I. I. Popova i dr. M., 1930. P. 94.

the constitutional reform. Revolutionary movements[1] and their supporters[2] were subjected to harsh repression by the authorities.

The political trials of "People's Will" members attracted international attention to the Russian liberation movement[3]. Revolutionaries were portrayed as heroes fighting to liberate their homeland from tsarist oppression and tyranny.

The Criminal Code of 1903 was enacted only partially. Of the Special Part, only the provisions concerning political and religious crimes were implemented, along with all provisions of the General Part, which were applicable only to the offenses provided for in the active articles of the Special Part[4].

The study of pre-revolutionary legislation revealed the existence of acute social conflicts reflected in criminal law — primarily associated with opposition to autocracy, succession to the throne, and the transformation of the existing state order. The existing criminal statutes proved ineffective in curbing the terrorist threat posed by a new wave of militant groups, including Socialist Revolutionaries, Maximalists, anarchists, Social Democrats, the Polish Socialist Party, and others who continued the cause initiated by the Narodniks.

Another pivotal moment was the workers' and soldiers' uprising in Petrograd, followed by the February and October Revolutions of 1917, which overthrew the autocracy and later the Provisional Government of A. F. Kerensky[5]. The establishment of the new regime brought fundamental changes to the state, political, economic, public, and social life of the country, leading to a reassessment of criminal prohibitions.

The new Bolshevik regime dismantled the old pre-revolutionary legal system and, over the next several years, developed its own Criminal Code (1919, 1922, 1926). Decree No. 1 "On the Court", dated November 24, 1917[6], abolished existing laws and declared the revolutionary legal consciousness of judges as the primary source of criminal law. This effectively justified arbitrariness and broad judicial discretion; thus, the principle of legality was replaced by revolutionary class expediency.

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1 *Troitskiy N. A.* "Narodnaya volya" pered tsarskim sudom, 1880–1891 gg. ["People's Will" before the Tsar's court, 1880–1891.]. Saratov, 1983. Pp. 355–356.

2 *Volk S. S.* "Narodnaya volya" (1879–1882 gg.) ["People's Will" (1879–1882)]. M., 1966. P. 276.

3 *Troitskiy N. A.* "Narodnaya volya" pered tsarskim sudom, 1880–1891 gg. ["People's Will" before the Tsar's court, 1880–1891.]. Saratov, 1983. P. 338.

4 *Piontkovskiy A. A.* Sovetskoe ugolovnoe pravo. Tom I. Obshchaya chast [Soviet Criminal Law. Volume I. General part]. M., 1929. P. 14.

5 *Tsamutali A. N., Belousov M. S.* 190-letie vosstaniya dekabristov [190th anniversary of the Decembrist uprising] // Vestnik Sankt-Peterburgskogo universiteta [Bulletin of St. Petersburg University]. 2015, Ser. 2. Vyp. No. 4. P. 11.

6 Khrestomatiya po istorii gosudarstva i prava Rossii: ucheb. Posobie [Chrestomathy on the History of the State and Law of Russia: textbook] / sost. Yu. P. Titov. 2-e izd. perab. i dop. M.: TK Velbi, Izd-vo Prospekt, 2008. Pp. 285–286.

The class character of criminal legislation manifested primarily in the use of criminal repression to protect the existing order — the dictatorship of the proletariat. Dissent was suppressed through violence, including in the struggle against counter-revolutionary organizations.

The Decree of November 28, 1917, "On the Arrest of the Leaders of the Civil War Against the Revolution" stated that "members of the leading institutions of the Cadet Party, as a party of enemies of the people, are subject to arrest and trial by revolutionary tribunals"[1].

In the early years of the revolution, the new government adopted a number of decrees related to criminal law[2]. The protection of public order was carried out through revolutionary terror, which functioned as a legal means of political struggle and retribution against the class enemy[3].

The Bolsheviks' seizure of power enabled the development of legal instruments to combat counterrevolutionary activity. The Socialist Revolutionaries (SRs) and Mensheviks, who were excluded from political life, took an active part in most anti-Soviet conspiracies (the coup in Arkhangelsk, kulak uprisings, etc.), as well as in organizing acts of sabotage and terrorism against the leaders of the party and government[4].

On September 5, 1918, the Council of People's Commissars of the RSFSR adopted the resolution "On Red Terror", according to which all individuals involved in White Guard organizations, conspiracies, and uprisings were to be executed[5]. The resolution further required the publication of the names of those executed, along with the reasons for the application of this measure. State terror was used as a retaliatory measure against the actions of political opponents and their sympathizers. Mass repressions and arrests ultimately extinguished any hope for democratic reforms in society and government.

In the Guiding Principles of 1919, when characterizing the corpus delicti, the authors focused solely on the objective element, discarding the provisions related to

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[1] Department of History, Lomonosov Moscow State University // www.hist.msu.ru.: [Electronic resource]. — URL: http://www.hist.msu.ru/ER/Etext/DEKRET/17-11-28.htm (date of address: 01.02.2025).

[2] Ugolovnoe pravo Rossii. Obshchaya chast: Uchebnik. 3-e izdanie, pererabotannoe i dopolnennoe [Criminal Law of Russia. General Part: Textbook. 3rd edition, revised and supplemented] / pod red. F. R. Sundurova, I. A. Tarkhanova. Statut, 2009. 392 p.

[3] *Pidzhakov A. Yu., Bayramov Sh. B.* Gosudarstvennyy terrorizm v sovetskiy period [State terrorism in the Soviet period] // Istoriya gosudarstva i prava [History of State and Law], 2011, No. 5. Pp. 33–35.

[4] Istoriya sovetskogo ugolovnogo prava [History of Soviet Criminal Law] / A. A. Gertsenzon, Sh. S. Gringauz, N. D. Durmanov, M. M. Isaev i dr. M.: Yurid. izd-vo MYu SSSR, 1948. P. 90.

[5] Resolution of the CPC of the RSFSR of 05.09.1918 "On the Red Terror" // "Izvestiya VTsIK", No. 195, 10.09.1918 (The document became invalid due to the issuance of the Resolution of the VTsIK, CPC of the RSFSR of 25.01.1928).

guilt and the subjective element, which they regarded as vestiges of the bourgeois system. This marked a departure from the principle nullum crimen sine lege ("no crime without a law"). Rejecting the idealistic bourgeois doctrine of guilt, the authors of the Guiding Principles expressed a specific social attitude — they regarded guilt as the manifestation of a hostile element. The basis for the imposition of punishment was found not in the act itself, but in the perceived dangerousness of the offender's personality[1], in relation to the nascent Soviet state and society as a whole.

The next Criminal Code of the RSFSR, dated June 1, 1922, which summarized the previous experience of revolutionary tribunals and people's courts, also borrowed the reactionary views of the sociological school, such as the concept of the "dangerous state of personality" but interpreted them from Marxist positions — based on the class danger posed by the individual.

For the first time, the term "terrorist act" was introduced in Article 64, which provided punishment "for participation in the execution of terrorist acts committed for counter-revolutionary purposes and directed against representatives of Soviet power". Liability was also established for concealment and aiding and abetting (Art. 68), as well as for failure to report reliably known impending or committed terrorist acts (Art. 89).

The essential character of terrorism was determined by the social affiliation of the object of the attack and its aims; that is, it was based on political motives and the struggle for power — the overthrow of Soviet authority, the transformation of the social system, existing legislation, and territorial integrity.

The legislator did not define the corpus delicti of a terrorist act but laid the foundation for future normative acts regulating this sphere.

In the next Criminal Code of the RSFSR (1926), the Special Part (Chapter I) was titled "Counterrevolutionary Crimes", which recognized as criminal any actions aimed at the overthrow, undermining, or weakening of the workers' and peasants' government, as well as providing assistance to the international bourgeoisie pursuing the same goals (Art. 58.1). Organizing a counterrevolutionary uprising or armed invasion of Soviet territory entailed capital punishment and confiscation of property (Part 1, Art. 58.2). Part 2 of Article 58.2 provided for a mitigated punishment — imprisonment for up to five years and confiscation of property. Participation in such organizations was punishable by a more lenient measure of social protection, as provided in Parts 1 and 2 of Article 58.2. Participation in and assistance to organizations acting in support of the international bourgeoisie under Article 58.1 were subject to the same penalties (Art. 58.5). Article 58.6 established liability for inciting the population to mass unrest, armed uprising, or armed invasion.

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[1] Istoriya sovetskogo ugolovnogo prava [History of Soviet Criminal Law] / A. A. Gertsenzon, Sh. S. Gringauz, N. D. Durmanov, M. M. Isaev i dr. M.: Yurid. izd-vo MYu SSSR, 1948. P. 168.

The Decree of the Central Executive Committee of the USSR dated September 14, 1937, "On Amendments to the Current Criminal Procedure Codes of the Union Republics", prescribed the initiation of criminal cases for counterrevolutionary sabotage and diversion falling under Article 58.9 of the Criminal Code of the RSFSR (1926), which reproduced Article 65 of the Criminal Code of 1922.

The next significant document was the Fundamentals of Criminal Legislation of the USSR and the Union Republics dated December 25, 1958. According to the Law on Liability for State Crimes of the same date, the following were classified as especially dangerous state crimes: treason against the Motherland (Art. 1), espionage (Art. 2), and a terrorist act against representatives of a foreign state (Part 1, Art. 4) committed with the aim of provoking war or international complications — all punishable by death and confiscation of property. Serious bodily injury inflicted on such persons for the same purposes was punishable by imprisonment from eight to fifteen years and confiscation of property[1].

The Criminal Code of the RSFSR (1960) made attempts to define the disposition of terrorist crimes. It established liability for a terrorist act (Art. 66) and a terrorist act against a representative of a foreign state (Art. 67), which was defined as the murder (or infliction of grievous bodily injury) of a statesman for political motives, or of a foreign representative with the aim of provoking war or international complications. In cases where such acts were committed as part of terrorist activity, the offense was to be qualified in conjunction with other serious crimes, such as hijacking an aircraft or taking hostages.

Thus, a terrorist act encroached upon the social order and an individual (life and health) representing the state in question. At the same time, the aim was emphasized: to undermine and weaken the state.

The term "terrorism" was for the first time introduced into the Criminal Code of the RSFSR of 1960 by Article 213.3, pursuant to the Federal Law No. 10-ФЗ of 01.07.1994: "committing, for the purpose of violating public security or influencing decision-making by public authorities, an explosion, arson, or other acts creating a danger of loss of life, significant property damage, or other grave consequences"[2].

Concluding the historical analysis of legislation regulating crimes of terrorist character, the following conclusions may be drawn:

1. The historical prerequisites for introducing criminal liability for crimes of terrorist character were public manifestations of revolutionary-terrorist groups, organizations, associations, and liberation movements that adopted terrorist methods

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[1] Khrestomatiya po istorii otechestvennogo gosudarstva i prava. 1917–1991 gg. [Chrestomathy on the History of the National State and Law. 1917–1991]. M., 1997. P. 340.

[2] Criminal Code of the RSFSR (approved by the Supreme Soviet of the RSFSR 27.10.1960) (ed. of 30.07.1996) // Vedomosti VS RSFSR, 1960, No. 40, Art. 591 (Repealed as of January 1, 1997 (Federal Law of 13.06.1996 No. 64-ФЗ).

as the primary means and form of struggle against the legitimate government — with the aim of overthrowing it and/or altering the existing state system. In this regard, the legislator, in order to preserve power and public order, adopted appropriate measures, including criminal prohibitions.

2. Pre-revolutionary criminal prohibitions related to terrorist activity were scattered throughout the Code of Criminal and Penal Sanctions and lacked a coherent concept for combating this phenomenon. In the Soviet period, criminal legislation was aimed at suppressing counterrevolution through mass repressions, accompanied by extrajudicial executions, torture, killings, and the GULAG system[1].

3. The principal features of terrorism in the second half of the XIX century and early XX century consisted in the targeting of high-ranking state officials, which was regarded as a particularly dangerous form of state crime.

4. Pre-revolutionary terrorists directed their methods against those they opposed (individual terror). Acts of violence were, for the most part, political in character and aimed against the existing authorities. In contrast, modern terrorist acts are directed at an indeterminate number of persons unrelated to any specific conflict (mass terror).

5. The legal assessment of terrorist acts depends on the character of the socio-political structure of the state[2]. In totalitarian regimes, terror is justified and permissible, applied against class enemies; whereas in traditional states, such actions are qualified as criminal offenses.

6. The social prerequisites for introducing criminal liability for crimes of terrorist character are associated with a heightened level of public danger, which discredits the current government as incapable of protecting its citizens from terrorist threats — threats that are marked by monstrous consequences, including loss of human life.

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[1] The Main Directorate of Correctional Labor Camps is a division of the USSR NKVD, USSR Ministry of Internal Affairs, USSR Ministry of Justice, and USSR Ministry of Justice, which managed detention facilities in 1930-1959. After 1959, there was the Main Directorate of detention centers, and since 1968 — the Main Directorate of Correctional Labor Institutions (Editor's Note).

[2] Entsiklopedicheskiy slovar yunogo istorika: otechestvennaya istoriya [Young historian's encyclopedic dictionary: national history] / Sost. V. B. Perkhavko. M.: Izd-vo "Pedagogika-Press", 1997. P. 518.

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