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The Theoretical and Legal Foundations of Statutory Lists: From the Concept to Practical Application

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Introduction: *the study analyzes and develops the concept of closed (numerus clausus) and open (numerus apertus) statutory lists, which are an important tool of legislative technique. Each type of lists is characterized by a special structure and special linguistic means that explicitly or implicitly indicate the closed or open nature of a list.* ***Purpose:*** *the article aims to analyze the types of statutory lists and provide a classification thereof, as well as to study judicial practice in their application. This is essential since a wrong choice of the type of list, errors in the technique of its formulation, or incorrect classification of a list by a law enforcer entails serious negative consequences for legal regulation.* ***Results:*** *the authors have developed a classification of closed lists according to their location in the elements of the structure of legal norms and to the completeness of the enumeration (complete and incomplete closed lists) as well as a classification of open lists according to various methods of enumerating their elements and the use of specifying language tools (simple lists and lists of a concretizing nature). In addition, through an analysis of legislation and judicial practice, the authors have derived the concept of a simulacrum of a closed list, which creates the illusion of an exhaustive list, and also have elucidated the relationship between 'numerus clauses' and the maxim 'expressio unius', which is a rule of interpretation widely used in foreign judicial practice.* ***Conclusions:*** *the differentiation of open and closed lists and their subtypes, the distinction made between open lists and incomplete closed lists, and the identification of simulacra of closed lists, all contribute to a deeper understanding of their functional role in legal regulation. A critical analysis of judicial practice, including the study of the application of 'expressio unius', the study of the 'opening' by courts of closed statutory lists through the development of law, the identification of different approaches of courts to the interpretation and correction of lists, indicates the complexity and multifaceted nature of the category of 'statutory list' and the need to systematize special knowledge about all its aspects.*

Keywords: 'classification of statutory lists; numerus clausus; numerus apertus; expressio unius; development of law contra legem; simulacrum of a closed statutory list; incomplete closed list; open statutory list with concretizing language means applied

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Information in Russian

Теоретико-правовые основы законодательных перечней: от концепции к практике применения

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***Введение**: в статье анализируется и разрабатывается концепция закрытых (numerus clausus) и открытых (numerus apertus) законодательных перечней, являющихся важным инструментом законодательной техники. Каждому виду перечня свойственны особая структура и специальные языковые средства, которые явно либо имплицитно указывают на закрытый либо открытый характер списка соответственно. **Целью** работы является анализ особенностей и классификация видов законодательных перечней, а также изучение судебной практики их применения, так как неправильный выбор вида перечня, ошибки в технике его формулирования или неверная квалификация перечня правоприменителем влечет за собой серьезные негативные последствия для правового регулирования. **В результате** научно-практического анализа осуществлена авторская классификация закрытых перечней согласно их расположению в элементах структуры правовых норм и полноте перечисления (полные и неполные закрытые перечни), а также проведена классификация открытых перечней согласно различным способам перечисления элементов списка и применению конкретизирующих языковых средств (простые перечни и перечни конкретизирующего характера). Кроме того, посредством анализа законодательства и судебной практики выведено понятие симулякра закрытых перечней, создающего иллюзию исчерпывающего списка, а также выявлено соотношение numerus clausus и максимы expressio unius, являющейся широко используемым в зарубежной судебной практике правилом интерпретации. **Выводы:** дифференциации открытых и закрытых списков и их подвидов, размежевание открытых перечней и неполных закрытых перечней, выявление симулякров закрытых перечней способствуют более глубокому пониманию их функциональной роли в правовом регулировании. Критический анализ судебной практики, в частности изучение применения expressio unius, исследование особенностей «открытия» судами закрытых законодательных перечней посредством развития права, выявление различных подходов судов к истолкованию и коррекции списков позволяют прийти к выводу о сложности и многогранности категории «законодательный перечень» и необходимости систематизации специальных знаний о всех его аспектах.*

Ключевые слова: классификация законодательных перечней; numerus clausus; numerus apertus; expressio unius; развитие права contra legem; симулякр закрытого законодательного перечня; неполный закрытый перечень; открытый законодательный перечень с применением конкретизирующих языковых средств

Introduction

In the era of dynamically changing and increasingly complicated legislation, it is particularly important to possess the lawmaking technique of drawing up statutory lists as well as the practical skills of their interpretation and application. The present paper analyzes the formation and classification of open and closed statutory lists, elucidates their significance for lawmaking and law enforcement activity, including through the study of judicial practice of their application. The wrong choice of the type of list, errors in the technique of its formulation, or incorrect classification of the list by a law enforcer entail serious negative consequences for the entire legal regulation. Accordingly, the object of this study are statutory lists, which act as an important element of legislative technique and, at the same time, the object of law enforcement activity; the subject of the study are the problems of the formation, interpretation, application, and classification of the types of lists.

The study employed a variety of methods of scientific research, including historical-legal and comparative-legal methods, system analysis of legislation and doctrinal sources, methods of deduction, induction, and abstraction, as well as empirical method of research, applied to analyze the extensive judicial practice.

Thus, this paper is a comprehensive study making an attempt to develop theoretical foundations of the concept of closed (*numerus clausus*) and open (*numerus apertus*) statutory lists basing on a comprehensive analysis of legislative material and problems of law-enforcement (judicial) practice that formed the basis for the presented theoretical provisions.

1. General Provisions on Statutory Lists

1.1. Closed (*numerus clausus*) and open (*numerus apertus*) statutory lists

Statutory lists are systems composed of elements having legal significance, and they are grouped into two types: closed and open.

A closed list is technically terminated by a period placed immediately after the last element listed, which implies that the enumeration is exhaustive and law enforcerы cannot, as a rule, add other elements to the list. To indicate that a statutory list is closed, or exhaustive, the Latin phrase *numerus clausus* is often used, in which the word *numerus* literally translates as 'number' and the word *clausus* in the given context means 'limited', so *numerus clausus* means 'limited number'.

As studies have shown, the term *numerus clausus* itself originated in German legal literature, where it was used to describe rights in rem and the idea that not only the number but also the content of property rights is limited. Scholars have noted that 'In relation to property law, early mentions of the term numerus clausus include Gierke's design for a German civil code (Von Gierke 1889), as well as handbooks by Örtmann (Örtmann 1899) and Heck (Heck 1930). These authors refer to numerus clausus to describe a rule in German law that only legislation, especially the German Civil Code, can describe what is a property right and what the content of such a property right may be' [17, p.5].

The opposite of *numerus clausus* is the term *numerus apertus*, which refers to an open list. An open list is technically formulated in such a way that the last item on the list is followed by a phrase such as 'etc.', suggesting that the list is not exhaustive and that law enforcers may add new items similar to other items on the list.

In jurisprudence, a common example of *numerus clausus* and *numerus apertus* is the legislative technique of listing the circumstances aggravating and mitigating criminal liability. For example, in the criminal legislation of Armenia, the circumstances aggravating responsibility are set forth in the logic of *numerus clausus*, while mitigating circumstances – in the logic of *numerus apertus.*

The technique of closed and open lists has both advantages and disadvantages. A closed list is endowed with a high degree of certainty, as a result of which the discretion of law enforcers is significantly limited, and they are usually deprived of the possibility to add new elements to closed lists. On the other hand, a closed list lacks flexibility, so law enforcers cannot adapt it to changing circumstances. It is generally the prerogative of legislators to amend or supplement closed lists.

In contrast to closed lists, open lists are more flexible as law enforcement officers have the possibility to supplement them with new elements by applying appropriate rules of interpretation. At the same time, an open list does not have a high degree of certainty, which may lead to an unreasonable expansion of law enforcers' discretion.

Two main methods of enumeration are used to formulate an open list: simple enumeration and enumeration of a concretizing nature (with detailing elements).

In the case of simple enumeration, a list ends with 'etc.' or 'other cases', which clearly indicates that this enumeration is not exhaustive. For example, Article 8 of the Law of the Republic of Armenia 'On Advertising' prohibits advertising that violates the rules of decency, i.e., directly or indirectly defames or expresses disrespect to the state symbols (the coat of arms, flag, anthem, currency, etc.)[1]. The above list of state symbols is *open*, i.e., in the sense of the law state symbols may include, for example, state awards and medals, which, according to the logic of the open list, are subject to the same prohibitions.

In the case of *enumeration of a concretizing nature*, a list is set out using the words 'inter alia', 'among others', 'for example', 'including', with the enumeration ending not with 'etc.', but with a period. For example, according to Article 24(2)(5) of the Law of the Republic of Armenia 'On Citizenship[2], a citizen's application for renouncing their citizenship of the Republic of Armenia shall be rejected if: '<…> he/she has obligations stipulated by the Laws 'On Defense' and 'On Military Service and the Status of Military Personnel', **including**...' (hereinafter put in bold by us. – A. G., L. D.), followed by enumeration of the most obvious obligations that serve as grounds for rejecting the application.

[1] Law of the Republic of Armenia 'On Advertising' of May 31, 1996 ՀՕ-55. *Bulletin of the National Assembly of the Republic of Armenia*. 1996/10 (1110). Art. 120.

[2] Law of the Republic of Armenia 'On Citizenship' of November 6, 1995 Ս-061. *Bulletin of the National Assembly of the Republic of Armenia.* 1995/8.

The presented example clearly shows that legislators have listed the grounds for rejection of a citizen's application for renunciation of citizenship by means of open enumeration with concretizing elements – using the word 'including'; accordingly, these grounds are not exhaustive, which implies that law enforcers may consider that the presence of other obligations provided for in other articles of the law is also a ground for rejection of the application for renunciation of citizenship. In this case, law enforcers should use the rule of interpretation *analogia intra legem* to determine which of the numerous obligations stipulated in the Laws of the Republic of Armenia 'On Defense' and 'On Military Service and the Status of Military Personnel' can be considered grounds for rejecting an application for renunciation of citizenship.

Let us look at another example. Part 1 of Article 62 of the Law of the Republic of Armenia 'On the Fundamentals of Administrative Action and Administrative Proceedings' is set forth as follows[1]:

'An administrative act shall be null and void if it contains, **inter alia,** the following obvious gross errors:

a) it is not clearly or unambiguously evident from the act which administrative body has adopted it;

b) the act has been adopted by an incompetent administrative body;

c) it is not clear from the act to whom it is expressly addressed or it is not known what issue it regulates;

d) the act imposes an obviously unlawful duty or entitles the addressee to an unlawful right'.

In this case, the enumeration of obvious gross errors does not end with the wording 'etc.' or 'other obvious gross errors', which, at first glance, may give the impression that the list is closed. Meanwhile, the open nature of the list in question is evidenced by the fact that the legislator technically set out the list of these errors through *open enumeration of a concretizing nature* with the use of the phrase 'inter alia', that is, listed cases of the most obvious gross errors, which in itself does not exclude the possibility that in the course of law enforcement this list may be supplemented with other cases of obvious gross errors. Here is an example. The adoption of an act by an unauthorized administrative body is included in the statutory list of obvious gross errors, but the actual adoption of an administrative act by a body that is not administrative in the sense of this law is not provided for in the list. However, it is theoretically possible that an employee of a body that is not considered administrative in the institutional or functional sense, performs administrative functions. For instance, an employee of the educational complex of the Ministry of Internal Affairs of the Republic of Armenia (a state non-profit organization) draws up an administrative act, on the basis of an official form, on bringing a driver to administrative responsibility, as a result of which the citizen pays a fine, which goes to the state budget. In this case it is obvious that the educational complex of the Ministry of Internal Affairs of the Republic of Armenia is not an administrative body, but its employee performed administrative actions. This situation is a clear example of an obvious gross mistake that is not included in the statutory list as a ground for recognizing an act as null and void. Nevertheless, since this statutory list is open, a law enforcer may supplement it with a new element.

As regards the inclusion of new elements in open lists (both simple and lists with concretizing language means), in both cases the rule of interpretation *analogia intra legem* is used (called *ejusdem generis*[2] and *noscitur a sociis*[3] in Anglo-Saxon legal systems), according to which an open list may be supplemented with elements similar to the elements listed therein. For example, if an open statutory list enumerates 'lakes, rivers, streams, and other water bodies', the question arises with the law enforcer whether the wording 'other water bodies' allows for the inclusion in the list of, for example, swimming pools. If the rule of interpretation *analogia intra legem* is applied, the law enforcer should conclude that a swimming pool as an artificial water body cannot be included in this list since lakes, rivers, streams listed in the list are natural water bodies, while a swimming pool is not such [23; 28, p. 8391].

[1] Law of the Republic of Armenia 'On the Fundamentals of Administrative Action and Administrative Proceedings' of February 18, 2004 ՀՕ-41-Ն. *Official Bulletin of the Republic of Armenia*. 2004.03.31/18(317). Art. 413.

[2] *Ejusdem generis* means of the same kind, class, or nature. In interpreting laws, wills, and other instruments, the 'ejusdem generis rule' is that where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned [20, p. 608].

[3] Noscitur a sociis means 'It is known from its associates'. The meaning of a word is or may be known from the accompanying words. Under the doctrine of 'noscitur a sociis', the meaning of questionable or doubtful words or phrases in a statute may be ascertained by reference to the meaning of other words or phrases associated with it [20, p. 1209].

1.2. Areas of application of closed lists (*numerus clausus*)

In jurisprudence, the expression *numerus clausus* is used not only to indicate the closed (exhaustive) nature of statutory lists but also for other purposes, for example, to indicate a quota (a quantitative limit on the number of persons) pertaining to a group of persons, for instance, to establish quotas for university students or prisoners. The German Constitutional Court in cases 1 BvL 32/70 and 1 BvL 25/71 (Ruling of June 18, 1972) considered the constitutionality of quotas that limited the freedom of admission of students to medical schools (an absolute *numerus clausus* of student places for higher education in medicine) due to the shortage of study places in medical specialties [5, pp. 579–580]. In the case of Ananyev and Others v. Russia, the European Court noted in its judgment of January 10, 2012: 'It would be appropriate to establish the maximum capacity (*numerous clausus*) for each remand prison through the definitions of space per inmate as a minimum of square and possibly cubic metres'.[1] In this case, *numerus clausus* was used in the context of limiting the maximum number of prisoners.

However, in jurisprudence *numerus clausus* is most often used to indicate that the enumeration of some elements in the provisions of the law is closed, or exhaustive. Let us repeat that its essence is as follows: the law establishes a closed, or exhaustive, list of elements (circumstances) having legal significance, from which a law enforcer concludes that he/she is not authorized to make a circumstance (element) not specified in this list the subject of legal operations. This conclusion is made on the basis of the rule of interpretation *expressio unius* (more on this below), which represents an assumption that explicit inclusion of certain things in the text of the law implies the exclusion of other things not mentioned in it [22, p. 87].

Referring to the phrase *numerus clausus* in their decisions, courts of the Republic of Armenia (hereinafter also referred to as the RA) label it as a principle. However, in our opinion, the Latin expression *numerus clausus*, denoting a closed list or limited number, is not a principle of law as it does not carry any ideological load. This is not a fundamental idea, but a formulation intended to indicate a limitation on the number of elements included in a list. Therefore, the use in judicial acts of the word 'principle' along with the expression *numerus clausus* lacks legal significance.

Some authors mention the 'type restriction' principle along with the expression *numerus clausus*, but from their judgments it is difficult to understand how *numerus clausus* and 'type restriction' relate [27, pp. 33–34]. Both formulations essentially convey the same meaning since *numerus clausus* itself contains restriction on the types of objects (elements) specified in a list.

The Administrative Court of the RA considers *numerus clausus* as a 'quantitative limitation' (see, for example, administrative case No. ՎԴ/6004/05/22)[2], while criminal courts of the RA consider it as a closed list (see, for example, criminal case No. ԵԱՆԴ/0030/01/16)[3]. The approach of the criminal courts of the RA to the essence of *numerus clausus* by applying the wording 'closed list' is more acceptable because the limitation on quantity is one of the properties of a closed list, i.e., if a list is closed, it means that the number of items listed in it is limited.

The courts of the RA referred to *numerus clausus* to characterize the closed nature of the following statutory lists:

1) the exhaustive list of types of evidence in criminal proceedings (criminal case No. ԵԱՆԴ/0030/01/16) mentioned above;

2) the exhaustive list of preparations derived from hemp, defined by separate paragraphs of Appendix 1 of the Criminal Code of the RA (criminal case № ԵԱՆԴ /0095/01/17);[4]

3) the exhaustive list of circumstances excluding proceedings on administrative offenses (administrative case No. ՎԴ/6004/05/22) mentioned above;

4) the exhaustive list of intermediate judicial acts of the Administrative Court of the RA subject to appeal (administrative case No. ՎԴ /1073/05/19);[5]

[1] Case Ananyev and Others v. Russia Applications Nos. 42525/07 and 60800/08. Strasbourg. 10 January 2012. Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-108465%22.

[2] Decision of the Administrative Court of First Instance of the Republic of Armenia No. ՎԴ/6004/05/22 of August 4, 2022. Access from the legal reference system 'DataLex'.

[3] Decision of the Court of First Instance of General Jurisdiction of the Republic of Armenia No. ԵԱՆԴ/0030/01/16 of October 2, 2017. Access from the legal reference system 'DataLex'.

[4] Decision of the Court of First Instance of General Jurisdiction of the Republic of Armenia No. ԵԱՆԴ/0030/01/16 of January 31, 2017. Access from the legal reference system 'DataLex'.

[5] Decision of the Administrative Court of Appeal No. ՎԴ/1073/05/19 of April 4, 2019. Access from the legal reference system 'DataLex'.

5) the exhaustive list of construction objects or construction works with low-risk classification established in the Annex to the RA Government Decree No. 596-N of March 19, 2015 (administrative case No. ՎԴ/0204/05/23)[1].

Thus, a closed list established by the law is a system that consists of an exhaustive enumeration of elements having legal significance and, acting as a symbol of legal prohibition, considers it inadmissible to perform legally significant operations with elements not specified in this list. Therefore, a statutory closed list as a legal symbol contains an indirect (implicit) prohibition.

1.3. A closed statutory list in the context of legal regulation methods

The imperative method of legal regulation is formed on the basis of a dominating combination of prohibitive and binding methods of legal regulation, while the dispositive method is based on the dominance of the permissive (entitling) method. The content of a closed list can be set forth by both permissive and binding or prohibitive methods of legal regulation, i.e., this list can contain both permissive and binding or prohibitive provisions. However, a closed list itself implies the use of the imperative method of legal regulation because, by establishing a closed list, the legislator implicitly prohibits (excludes) the occurrence of any legal consequences associated with elements not specified in the list. In other words, a closed list may explicitly contain imperative norms, establishing obligations and prohibitions, or dispositive norms, establishing rights, while a statutory closed list itself contains an implicit prohibition according to which it is considered inadmissible to perform any legal operations with elements not specified in the list[2]. For example, the Court of Cassation of the RA in its ruling of February 12, 2010 noted: '<...> the Criminal Procedure Code of the Republic of Armenia does not provide for the possibility of appealing against the decision on recusal in the Criminal Court of Appeal of the Republic of Armenia. Applying the well-known rule of interpretation *expressio unius*, according to which the non-inclusion of an element in an exhaustive list should be interpreted in the sense of its exclusion, the Court of Cassation states that the Criminal Procedure Code of the Republic of Armenia establishes that decisions on recusal are not subject to appeal'[3].

Thus, the RA Court of Cassation deduced the prohibition on appeal against decisions on recusal from the legislatively established closed list of judicial acts subject to direct appeal to the RA Court of Appeal, but the Court did not indicate that the article of the law providing for the closed list explicitly contains a legal prohibition. The wording of the RA Court of Cassation is correct as the closed list of judicial acts subject to appeal does not provide for a prohibition, but for the right to appeal. It is another matter that the closed nature of this list results in an implicit prohibition to appeal against judicial acts not specified in the list.

Courts of first instance also deduce legal prohibitions from the closed list, but do not indicate that this list contains an explicit legal prohibition to perform actions with an element not specified in the list. For example, in its Decision of March 19, 2013[4], the court of first instance noted: 'When studying Article 189 of the Criminal Procedure Code of the Republic of Armenia, it becomes clear that the legislator has exhaustively enumerated the fact-establishing cases subject to judicial consideration, among which there is no competence to establish the fact of birth, therefore, it is necessary to apply the well-known rule of interpretation *expressio unius*, according to which the non-inclusion of any element in an exhaustive list should be interpreted in the sense of its exclusion, i.e., its essence is that if an element is not included in a closed list, the norm establishing the enumeration can **be interpreted as prohibiting this element**'[5].

As we can see, the court of first instance did not indicate that there was a legal prohibition in this article, but rather derived a legal prohibition by interpreting the provision establishing an exhaustive list.

Unlike the Cassation Court of the RA and the courts of first instance of the RA, when determining the constitutionality of closed lists, the Constitutional Court of

[1] Decision of the Administrative Court of First Instance of the Republic of Armenia No. ՎԴ/0204/05/23 of October 11, 2023. Access from the legal reference system 'DataLex'.

[2] The foregoing does not extend to situations where, in the case of statutory closed lists, the presumption of deliberate silence on the part of the legislature is rebutted and it is established that the failure to include an item on a closed list is the result of a legislative error, but that is a separate topic for discussion.

[3] Decision of the Court of Cassation of the Republic of Armenia No. ԵԿԴ/0547/06/09 of February 12, 2010. Access from the legal reference system 'DataLex'.

[4] Decision of the Court of First Instance of General Jurisdiction of the Republic of Armenia No. ԵԿԴ/2970/02/12 of March 19, 2013. Access from the legal reference system 'DataLex'.

[5] Civil Procedure Code of the Republic of Armenia 1998 (ՀՕ-247). *Bulletin of the National Assembly of the Republic of Armenia.* 1998.09.09/20(53). Ceased to be in force on April 9, 2018.

the RA formulates its position as if the article of the law establishing a closed list directly prohibits legal transactions involving elements not included in the list. For example, Part 2 of Article 401 of the Code of Criminal Procedure of the RA[1] establishes an exhaustive list of judicial acts subject to exclusive review, which does not include the final judicial act on the application of pre-trial restrictions (this provision deals with the procedure for exclusive review on the basis of new and newly discovered circumstances). In its ruling ՍԴՈ-1736 of June 4, 2024, the Constitutional Court of the RA considered the constitutionality of non-inclusion in this closed list of the final judicial act on the application of pre-trial restrictions and formulated its opinion in the ruling as if Part 2 of Article 401 of the RA Criminal Procedure Code directly established a legal prohibition: '**The existence of the prohibition** established by Part 2 of Article 401 of the Criminal Procedure Code of the Republic of Armenia renders pointless in some cases the filing of individual complaints with the Constitutional Court since a decision rendered by the Constitutional Court cannot be a prerequisite for the review of the final judicial act in a specific case <...>. Moreover, in the presence of **this prohibition**, in some cases it is not possible to restore and protect violated human rights and freedoms'[2].

As we can see, the Constitutional Court of the RA directly refers to the prohibition provided for in Part 2 of Article 401 of the Criminal Procedure Code of the RA although this article does not establish a direct (explicit) prohibition. However, the closed list of judicial acts subject to exclusive review established by law implies an indirect (implicit) prohibition on the review of judicial acts not included in this list.

When establishing closed lists in the field of private law, the legislator also uses the imperative method of legal regulation. Although there is some debate on this issue among private law experts, the prevailing view is that if the law establishes a closed list of civil rights [27, p. 32], such as property rights, or a closed list of the forms of ownership [21], the parties cannot create new rights or new forms of ownership. Only the legislator can do so.

Civil law experts note that the establishment of a closed list is characteristic of the imperative method of legal regulation and explain this by public interest, since property rights must be recognized not only by the parties, but by everyone, which is why the law establishes mandatory rules where the possibility of freedom is limited: 'To a certain extent, the purpose of restriction by type and the reason for its establishment can be characterized as the legislator's desire to impose certain restrictions on the owner of a thing so that the owner could not go too far in encumbering the property belonging to him with a right in rem' [27, pp. 33–34].

Nevertheless, it is noted in private law theory that, in line with the socio-economic development of society, numerous exceptions are made to *numerus clausus* in practice, and it is proposed to soften the imperative nature of the regulation of property rights [1, p. 46].

Some Russian experts note that in the case of a closed statutory list of specific property rights, there is a combination of imperative and dispositive methods of regulation: 'With regard to the normative establishment of a clear list of property rights, the significance of *numerous clausus* lies in the combination of an implicit prohibition on the creation of types of rights not specified by law through agreement between the parties, which is characteristic of the granting of rights as an imperative feature of the method of regulating civil legal relations, and the freedom of subjects of civil rights to create types of rights regulated by law at their own discretion, which corresponds to permissibility as a feature of the dispositive method of civil law regulation' [11, p. 144]. This quote refers to a list of property rights, but what is important here is that the author mentions an explicit prohibition arising from the closed list.

Constitutional closed lists are a means of regulating certain relations by means of the imperative method. In this case, a constitutional closed list becomes a criterion for determining the constitutionality of laws. For example, the 1995 Constitution of the Republic of Armenia provided a closed list of those empowered with legislative initiative (parliament members and the government of the Republic of Armenia), while in the Law of the Republic of Armenia 'On Television and Radio' in force at the time it was stated that the Charter of the Public Television and Radio Company was approved by the National Assembly of the Republic of Armenia, and the powers to develop the Charter of the Public Television and Radio Company and to submit it for consideration to the National Assembly of the Republic of Armenia were vested in the governing body of the Public

[1] Criminal Procedure Code of the Republic of Armenia of June 30, 2021 ՀՕ-306-Ն. Available at: https://www.arlis.am.

[2] Resolution of the Constitutional Court of the Republic of Armenia ՍԴՈ-1736 of June 4, 2024. Access from the legal information system 'Arlis'.

Television and Radio Company – the Council of the Public Television and Radio Company[1]. These legislative provisions were interpreted as meaning that the National Assembly of the RA approves the Charter of the Public Television and Radio Company by adopting a law, and therefore, the submission of the Charter to the National Assembly of the RA for consideration was, in essence, considered to be the exercise of legislative initiative. In this regard, in its Ruling ՍԴՈ-278 of January 11, 2001, the Constitutional Court of the RA noted: 'Article 75 of the Constitution of the Republic of Armenia provides an exhaustive list of those entitled to legislative initiative in the National Assembly, and, according to the law, other bodies cannot be authorized to submit to the legislative body draft legal acts that become subject to consideration in accordance with the procedure for the adoption of laws and whose provisions must acquire the force of law'[2].

On this basis, the Constitutional Court of the Republic of Armenia ruled that the provision of the Law 'On Television and Radio', according to which 'the Council shall develop and submit to the National Assembly the Charter of the Public Television and Radio Company', does not comply with the requirements of Part 1 of Article 75 of the Constitution of the Republic of Armenia, i.e., with the closed list of bodies with legislative initiative.

Article 75 of the 1995 Constitution of the Republic of Armenia contained an authorizing provision, but, by establishing a closed list of entities with legislative initiative, the constituent power regulated the right of legislative initiative by means of the imperative method.

Thus, in general terms, it can be noted that by employing the technique of a closed list (*numerous clausus*), the legislator wishes to regulate these relations by means of the imperative method, i.e., implicitly prohibits elements not specified in the list from being the subject of legal transactions. In this case, for determining the method of legal regulation it is irrelevant whether the closed list contains authorizing, prohibiting, or binding norms.

1.4. The possibility of broad interpretation of provisions establishing an exhaustive list

Are legislative provisions establishing an exhaustive list subject to broad interpretation? In other words, can a law enforcement official add a new item to an exhaustive list by way of broad interpretation? Before moving on to these issues, it is necessary to clarify the following circumstance. The question of the broad interpretation of a rule providing a closed list must be distinguished from the interpretation of permissive, prohibitive, or binding rules constituting the content of a closed list, or elements of the hypothesis present in the list. There is no doubt that the provisions constituting the elements of a closed list (their content) are subject to interpretation, whereby interpretation reveals systemic links between the basic rule defining the incomplete closed list and the rule defining other elements of that list.

Let us return to the original question, the answer to which is the following thesis: a norm providing a closed list is not subject to broad interpretation.

First, a closed list (insofar as the question is whether a particular element is included in the closed list) does not in itself require broad or restrictive interpretation since an exhaustive list (enumeration of elements) is, by its very structure and form, definite, so it is initially clear whether a particular element is included in the closed list or not.

Second, if a closed list excludes the possibility of a legislative gap in a specific situation, it can be assumed that the legislator, by formulating the norm using the technique of a closed list and not specifying other elements in this list, deliberately did not want to subject elements not provided in the list to regulation (in the case of closed lists, the distinction between a legislative gap and deliberate silence of the legislator is the subject of a separate discussion).

If a law enforcer narrows down a closed statutory list or adds new elements to it, these not indicated in the law, he/she does not interpret the rule in a narrow or broad way, but goes against the rule that establishes the closed list and thus develops law *contra legem*, which means that he/she either does not apply an element included in the closed list (negative development of law *contra legem*) or adds a new element to the closed list (positive development of law *contra legem*).

In order to disguise the fact that their decision to add a new element to a closed list is, in essence, a development of law *contra legem*, courts of the RA prefer to present their decisions on the 'opening' of closed lists as the result of a broad interpretation of the provision establishing this closed list. For example, in its Resolution of November 28, 2024 in case No. ՀԿԴ/0044/15/24[3] the Court of Cassation of the RA supplemented the exhaustive list of judicial acts subject to appeal as established by Article 389 of the RA Criminal Procedure Code with a new

[1] Law of the Republic of Armenia 'On Television and Radio' ՀՕ-97 of November 18, 2000. *Official Bulletin of the Republic of Armenia*. 2000.11.18/27 (125).

[2] Resolution of the Constitutional Court of the Republic of Armenia No. ՍԴՈ-278 of January 11, 2001. Available from the legal information system 'Arlis'.

[3] Resolution of the Cassation Court of the Republic of Armenia No. ՀԿԴ/0044/15/24 of November 28, 2024. Access from the legal reference system 'DataLex'.

judicial act not specified in the list – a ruling of the court of first instance refusing to initiate proceedings in connection with a private party's request to lift the seizure of property (for brevity, we will further refer to this decision as judicial act X).

In the case in question, the Court of Cassation disagreed with the Court of Appeal that had dismissed the appeal on the grounds that judicial act X was not included in the list of judicial acts subject to review under a special procedure. The Court of Cassation stated in its resolution: 'By excluding the possibility of appealing against the decision of the court of first instance under a special review procedure, the Court of Appeal of the Republic of Armenia subjected the provisions of Article 389 of the Criminal Procedure Code of the Republic of Armenia to **restrictive interpretation** <…>, the conclusion of the Court of Appeal of the Republic of Armenia that the decision of the court of first instance is not subject to appeal because it is not specified in Article 389 of the Criminal Procedure Code of the Republic of Armenia is unfounded <…>. The Court of Appeal of the Republic of Armenia <…> misinterpreted the provisions of Article 389 of the Criminal Procedure Code of the Republic of Armenia <…>'.

In the above-mentioned case, the Court of Cassation essentially decided the issue correctly, but the strategy of its reasoning appears to be controversial. The Court made Article 389 of the Code (which contained a list of judicial acts subject to appeal) the subject of interpretation and then noted that the Court of Appeal had 'incorrectly' interpreted the provision on the closed list because it had subjected it to a restrictive interpretation.

The Court of Cassation of the RA also used other questionable wordings. For example, it stated that: '<...> the conclusion of the Court of Appeal of the Republic of Armenia that judicial act X is not subject to appeal is unfounded'. At first glance, this wording gives the impression that the Court of Cassation questioned the fact that, from a legal point of view, judicial act X is not subject to appeal (i.e., it is not included in the closed list). Meanwhile, it is indisputable that judicial act X is not included in the closed statutory list of judicial acts subject to appeal, and therefore it is also indisputable that, from a legal point of view, judicial act X is not subject to direct appeal.

In the case under consideration, the Court of Cassation of the RA did not interpret the provision containing the closed list in a broad way, but, in essence, 'acted against' the statutory closed list and 'opened' it, or, in other words, filled a gap in the list. In essence, the Court of Cassation made the right decision in this case since the non-inclusion of judicial act X in the list of judicial acts subject to appeal is vulnerable from the point of view of a number of principles of criminal procedure, but the methodology for remedying such situations lies not in a broad interpretation of a closed list, but in applying to a statutory closed list the doctrine of the development of criminal procedure law *contra legem* or *extra legem*.

2. The Maxim *Expressio Unius Est Exclusio Alterius* in the Context of Closed Lists

2.1. General provisions

As mentioned above, *expressio unius est exclusio alterius* is a well-known Latin maxim that has become widely used in legal practice and literally means 'the expression of one thing excludes other things' [30, p. 853]. This maxim works as a so-called negative inference: if the law explicitly mentions certain categories, this implies that those categories that are not explicitly mentioned in the law are intentionally excluded by the legislator from the text of the law. Accordingly, this maxim is logically and substantively linked to the closed list *numerus clausus* since both of these legal instruments can be used to achieve similar or common goals, which will be discussed below, but first we consider it necessary to turn to the peculiarities of this legal maxim.

Let us refer to the description of the essence of this maxim found in foreign legal literature. For example, the Oxford publication *Guide to Latin in International Law* calls *expressio unius* a canon of interpretation and defines this rule as 'The express mention of one thing excludes the other' [16]. According to the general meaning of the explanations set out in the Guide, the rationale underlying *expressio unius* is that the direct inclusion of a subject in a normative text indicates that the drafters were aware of the existence of other subjects and issues and decided to exclude them intentionally. As an illustration of how *expressio unius* works in practice, there is cited an international treaty establishing that civilian ships may pass through the territorial waters of another state without notification, from which it follows that military ships are not covered by this rule and that appropriate notification is required before a foreign military ship enters territorial waters, since the qualification 'without notification' is explicit with regard to civil ships but not mentioned in relation to military ships.

At first glance, the Latin maxim in question appears to be one of the maxims used to construct legal arguments, but in the Anglo-American tradition, where this maxim is most widely used, it is more often referred to not as a maxim but as a *rule of interpretation,*

mainly a linguistic rule of interpretation. This is probably due to the fact that *expressio unius* refers to so-called linguistic maxims, which offer the reading and perception of texts, including legal texts, through logical-linguistic intellectual operations based on linguistic regularities.

For example, in a 1915 publication on the rules of drafting and interpreting legislative texts, the list of basic rules applicable to the interpretation of statutes, specifically its paragraph 5, mentions *expressio unius*, while in the previous sentence it is assumed that the legislative body is familiar with the rules of grammar and must comply with them when interpreting the law, unless this would violate the intention of the legislator or lead to absurd results [19, p. 513]. In the 'Canons of Interpretation' section of her academic work, U.S. Supreme Court Justice Connie Barrett notes that the rules applied by courts when interpreting the law are traditionally divided into linguistic and substantive. According to Barrett, linguistic canons apply rules of syntax to laws, a standard example of which is the rule *expressio unius est exclusio alterius* [18, p. 117].

If we delve into the differences between the categories in question, a maxim is a concise statement that serves as a kind of guideline for law enforcement officials as it is an expression of generalized experience in law enforcement and well-established doctrinal views, while a rule of interpretation is essentially a prescription that determines how a legal text should be interpreted. Both legal maxims and rules of interpretation, while not being identical concepts, can serve as means of interpreting legal norms. A maxim may contain a general principle, a truth that serves as a starting point for reasoning for law enforcement officials, while a rule of interpretation contains specific prescriptions and provides a sequence of actions to be applied specifically to the interpretation of legal norms. From the above it can be concluded that both rules of interpretation and so-called linguistic maxims are established canons of interpretation, thus constituting an essential part of the Anglo-American doctrine of interpretation of law.

2.2. The origin of *expressio unius*

The origin and historical roots of this maxim are also quite interesting. Legal dictionaries state that *expressio unius* is a Roman maxim since the phrase itself is of Latin origin. Meanwhile, this rule (or regula) as we know it today is not found in the works of Roman jurists or in the collection of Roman law *Corpus Juris Civilis*; it first spread in England, in the common law system, where this rule was often directly cited and is still cited by courts in the resolution of cases, and is also mentioned in legal literature and various scientific works.

According to the modern Oxford Dictionary, the earliest mention of *expressio unius* in the Oxford English Dictionary dates back to 1719 and is found in the works of Thomas Salmon [26]. One of the earliest court cases often cited by English sources is the case of R. v Inhabitants of Sedgley heard in 1831 (SC 9 LJMCOS 61), which interpreted the Poor Law of 1601 establishing taxation on land, houses, and coal mines in favor of the poor[1]. The court had to determine whether this law also applied to limestone mines. Using the principle *expressio unius exclusio alterius*, the court ruled that, since limestone mines were not expressly mentioned in the list of taxable objects in the law, it could be concluded that the law did not imply that the specified tax was to be applied to other types of mines, i.e., to limestone mines.

Even Italian authors mention *expressio unius* in the context of English common law. For example, it is pointed out that the system of contract interpretation in English common law revolves around a set of rules of hermeneutics, one of which is the technique, used by judges, embodied in the formula *expressio unius est exclusio alterius*, meaning that the existence of a specific circumstance implies the exclusion of circumstances not expressly provided for in the contract [25, pp. 54–55].

Based on the above, it becomes clear that many Latin sayings used in English law, although not created directly by Roman lawyers, were borrowed by the Anglo-American legal tradition and courts for their own purposes, and were expressed in Latin to demonstrate that they were inspired by Roman law, which enjoyed authority in medieval Europe.

As modern English lawyers note, numerous Latin principles and phrases were tested in English courts, and it was usually easier to continue using Latin phrases and maxims

[1]R. v Inhabitants of Sedgley 1831 (SC 9 LJMCOS 61). English Reports Citation. Pp. 1068–1069. Available at: http://www.commonlii.org/int/cases/EngR/1831/265.pdf.

that were familiar to everyone than to try to replace them with English phrases [24]. Over the centuries, when creating judicial precedents, common law courts directly referred to legal maxims to justify their decisions, thus giving maxims, including linguistic ones, the normative status through English case law.

2.3. The relationship between *numerus clausus* and *expressio unius*

Returning to the thesis about the direct connection between the closed list *numerus clausus* and the maxim *expressio unius*, we should note that both of these legal instruments can be used to limit arbitrary interpretation of the text of a law by law enforcement officials, although, as mentioned above, *expressio unius* is a rule of interpretation, while *numerus clausus* is a legislative technique for formulating closed/exhaustive lists. Both *numerus clausus* and *expressio unius* are factors that preclude the possibility of unjustified expansion of various lists and enumerations established by law. *Expressio unius* implies the exclusion from legal regulation of those elements that are not expressly mentioned in the legislative text, while *numerus clausus* initially introduces into the law an exhaustive list of elements, objects, or rights.

The rules of *expressio unius* and *numerus clausus* can complement each other. For example, as already mentioned, in civil law, when analyzing property rights, one can rely on *numerus clausus* to define the list of possible property rights, and the rule of *expressio unius* can be used to conclude that, if the text of the law directly enumerates a pledge, easement, and other property rights, then it is prohibited to create a property right that is not mentioned by the legislator in this list. It should also be noted that, although the *expressio unius* rule mainly applies to closed lists, it can also be applied regardless of any lists or enumerations. For example, if the law directly mentions only one element or one specific legal category, this leads to the same conclusion that this legal regulation cannot be extended to any other element or category not expressly established by law.

Based on the above, it can be concluded that, despite the differences mentioned, both legal instruments in qustion are aimed at ensuring the predictability and stability of legal regulation, with *expressio unius* serving as a tool for interpreting and analyzing legal texts and *numerus clausus* serving as a normative restriction, which often acts as an obstacle to the creation of objects or new legal categories not specified by the legislator.

In addition, the rule of *expressio unius*, like *numerus clausus*, largely overlaps with the phenomenon of qualified silence of the law. Qualified silence of the legislator can be enshrined by drawing up a closed list *numerus clausus* and interpreted through the logic of *expressio unius* if the context and general logic of the law suggest that the legislator deliberately excluded certain elements and categories from the text of the law. If, however, silence of the law is caused by an omission, an error on the part of the legislator, or by a subsequent gap, the application of the *expressio unius* rule may lead to an erroneous interpretation of the law and negative consequences, which we will consider below, as there is a danger that in such cases an overly literal and narrow interpretation of the law may lead to absurd results that do not correspond to the intentions of the legislator. Let us consider examples from Armenian practice where the application of *expressio unius* can be assessed as justified and as highly controversial.

2.4. The use of *expressio unius* in Armenian judicial practice

Courts of various instances in the Republic of Armenia actively apply this maxim in their legal practice, referring to it as the *expressio unius* method of interpretation (in civil cases) or simply the *expressio unius* rule (in criminal cases). There are dozens of court cases that refer to this maxim. Perhaps such widespread application of this rule of interpretation taken from the common law system is due to the fact that, following the judicial and legal reforms of 2007, the institution of judicial precedent was introduced and legislatively enshrined in the legal system of the Republic of Armenia, which partially borrowed the features of the English model of precedent, including the rule of *stare decisis*, adapting them to the needs and characteristics of the Armenian legal system. Let us consider the most relevant cases, the court decisions on which were delivered in 2023-2024.

A rather interesting and ambiguous example of the application of *expressio unius* by a court is civil case No. ԱՎԴ/3692/02/23 of March 19, 2024[1], where the subject of consideration by the Court of Appeal of the Republic of Armenia was whether the apartment acquired during marriage, which was purchased with funds received by one of the spouses from the sale of his personal property that had been transferred to him as a gift, was jointly

[1] Decision of the Court of Appeal of the Republic of Armenia No. ԱՎԴ/3692/02/23 of March 19, 2024. Access from the legal reference system 'DataLex'.

acquired property. The court rejected the plaintiff's claim that the apartment should be recognized as his personal property, basing its position, among other things, on the application of the *expressio unius* rule. Applying this rule to the legal norm in question, the court concluded that in Article 201 of the Civil Code of the RA the legislator had established, through a closed list, exceptions where property is not considered joint property of spouses but is considered personal property. These exceptions include property that belonged to each spouse before marriage as well as property received by one of the spouses during marriage as a gift or by inheritance. In the court's opinion, since the legislator had not included in the above list property acquired during marriage with funds obtained from the disposal of personal property of one of the spouses, the legal provision of Article 201 of the Civil Code of the RA, according to the *expressio unius* rule, could be interpreted as prohibiting from classifying such property, in this case the apartment, as personal property of one of the spouses.

It should be noted that in this case the interpretation given by the Court of Appeal, coupled with the application of the *expressio unius* rule, seems rather ambiguous. One of the critical comments regarding *expressio unius* is that this maxim often places excessive emphasis on textualism and a literal approach to interpreting the law. We have already mentioned that when applying *expressio unius* a balanced approach is needed that takes into account the intention of the legislator and the general context of the law. It would seem that, following the logic of the legislator, if property received as a gift during marriage is personal property of a spouse, then the funds received from the sale of that personal property are also his/her personal property, as is any property subsequently acquired by the spouse with those personal funds. It is not entirely clear why, when one of the spouses disposes of his/her personal property, the right to that personal property is automatically transformed into jointly acquired property of the spouses, as follows from the legal position of the Court of Appeal. The mechanical application of *expressio unius* can lead to an overly narrow interpretation of the law and to results that do not reflect the true intentions of the legislator. In this case, such an interpretation could result in judicial practice limiting the right of one of the spouses to freely dispose of his/her personal property.

The Supreme Court of the Russian Federation took a more balanced position on this issue in its Ruling of September 22, 2020 (No. 41-KG20-10-K40), according to which property acquired during marriage with personal funds of one of the spouses obtained from the sale of personal property may be excluded from the regime of joint ownership of the spouses.[1]According to the legal position of the Judicial Chamber for Civil Cases of the Supreme Court of the Russian Federation, when determining the status of property, the court must take into account a number of legally significant circumstances, including the value of the property acquired and the amount of personal funds contributed, as well as the period between the sale of personal property and the acquisition of new real estate. This issue was clarified by the Plenum of the Supreme Court of the Russian Federation much earlier, in 1998. According to para. 4 of Item 15 of Resolution of the Plenum of the Supreme Court of the Russian Federation of November 5, 1998 No. 15 'On the Application by Courts of Legislation on Divorce Proceedings', property acquired during marriage, but with personal funds of one of the spouses that belonged to him/her before marriage and was received as a gift or by inheritance, is not considered joint property[2].

At the same time, *expressio unius* is quite often and reasonably applied by courts when considering cases concerning the establishment of facts that have legal significance. In case No. ԵԴ2/38825/02/23 of September 29, 2023,[3] the court of first instance rejected the plaintiff's claim for confirmation of ownership of a land plot in special proceedings. The court noted that in Article 26 of the Civil Procedure Code of the Republic of Armenia, the legislator clearly and exhaustively defined the cases that may be considered in special proceedings, and the list provided in this article does not provide grounds for considering claims for recognition of ownership rights in special proceedings. Accordingly, in the given circumstances, having applied the generally accepted rule of interpretation *expressio unius*, according to which the omission of any element from an exhaustive list should be interpreted as its exclusion, the court concluded that it did not have jurisdiction to consider claims for recognition of ownership of a land plot in special proceedings and within the framework of Article 26 of the Civil Procedure Code of the Republic of Armenia.

[1] Ruling of the Judicial Chamber of the Supreme Court of the Russian Federation for Civil Cases No. 41-KG20-10-K4 of September 22, 2020. Access from the legal reference system 'Consultant Plus'.

[2] Resolution of the Plenum of the Supreme Court of the Russian Federation 'On the Application by Courts of Legislation in Divorce Proceedings' No. 15 of November 5, 1998. Access from the legal reference system 'Consultant Plus'.

[3] Decision of the Court of First Instance of General Jurisdiction of the Republic of Armenia No. ԵԴ 2/38825/02/23 of September 29, 2023. Access from the legal reference system 'DataLex'.

In case No. ԳԴ4/0114/02/23 of April 16, 2024,[1] court of first instance, in special proceedings conducted at the request of the applicant, considered an issue of confirming the death of a person who was the testator. The problem was that the death of the person was not registered in a timely manner with any of the relevant authorities. The court noted that an analysis of Article 237 of the Civil Procedure Code of the Republic of Armenia showed that the legislator had exhaustively listed (in nine points) all cases in which the court is authorized to consider the establishment of facts in special proceedings, but the authority to establish the fact of a person's death is not included in this list. Therefore, in this case, in the opinion of the court, it was necessary to apply the well-known rule of interpretation *expressio unius*, according to which the absence of any element in an exhaustive list should be interpreted as its exclusion, since the essence of this rule is that if any element is not included in a closed list, then the norm establishing this list can be interpreted as establishing a prohibition on that element. Accordingly, the court ruled that the question of establishing the fact of death should be examined on its merits, but not in special proceedings, as the plaintiff wished: it was to be considered within the framework of other legal procedures provided for by law, in particular within the framework of the court's examination of other facts of legal significance.

3. Types of Closed Statutory Lists

3.1. General provisions

The classification of closed statutory lists has been little studied in legal theory. In this work, closed statutory lists will be classified on two grounds. First, according to the logical structure of the legal norm, i.e., depending on which structural element of the legal norm the closed statutory list is enshrined in: hypothesis, disposition, or negative sanction. Second, according to the completeness of the enumeration of elements in a specific article of the law, i.e., depending on whether the list is complete or incomplete. We should note in advance that in the case of incomplete closed lists, such a list does not become an indefinite system; the peculiarity is that elements of an incomplete list are technically included (listed) not in one article, but in different articles, individual elements of an incomplete list may be provided in another article.

3.2. Types of closed lists according to their location in the structural elements of legal norms

Closed lists may be provided in three elements of the logical structure of a legal norm: in the hypothesis, in the disposition, and in negative sanctions.

A closed list located in the hypothesis (hypothesis with a closed list) enumerates the conditions (legal facts) necessary for the emergence of legal relations. A closed list provided in the hypothesis can be either complex (for legal consequences to arise, all elements of the closed list must be present) or alternative (the presence of any condition specified the closed list is sufficient for legal relations to arise).

If deliberate non-inclusion of a fact (element) in a closed list provided in the hypotheses, as well as omission of a fact(element), gives rise to serious legal problems (e.g., leads to a violation of the principle of law), then it is generally permissible to supplement the closed list on the basis of the doctrine of the development of law *extra legem* or to 'open' this list and add a new element based on the doctrine of the development of law *contra legem* on the condition that the consequences of these actions are not restrictive for private individuals. A closed list in the hypothesis cannot in any way be 'opened' or supplemented if the consequences it entails are prohibitive, binding, or punitive in nature.

A closed list contained in the disposition enumerates the legal consequences that arise when the relevant conditions are met; these consequences may be prohibitive, permissive, or binding in nature. The closed system of prohibitive or binding elements (legal consequences) established in a closed list provided in the disposition cannot be supplemented on the basis of the *extra legem* development of law doctrine or 'opened' on the basis of the *contra legem* development of law doctrine if this may impose restrictions on private individuals that are not specified in the closed list.

[1] Decision of the Court of First Instance of General Jurisdiction of the Republic of Armenia No. ԳԴ4/0114/02/23 of April 16, 2024. Access from the legal reference system 'DataLex'.

A closed list contained in the sanction provides an exhaustive list of types of penalties that may be imposed for a particular offense. This list may consist of basic and additional penalties, or basic and alternative penalties. Up to a point, cases where the sanction of a norm establishes only one type of punishment (an absolutely definite sanction) should also be considered a closed list of sanctions. It should be emphasized that the structure of a sanction consisting of a single element, although exhaustive, may be regarded as a list with strict reservations.

A closed list contained in the sanction cannot be supplemented or 'opened' by law enforcers on any grounds. This list may only be amended by the legislature. If a closed statutory list enumerates the most severe types of punishment, this list cannot be supplemented by any other legal act except by a law, even if it is a matter of supplementing it with a more lenient punishment. The possibility of 'opening' or supplementing a closed list of sanctions by a court or other law enforcement agency would undermine the stability and certainty of the system of punitive measures applied in the state. For example, according to part 6 of Article 5 of the RA Law 'On Non-Governmental Organizations', a member of an organization may be expelled from the organization in the cases and in the manner established by the organization's charter. According to Item 12 of Part 1 of Article 13 of the same Law, the charter of the organization shall specify the cases and procedure for expelling a member from the organization[1]. The aforementioned law establishes one type of sanction to be applied to a member of a non-governmental organization – expulsion from the organization. The absence of a milder punishment in a closed list of sanctions should be interpreted in accordance with the legal maxim *expressio unius exclusion alterius*. This means that a closed list containing punishment in the form of expulsion from the organization cannot be 'opened' or supplemented by the non-governmental organization by introducing another punishment in the form of 'suspension of membership, which, though being a milder sanction, is not provided for by law.

However, in practice, the opposite situation is observed. For example, Item 17 of the Charter of the non-governmental organization 'Football Federation of Armenia' (hereinafter referred to as the Federation) establishes such a sanction as 'suspension of membership'. It runs as follows: 'The Assembly may suspend the membership of any member if the latter regularly and/or grossly violates its obligations <...>. A member of the Federation whose membership has been suspended loses all rights arising from membership. Other members may not have any sporting ties with the member of the Federation whose membership has been suspended. The Disciplinary and Ethics Committee may apply other sanctions'.

In civil case No. ԵԴ/2554/02/21, a member of the Federation, Football Club Torpedo LLC, whose membership had been suspended, challenged in court the legality (lawfulness) of Item 17 of the Federation's Charter. The main legal issue in this case was whether a non-governmental organization has the right to 'open' an exhaustive list of sanctions provided for by law and to establish a different penalty in its Charter – suspension of membership – which, though being a milder measure than the sanction provided for by law (expulsion from the organization), is nevertheless not enshrined in law.

The court of first instance of the RA expressed a positive position on this issue and noted in its decision of May 11, 202: '<...> the charter of a non-governmental organization is its founding basic document, and the law establishes the basic requirements with regard to its form and content, but the list of these requirements is not exhaustive, and Article 13 of the Law expressly states this, establishing that the charter may also contain other provisions that do not contradict the law and relate to the organization of activities. <...> The provisions established by an organization's charter concerning the suspension of membership are not arbitrary, and the condition under which the question of **temporary or permanent** suspension of membership may be considered is defined. Such regulation **directly follows from the legislation of the Republic of Armenia, does not contradict domestic legal acts, and is in itself a sanction, the grounds, procedure, and conditions for the application of which are defined by the charter.** The court considers it necessary to note that in the event of non-performance or improper performance by a member of the organization of its duties established by law or the charter, the determination of the penalty, i.e., of the legal consequences of the breach of duties, is lawful, does not contradict any law or legal act, but, on the contrary, is intended to ensure the normal functioning of the organization'[2].

In the case in question, the Court used a number of formulations that are vulnerable from the point of view of formal logic and legislation.

First, using the phrase 'temporary or permanent suspension of membership', the Court recognized that suspension may be permanent. However, unlike termination of membership, suspension of membership is always temporary in nature.

Second, the Court noted that 'the regulation of suspension of membership derives directly from the legislation of the Republic of Armenia', but did not refer to the legislative provision from which such regulation directly derives. In fact, RA legislation does not contain any

[1] Law of the Republic of Armenia 'On Non-Governmental Organizations' No. ՀՕ-22-Ն of December 4, 2001. *Official Bulletin of the Republic of Armenia*. 2017.01.25/5(1280). Art. 58.

[2] Decision of the Court of First Instance of General Jurisdiction of the Republic of Armenia No. ԵԴ/2554/02/21 of May 11, 2021. Access from the legal reference system 'DataLex'.

provision from which a provision on the suspension of membership could be derived. Noteworthy is that in the very next sentence the Court changed its reasoning and noted that this regulation did not contradict domestic legal acts. If the regulation on the suspension of membership had stemmed directly from the legislation or had been provided for by the legislation, the Court would not have had to state that this regulation did not contradict the law. If a regulation is expressly provided for by law (or stems directly from the law), it is superfluous to state that this regulation does not contradict the law.

Thirdly, the irony lies in the fact that, while affirming that the regulation on the suspension of membership derives from the RA legislation, the Court noted that the grounds, procedure, and conditions for applying 'suspension of membership' are established by the Charter. In all likelihood, the Court forgot its initial assertion that the regulation of suspension of membership derives directly from the RA legislation, since it further noted that the institution of suspension of membership is provided for in the Charter, which is not part of the RA legislation.

The Court's decision appears to be based on the following logic: if suspension of membership is not prohibited by law, it may be provided for by the Charter. If this is the case, then this decision of the Court, which resolves civil disputes, is based on a purely private-law approach, based on the principle that 'everything that is not prohibited by law is permitted', which, however, should not apply when it comes to legal liability, even if this liability falls within the sphere of private law.

Suspension of membership in a non-governmental organization restricts the fundamental (constitutional) right to freedom of association, according to which everyone has the right to freely associate with others, including the right to form and join trade unions. Freedom of association may only be restricted by law (Parts 1 and 3 of Article 45 of the Constitution of the Republic of Armenia). From the perspective of constitutional law, it is clear that suspension of membership, as an act of interference with freedom of association, can only be provided for by a parliamentary (in the formal sense) law.

Thus, it is prohibited to supplement, on the basis of the doctrine of the development of law *extra legem*, exhaustive types of punishment established in a closed list of sanctions or to 'open' such lists on the basis of the doctrine of the positive development of law *contra legem*, even if this is intended to introduce a more lenient type of punishment.

At the same time, if one and the same penalty is established for violations that are not clarified by law, this penalty being most severe in comparison with similar situations (for example, such a penalty as expulsion of a member from an organization), the application of this severe sanction to less significant (minor) violations may contradict the constitutional principle of proportionality. To avoid violation of the proportionality principle, the legislator should amend the closed list of sanctions, or the law enforcement agency should apply the mechanism of constitutional justice (if, of course, it is possible to resolve the issue in this way). If the situation is such that it is not possible to resolve the issue through the legislative process or the mechanism of constitutional justice, the court has no choice but to consider that the norm prohibiting the act in question is an 'imperfect norm' – leges imperfectae [4, pp. 161–164; 9, p. 77], i.e., for violating this norm there are no negative legal consequences (penalty) commensurate with the offense. In such a case, guided by the constitutional principle of proportionality, the court must refuse to apply the only and most severe penalty established by law for minor (insignificant) offenses. If the court, based on the constitutional principle of proportionality, refuses to apply the only but disproportionate type of punishment, it contradicts the legislative requirement to apply the only sanction provided for by law, which can be considered a negative development of law *contra legem*.

In the judicial practice of the RA, there are rare but notable cases of negative development of law *contra legem*. For example, as a result of an inspection, the State Revenue Committee of the RA found that the company NATFUD had failed to register the labeling affixed to a 2-kilogram sausage in the electronic accounting system, in accordance with the established procedure. The Committee, basing on the only absolutely definite sanction provided for in Item 1 of Part 1 of Article 424 of the RA Tax Code, fined the company 500,000 RA drams (approximately US$1,300).

The organization appealed against the fine in the Administrative Court of First Instance of the RA, but the court, in its decision of April 19, 2023, dismissed the claim, stating the following: '<...> a tax offense is a separate type of offense, which differs in its purpose and focus. A tax offense does not contain an element characteristic of an administrative or criminal offense – the mental element (mandatory presence of guilt), therefore, the presence or absence of guilt for holding a person liable for a tax offense cannot be relevant and serve as a basis for exempting a person from liability. <...> The fine imposed

on the plaintiff was based on Item 1 of Part 1 of Article 424 of the Tax Code of the Republic of Armenia, and in accordance with this provision, the legislator did not establish any exceptions, including in connection with the absence of intent to evade the payment of taxes or the fact of elimination of deficiencies <...>'[1].

The Administrative Court of Appeal of the Republic of Armenia, based on the principle of proportionality of tax liability, disagreed with the court of first instance and, in its decision of May 6, 2024[2], invalidated the tax authority's act for the following reason: '<…> Although legislation establishes tax liability for the disposal of labeled goods in violation of the procedure established by law, at the time of the discovery of the offense, the goods subject to labeling had been disposed of by NATFUD according to the tax invoice, as a result of which the Court of Appeal noted that the tax invoice indicated '2 kg of sausage' at a price of '5,483.6' drams. In other words, the non-compliance of the labeling of the goods sold with the law did not entail any financial consequences, the taxpayer did not evade taxes and did not cause material damage to the state, therefore, the application of a tax penalty in the amount of 500,000 drams in such circumstances does not follow from the principle of proportionality of liability established by the Tax Code of the Republic of Armenia'[3].

The Tax Code of the Republic of Armenia, unlike the Code of Administrative Offenses of the Republic of Armenia, does not provide for the possibility of exemption from liability in the case of a minor offense. The law also does not provide for any mechanisms for individualizing liability established for a tax offense. In such circumstances, the Administrative Court of Appeal of the Republic of Armenia, based on the principle of proportionality, which is expressly enshrined in Article 3(1) of the Tax Code of the Republic of Armenia[4], developed tax law contrary to the legislative requirement to apply a strictly defined sanction and derived from the principle of proportionality a new rule of conduct according to which a person may be exempted from tax liability in the case of a minor offense.

3.3. Complete and incomplete closed lists

Depending on the completeness of the list of elements in a specific article of the law, statutory closed lists (the rules that establish them) can be complete or incomplete.

In the case of complete closed lists, all elements of the list are enumerated in a specific article. For example, Article 12 of the Criminal Procedure Code of the Republic of Armenia provides a complete closed list of grounds for termination of criminal proceedings since this article contains all the grounds for termination of criminal proceedings.

In the case of a complete closed list, the norm does not contain a reference to another article, therefore the elements of this list cannot be provided in other articles, otherwise a contradiction will arise between these norms.

In the case of incomplete closed lists, the main part (but not all) of the elements of the list are enumerated in a specific article, but this list is not exhaustive, as other articles may provide other elements of this list. For example, Part 1 of Article 389 of the RA Code of Criminal Procedure establishes an incomplete closed list of judicial acts subject to special review (direct appeal) in the RA Court of Appeal: on the one hand, this provision lists judicial acts subject to appeal; on the other hand, it is noted that 'other judicial acts in cases provided for by this Code' are also subject to review by the RA Court of Appeal. In this case, the list of judicial acts subject to appeal to the RA Court of Appeal is closed since acts subject to review are exhaustively listed in the law, but this list is incomplete because a specific article refers to other articles of the law that may list other judicial acts subject to appeal in the RA Court of Appeal.

In its Resolution ՍԴՈ-1725 of April 16, 2024, the Constitutional Court of the Republic of Armenia classified the list of judicial acts subject to direct appeal to the Administrative Court of Appeal of the Republic of Armenia as an 'open enumeration' (we refer to it as an incomplete closed list). The RA Constitutional Court considered the list of acts to be an open list on the basis of the *wording* 'other decisions are subject to appeal in cases provided for by the law', which is established in Item 12 of the RA Code of Administrative Procedure.

[1] Decision of the Administrative Court of First Instance of the Republic of Armenia No. ՎԴ/6794/05/22 of April 19, 2023. Access from the legal reference system 'DataLex'.

[2] Decision of the Court of Appeal of the Republic of Armenia No. ՎԴ/6794/05/22 of May 6, 2024. Access from the legal reference system 'DataLex'.

[3] The decision of the Court of Appeal of the Republic of Armenia was challenged in the Court of Cassation of the Republic of Armenia, but the latter, by its ruling of October 16, 2024, refused to accept the appeal for consideration.

[4] Tax Code of the Republic of Armenia No. ՀՕ-165-Ն of October 4, 2016. *Official Bulletin of the Republic of Armenia*. 2016.11.04/79(1259). Art. 1038.

The Constitutional Court of the RA noted: 'Part 1 of Article 131 of the Code of Administrative Procedure of the Republic of Armenia establishes, by means of an exhaustive list, interim judicial acts subject to direct appeal in appeal proceedings. The above provision of the Code, in essence, establishing an exhaustive list of interim judicial acts subject to immediate appeal in appeal proceedings (Items 1-11 of Part 1 of Article 131) **simultaneously** establishes, through this list, an **open enumeration** (Item 12) <...>'[1].

The wording used by the Constitutional Court of the Republic of Armenia 'establishes through this list an open enumeration' appears to be not appropriate as it may cause confusion and be mistakenly taken as an open list of judicial acts subject to appeal. Meanwhile, the phrase 'open enumeration' used by the court should not be equated with an open list of judicial acts subject to appeal.

The RA Constitutional Court did not consider the list of judicial acts subject to appeal to be open on the basis of the wording 'other decisions in cases provided for by the law'. On the contrary, the Constitutional Court clearly stated that those judicial acts that are not specified either in this list (general regulation) or in special regulations established by law cannot be subject to direct appeal.

Thus, in order to avoid terminological confusion, the list in the situations described above should be classified as an incomplete closed list.

4. Simulacra of Closed Statutory Lists

4.1 General provisions

In practice, it is usually not difficult to determine whether a statutory list is closed or open. However, there are situations where a list provided for by law at first glance appears to be a closed list, but in reality it is not a closed list but a simulacrum (from the Latin simulacrum, meaning 'likeness' or 'semblance') of a closed list, i.e., it is a likeness of a closed list that is not actually one.

The resolution of specific micro-level (small-scale) legal issues, such as whether a list of judicial acts subject to direct appeal is a closed or open list, is generally not difficult.

It is more difficult to formulate macro-level (large-scale) issues in the closed list technique, or to determine what such a list represents in terms of closedness or openness. For example, difficulties arise in determining whether a list of norms enumerated in a law is exhaustive (closed) or not, or whether the list of human rights enshrined in the Constitution is exhaustive or not, or whether a list of principles of law is exhaustive or not.

The general approach is that it is impossible in principle to legislatively enshrine a closed list covering large-scale issues, and therefore it is inadmissible. Even if they are formulated in the text of the law using the technique of a closed list, it is still not a real closed list, but rather an imitation (a simulacrum of a closed statutory list).

Sometimes it becomes necessary to discuss complex issues of the legal form and content in order to identify such lists as closed or open. There are even cases where it is necessary to delve into more fundamental issues of legal theory, such as questions of legal understanding. A researcher, based on legal positivism and basing on a nominal statutory enumeration of the principles of law, may conclude that the list of principles of law is closed. However, in reality the scope of the principles of law does not allow the logic of a closed statutory list to be applied to them, or to conclude that a statutory list of principles is closed even if the text of the law contains a nominal list of principles resembling a closed statutory list. If the legislator provides a list of principles that outwardly resembles a closed list, it should be considered not a closed list of principles of law, but a simulacrum of such a list (more on this below).

Simulacra of closed lists relating to large-scale issues create another simulacrum – that of the 'opening' of such a list according to the *contra legem* logic. Meanwhile, if something is an illusion, then its opposite is also an illusion. In the case of a simulacrum of closed lists, the logic of 'opening' such a list by means of *contra legem* does not work, although this impression may be created.

[1]Resolution of the Constitutional Court of the Republic of Armenia No. ՍԴՈ-1725 of April 16, 2024. Access from the legal information system 'Arlis'.

4.2. Simulacra of closed lists in the macro-legal dimension

4.2.1. A simulacrum of a closed list of norms enshrined in law

At various times, opinions have been expressed about a closed system of legal norms in the sense that law is a comprehensive system in which there are no gaps, and therefore norms listed in it are exhaustive. For example, Carl Schmitt noted in his famous work that the Constitution is a closed system of norms [29, p. 59]. For many years, the prevailing opinion was that there exist closed legal systems such as the criminal law system, which is recognized as a closed system due to the rule of *nullum crimen, nullapoena sine lege* [2, p. 141].

The question of whether a list of norms enumerated in a law is closed or open is directly related to the question of the possibility of a legislative gap. If we rely on the doctrine that the law is a comprehensive system and cannot have gaps, this means that the list of norms listed in a law is closed.

Currently, the approach is gaining recognition that even the Constitution and the Criminal Code (its general part) are not closed systems and that gaps are possible in them. For example, Part 3 of Article 4 of the Criminal Code of the Republic of Armenia, adopted in 2021, expressly states that the provisions of the general part of the Criminal Code may be applied by analogy if this does not worsen the situation of a person[1]. However, from the point of view of legal form, the listing of articles in a law gives the impression that the list of norms enshrined in the legislation is also exhaustive. But when we move from the legal form (articles) to the content (norms), it becomes clear that there is no objective reality behind a formal closed list of articles. The system of legal norms enshrined in the articles of the law is not closed as there are always gaps, which can be filled by new norms through the application of analogy.

The state recognizes the existence of an open list of legal norms when the law (for example, the RA Law 'On Normative Legal Acts') allows law enforcement officials to fill legislative gaps by analogy with the law and legal principles. When a court, based on analogy of the law and legal principles, adds new rules (norms) to the legal order, the list of articles of the law does not change outwardly, but the list of legal norms undergoes changes.

All this shows that the listing of articles in a law gives the impression of a closed list of legal norms, but this is only an illusion since there are always gaps in legislation that can be filled by new norms.

4.2.2. A simulacrum of a closed list of human rights enshrined in the Constitution

Is the list of human rights enshrined in the Constitution exhaustive or not? For example, there are academic studies reviewing the practice of the German Constitutional Court, which has recognized a number of human rights, such as the general right to privacy, that were not included in the list of fundamental rights established by the Basic Law of 1949 as constitutional rights [8]. This approach is based on the idea of an open list of human rights listed in the Constitution.

For many years, the concept of an open list of human rights has been recognized in the constitutional law of the Republic of Armenia, and this was explicitly stated in the text of the Constitution of the Republic of Armenia. Article 43 of the 1995 Constitution of the RA explicitly stated: 'The rights and freedoms enshrined in the Constitution are not exhaustive and cannot be interpreted as denying other universally recognized rights and freedoms of the human being and citizen'[2].

The Constitutional Court of the Republic of Armenia, in its ruling ՍԴՈ-350 of February 22, 2002, noted: 'The aforementioned constitutional provision may be interpreted to mean that a citizen of the Republic of Armenia or any person under the jurisdiction of the Republic of Armenia may have not only the rights or freedoms not specified in the Constitution, but also those rights and freedoms that are a logical extension of the rights and freedoms enshrined in the Constitution of the Republic of Armenia, or are an additional guarantee ensuring their implementation. <...> the rights and freedoms listed in the Constitution of the Republic of Armenia are not exhaustive; individuals and citizens may have other well-known rights and freedoms <...>. The provisions of the Constitution on human rights and freedoms are not prohibitive but rather enabling in nature'[3].

[1] Criminal Code of the Republic of Armenia No. ՀՕ-199-Ն of May 5, 2021. Available at: https://www.Arlis.am/.

[2] Constitution of the Republic of Armenia (adopted by a nationwide vote on July 5, 1995). *Official Bulletin of the Republic of Armenia.* 1995. Special issue. Art. 77.

[3] Resolution of the Constitutional Court of the Republic of Armenia No. ՍԴՈ-350 of February 22, 2002. Access from the legal information system 'Arlis'.

In Article 42 of the RA Constitution as amended in 2005, the provision on the open list of fundamental human rights was essentially retained, but it was worded as follows: 'The fundamental rights and freedoms of the human being and the citizen, as enshrined in the Constitution, shall not exclude other rights and freedoms established by laws and international treaties'[1].

The 2015 version of the RA Constitution does not contain any specific provisions regarding an open list of fundamental human rights, but this does not mean that the constituent power's approach to this issue has changed[2]; the regulation of the open list of fundamental human rights has been implemented differently. Article 39 of the RA Constitution enshrines the fundamental human right to freedom of action, which, according to the doctrine, 'protects all manifestations of freedom of action, regardless of whether they are formally enshrined or not' [6, p. 57]. Armenian lawyers note that the right to freedom of action guaranteed by Article 39 of the RA Constitution comprehensively protects all human freedoms that are not protected by more specific fundamental rights. In the theory of fundamental human rights, the right to freedom of action is referred to as a general fundamental right, a 'gap-filling' right that, in the sense of comprehensive protection of freedom and in the interests of freedom, 'includes' protection against all unjustified restrictions on freedoms that are not covered by the protection of any specific fundamental right [14, p. 40].

Thus, if a state's constitution does not explicitly mention an open list of fundamental rights, or if fundamental human rights are listed in the form of a closed list, the scope (scale) of fundamental human rights does not allow it to be considered a closed list. Practice shows that the list of human rights listed in constitutional texts is supplemented by new rights through various methods, for example through broad interpretation or through the expansion of the scope of their protection.

4.2.3. A simulacrum of a closed list of the principles of law listed in a law

As already mentioned, laws sometimes provide a nominal list of principles of a branch of law. In the legal system of the RA, there are both open and closed methods of statutory enumeration of the principles of law (legal principles). For example, the RA Law 'On the Fundamentals of Administration and Administrative Proceedings' uses the technique of open listing of principles. The second chapter of this law sets out (lists) the basic principles of administration, but the same law expressly states that the list of principles is open. Article 12 of the law clearly says that the main principles of administration set out in this chapter are not exhaustive and cannot stop other principles of administration from being used.

Other laws have attempted to present the principles of law in the form of a closed list. For example, Chapter III of the RA Criminal Procedure Code lists the principles of criminal procedure; but, unlike the RA Law 'On the Fundamentals of Administration and Administrative Proceedings', the RA CPC does not contain a rule stating that the list of principles of criminal procedure is not exhaustive, which creates the impression that the statutory list of principles of criminal procedure is closed. As already mentioned, the scope of the principles does not allow them to be exhaustively listed in a closed statutory list or to conclude that the list of principles is closed. It is no coincidence that in practice RA courts sometimes recognize and apply procedural principles (such as the principle of mutual respect for participants in criminal proceedings or the principle of procedural fairness) that are not listed in Chapter III of the RA Criminal Procedure Code. This indicates that the courts of the RA do not consider the statutory list of principles of criminal procedure to be closed.

To dispel the illusion of a closed statutory list of legal principles, even supporters of legal positivism often point out that legal principles are fundamental provisions that are not only directly listed in the text of the law but also indirectly enshrined. Recently, there have also been mentioned implicit and explicit principles of law, which also dispels the illusion of a closed list of principles [15, pp. 149–150].

4.3. Simulacra of closed lists in the micro-legal dimension

Simulacra of closed lists are sometimes found in the micro-legal dimension, i.e., in small-scale matters, such as the simulacra of an exhaustive list of types of evidence in criminal proceedings in the RA. For example, Part 1 of Article 86 of the RA Criminal Procedure Code lists the following types of evidence: 1) statements made by the detainee; 2) statements made

[1] Constitution of the Republic of Armenia (adopted by a nationwide vote on July 5, 1995) as amended on November 27, 2005. *Official Bulletin of the Republic of Armenia.* 2005. Special issue. Art. 1426.
[2] Ibid. Art. 1118.

by the accused; 3) statements made by the victim; 4) statements made by witnesses; 5) expert conclusions; 6) expert opinions; 7) expert testimony; 8) material evidence; 9) protocols of evidentiary and other procedural actions; 10) extra-procedural documents. At first glance, the legislator has listed the types of evidence in the form of a closed list, which creates the impression that the types of evidence provided for in part 1 of Article 86 of the RA CPC are exhaustive.

The view (assertion) that the legislature provides an exhaustive (closed) list of types of evidence was widespread in the Soviet system and is now supported in certain post-Soviet criminal procedure systems [10, p. 18]. For example, Judge S. Marabyan, in his judgment of October 2, 2017, noted: '<...> the concept of 'other document' (extra-procedural document) does not make the closed list of types of evidence defined by law (the *numerus clausus* principle) open. <...> the phrase 'other document' must be interpreted narrowly; otherwise, with a broad interpretation of the phrase 'other document', the closed list of types of evidence defined by law (the *numerus clausus* principle) becomes open, which allows 'introducing' in criminal proceedings anything under the name of 'other document', which in principle contradicts the fundamental provisions of the law of evidence underlying the Criminal Procedure Code of the Republic of Armenia, in particular the rules of admissibility of evidence, the clear listing of types of evidence by law, or the concept of a closed list'[1].

Let us provide another example. The Criminal Court of Appeal of the Republic of Armenia, in its decision of July 9, 2018, stated: '<...> a conviction may be based only on evidence, the closed list of which is clearly defined by the Code (the *numerus clausus* principle) and which does not include such evidence as the 'explanation' of the victim's representative or any other person (criminal case No. ՏԴ1/0003/01/18)'[2].

In making statements about a closed list of types of evidence, Armenian courts have fallen into the trap of 'first impressions'. In fact, this list is not exhaustive (closed). The enumeration of types of evidence in the law creates the illusion of a closed list. The fact is that in the post-Soviet criminal process, 'other documents' or 'extra-procedural documents' are used as evidence, through which data not included in the statutory list of types of evidence are officially introduced into the criminal process. For example, documents and information carriers created as a result of operational-search measures are not classified by procedural law as types of criminal procedural evidence, but they have always been used as evidence through the category of 'other documents'.

The idea that legislation provides an exhaustive list of evidence creates false expectations of legality. Meanwhile, for the legality of the process of proving, it is not an exhaustive list of types of evidence that is essential, but an exhaustive list of legislatively-established methods (evidentiary actions) for collecting evidence. For example, interviewing a victim by a police officer is not a procedural method of gathering evidence, so a video recording of the interview is not evidence, which is not because this type of evidence is not specified by law (it can be considered an extra-procedural document), but because the law does not establish the possibility of gathering evidence in this way. The main procedural method of obtaining data from a crime victim is not an interview, but an interrogation.

As already noted, the wording of Article 86 of Part 1 of the RA Criminal Procedure Code gives the impression that the legislator has provided an exhaustive list of types of evidence, but it is an illusion of an exhaustive list of types of evidence. In Part 1 of Article 86 of the RA CPC, documents drawn up as a result of operational-search measures are not classified as types of evidence, and Part 2 of the same article expressly prohibits the use as evidence in criminal proceedings of documents drawn up as a result of operational-search measures as well as information recorded on any information carriers. The illusory nature of all this can be demonstrated by the fact that, in certain situations, the legislator nevertheless recognized as evidence documents drawn up as a result of operational-search measures as well as recognized their procedural form as extra-procedural documents (Article 96 of the RA CPC). It turns out that documents

[1] Decision of the Court of First Instance of General Jurisdiction of the Republic of Armenia No. ԵԱՆԴ/0030/01/16 of October 2, 2017. Access from the legal reference system 'DataLex'. This judicial act was issued during the period of validity of the Criminal Procedure Code of the Republic of Armenia of 1998, therefore it contains wordings that are not used in the new Criminal Procedure Code of the Republic of Armenia.

[2] Decision of the Court of Appeal of the Republic of Armenia No. ՏԴ 1/0003/01/18 of July 9, 2018. Access from the legal reference system 'DataLex'.

drawn up as a result of operational-investigative measures, although not included in the closed list of types of evidence provided in Part 1 of Article 86 of the RA Criminal Procedure Code, are considered evidence – an extra-procedural document. Moreover, in Part 1 of Article 86, the results of an inspection or re-inspection carried out on the initiative of the authority conducting the proceedings are not classified as types of evidence, but the legislator, again, has classified them as extra-procedural documents.

In addition, protocols drawn up as a result of other procedural actions in accordance with Item 9 of Part 1 of Article 96 of the RA Criminal Procedure Code are a type of evidence that can be used to qualify as evidence the protocols of some procedural actions that are not considered evidentiary actions[1].

Russian theorists have also criticized the legislative regulation of the closed list of types of evidence, but the reason for their criticism is different. They consider the compilation of an exhaustive list of types of evidence to be absurd, excessive, and harmful solely because such a list limits the investigator's ability to protect the interests of the victim and the state, contradicts the principle of free evaluation of evidence, and unreasonably hinders the possible development of means of proof [13, p. 217].

Research shows that in Anglo-Saxon and Romano-Germanic procedural systems there are no legislative provisions or theoretical judgments on an exhaustive list of types of evidence [12]. For example, Article 427 of the French Code of Criminal Procedure does not limit the use of evidence to that provided for in the code, since the law does not contain an exhaustive or non-exhaustive list of types of evidence. This circumstance is expressly enshrined in Article 81 of the French Code of Criminal Procedure, Part 1 of which states that the investigating judge is authorized by law to take any measures to gather information that he deems necessary to establish the truth. Consequently, the use of new evidence in French criminal proceedings is not, in principle, a problem (e.g., electronically signed documents, computer information, etc.) [7, p. 134].

In Italian criminal proceedings, in addition to the types of evidence specified by law (typical evidence: witness testimony, expert opinion, results of experiments presented for recognition), under certain conditions it is admissible to use means of proof not established by law (atypical evidence). In accordance with Article 189 of the Italian Code of Criminal Procedure, the judge shall allow the use of atypical evidence only if he considers that it is suitable for verifying the facts and does not prejudice the moral freedom of the individual [3, p. 152].

Conclusion

Based on the results of the scientific and practical research, the following conclusions can be drawn:

1. Statutory lists are systems consisting of elements of legal significance and are of two types: closed (*numerus clausus*) and open (*numerus apertus*). A closed list established by law is a system consisting of an exhaustive list of elements of legal significance, which, acting as a symbol of legal prohibition, considers it inadmissible to perform legally significant operations with elements not included in this list. Thus, a closed list in legislation as a legal symbol contains an indirect (implicit) prohibition.

2. A critical analysis of judicial practice shows that the rules of closed lists are not subject to broad interpretation, and attempts by courts to 'expand' a closed list are in fact a form of *contra legem* development of the law, rather than broad interpretation. Thus, courts 'open' closed statutory lists through the development of law *contra legem*, and supplement them through the development of law *extra legem*.

3. Closed lists can be classified according to their location in the elements of legal norms. A closed list contained in a sanction provides an exhaustive list of types of punishment and cannot be supplemented by means of *extra legem* development or 'opened' through *contra legem* development on any grounds. This list can only be changed by the legislator.

[1] In the criminal process of the Republic of Armenia, the results of hypnosis or a lie detector cannot be used as evidence, which is not due to the fact that such type of evidence is not provided for in Part 1 of Article 86 of the Criminal Procedure Code of the Republic of Armenia, but because the legislator has prohibited their use (Part 8 of Article 18, Item 6 of Part 3 of Article 97 of the Criminal Procedure Code of the Republic of Armenia). If we assume for a moment that the legislator has changed its approach to obtaining evidence through hypnosis and allowed it, then in the event of such a change, there would be no need to provide for a separate type of evidence for data obtained through hypnosis; it would be used either as an expert opinion or as testimony.

4. An analysis of the legislation has revealed simulacra of closed lists that create the illusion of an exhaustive list. Simulacra of closed statutory lists relating to macro-level issues create the false impression that all possible principles and norms of law or human rights are already listed in the law, which, however, does not correspond to the reality, complexity, and multifaceted nature of law, but only restricts law enforcement practice.

5. Two main methods of listing are used to formulate an open list: simple listing and concretizing listing (using concretizing language means). Concretizing lists are set out using words such as 'inter alia', 'among others', 'for example', 'including', which indicate that the circumstances, rights, and other elements listed are most obvious but not exhaustive, which accordingly does not exclude the possibility that law enforcers may identify other circumstances and elements, not included in the list. At the same time, it is necessary to distinguish open lists from incomplete closed lists in which not all elements of the list are technically contained in one specific article, but may be partially located in other articles.

6. As regards the inclusion by law enforcement authorities of new elements in simple and concretizing open lists, in both cases the rule of interpretation *analogia intra legem* is used, according to which elements similar to those listed may be added to the open list.

7. According to the maxim *expressio unius est exclusio alterius*, if the law explicitly mentions certain categories, this implies that the categories not explicitly mentioned in the law are intentionally excluded by the legislator from the text of the law. In the Anglo-American tradition, where this maxim has found its widest application, it is more often referred to as a rule of interpretation rather than a maxim. This rule is quite often applied by the courts of the Republic of Armenia when interpreting closed statutory lists, which is due to, among other things, the adoption by Armenian judicial practice of certain features of the case law of common law countries.

8. The abovementioned is logically and substantively linked to the *numerus clausus* closed list since both legal instruments are used to limit overly arbitrary interpretation of the text of the law by law enforcement officials, and both prevent unjustified expansion of various closed lists established by law. *Expressio unius* implies the exclusion from legal regulation of those elements that are not expressly mentioned in the text of the law, while *numerus clausus* initially introduces into the law an exhaustive list of elements, objects, or rights. At the same time, *expressio unius* is a tool for interpreting and analyzing legal texts, while *numerus clausus* serve as a normative restriction, which often prevents the creation of objects or new legal categories not provided for by the legislator.

It should be borne in mind that sometimes the purely mechanical application of *expressio unius* by courts, without taking into account the context of the law, can lead to misinterpretation of the law and absurd results that do not correspond to the intentions of the legislator.

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Evolution of the Status of Russian Judges: A Historiographic Perspective

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Introduction: *research into the evolution of the status of judges, conducted through the prism of a retrospective analysis of domestic sources, allows us to form a holistic picture. In the format of historiographic approaches, the study shows contextual influence of the past on the current state, determining the prospects for further development of the concept of the rights and responsibilities of persons conducting legal proceedings in Russia. The paper explores the manifestations of various forms of legal proceedings in Ancient Rus', in autocratic Russia, approaches adopted in the Soviet and modern periods.* ***The purpose*** *of the study is to develop systemic approaches to the requirements for persons administering justice. The use of formal-legal, historiographic, comparative-legal, historical-legal, and other* ***scientific methods*** *allowed us to come to conclusions that substantiate the following* ***results****. The foundation of Russian justice is the assertion that the status of a judge is a combination of his rights, duties, and responsibilities, with only legal component of the status considered here, that is, without taking into account (with necessary exceptions) such components as moral, ethical, psychological, physiological, etc. An analysis of the essential characteristics of judges reveals features that allow integrating them into the concepts of modern justice.* ***Conclusions:*** *based on the analysis of the status of judges, the study has revealed contextual determinacy of the concept of the rights and responsibilities of persons ensuring the implementation of domestic political and legal values when administering justice. This contributes to the creation of a domestic (Russian) historiographic model of political and legal knowledge, the application of which can be considered an important element of the system of preventive mechanisms formed to counteract distortions of Russia's role in civilizational development.*

Keywords: court; judge; status; regulation; evolution; rights; duties; responsibility; improvement

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Введение: *исследование эволюции статуса судей сквозь призму ретроспективного анализа отечественных источников позволяет сформировать целостную картину. В формате историографических подходов обозначается контекстное влияние прошлого на современное состояние, определяющее перспективы дальнейшего развития концепции прав и обязанностей лиц, осуществляющих отечественное судопроизводство. Исследуются проявления различных форм судопроизводства в Древней Руси, самодержавной России, подходы к его реализации в советский и современный периоды.* ***Цель*** *заключается в формировании системных подходов к требованиям для лиц, осуществляющих правосудие. Использование в исследовании формально-юридического, историографического, сравнительно-правового, историко-правового и других* ***научных методов*** *позволило прийти к выводам, обосновывающим следующие* ***результаты****. Основой российского правосудия служит утверждение о том, что статус судьи – это совокупность его прав, обязанности и ответственности, при этом здесь рассматривается лишь правовой компонент статуса, однако остаются без внимания (за необходимыми исключениями) такие его компоненты, как моральный, этический, нравственный, психологический, физиологический и др. Анализ сущностных характеристик судей обнаруживает черты, позволяющие интегрировать их в концепции современного правосудия.* ***Выводы:*** *на основе анализа статуса судей выявлена контекстная обусловленность концепции прав и обязанностей лиц, обеспечивающих реализацию отечественных политико-правовых ценностей при осуществлении правосудия. Это способствует созданию отечественной историографической модели политико-правовых знаний, применение которой можно считать весьма важным элементом системы формирования превентивных механизмов противодействия искажениям роли России в цивилизационном развитии.*

Ключевые слова: суд; судья; статус; регулирование; эволюция; права; обязанности; ответственность; совершенствование

Introduction

Since ancient times, Rus' (Russia) has been a single large ethno-contact space, where people representing different nations and ethnic groups coexisted, coexist, and will coexist. Their unity, among other bonds, has been maintained by the organizational-legal mechanism of justice, with judges being its central component. In the historiography of judicial power, a significant place is occupied by studies on the status of a judge. In the Russian segment, such studies are represented by educational publications [41; 43; 44; 53; 60; 81], monographic works [7; 29; 42; 57; 58], and individual articles [18]. They, as well as a number of other individual scientific publications [14; 72] contain considerable lists of references (bibliographic lists, etc.) that include works devoted to the analysis of the status of judges.

In the nine-volume work *History of the Court and Justice in Russia* [32; 33; 34], prepared by scientists from the Russian State University of Justice in 2020-2022, almost every volume begins with the historiography of the problems of justice in the corresponding historical period.

Fifty years ago, there was asked a question in special literature: can we consider that the comprehensiveness and completeness of judicial research, the adoption of lawful and reasoned decisions are determined by the degree of development in judges of qualities related to the moral and volitional sphere, and, therefore, is it possible to ensure the success of a judge's professional activity by cultivating such qualities in any lawyer? According to N. V. Radutnaya, the answer to this question is largely associated with solving the problem of taking into account individual psychological qualities and personality traits when selecting judges. If the determining factors for the activities of a professional judge are moral and volitional

qualities, which can be developed in the process of education, including during training and in the course of professional activity, then can it be considered that any person with a legal education is capable of being a judge and achieving mastery in his profession? If the intellectual sphere (the qualities of mind, memory, imagination) plays a significant role in mastering this skill, then we can talk, firstly, about the ability to be a judge by profession and, secondly, about the need to ensure special conditions in the preparation of the responsibility of a judge for the development of these qualities [67].

The very need for independence of judges in the administration of justice arose long ago. P. Barenboim notes that the history of the biblical court begins with Chapter 2 (paras. 13-21) of *The Book of Exodus*, where young Moses tried on his own initiative to resolve a dispute between two Jews and heard from one of them the question: 'Who made you a ruler and a judge over us?' As we can see, the right to judge was associated with the right to rule. In the same chapter, it is described that Moses married Zipporah, the daughter of the priest of the land of Midian (neighboring Egypt) named Raguel, who later advised his son-in-law to create a separate class of judges [9, p. 37].

Barenboim also points out that in substantiating the divine origin of the monarchs of biblical times, one could find references to judge gods in the epics of that time. For example, in the annals of the Assyrian king Ashurnasirpal II, in addition to the enumeration of thousands of noses, ears, and hands cut off for intimidation, we can find the mention of Shamash, one of the numerous Assyrian gods, who was a judge 'by specialization'. According to the text, Shamash handed the king 'the scepter that shepherds people'. This nuance, however, does not go beyond the doctrinal justification of the divine origin of monarchical power received from God, who was perceived in all religions as the 'supreme judge' [9, p. 72].

Investigating the historical aspect of justice, V. A. Terekhin believes that three opinions have been formed in science about the time of the origin of justice, court, and judicial power: 1) they existed in the pre-state historical period; 2) they appeared together with the state and law; 3) the court, and especially the judicial power, are products of the evolutionary development of society and the state. Terekhin himself points out that the category of 'justice' is very closely related to such a concept as 'resolution of social conflicts'. The function of dispute resolution was performed both in state-based and pre-state societies, since even in the pre-state society the population could not do without conflicts. At the same time, there formed a social idea of truth, equality, and justice as the basis for the stability and development of society. The need for the implementation of the said social values appears to be genetically primary, as a result of which the function of fair settlement of contradictions appeared. At that time the procedures for examining the claims of the parties and the decisions taken were based on generally recognized rules of conduct, moral and ethical standards, religious canons, traditions of a particular society, etc. Apparently, at first people resolved conflicts themselves, but later they began to invite third parties for this purpose, those being independent persons. Subsequently, the most authoritative people or groups were selected from among them. These were individuals and gatherings that had completely different names, including 'court' [79, pp. 95–96].

As Terekhin quite rightly notes: 'An analysis of the formation of the public institution for dispute resolution as a way of implementing power shows that in most countries, at the first stages of the state development, this function was carried out not by independent courts, but by the administration. The Russian state, where until a certain period all public authorities were concentrated in one person and were not divided, was no exception. At that time, the function of resolving conflicts was performed by representatives of the administration – princes, princely governors, boyars, mayors, guba elders, landowners, etc. When considering disputes, these representatives of power were guided by legal procedures and other legal norms; however, the will of the state was implemented not by a sovereign court, but by an administrative body or an official. It was much later, most likely during the reign of Peter I (the first quarter of the 18th century), that independent courts began to emerge and judges started to be appointed, called upon to resolve legal conflicts on a professional basis' [79, p. 97].

It is important to take into account that the status characteristics of a particular judge largely depend on the place of the judicial body in which this judge administers justice in the judicial system of the state. This means that the evolution of the status of a judge is determined by the evolution of the structure of the state's judicial system. The problems of this segment of legal science have been well studied [4; 12; 20; 22].

The subject of this study does not include the mechanism of administration of justice by those who were not professional judges in the service of the state. Of course, the need for justice, for the protection of violated rights (including those based on customs), and for their restoration existed in early states, in pre-state entities, and even in primitive societies [39; 40]. And this need was far not always satisfied in

diverse peaceful forms that can be characterized as precursors of justice. For example, G. V. Maltsev [52] described in detail blood feud and retribution as mechanisms for restoring violated justice.

Administration of Justice in Ancient Rus'

Judges are the fruit of society [59], and with the development of society and relations, including legal ones, with the transformation of approaches to justice and the judicial system, the status characteristics of judges also developed.

In pre-state entities, there were no professional judges, although there existed court itself as a non-violent way of resolving disputes and conflicts, so the court is much older than the state [27; 62; 80]. It can even be said that the awareness of the need for a mechanism for restoring violated justice appeared and began to manifest itself simultaneously with the 'invention' of fire, and both of these phenomena are approximately equal in their significance in the history of the human civilization's development. Perhaps, in the early stages of the archaic community of people united in tribes and clans, more or less organized groups created reconciliation mechanisms, sought to resolve disputes, disagreements, quarrels, etc. in the broadest sense.

It is important to note that for the purposes of administering justice in pre-state entities, the person holding power had a privilege of appointing a 'justice administrator'. Noteworthy is that there were declared requirements with regard to the latter. As Professor A. I. Burkin noted, the Old Russian legal collection of the 13th century first of all highlights the righteousness of judges and a fair trial: 'Listen, all you, judges of the earth. Do not commit injustice in court, for God's judgment is true. Cursed is everyone who judges unjustly. Blessed is the man who listens to these words, and will not be ashamed of the face of the mighty at a trial, but will deliver the offended from the hand of the unjust. And he himself will be delivered on Doomsday by those who judge righteously' [15].

The situation has changed little in the initial state entities.

The requirements with regard to people administering justice, for example, in Ancient Rome were as follows: 'We need a person who is naturally intelligent and experienced in life, who would see through what they think, feel, assume, and expect – his fellow citizens and all the people he wants to convince of something with his speech... He must be able to feel the pulse of people of any kind, any age, any class; he must intuitively understand the thoughts and feelings of those before whom he is conducting or will conduct a case' [6, p. 248].

The Old Russian legal collection of the 13th century *The Measure of Righteousness* speaks of the righteousness of judges and a fair trial, and it reproduces the words of St. Basil the Great about the statement of the great Tsar Constantine: 'Let the judge be sincere. Not fearing the rich, not having mercy on the poor, but not accepting the face of the strong and the poor in court, for the Judgment is of the Lord. It is unworthy to listen to slander. Do not accept a gift, so as not to strike your soul' [6, p. 60].

According to the Code of 1649, state courts in Rus' were divided into three types: 1) the highest – the court of the tsar and the Boyar Duma. The Justice Chamber, created in 1681, became a permanent judicial board of the Boyar Duma. It consisted of a chairman and his comrades, appointed by the sovereign from the Duma ranks, who were engaged in resolving judicial cases that were transferred for consideration to the sovereign and the Duma under the procedure of report and appeal; 2) central – the court of prikazy; 3) local – the courts of governors, of guba and zemstvo institutions. At that time, judges were 'the sovereign's people', and they exercised their powers in addition to other duties, the administration of justice was not their main occupation [68, p. 37]. According to O. V. Grigoriev, in Muscovite Rus' the law 'whoever governs is the judge' was applied everywhere [24]. Strictly speaking, the term 'judge' itself in its modern meaning began to be used only during the judicial reforms of Peter I, and before that it was exclusively to designate the heads of prikazy [71, p. 254]. As D. O. Serov points out, Peter I did not specifically regulate the status of judges, did not introduce any qualification requirements with regard to them [71, pp. 269, 449].

The Judicial System of Russia in the Pre-Reform Period (before 1864)

During that period, the judicial system, contextually predetermining the status of a judge, was structured spontaneously and was constantly subject to various changes. There appeared highly specialized courts, for example: the *Orphans' Court in the Irkutsk province* (consisted of elders and two members of the city magistracy; the corresponding judicial body in relation to noble widows, minor orphans, and estates was the Noble Guardianship, established in each uezd (district) in the person of the district noble leader, district judge, and elected assessors [1, p. 67]); *judicial bodies of rural justice* [1, p. 67]; *Courts of conscience* (created under the direct supervision of the monarch, characterized by relative independence from the imperial administrative-judicial system [1, pp. 68, 69; 3; 55; 56; 69]); *stanitsa and volost courts* [32, pp. 287–303]; *University Court*

(students, teachers, as well as officials and employees working within educational districts were subordinate to this court; it consisted of three instances: the rector, the university court, and the university council [35]); *mining court* (which was an administrative-judicial institution that had jurisdiction over cases of employees working at mining plants, as well as disputes involving the population living in the territory of mining districts under the jurisdiction of the Ural Mining Administration. The system of mining courts included a mining chief, mining civil courts, the Ural Mining Administration, and the Senate [35, p. 194, 195]); *commercial courts* [86] (the prototype of state arbitrazh bodies of the Soviet period of our history and arbitrazh (commercial) courts of the modern period); *non-Orthodox courts* (in Eastern Siberia – a permanent apparatus of clan administration in the person of a clan member recruited by provincial government from among honorary clansmen, who single-handedly administered justice on the basis of local customs [2, p. 15]; with the adoption in 1822 (during the implementation of the legislative plans of M. M. Speransky) of a single government act (the Charter on the governance of inorodtsy and on their nomadic court) it represented a three-tier system of the Clan Administration, the Inorodtsy Administration, and the Steppe Duma) [1, p. 24]; a *system of church justice bodies*, the creation of which was connected with the foundation of the Most Holy Governing Synod, which became the highest body of church authority [71, pp. 290-299]; the *Supreme Court*, created by Peter I by a special Decree of February 9, 1723, consisting of several senators, six generals and Guards officers, as well as the Moscow vice-governor. This court was convened irregularly, in total it passed sentences on 29 people [71, p. 323], which testifies to its judicial activity carried out in a 'pulsating' mode. As indicated in the literature, only through the judicial reforms of Peter I, a total of 13 specialized judicial bodies were reorganized and established for the first time [71, p. 332]. Subsequently, the Supreme Criminal Court of the Russian Empire was established [11].

There were certain requirements established in Russia in the 18th century and in the first half of the 19th century with regard to judges of courts of various types. To a large extent, the determining role in the selection of candidates for judicial positions was played by nobility assemblies, to which the provincial leadership presented information about the careers of candidates. In provinces that did not have bodies of nobility self-government (Arkhangelsk, Vyatka, Perm, etc.), the rules of centralized appointment of judges were applied; special rules for vesting judges with powers were established in relation to the Siberian provinces [21]. The procedure for staffing (in the modern meaning of the word) the judicialry, or the 'procedure for establishing in the position' – according to the terminology of the period of Catherine II, can be found in the monograph by T. L. Migunova [54]; in the article by V. A. Voropaev it is noted that the qualification requirements for candidates for the positions of judges were changed.

On the one hand, there is evidence of high demands placed on judges in terms of their moral and ethical qualities. For example, in the Kaluga province, in a document relating to a nobility assembly devoted to the election of judges, it was proposed 'to elect as law executors persons who appear to be most worthy and capable, due to their knowledge, experience, and good qualities, of maintaining the highest accuracy of the scales of justice, so as not to sacrifice our peace of mind' [71, p. 115]). On the other hand, there are inferences drawn by V. Bochkarev, who, basing on a comprehensive analysis, identified the shortcomings in the activities of judicial bodies and institutions of pre-reform Russia: among others, he named a low intellectual and moral level of the court personnel and slavish dependence of the court on the administration [13, p. 239].

Until the judicial reform of 1864, the court was not properly separated from the administration; accordingly, there was no separate, full-fledged judicial corps with judges specially selected according to the correct criteria. The judicial duties of that time were combined with administrative ones, which relegated the former to the background. Therefore, it was impossible to ensure effective selection for judicial positions.

Summing up the study into pre-reform status characteristics of the judicial corps, it is appropriate to refer to I. P. Slobodyanuk [72, pp. 24-25], who, in turn, refers to the pre-revolutionary work of V. Bochkarev [13], preserved in libraries both in the form of a separate reprint and in the form of an article published in the collection *Judicial Reform*. In this work, based on a significant number of sources and a comprehensive analysis of the activities of judicial bodies and institutions of pre-reform Russia, the author provided the most complete picture identifying the following characteristic of the judiciary: '1) the principle of class structure as the basis of the judicial system; 2) a low intellectual and moral level of the court personnel; 3) beggarly salaries in the department of the Ministry of Justice, which gave rise to exorbitant bribery in absolutely all courts; 4) slavish dependence of the court on the administration; 5) the actual impotence of the prosecutor's supervision; 6) the endless variety and multiplicity of judicial instances; 7) exorbitant red tapism, with an abundance of procedural forms; 8) the absence of orality and publicity in legal proceedings; 9) the dominance of clerical secrecy; 10) the investigative or inquisitorial nature of the process, based on the theory of formal evidence, and 11) the aimless cruelty of the penal system'.

The Status of Russian Judges after the Judicial Reform of 1864

The status of Russian judges was significantly improved as a result of the Judicial Reform of 1864. Noteworthy is the statement of G. A. Dzhanshiev (a well-known scholar of that period): before the judicial reform, 'we had no judges in the true sense of the word: they were agents of the Ministry of Justice' [26].

With regard to the status of judges, the Judicial Reform of the Russian Empire can be characterized by the following innovations: 1) the institution of candidates for the position of judge was officially introduced (which we do not have today); 2) it was established that the judicial corps was to be filled with lawyers having professional higher education; 3) qualifications were introduced for applying for the position of judge (a qualification based on personal details, a qualification based on the professional level of training of a candidate for the position of judge, a property qualification, etc.); 4) a more or less clear procedure for conferring judicial powers was established; 5) judicial powers could no longer be exercised along with other executive and administrative powers; 6) and, most importantly, there were proclaimed specific requirements with regard to judges, these taking into account that, according to the note to Item 2 of Article 1 of the introduction to Book One 'General Establishment of Judicial Institutions', 'the judicial power of spiritual, military, commercial, peasant, stanitsa and inorodtsy courts is determined by special regulations on them' [51, p. 387].

Temporary Rules on the Volost Court in Localities introduced the Regulation on Zemstvo District Chiefs: 'When performing their duties, judges wear the insignia assigned to their position. In terms of responsibility, temporary removal, and dismissal from office, they are subject to the rules established for volost elders. Volost judges receive a salary from volost funds. The amount of this salary and the method of remunerating candidates for the performance of judicial duties are determined by the uezd (district) congress, with the annual salary not exceeding: for the chairman of the volost court – one hundred rubles; for the volost judge – sixty rubles. The proposals of the congress on these matters are approved by the provincial department. Note. In the event that the duties of the chairman of the court are assigned to the volost elder, the latter does not receive any special remuneration for that.

In general, the attitude toward the institution of volost judges was, at least in the Duma, rather negative. M. V. Nelytina cites a statement made by Shubinsky, the chairman of the Commission on Judicial Reform at the III State Duma: 'The moral side of the volost court,' he said, 'is known to all of us in a thousand anecdotal stories <…>. As to the intellectual side of the volost court, it is in a downright childish state. Judges themselves say: we are illiterate; for the most part, the best of them only know how to draw the family name' [61].

Meanwhile, the abovesaid applies to the lower level of the judicial corps of Imperial Russia. Items 202-204 of Section One of Chapter One of Section Six 'On the appointment, dismissal, and transfer of officials of the judicial department' established: 'The positions of chairmen, deputy chairmen and Members of courts, including judicial investigators, as well as the prosecutor's supervision officials, chief secretaries, secretaries and their assistants, are filled, in compliance with the procedure specified in Articles 203-211, only from among persons who have certificates from universities or other higher educational institutions confirming the completion of a course in legal sciences or the passing of an exam in these sciences, or who have proven in service their knowledge in the judicial area. Persons who have served in the judicial field for at least three years in ranks not lower than Secretary of the District Court, may be appointed as members of the District Court. Sworn attorneys who have held this rank for at least ten years and received certificates from the Councils of Sworn Attorneys, as well as certificates from the courts where they served, confirming precise, correct, and impeccable performance of their duties at all times may also be appointed as members of the District Court [61].

As shows an analysis of the sources, the provisions of the 1864 Judicial Reform were developed following a deep theoretical (and even scientific) study into the issues of the status characteristics of Russian judges. The main elements of the judicial-status component of Russian judges of that period were described in detail by N. V. Muravyov: '1) higher legal, and consequently higher general education, the presence of which to a certain extent also presupposes good upbringing, i.e., the great and necessary art of living among one's own kind, which most of all distinguishes an intelligent person from a savage; 2) social and moral reliability, measured by not being in any of the formal states that discredit a person (conviction, insolvency, etc.); 3) the purity and integrity of the judicial profession, achieved through non-combination of judicial duties with any others; 4) practical preparation for independent judicial activity measured by the terms of preparatory judicial practice; 5) certain conditions and procedure for appointment to judicial positions and the correct gradualness of career progression, guaranteeing successful work, the importance of merits, and at the same time leaving scope for talents and distinctions; 6) independence from ranks and the relative height of position on the general

career ladder; 7) independence of both the official position and activity, expressed: a) in the irremovability and non-transferability of judges at the discretion of their superiors until they themselves, through their legally established actions, have disgraced or humiliated their rank and b) in the legal freedom of conviction and of speech of the prosecutor's office officials; 8) unity between the ranks of the judicial class, manifested externally, among other things, in the self-government of the courts in internal matters and in the procedural inseparability of the prosecutor's supervision officials; finally, 9) precise rules on material support, both during service and upon leaving it (emeritus payments)' [84, p. 44].

Of course, in the subsequent years, up until 1917, many positive innovations introduced by the Judicial Reform of 1864, including those related to the status of Russian judges, were distorted or even lost in the course of various kinds of correlations of regulatory legal regulations (sometimes they are called the Judicial Counter-Reform), but one thing is certain: at that period a corps of professional Russian judges possessing a worthful legal status was formed.

The February Revolution, having changed the state system of Russia, also changed the normative component of the status of judges, though the latter was mainly transformed situationally, not radically.

The Status of a Soviet Judge

The formation of the status of a Soviet judge was predetermined by the October (1917) Revolution, after which the issue of the previous justice mechanism, and therefore the previous judicial corps, was resolved in the most radical way. The Decree of November 24, 1917 'On the Court'[1] resolved the issue of the previous courts as follows: 'the hitherto existing general judicial regulations' were abolished, 'the operation of the hitherto existing institution of justices of the peace was suspended, - replacing justices of the peace, elected until now by indirect elections, with local courts in the person of a permanent local judge and two regular assessors, invited to each session from special lists of regular judges', while 'local judges are henceforth elected on the basis of direct democratic elections...' etc.

In general, all regulation of justice during that period was situational in nature, and that could not be otherwise in the conditions of the brutal Civil War. As noted in legal literature, in the first years of Soviet rule, more than 400 decrees and other acts were adopted that contained criminal-law, judicial and judicial-procedural norms [19, p. 6; 31].

The beginning of the systematic judicial construction and staffing of the judicial corps after the end of the Civil War can be seen in the Regulation on the Judicial System of the RSFSR, approved by the Resolution of the All-Russian Central Executive Committee of November 11, 1922[2]. An important feature of that historical period was that, despite Decree on the Court No. 1, which provided for liquidation or serious reorganization of all previously existing courts, religious courts continued to operate in the country. As noted by M. V. Kozhevnikov, Sharia courts functioned in the territory of Chechnya, Dagestan, and the Mountain Republic (Kabarda), Aksakal courts operated in the Kyrgyz Republic, and the Kazi courts worked in the Fergana, Samarkand, and Syr Darya regions and the Turkestan Republic [48, p. 132]. According to A. L. Karabanov, 'not wishing to intrude into the sphere of religious, national, and other feelings and customs of the peoples and nationalities of the USSR, and realizing the consequences that such intrusions could lead to, the Soviet government deliberately did not abolish these courts by force for a long time. At first, there were only attempts to place these bodies under a certain control and create a legal basis for their activities. In some regions, they were even financially maintained by the state [37, p. 57]. Article 4 of the Fundamentals of the Judicial System of the USSR and the Union Republics, approved by the Resolution of the Central Executive Committee of the USSR of October 29, 1924[3], proclaimed the following: 'At the Central Executive Committee of the USSR, in accordance with Articles 43-48 of the Basic Law (Constitution) of the USSR, the Supreme Court of the USSR shall be constituted'. This 'at' testifies that there was no independence of the justice mechanism. It was stipulated: 'Any citizen of the USSR who has not been discredited by the court may be a judge if they meet the following conditions: a) have the right to elect and be elected to the council; b) have experience in public political work in workers' and peasants' public, professional, or party labor organizations, or experience in practical work in the bodies of Soviet justice, or in the relevant administrative state bodies. The terms and conditions of the mandatory experience for a judge are determined by the legislation of the USSR and the legislation of the union republics'.

Personnel preferences with regard to candidates for judicial positions in the 1930s-1940s were expressed, practically at the official level, by N. V. Krylenko, People's Commissar of Justice of the USSR: 'An illiterate person cannot be a judge at least because he cannot write and compose a sentence. Political literacy is even

[1] Collection of Laws of the RSFSR. 1917. No. 4. Art. 50.
[2] Ibid. 1922. No. 69. Art. 902.
[3] Collection of Legislative Acts of the USSR. 1924. No. 23. Art. 203.

more necessary since the activity of the court is one of the most important functions in governing the state, in resolving a number of most complex functions of politics, economics, and everyday life. The suitability of a candidate for the position of judge will be best determined by his previous work and activity in public, economic, and political organizations' [50, p. 19].

Drawing a conclusion about personnel policy in this area, some authors emphasize that, along with legal norms regulating the formation of the judicial corps, an important role was played by extra-legal components, which include the election and recall of judges only with the consent of party committees, the transfer of judges along the party line, party affiliation, etc. At the same time, the 'purges' aimed at improving the composition of the judiciary, in fact, led to a turnover of judges and, as a consequence, to an increase in the number of people's judges with little experience of work [16, pp. 116, 123, 130].

At the same time, judges and heads of courts were the nomenclature of the corresponding party bodies. As noted in the literature, in the circular of the Ural Regional Committee of the RCP(b) of January 24, 1924, it was indicated that people's judges were appointed by the regional executive committee after approval from the district committees of the RCP(b), and in 1928 in the RSFSR party members constituted 85.9% among judges [82, p. 200]. Naturally, party committees and judicial authorities 'demanded that judges, when making decisions and sentencing, be guided by revolutionary (socialist) legal consciousness and the principle of revolutionary expediency... The criterion for selecting judges was experience in the revolutionary struggle, and not legal education and professionalism' [82, pp. 200, 201].

The omnipotence of party organs in judicial personnel policy, coupled with their relative irresponsibility in this matter, led to situations such as those described by E. A. Sosedov: in Tambov province (and there is no reason to believe that the situation was fundamentally different in other provinces) 'some judges of the provincial court and people's courts were included in the staff and exercised judicial powers before their appointment by the Provincial Executive Committee and the People's Commissariat of Justice, and then were not approved in the manner established by the Regulation on the Judicial System, or after approval did not begin work at all...' [73, p. 289]. The administration of justice by someone other than a judge appointed to the position in accordance with the procedure established by law is not justice; however, such situations were apparently not perceived as an emergency measure at that time.

The Great Patriotic War brought adjustments to the personnel policy for staffing the judicial corps. As noted in legal literature, according to the explanation of the People's Commissariat of Justice of the USSR dated October 23, 1941, under wartime conditions, 'heads of departments, regardless of the law (! – *M. K., E. V.)*, removed and appointed judges' [46, p. 38]. By the summer of 1942, the number of people's judges in the RSFSR had decreased by half compared to pre-war times, but in the first year of the war, the operational staff of the military tribunals of the NKVD troops was increased by 350% (in total, 250 military tribunals of divisions and fortified areas of the Red Army (3,000 judges) were formed during the war) [63].

As noted by M. V. Kozhevnikov, 'the demand for general court judges to replace those mobilized to the Red Army was satisfied by election to these positions of people's assessors who had demonstrated their suitability to perform the duties of a judge before the war' [45].

After the end of the war, military tribunals were demilitarized. For example, transport military tribunals were transformed into linear transport courts (for railway and water transport) with the pre-war regime for selecting and appointing judges and people's assessors. As noted in the literature, such selection was carried out according to formal indicators – party membership, legal education, work experience in justice bodies (for example, in 1949 the situation with personnel in linear transport courts was as follows: 99.5% of those working there were members of the All-Union Communist Party (Bolsheviks), one person was a member of the All-Union Leninist Young Communist League, and one person was not affiliated with any party; 29.1% had a higher legal education, 12.8% did not have legal training) [85, p. 886].

The difficulties in staffing the country's judicial corps with skilled specialists in the first post-war years were caused by the difficult (to put it mildly) conditions in which judges had to live and work. In accordance with the Order of the People's Commissariat of Justice of the USSR of July 14, 1945, an assessment of the premises of people's courts was carried out in the USSR. It turned out that the buildings that belonged to judicial institutions before the war were not returned to them. Decree of the Council of People's Commissars of the USSR of August 8, 1943 was not implemented. As of September 1, 1945, 'in the RSFSR, 642 people's courts (16.8%) did not have a courtroom, 99 courts were located in one room, 440 – in two, 1,160 – in three rooms. Only 962 courts had typewriters (23%). In the Poltava region, five people's courts had no premises at all and were located in private homes. In the Dikansky People's Court, citizens went outside during deliberations. The Irkleyevsky People's Court was located in a walk-through room of the district prosecutor's office. In the Novosibirsk region, out of 75 people's courts, 38 were located on premises consisting of one to three rooms, five courts worked in one room, and six had no rooms at all. The people's court of the 7th court district of Novosibirsk was located in a bathhouse. In the Penza region, out of 56 people's courts, 48 were located in rotten houses. The Uritsky District People's Court was housed in a dugout... Members of regional courts in 1954 received 1,000 rubles per month (people's judges - 690-880 rubles, police officers - 1,300 rubles). A people's judge of the Gorky region with two children lived on the premises of the people's court...' [47].

In the fall of 1950, the Minister of Justice of the USSR K. P. Gorshenin proposed that the Council of Ministers of the USSR adopt a regulation on candidates for judicial positions, but the proposal was rejected [45]. We still do not have an institution of candidates for judicial positions today. But, while the idea ofits creation was not realized then, in completely different conditions, is it not time to return to it today?

The requirements with regard to judges in the USSR, formulated in the 1930s, have not fundamentally changed subsequently. Serious changes in the mechanism for staffing the USSR judiciary began in the late 1980s, during perestroika, glasnost, the abolition of Article 46 of the USSR Constitution on the supremacy of the party, etc.

A significant event in the evolution of the status of Russian judges was the adoption of special Law of the USSR of August 4, 1989 'On the Status of Judges in the USSR'[1], the first law of this kind in the history of our country. This Law proclaimed the independence of judges and people's assessors, which was to be ensured by the following: the legally established procedure for the election and dismissal of judges and people's assessors; the immunity granted to judges and people's assessors; a strict legal procedure for the administration of justice; secret deliberations of judges when making decisions and the prohibition to demand disclosure of the secrets; liability for disrespect for the court or for interference in the resolution of specific cases; the creation of the necessary organizational and technical conditions for the activities of the courts; material and social support for judges corresponding to their high status.

There were established requirements for candidates for the positions of judges and people's assessors: a citizen of the USSR who has reached the age of 25 by the election day, has a higher legal education, has worked in the legal profession for at least two years, and has passed a qualifying exam may be elected as a people's judge; citizens of the USSR who have a higher legal education and have worked in the legal profession for at least five years, including, as a rule, at least two years as a judge, may be elected as judges of higher courts; a citizen of the USSR who has reached the age of 25 by the election day, is on active military service, has a higher legal education, and holds the military rank of an officer may be elected as a judge of a military tribunal; a person elected as a judge of a military tribunal for the first time must pass a qualifying exam; a citizen of the USSR who has reached the age of 25 by the election day may be elected as a people's assessor, and a citizen of the USSR who is on active military service may be elected as a people's assessor of a military tribunal.

The selection of candidates for judges was also regulated. It was to be carried out by justice bodies in accordance with the requirements of this Law on the basis of recommendations and taking into account the opinions of the work teams in which the nominated candidates worked, and the conclusion of the qualification board of judges. Persons recommended for the first time as candidates for the positions of judges underwent professional training in cases and in the manner established by the USSR Ministry of Justice. Candidates for the positions of people's judges of district (city) people's courts, judges of territorial, regional, city courts, courts of autonomous regions, courts of autonomous districts, Supreme Courts of autonomous republics were nominated jointly by the Ministry of Justice and the Supreme Court of the Union Republic. Candidates for judges of the Supreme Courts of the Union Republics were nominated under the procedure established by the legislation of the Union Republics, taking into account the opinion of the Supreme Court of the USSR and the USSR Ministry of Justice.

Reforming the Status of Judges in Modern Russia

The collapse of the USSR was approaching, bringing radical changes in the mechanism for staffing the judicial corps. There were several factors making this transformation inevitable: in the Soviet period power was divided not into legislative, executive, and judicial, but into party (dominant), Soviet, and economic; candidates for the positions of judges were selected on the basis of the party principle, which meant there was no guarantee of their independence; there was not ensured selection of 'the best of the best' among those wishing to become judges, which could only be organized on a competitive basis; there was not ensured attractiveness of the judicial position as there was no high salary, no appropriate 'social package', no proper judicial immunity, etc.; the institution of candidates for the position of judge was not formed and legalized, which made it impossible to create the necessary personnel pool.

The very end of the historical period under consideration is characterized by the first slight signs indicating that the independent role of the judicial community bodies began to form – through the procedure for selecting candidates for the position of judges and granting them judicial powers. These bodies were the only mechanism capable of neutralizing attempts by different agencies, structures, instances, groups, etc. to nominate 'their' people, who, being appointed as judges, could be dependent on those who had promoted them and therefore could be obliged to solve the problems of the latter when administering justice.

It is possible to conclude that at that time there was no clear, normatively enshrined program of personnel policy. The CPSU bodies also did not give up their leading positions in the matter of staffing the judicial corps. Yu. I. Stetsovsky noted the following:

[1] Bulletin of the Congress of People's Deputies of the USSR and the Supreme Soviet of the USSR. 1989. No. 9. Art. 223.

'Answering the question of whether a judge, upon taking the office, should suspend his membership in the CPSU, the Minister of Justice of the USSR V. Yakovlev stated: 'On what grounds? The law does not establish this... To deprive a judge of the possibility to hold certain political views means to encroach on his legal rights''. In other words, to encroach on the 'right' of a judge to pursue the arbitrary policy of the CPSU. The formula 'judges are independent and only subordinate to the district committee' was firmly rooted. The Central Committee of the CPSU was strongly against the depoliticization of courts and other state institutions. In such a situation, independent judicial power or subordination of the court to the law were merely impossible. The nomination for election and qualification certification of a judge, his recall depended on the discretion of party organs, the Ministry of Justice, and the Supreme Court. For example, a central newspaper reported on the cancellation of a sentence, and the editorial board received a resolution of the board of the Ministry of Justice of the Union Republic: 'The judge... was strictly warned about her negligence and irresponsibility, she was brought to party responsibility, the resolution of the board has been sent to all courts of the republic' [74, p. 60].

At the end of the 20th century, there arose a peculiar situation with the appointment of federal judges working in the constituent territories of the Russian Federation. The Constitution of the Russian Federation, the federal constitutional laws 'On the Judicial System of the Russian Federation' and 'On Commercial Courts in the Russian Federation', as well as the Law of the Russian Federation 'On the Status of Judges in the Russian Federation', established (at that time) that federal judges were to be appointed to office by President of the Russian Federation 'taking into account the opinion of the representative (legislative) bodies of the constituent territories of the Russian Federation'; meanwhile, in individual constituent territories of the Russian Federation there were periodic demands to transfer the appointment of judges to their jurisdiction [30].

Sometimes the situation went further the presentation of demands. For example, in February 1998, the Prosecutor General of the Russian Federation reported that in the Republic of Bashkortostan 'judges are elected by the state assembly of the republic. But, most importantly, these judges have issued more than 400 sentences ...'[1]. This meant that several hundred people were convicted by an illegitimate court. One of the reasons (at least that officially stated) for the desire of the heads of individual federal territories to appoint judges independently was the lengthy procedure for processing documents applied for the position of judge – sometimes up to six months.

Sometimes the situation with non-federal judges was also absurd. For instance, Item 2 of Article 14 of the Law of the Khanty-Mansi Autonomous Okrug 'On the Charter Court of the Khanty-Mansi Autonomous Okrug'[2] established that judges of this Charter Court may perform their duties part-time, which, in principle, takes them outside the legal field of state judges.

In actual fact, the threat to the structure of the federal justice mechanism was even more serious as it came from 'the depths' of the Administration of President of the Russian Federation – from the State Legal Department under President of the Russian Federation (hereinafter also referred to as the SLD), which was perceived extremely negatively by the judicial corps of the Russian Federation itself. An important body of the country's judicial community – the Council of Judges of the Russian Federation adopted a special Resolution on this issue on October 29, 1998.

The Constitution of the Russian Federation and the Federal Constitutional Law 'On the Judicial System of the Russian Federation' establish a single system that includes federal courts and courts of the constituent territories of the Russian Federation, which include constitutional (charter) courts of the constituent territories of the Russian Federation and justices of the peace, being judges of general jurisdiction of the constituent territories of the Russian Federation. These provisions fully comply with the principles of the federal structure of the Russian Federation. Federal courts are an indispensable condition and guarantee of the preservation of the Russian Federation as a single, integral state. At the same time, a legal framework has been created for the implementation of the interests of the constituent territories of the Russian Federation in creating their 'local' courts. The draft federal constitutional law 'On Courts of General Jurisdiction' prepared by the SLD, the speech delivered by the head of the SLD R. G. Orekhov at meetings of the Council under President of the Russian Federation on issues of improving justice on June 18, 1998 and on the pages of the *Russian Justice* magazine (No. 8 for 1998) indicate that the SLD proposed that there be revised the above-mentioned provisions of the Constitution of the Russian Federation and the Federal Constitutional Law 'On the Judicial System of the Russian Federation' with subsequent creation of independent judicial systems of the constituent territories of the Russian Federation consisting of: people's courts of the constituent territories of the Russian Federation and appellate and cassation courts of the constituent territories of the Russian Federation acting procedurally independently of the federal judicial system.

Further in the abovementioned Resolution it was strictly stated: the position of the SLD causes bewilderment and mistrust on the part of the judicial community of Russia since: firstly, it initiates centrifugal forces in society, which will certainly lead to separatism; secondly, this initiative comes from officials of the SLD under President of the Russian Federation, while President of the Russian Federation himself takes a different position, given that the Constitution of the Russian Federation and the Federal Constitutional Law 'On the Judicial System of the Russian Federation' were adopted on the initiative of President of the Russian Federation and, as follows from their content, contain provisions that are fundamentally different from the initiatives of the SLD; etc.

[1] *Russian Gazette*. 1998. 14 February.

[2] Adopted by the Duma of the Khanty-Mansi Autonomous Okrug on September 11, 1997.

The final part of the Resolution stated: 'To express fundamental disagreement with the position of the SLD under President of the Russian Federation in the part concerning the creation of independent judicial systems of the constituent territories of the Russian Federation, which obviously contradicts the relevant provisions of the Constitution of the Russian Federation and the Federal Constitutional Law 'On the Judicial System of the Russian Federation'. To inform President of the Russian Federation B. N. Yeltsin and the chairmen of the chambers of the Federal Assembly of the Russian Federation of the above'.

It appears that the precursor of the post-Soviet regulation of the status of Russian judges should be seen in the Concept of Judicial Reform, approved by Resolution of the Supreme Soviet of the RSFSR of October 24, 1991 No. 1801-I 'On the Concept of Judicial Reform in the RSFSR'[1]. Presented (as stated in Item 4 of this Resolution) by President of the RSFSR, it was approved (though, symptomatically, not confirmed), but was not published together with the Resolution. Among its main tasks was named 'ensuring the sovereign right of the RSFSR to administer justice and criminal prosecution on its territory in accordance with its own substantive and procedural law' (Item 2 of the abovementioned Resolution). At that time the RSFSR was part of the USSR, accordingly the judicial system of the RSFSR and the legislation of the RSFSR were – organically and legally – integral parts of the judicial system and legislation of the USSR. Obviously, when the Concept was being developed, the collapse of the USSR was not foreseen, and a long and active confrontation of the Russian authorities with the Union center was assumed (primarily in the ideological-legal perspective).

The Concept listed 11 main tasks, the conceptual solution of which was supposed to ensure the viability of the judicial reform itself, but there was no mention of improving the mechanism for staffing the judicial corps and of judges in general.

The text of the Concept only notes (in the most general terms) the following: 'the cornerstone of the transformation will be the irremovability of judges'; 'the nomination of judicial candidates for the positions of court chairmen and other judicial positions... should be the prerogatives of the judicial corporation'. The text also emphasized the need to prohibit judges from belonging to political organizations and movements as well as the formation of party organizations in the courts, and also pointed out that 'the Ministry of Justice of the RSFSR may be entrusted with the following functions related to the formation of the judiciary: determining the staffing needs of the courts; making submissions on the introduction of additional judicial positions; selecting candidates for judicial positions outside the judicial system and recommendation of those to the bodies of the judicial corporation to assess their suitability for judicial work; forecasting the required number of students in the system of higher legal education... ; determining the number of places for internships for future judges... ; creation and organization of institutions providing advanced training for judges; maintaining statistical and personal records of information about judicial personnel'.

Logically, in the work analyzing the implementation of the provisions of the Concept very little was said about the irremovability of judges, about the first five-year term of appointment of justices of the peace, and about the fact that the procedure for appointing judges still did not involve the receipt of opinion from the relevant chambers of parliament. At the same time, it was recognized that the idea, implemented (although partially) and voiced in the Concept, that the nomination of candidates for the positions of judges to the positions of chairmen of courts and other judicial positions should be the prerogative of the judicial corporation, had not proved worthwhile and that it was necessary to abandon the monopoly of the judicial community in this area [49, pp. 22–23].

Thus, the Concept of Judicial Reform did not become a serious guideline, much less a policy document in the matter of creating an effective organizational-legal mechanism for selecting candidates for the positions of judges and granting them judicial powers. Accordingly, Decrees of the President of the Russian Federation of November 22, 1994 No. 2100 'On Measures to Implement the Concept of Judicial Reform in the Russian Federation' and of May 23, 1995 No. 521 'On Some Organizational Measures to Accelerate the Implementation of Judicial Reform in the Russian Federation' were of little help in this matter.

Noteworthy is that the Concept of judicial reform itself was subjected (at that time) to serious criticism in the scientific literature [78]. Today, after a long time has passed since its approval by the Supreme Soviet of the RSFSR, considerable claims can be made against it (even though there is much that is positive in it).

Particularly significant for the status of Russian judges in the post-Soviet period is Law of the Russian Federation of June 26, 1992 No. 3132-I 'On the Status of Judges in the Russian Federation[2]. Article 1 of this law, entitled 'Judges as Bearers of Judicial Power', proclaimed the following: judicial power in the Russian Federation belongs only to the courts represented by judges and representatives of the people called upon in cases established by law to administer justice; judicial power is independent and acts independently of legislative and executive powers; judges are persons constitutionally endowed with the authority to administer justice and performing their duties on a professional basis; judges are independent and subordinate only to

[1] It was published by the Respublika publishing house in 1922.

[2] Bulletin of the Congress of People's Deputies and the Supreme Soviet of the Russian Federation. 1992. No. 30. Art. 1792.

the Constitution of the Russian Federation and the law, and they are not accountable to anyone in their activities aimed at administering justice; disrespect for the court or judges entails liability established by law, and the demands and orders of judges in the exercise of their powers are mandatory for all persons without exception, for state bodies, public associations, officials, other legal entities and individuals; information, documents, and their copies necessary for the administration of justice are provided at the request of judges free of charge, failure to comply with the demands and orders of judges entails liability established by law.

Still significant today is Article 2 of this Law, entitled 'Unity of the Status of Judges'. According to its text, all judges in the Russian Federation have a uniform status, and the specifics of the legal status of certain categories of judges, including judges of military courts, are determined by federal laws, and in cases stipulated by federal laws – also by laws of the constituent entities of the Russian Federation.

The requirements for a judge were clearly stated: a judge is obliged to strictly observe the Constitution of the Russian Federation and other laws. In the exercise of their powers, as well as in off-duty relations, judges must avoid anything that could diminish the authority of the judiciary, the dignity of judges, or cast doubt on their objectivity, fairness, and impartiality.

Of great importance at that time was the establishment by law of the inadmissibility of interference in the activities of a judge: it was stipulated that any interference in the activities of a judge in the administration of justice is prosecuted by law, while a judge is not obliged to give any explanations on the merits of cases considered or in proceedings, or to present them to anyone for review, except in cases and in the manner prescribed by procedural law.

This Law also established the terms of office of a judge, proclaimed their irremovability, the grounds and procedure for the suspension and termination of the powers of a judge, their immunity (Item 3 of Article 16 of the Law, establishing who makes decisions on initiation of a criminal case against a judge or on bringing him in as an accused in another criminal case, was the subject of consideration by the Constitutional Court of the Russian Federation [66]), the right to maintain the level of qualification necessary for the exercise of the powers of a judge, etc.

One of the documents dealing with judicial-status characteristics related to moral and ethical aspects was the Code of Honor of a Judge of the Russian Federation, approved by the Resolution of the Council of Judges of the Russian Federation of October 21, 1993 [70, pp. 9–10] (subsequently transformed into the Code of Judicial Ethics), which, as stated in its preamble, establishes the rules of conduct for judges in their professional and off-duty activities, mandatory for every judge of the Russian Federation, regardless of the position held, as well as for judges who are retired but have retained the title of judge and affiliation with the judicial community.

Despite the fact that the judicial community of Russia and its bodies were legally formalized only with the adoption of Federal Law of March 14, 2002 No. 30-FZ 'On the Bodies of the Judicial Community in the Russian Federation'[1], the country's highest and other bodies of the judicial community acted boldly and energetically.

Since the Law on the Status of Judges was adopted in 1992, more than 60 amendments and additions have been made to it. Among those we can see situational, insignificant, simply editorial modifications. Meanwhile, there have also been many essential changes having a fundamental meaning, for example: Part 4 of Article 1 of Federal Law of June 21, 1995 No. 91-FZ was supplemented with the rule that judges are not accountable to anyone in their activities aimed at administering justice; Item 1 of Article 2 of the Law was supplemented with a subitem stating that 'The specifics of the legal status of judges of the Constitutional Court of the Russian Federation are determined by federal constitutional law'; there were introduced Article 7.1 'Execution of the duties of a judge' and new versions of Article 13 'Suspension of the powers of a judge' and of Article 14 'Termination of the powers of a judge'; Article 6 'Procedure for vesting judges with powers' was changed significantly (and was subsequently repeatedly amended). Noteworthy is also that Federal Law of December 15, 2001 No. 169-FZ was supplemented with Article 6.1 'Procedure for vesting powers and terminating powers of chairmen and deputy chairmen of courts' and Article 6.2 'Powers of chairmen and deputy chairmen of courts' (also subsequently repeatedly amended).

The changes to the Law on the Status of Judges introduced by Federal Law of April 5, 2005 No. 33-FZ are at first glance insignificant. First of all this concerns the provision that, based on the results of consideration of all documents submitted by citizens applying for the position of judge, the Qualification Board of Judges makes

[1] Collection of Legislative Acts of the Russian Federation. 2002. No. 30. Art. 3013.

a decision to recommend one applicant for the position of judge. The words 'one of' were replaced by the words 'one of several'. Thus, the Board could recommend several candidates for one vacant judicial position, which leaves open the question of who selects one candidate for the only vacant judicial position from several (not to mention the parameters that this selector should be guided by).

With the adoption of Federal Law of December 25, 2008 No. 274-FZ (in connection with the adoption of the Federal Law 'On Combating Corruption'), many changes were made to the Law on the Status of Judges with regard to the mechanism for staffing the judicial corps of Russia. For example, the requirements for candidates for the position of judge were changed.

Later, other adjustments to the Law on the Status of Judges followed, to one degree or another determining certain status characteristics of Russian judges. And this process will undoubtedly continue in the future, including in the distant future.

Scientific and technological progress is already seriously influencing this process by means of neural networks, artificial intelligence [17]. It should be hoped that in the future the question of replacing a human judge with a robot judge will not arise.

Meanwhile, artificial intelligence will be able to provide certain, and in some aspects significant, assistance to a human judge in the implementation of fair justice, including in the psychological aspect, in realizing the judges' essential aspiration to issue maximally (this word is unlikely to be entirely appropriate here, but there is no other that would seem suitable) fair judicial act.

The Limits of Judicial Discretion

An important (and probably even the most important) aspect of the status characteristics of judges is associated with the problem of the limits of their powers in the course of administration of justice. Currently existing constitutional and legislative principles of legal proceedings impose certain, sometimes imperative, restrictions on judges, both in the course of a trial and in the adoption of a judicial act. This has been so for a long time, and it is even more fundamental at present. And this 'wiggle room' for a judge, this segment of his judicial activity within the framework of the named restrictions has been seriously studied by legal science in recent years. One of the classic scientific works on the problem of judicial discretion is the monograph of the former President of the Supreme Court of Israel Aharon Barak, published in translation from English into Russian in 1999 thanks to the efforts of the Chairman of the Constitutional Court of the Russian Federation, Corresponding Member of the Russian Academy of Sciences M. V. Baglai, with his introductory article [8]. Of serious scientific and practical interest are the characteristics of judicial discretion considered in this monograph – its definition, object, limits, etc.

Subsequently, Russian scholars published several monographs devoted to the problems of judicial discretion [10; 64; 76]. There have also been dissertation works defended on this issue [23; 28; 65], conferences have been organized and held [75]. There have repeatedly been explored the difference between judicial (a judge's) discretion and court discretion, these being largely equal concepts. A characteristic feature of studies into the problems of judicial (court) discretion is focus on *external* aspirations: how, in what, when, under what conditions, etc. a judge can / cannot cross the boundaries of legislative provisions in the administration of justice.

Closely related to the problems of judicial discretion are the problems of the inner conviction of a judge [77], discretionary powers of judges [38], judicial lawmaking and rule-making [25; 38]. These (and other) works also deeply and comprehensively examined the problem of external aspirations (possibilities/impossibilities) of a judge in the direct administration of justice.

But judicial (court) discretion also has the other – internal - side. Without going beyond the limits of what is permitted (by the law and by established judicial practice), a judge is nevertheless free to conduct a trial and issue a judicial act in a rather wide range of possibilities, without violating the law, or other regulatory prescriptions, or established judicial practice, or acts of judicial community bodies, but realizing his own judicial-creative potential, to the best of his abilities. All this is an integral part of the status characteristics of a judge.

And this range is generally wide for all types of legal proceedings, which is clearly manifested in the Criminal Code of the Russian Federation and in the Code of the Russian Federation on Administrative Offenses.

According to Part 1 of Article 6 'The Principle of Justice' of the Criminal Code of the Russian Federation, 'Punishment and other measures of a criminal-legal nature applied to a person who has committed a crime must be fair, that is, correspond to the nature and degree of social danger of the crime, the circumstances of its commission, and the personality of the perpetrator'. Guided by this principle, within the framework of Article 62 of the Criminal Code of the Russian Federation, entitled 'Imposition of punishment in the presence of mitigating circumstances', and Article 63 'Circumstances aggravating punishment', and taking into account the list of primary and additional punishments listed in Article 44 of the Criminal Code of the Russian Federation, the judge, when determining the length of punishment for the defendant, chooses: in accordance with Article 54 of the Criminal Code of the Russian Federation, entitled

'Arrest', which establishes the detention of a convicted person in conditions of strict isolation – a period of arrest from 1 to 6 months; according to Part 2 of Article 56 of the Criminal Code – from 2 months to 20 years.

The terms indicated by the judge in a sentence he delivers are calculated in months at best, and more often – in years. Meanwhile, observing the principle of justice to the deepest extent possible and thereby taking into account all circumstances in a specific court case, the judge can deviate from the custom, and assign a term of imprisonment with an accuracy of a week or even a day (while for a person serving a criminal sentence, even one hour of stay in a penal colony is a long term). Noteworthy is that Part 1 of Article 4.8 of the Code of the Russian Federation on Administrative Offenses (as amended on April 14, 2023 No. 122-FZ) states: 'The terms established in this Code are calculated in hours, days, months, years'.

The situation with criminal punishment is, to a certain extent, similar to the situation with punishment for administrative offenses. Article 3.2 of the Code of the Russian Federation on Administrative Offenses (as amended on February 03, 2025) defines an administrative fine as a type of administrative punishment. This code often specifies the amount of a fine as a 'from... to...' range, and this 'wiggle room', left at the discretion of the judge, is significant.

In such situations (in both types of offenses) a voluminous, comprehensive and, at the same time, highly delicate work is required (ideally – with the use of information outside the court case). It should cover not only the defendant or administrative defendant (in order to reveal the deep essence of his personality) but also the victims, public opinion, etc.

For Russian judges, due to their excessive workload, this is a virtually impossible task. Meanwhile, legal science does pay due attention to the methodology of judicial cognition, which is, among other things, supposed to ensure that the judicial act issued corresponds to the act committed to the maximum extent possible. One should agree with S. M. Amosov who pointed out the following: 'In theoretical reasoning it is easy to master the most subtle qualities of law, to give it an arrangement in a philosophical, logical, historical, and economic environment, while a specific legal qualification of states and actions often does not maintain a high level of harmony and reflects the use of only one legal component. Judicial decisions made in such a situation look awkward, though being schematically correct, and cause a negative attitude in society. Thus, mastering the methodology of judicial cognition makes it possible to understand the mechanism of mental activity of a judge from the initial familiarization with the case materials to the final decision' [5, p. 182-183]. The problems related to judicial discretion are also studied through empirical observations: analysis of statistics, questionnaires, expert interviews [36]; professional thinking of judges is also explored using the latest achievements of cognitive sciences [83].

Conclusion

An analysis of the legal content of individual state-legal institutions, in the case of the present study – of the status of judges, is helpful in formulating arguments for discourses on the significance of domestic political-legal values that form the doctrine of Russian statehood. Such studies are important since modern political-legal discourse is characterized by a clear tendency toward the transformation of the conceptual foundations of justice and blurring of the boundaries of what is permissible.

Research into a person's status that, by virtue of the law, legitimizes his right to exercise justice is the creation of a construct the elements of which are political-legal foundations having deep historical roots in the Russian state and relating to institutions that quite often become the subject of legal studies. Studies on the foundations of the status of a judge, these exploring different aspects, assume the permanence of these foundations. The exclusivity of the requirements with regard to judges is based on the fact that, unlike most persons exercising powers in the system of legislative and executive power, they exercises this power, with rare exceptions, personally. This makes it necessary to apply highly obvious requirements to judges not only as professionals but also as citizens who ensure the implementation of the principles of justice and legality in each of their decisions. It is their activities that determine the trust of citizens in the law and the actions of the state.

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Roman Legal Expansion in Early Britain: Attempt at Romanization of Local Law

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Introduction: *in the literature on the early history of Anglo-Saxon law (pre-common law), there is a noticeable gap in the study of the emergence of the common legal order in the Roman province of Britain (1st–early 5th centuries) and in the typological assessment of this mixed legal environment.* ***Purpose and objectives:*** *the study aims to analyze the attempt to adapt the local law of the ancient Britons to the legal policy of the Roman Empire. The objectives are to trace the penetration of the Roman technique of revision and regulation of the Romano-Celtic vulgarized law, to conduct a partial reconstruction of the ethno-legal identity of the urban population.* ***Methods and materials:*** *the research materials are sources of legal Romanism and of the narrative tradition of ancient and early medieval Britain, as well as a set of various material sources, including Roman inscriptions of Britain. The historiographic concept of 'provincial Romanization' and the related historical and cultural approach are used to trace the continuity of the Roman legal order in the Briton-Roman cities, the relationship between the legal policy of the British elites and the processes of urbanization and adaptation of Roman law to the local legal order. The study employed dialectical, culturological, general historical, sociological, formally dogmatic methodological approaches.* ***Results and discussion:*** *the research has revealed the process of fragmentary mixing of the customary Briton-Celtic law and communal principles of the island Britons with the legal system of the Roman metropolis, an alien system of the higher order. In the course of the socio-political and cultural-religious transformation in the Roman province of Britain, there occurred hybridization of the local legal order. Thus, it is possible to apply the concept of legal acculturation, this meaning gradual Romanization of Old English law during the long-term colonization of the island. Nevertheless, legal and political Romanization did not lead to the complete absorption or disappearance of all aspects of the indigenous Briton-Celtic political and legal culture.*

Keywords: Britain; Roman province; Romanization; Briton-Celtic law; Roman law; pre-classical common law; legal acculturation; systematization of law; revision and adaptation of law

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Information in Russian

Правовая экспансия римлян в ранней Британии: попытка романизации местного правопорядка

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Введение: *в литературе по ранней истории англосаксонского права (pre-common law) существует заметный пробел в исследовании зарождения общего правопорядка в римской провинции Британия (I в. – нач. V в.) и типологической оценке этой смешанной юридической среды.* ***Цель и задачи:*** *проанализировать попытку адаптации местного права древних бриттов к правовой политике Римской империи. Ставятся задачи проследить проникновение римской техники ревизии и упорядочения романо-кельтского вульгаризированного права, провести частичную реконструкцию этно-правовой идентичности городского населения.* ***Методы и материалы:*** *изучаются источники юридической романистики и нарративной традиции древней и раннесредневековой Британии, а также комплекс различных материальных источников, включая римские надписи Британии. Используется историографический концепт «романизация провинций» и связанный с ним историко-культурологический подход, позволяющий проследить преемственность римского правопорядка в бритто-романских городах, взаимосвязь правовой политики бриттских элит с процессами урбанизации и адаптации римского права к местному правопорядку. В процессе исследования были применены такие методологические подходы, как диалектический, культурологический, общеисторический, социологический, формально-догматический.* ***Результаты и обсуждение:*** *выявлен процесс фрагментарного смешения обычного бритто-кельтского права и общинных устоев островных бриттов с инородной правовой системой римской метрополии более высокого порядка. В ходе социально-политической и культурно-религиозной трансформации в римской провинции Британия произошла гибридизация местного правопорядка, что свидетельствует о применимости концепта правовой аккультурации, означавшего постепенную романизацию древнеанглийского права в ходе многолетней колонизации острова. Тем не менее юридико-политическая романизация не привела к полному поглощению или исчезновению коренной бритто-кельтской политико-правовой традиции, которая во времена англосаксонской гептархии составила синтез с позднеримскими правовыми конструктами и нормами древнегерманского права.*

Ключевые слова: Британия; римская провинция; романизация; бритто-кельтское право; римское право; предклассическое общее право; правовая аккультурация; систематизация права; ревизия и адаптация права

Introduction

A follower of the historical school of law, English professor J. G. Phillimore argued that any legal system in its natural progress goes through three stages of development: the first is the period of ‘infancy’ of law, which is characterized by the dominance of customs; the second stage is distinguished by the complication and diversity of law, as a result of which the legal array grows chaotically and requires a precedent approach; the third stage is the pinnacle of the evolution of law, which is expressed in the *codification of law*, elevating law to the rank of a genuine science [78, pp. 1–8].

At the last stage, that important systematic unity is achieved in which the facts, processed by legal experience and systematized by legal reason, are embodied in one consolidated volume, and jurisprudence itself becomes on a par with the most liberal and worthy fields, and a lawyer is no longer a simple singer of formulas (Lat. *cantor formularuon*) or a catcher of syllables (Lat. *syllabarum auceps*). These three periods of ‘original rudeness, subsequent confusion, and final system are clearly discernible in the evolution of Roman law’, including the stage of its expansion into the colonies and provinces during the Antonine and Severan periods, when it reached the highest point of conceivable perfection and systematicity [78, p. 4].

Another British legal scholar, Henry S. Maine, began his most influential work *Ancient Law* (1861) with a chapter entitled ‘Ancient Codes’, in which he examined the classical monuments of antiquity, including the Roman *Twelve Tables,* and contrasted these codes with the modern idea of codification in the European and English legal tradition, analyzing the ways in which the Roman model of legal systematization influenced it [67].

The article will trace the process of Roman legal expansion in the Celto-Roman province of Britain, the accompanying attempts at archaic systematization and regulation of the local legal order, with elements of the Roman technique of revision and adaptation of the traditional law of the Britons to the highly developed law of the Roman Empire.

The discussed in this paper fits into the more general concept of the Romanization of Britain, which can be understood as the spread of imperial cultural traditions (Latin language, Roman law, city management system, the techniques of constructing roads and public buildings, etc.), within the framework of the general process of interaction between the two cultures [3, pp. 200–203].

The Celtic communities of the Britons (Celtic *brith* – 'mottled', 'motley', Lat. *Britanni*) and their political unions (proto-states)[1] were part of the Roman Empire as a separate province of Britain (Lat. *Provincia Britannia*) from about the middle of the 1st to the beginning of the 5th centuries[2]. Roman rule was established in the central and southern parts of the island of Albion, with the exception of its northern part – Caledonia (Scotland) and the island of Hibernia (Ireland) [40, pp. 523–525].

In the political and legal history of Roman Britain, four main periods can be distinguished: 1) the *Caesarian period*, named in honor of the first Roman campaigns of the general Gaius Julius Caesar (55 BC – 43 AD); 2) *preparation for Romanization*, when a system of client kingdoms was formed, starting from the conquest of the island by Claudius (43 – 47) and up to the military viceregency of Julius Agricola (78 – 84); 3) the *period of federalization* and expansion of curial self-government, when Britain was divided into Upper and Lower with separate prefects and then became a diocese consisting of five provinces with a Romanized curial system (late 2nd – 3rd centuries); 4) the *period of confederative tendencies* up until Britain's exit from the Roman Empire (4th – early 5th centuries) [15].

In total, for more than three and a half centuries, Britain remained in the status of a peripheral Roman colony, which was reflected in its cultural, political, and legal history. At first, Roman Britain developed as a system of archaic *client kingdoms* based on local Celtic political-legal traditions [26, p. 43; 76, pp. 359–363], and then as a Romanized subject of the Roman federation with *curial self-government* and an adapted Brittonic-Roman legal system. But before the arrival of the Romans, the Celtic Britons did not have their own written law, all disputes were resolved by oral decrees of the leaders and in accordance with tribal customs, communicated in the Celtic and Old Gaulish languages [39]. There is clear linguistic evidence of close contacts between the southwest of Britain and Gaulish Brittany in the pre-Roman period [102, pp. 255–260].

During the written period of the genesis of law, the customary-law system of the Brittonic communities that had assimilated with the Roman conquerors was subjected to a fragmentary *legal expansion* of Roman legislative experience [81]. This is confirmed by the penetration of Latin state sources and legal texts, by attempts to 'domesticate' them through enshrining in the Brittonic-Celtic codes of customary law, and by the inclusion of individual norms of Roman law in the emerging traditional legal order. Gradually, the norms of mixed Romano-British vulgar law and the customs of the most ancient Brehon law of the pre-common law Ireland became the central link in the *early Anglo-Saxon tradition* [54; 92, p. 132–134].

The Concept of the 'Romanization of Britain' in Classical Studies and Its Criticism

In English classical studies, the concept of the 'Romanization of Britain' was developed in the works of P. Blair, R. Jackson, R. Collingwood, M. Millett, L. Revel, I. Richmond, S. Freer, F. Haverfield, and others. These researchers assigned a special role in this process to Romano-British urbanism and the cultural and legal transformation of Britain.

For example, Peter Blair notes that by the time of Caesar's first expedition to Britain in 54 – 53 BC, migration movements had led to the establishment of close ties of kinship as well as cultural-political ties between the Britons and Gauls. But the real history of Britain begins with the *Roman occupation* and legal expansion of the Romans, since they were the first to leave significant archaeological and documentary evidence [35, pp. 5–7]. It is clear that Rome's political intention was to 'rule' rather than simply 'conquer' another province, which implied establishing and maintaining social dominance over the local Britons for an indefinite period [46, pp. 11–12].

According to Rupert Jackson, author of *The Roman Occupation of Britain and Its Legacy* (2021), Roman occupation left an indelible legacy, including the creation of London as the British capital, the formation of the contours of the local road system, the division of England and Scotland, which was not part of the Roman province of Britain, as well as Roman law itself, which penetrated the islands and became 'part of our heritage, although it had

[1] In the *Anglo-Saxon Chronicles* the Britons are mentioned as a separate people of the continental Celts who came from the region of Armorica (Brittany), which at that time was a province of Roman Gaul [4, pp. 220-221].

[2] The ancient shores of Britain were first named *αι Βρεττανιαι* by the ancient Greek geographer Pytheas in the 330s BC [24].

an indirect influence' [59, p. 6]. As R. Hingley summarizes, 'we continue to live with the consequences of Roman expansion, since later societies absorbed, adapted and transformed Roman concepts, practices and materials' [57, pp. 20–22].

The cultural-historical definition of 'Romanization' was suggested by the Soviet researcher G. S. Knabe, who understood it as 'the process of creating a special civilization (when local elements interacted with Roman ones, merging into a dual economic, administrative, legal and cultural body) in the territories conquered or being under the influence of Rome' [10, pp. 644–645]. According to the Russian professor N. S. Shirokova, Romanization in Britain was a two-way process of interaction and interpenetration of Roman and local (Celtic) cultures, which found expression in mutual adaptation and the formation of a specific Romano-British culture [24, p. 10].

At the same time, there can be found more critical assessments of the phenomenon of Romanization of the Anglo-Saxon legal tradition. Opponents of the recognition of the historical process of Romanization in early Britain and of its influence on the political system and legal system of the province [29, p. 51–66] consider the term itself to be merely a fictitious historiographical concept and even 'somewhat of a curse word' [2, pp. 17–19]. They generally call for the deconstruction of the *Romanocentric view* of the world of the Roman provinces and of the dominant discourse on Roman imperialism using the tools of postcolonial theory [82].

For example, N. Terrenato assesses 'Romanization' in the colonies of the Roman Empire as global acculturation or cultural bricolage [94, pp. 20–27]. According to pre-revolutionary professor P. G. Vinogradov, the Romanization of Britain was merely a superficial facade concealing a more genuine cultural experience: 'there was no sufficiently numerous Roman population to form a tribal Roman element in law' at least due to the fact that Britain was a very remote province of the Roman Empire [5, p. 14]. In the Anglo-Saxon legal monuments called 'Barbarian truths', the traces of this element on the territory of England are almost completely absent.

Russian legal scholar P. I. Degay noted that 'although *Roman law*, as well as systematic regulation, had long been established in England, such a teaching had little influence on the practice and editing of laws there' [8, p. 111]. This position is supported by professor V. A. Tomsinov, who argues that we cannot speak about a serious influence of Roman law on English law up until the Norman Conquest [18, p. 124].

The difficulty of studying this issue in early medieval Britain is due to the insufficient archaeological evidence and not numerous written sources on the legal history of the province, a fragmentary narrative tradition describing this history, and numerous gaps (*Notes on the Gallic War* by Gaius Julius Caesar, *The Lives of the Twelve Caesars* by G. Suetonius Tranquillus, *Agricola* by Tacitus, *Roman History* by Dio Cassius, etc.) [93; 1, pp. 85–89]. Later works of St. Patrick and Gildas the Wise (*On the Ruin of Britain*, c. 547) demonstrate the survival of Latin literacy and a typically Roman education, training, and understanding of law in the elite society of Britain throughout at least the 5th – mid-6th centuries [6; 49; 88]. The Roman period in the political-legal history of Britain was also described by the archdeacon Henry of Huntingdon (Lat. *Henricus Huntendonensis*) in his *History of the English People* (c. 1135) [54].

In addition, when studying the Romanization of Britain, researchers encounter varying degrees of Roman influence in individual areas of the island [7, pp. 89-92; 53]. Numerous inscriptions in the west and partly in northern Britain reflect the practice of epigraphy, texts with living Latin and with Roman content [51, pp. 177–200]. Latin had a strong influence on legal texts in terms of their structure and external form, although they were often composed in Old English (Brittonic dialects) [83, pp. 87-91]. After the withdrawal of the Romans, the Anglo-Saxon tribes occupied most of Roman Britain, displacing, assimilating, or enslaving the local Romano-Britons [27, pp. 138-140]. However, even during the construction of Offa's Dyke, which separated Wales from medieval England, people to the west of it continued to consider themselves 'Romans', as evidenced by a large number of Latin inscriptions dating from the post-Roman period up until the 8th century [103][1]. Most Latin inscriptions in the corpus of material monuments and epigraphy are found in large cities, where Latin was the language used in record-keeping and trade, while Brittonic dialects remained the basis of oral communication [70, pp. 296–297].

To study the socio-economic and legal history of Roman Britain, one can also use documents such as land-grant charters, in particular the 'Llandaff Charters' (Lat. *Liber Landavensis*) – a collection of documents compiled in Wales around 1125, covering five hundred years of the history of the diocese, which contains more than a hundred land-grant charters transferring property to the Llandaff Cathedral, starting from the 6th century [86].

[1] Ancient Roman inscriptions from the province of Britain can be viewed on the website: https://romaninscriptionsofbritain.org /.

Of no small importance for understanding the legal life of the Romano-Britons are the wooden 'Vindolanda tablets' (Lat. *Tabulae Vindolandenses*) of the 1st – 2nd centuries, monuments of everyday writing in Roman Britain, several hundreds of which were discovered in the Roman fortifications of Hadrian's Wall in northern England. These tablets, made of birch, linden, and oak, contain information, written in ink in ancient Roman cursive, about the everyday life of legionaries, their reports, orders and instructions of military leaders, records made by merchants, women, and slaves. These tablets mention Londinium (Roman London), Gaul, and Rome itself. But the earliest written documents of the period of Roman Britain are considered to be the wax 'Bloomberg tablets' from London, dating from 50 – 80 AD. Some of them contain general correspondence, financial and legal documentation, including a judge's decision to schedule a pre-trial hearing, loan and sales records, accounting records, educational materials, etc.[1]

The Sources of Law and the Law Enforcement in the Roman Provinces of Britain

John Fortescue (c. 1394–1479), an English thinker, chief justice, and member of parliament, wrote about the stable continuity of Celtic legal customs and Roman laws in his treatise *De Laudibus Legum Angliæ* [45] in the second half of the 15th century. He emphasized that the English kingdom was initially populated by the tribes of the Britons and ruled by the Romans, and then again only by the Britons, after whom came the Saxons and Danes, and then finally the Normans began to rule. 'But during all this time, when several peoples and their kings dominated, England was nevertheless governed by the same customs that *continue* to operate in the present law' [98, p. 29].

There are not many written records of the application of Roman law in the real life of the ancient Romano-British, the social stratum of which developed mainly in southern Britain as a special subcategory of 'Roman subjects' [38]. In connection with the publication of the Imperial Edict of Caracalla (*Constitutio Antonina*) in 212, common citizenship was extended to the majority of free inhabitants of the Roman Empire[2]. Likewise, in Roman Britain all free male inhabitants were declared *de jure* Roman citizens and, therefore, subjects of Roman law. This edict is considered a turning point for the Romanization of outskirts and the provincialization of Roman law itself [100, pp. 199–209].

There is some evidence of the penetration and presence of Roman law in Britain of the late antiquity period [34, p. 48; 66, p. 303], where it was applied from case to case and sometimes took into account local customs and traditional norms if they were sanctioned by imperial constitutions [91, p. 108]. Thus, a peculiar legal symbiosis was created – *Roman vulgar law* [65]. As is noted by Sh. Frere, a supporter of the traditional line of 'interventionism', Rome encouraged and trained the elite strata of native Britons to accept Roman governmental institutions, study the Latin language, Roman cults and beliefs, customs and manners [47]. There are some extant literary testimonies regarding the use of Latin in Britain.

For example, Plutarch mentions in his treatise about a 'grammarian' Demetrius of Tarsus who taught in Britain in the Latin language around 80 AD, and then around 90 AD Roman poet Marcus Valerius Martial proudly wrote that his works were read in the province of Britain. Around 120, Roman orator Decimus Junius Juvenal mentioned some British lawyers who were taught Roman law in Latin by Gallic teachers [53, p. 34].

But this approach was more typical of the large cities of Britain, which often had the special status of a municipality, colony, or center of *civitatis*, populated by officials and the military. In smaller cities, and especially on the border with Wales, most Britons lived outside the city walls and retained some of the pre-Roman legal and religious traditions inspired by the surrounding ethnocultural landscape [81, pp. 74–75].

During that period, many local laws and customs in the provinces had to be *revised* so that they would better correspond to the applicable law of imperial Rome [52, pp. 12–29]. Gradually, the practice of collecting and recording Brito-Celtic and Welsh-Irish legal customs and legal rites emerged. The extant Old Irish collection *Trecheng Breth Féne* (Eng. *Triad / Triple of Judgments of the Freemen*), which was created about 850 and consists of almost 256 tercets (in the form of ternary enumerations), contains a description of ancient customs, legal norms, and behavior patterns of the Irish (triads 149-186) – what was commonly called the Fénechas (Irish *féne* – free peasantry, *breitheamh* – judge; Eng. *Brehon laws*), the ancient legal system of pre-Christian Ireland [64].

[1] These nearly fifty wooden plaques, made of fir and coated with dark wax for writing with a stylus, were found during excavations from 2010 to 2014 at the site of the Bloomberg building in London's financial district. In addition to 403 wax tablets, two ink tablets with texts written with a pen were found [97].

[2] The Edict of Emperor Caracalla (Greek papyrus 212 AD): 'I grant, therefore, to all [free persons throughout the Roman] world the citizenship of the Romans, [no other legal status remaining] except that of the dediticians; for it seems fair, [that the masses not only] should bear all the burdens, but participate in the victory as well'.

There is an assumption that the recording of these *Brehon laws* and Celtic customs began in the 440s (as St. Patrick ordered to compile a collection of them) and that the legendary British king Leir (909-849 BC) allegedly took part in this systematization [28, pp. 169-175]. The 'legal chapters' of the collection of Brehon law (triads from 149 to 186) deal with contracts, payment to workers, marriage and cohabitation, division of inheritance, renunciation of authority, taking oaths, confiscation of property, types of crimes, etc. [71].

In Briton-Celtic common law, the institutions of adoption, pledge, surety, clientage, rank hierarchy, privileges, judicial immunities, witness testimony, the imposition of a ban on property, etc. were widespread [31, pp. 360–365; 69, pp. 266–271]. Children of the nobility were often used as hostages to secure state agreements and contracts between the Celtic and Germanic states, which is well documented in the sources.

The Roman emperor Claudius, who conducted conquest campaigns in Britain, initiated some humanitarian reforms, including a ban on human sacrifice, practiced by the priests of the Gauls and by British druids (Old Irish *druí* – sorcerer; Middle Welsh *dryw* – prophet). The existence of Druidism on the island and the migration of the followers of the Celtic priesthood, banished from the continent, were one of the motives for the conquest of Britain, which allowed the Romans to finally destroy the corporation of Druids and their customary legal practice with magical rituals [24, p. 69]. As Julius Caesar himself testified in his *Notes*, local Druids used the Greek alphabet to verbally capture their practice, forbade it to be written down, not wanting to make their special teaching (Lat. *disciplina*) publicly available. They joined the 'order' of Druids voluntarily, and not on the principle of heredity, they did not pay taxes, were exempted from military service and other duties, and could engage in diplomatic and judicial activities.

In the literature on Celtic Druidism it is noted that they also performed legal functions when, during their annual meetings, they administered justice, tried cases over various crimes, and supplemented their sentences with a special sanction in the form of excommunication from the cult of those who did not obey their decisions [23, pp. 21–22]. They practically monopolized both civil and criminal jurisdiction. For their sacred practices in oak groves, the Druids often resorted to sacrificing captured criminals, whose bodies were walled up in a 'wicker man' and ritually burned. They sacrificed captives in order to discover the divine will in the flow of their blood and quivering entrails (Tacitus, Ann., xiv, 30; Diodorus Siculus, v, 31, § 3). As Pliny the Elder noted, Roman governors gradually eradicated the disgusting rites of Druidism, which included human sacrifice and even ritual cannibalism.

Imperial constitutions and comitial laws were declared the guiding source of law in the Roman provinces, including insular Britain [58, p. 87]. The imperial chancery sent legal acts in Latin to the praetorian secretariat (*Praefectura praetorio Galliarum*), from where they were sent in separate copies to all lower magistrates of the Gallic prefecture, including the vicar of Britain (*vicarius Britanniae*) [36]. In the provincial cities of Britain, the Roman municipal organization and judicial system were gradually adopted according to the model of the organization of the Roman *civitas*; public buildings were erected (basilicas, theaters, circus, baths, etc.) [63, pp. 147–148; 77, pp. 189–192]. At the beginning of Roman rule Britain was divided into 12 small tribal communities with self-government, while by the beginning of the 5th century there were already about three dozen such *civitates*.

As is known, after the division of the Roman Empire into four prefectures, Britain became part of the Gallic prefecture and was governed by a special governor – the vicar from York. Having become a diocese, it was divided into 4 subprovinces (Britannia Prima, Britannia Secunda, Flavia, and Maxima Caesariensis) headed by their own prefects [13].

The governors appointed in Britain were senators with the rank of ex-consul; legionary legates and *juridici* were elected from lower-rank senators; and *tribuni laticlavii* were future senators. Next to these officials were appointed two equestrians, a financial procurator, and a prefect of the fleet. There were three auxiliary criminal-legal colleges, which worked by analogy with Roman magistracies of the same name: 1) officials *tresviri capitales*, who had the right to arrest and punish fugitive slaves, conduct investigations, apply the death penalty, carry out night police surveillance in the city, and provide assistance in case of fire, 2) the college *quattuorviri viarum curandarum,* supervising the streets and depriving of civil rights, and 3) the college *decemviri stlitibus judicandis,* consisting of ten jurors for criminal trials [33, pp. 3–4].

The prefects of the provinces of Britain bore the title of *legatus Augusti pro praetore* and were often appointed from among the former consuls. They had to combine the roles of prime minister, head of the armed forces, and chief judge in important legal matters, maintain relations with local client chieftains, who often rebelled, travel around the regions of the province, listening to complaints and recruiting troops [16].

One of the most famous British governors, Gnaeus Julius Agricola (77/8 – 83/4), who carried out successful military activities (advancement in Scotland (Caledonia) as well as the conquest of the Brigantes, Selgovians, and Ordovices in Wales) and made a great contribution to the Romanization of Britain, implemented his own 'humanitarian' program [22, p. 231–240]: the spread of literacy, the introduction of the Latin language, extensive urban development, the construction of roads and forts [41, pp. 10–14]. However, according to the Roman historian Cornelius Tacitus, the 'voluntary adoption' of Roman customs and language (British Latin) by local tribes was more of a 'form of slavery than of civilization' (Tac. Agricolae. 19–21) [93].

One step below the governor in the social hierarchy was the procurator of the province, a knight and senior official in charge of financial matters, acocuntable directly to the Roman emperor [25]. Local pro-Roman aristocrats and 'Iron Age oligarchies' retained their administrative control and governance of traditional lands within the framework of Roman political structures and Roman law [73]. The city senate was formed from local landowners – native Britons and assimilated Romans. Most of Roman Britain was divided into districts corresponding to the traditional settlement areas of the Celtic tribes, each of which had its own Brito-Roman tribal capital and, presumably, its own city senate and magistrates.

This political connection with the tribal aristocracy, Romanized through the municipal government of the Romans, is evidenced by a surviving monument from the city of Venta Silurum, the administrative center of the conquered Silures tribe in south-east Wales. The Latin inscription in red letters on the Civitas Silurum stone (or Paulinus Stone), now displayed in the parish church in the south of Monmouthshire, testifies to the establishment of a kind of 'civil republic of Siluria' (an early city council)[1]. The Roman general and politician Tiberius Claudius Paulinus was the Roman governor (*legatus Augusti pro praetore*) in Lower Britain in 220 AD, and ruled as a just and merciful governor, allowing the establishment of self-governing councils in individual cities. This also happened in the Welsh city of Venta Silurum (now – Caerwent), contributing to the preservation of the Silurian identity of the local inhabitants and the longevity of the traditional legal culture the indigenous tribe [50, pp. 227–235].

Local city councils and judicial boards in Britain were formed according to the model of Roman magistracies. Senators in their council (or curia) elected special magistrates to consider criminal and civil cases using the norms of Roman and Brittonic-Celtic law. Magistrates presided at court trials and performed other duties in the city (supervision over water supply, roads, public works, etc.) [17, pp. 230–235].

The curiae of British cities were composed of Romanized *curiales* or *decuriones* from local residents who made decisions on local disputes [56]. They had to exercise their jurisdiction in accordance with the 'interdicts, edicts, formulas, promises (*sponsiones* and *stipulationes*), guarantees (*satis dationes*), protections and proscriptions' set out in the edict of the provincial governor [61, pp. 10–11].

The *Theodosian Code* (438) contains a *rescript* of Emperor Constantine addressed to the vicarius of Britain Papius Pacatianus (Pacatianus, Vicarius Britanniarum) concerning the duties of provincial decurions as municipal officials in the main cities (Codex Theodosianus. XI. 7.2) [87, p. 2].

At the same time, local leaders who expressed support and readiness to come to terms with Roman political and economic interests received the privilege from the metropolitan authorities to exercise local governance in accordance with Briton-Celtic customs and local laws if those did not contradict Roman law promulgated in the edict of the Roman governor. It is very likely that quite a few of the Briton-Celtic customs and even some of their legal institutions of individual cities in Britain were preserved [106, p. 334]. The Romans always treated ancient customs (Lat. *longa consuetudine*) with great respect and attention if those did not contradict positive law, in particular, the law of the municipality (Codex Justinianus. VIII. Tit. 53). In his work *On the Duties of the Proconsul*, Ulpian claimed that 'long-standing custom (Lat. *diuturna consuetudo*) should be observed as a right and law in cases where there is no written (law)' (Digesta. 1.3.33; 3.4.6).

In the large cities of the province (London, York, Colchester, Silchester, etc.), under the Flavian emperors (69–96) was established a special position of 'judicial legate' (Lat. *legatus iuridicus*; Eng. *senior law officer*) who was appointed from among experts in Roman law and the common law of Britain to assist local prefects in their ongoing efforts to Romanize the province [32, pp. 211–214].

[1] The Latin inscription translates to: 'For Tiberius Claudius Paulinus, legate of the Second Augustan Legion, proconsul of (Gallia) Narbonensis, imperial propraetorian legate of (Gallia) Lugdunensis. By decree of the ordines for public works on the tribal council of the Silures'.

There are several known names of such British *iuridicii*, who came from the capital of the empire and served in the position for several years: Gaius Salvius Liberalis (c. 78–83), Lucius Javolenus Priscus (c. 84–90s), Vettius Valens (130s), Sabucius Major Caecilianus (170s), and Antius Crescens Calpurnius (180 – 190s) [43].

Documents have come down to us concerning proceedings in the province of Britain with the participation of *legatus juridicus:* between 84 and 86 that was the famous Roman lawyer Lucius Javolenus Priscus (c. 60–120). As is known, having returned to Rome after his legate in Britain, he was accepted into the college of pontifical priests, whose duties included consulting on sacred law. Javolenus Priscus was a lawyer of high reputation, he headed the Sabinian legal school under Emperor Trajan, was the author of a number of legal works, widely known are his *responsa prudentium* and *quaestiones*, popular in the province of Britain. More than a hundred fragments of them are quoted in the *The Digest of Justinian*[1].

It is also a known fact that in British York other authoritative classical lawyers of the metropolis passed on their rich legal experience [104, pp. 103–110]. For example, Roman praetorian prefect and the greatest (maximus) jurist of the empire Aemilius Papinianus (c. 142–212), who accompanied emperor Septimius Severus on his last campaign to Britain in 207/208, for a certain period was the prefect of the city of York, and during his service at the 'forum of York' (Cassius Dio. Lib. LXXVII) [37, p. 261] even invited his fellow students, Roman jurists Ulpian and Julius Paulus [80, p. 457], as assessors. They were periodically called to Britain to judge complex legal disputes as arbitrators [85, pp. 318–329] or to act as judicial experts [87, pp. 5–6].

As T. Mommsen points out, Roman law developed rapidly in Britain, especially in the 2nd- 3rd centuries AD, as evidenced by the works of the lawyers Javolenus and Ulpian, who discussed and commented on court cases in Roman Britain [74, p. 194]. Describing the contribution of Papinian and Ulpian, Professor J.G. Wigmore recalls that 'for us, these two have a sentimental significance, since (together with Paul) they once administered justice on the island of Britain, being Roman magistrates and sitting in the Roman basilica' [106, p. 428].

The Transformation of Individual Legal Institutions in Roman Britain

Individual principles and structures of Roman law, in the same way as 'legal transplants' [99, pp. 516–518], were transferred to new soil and were actively applied in the paperwork related to the activities of the public authorities of Britain, as well as in resolving private disputes [62, p. 470]. According to English legal scholar P. Stein, the rules and doctrines of classical Roman law governed property, contract, and inheritance law in Roman Britain, and this state of affairs continued for quite a long period [87, pp. 2–3]. British historian E. Gibbon confirms that inheritance, alienation, and contracts were generally governed by the doctrines of Roman law, and Roman municipal rules generally prevailed in British cities [48, p. 365].

An important consequence of the spread of Roman power in Britain was the spread of the ancient form of ownership there [14, pp. 23–32]. Professor P. Winfield, like P. Vinogradov earlier, argues that the practice of granting land to individuals not burdened by the local customary law (*native folkright*) of the Britons may be associated with the Roman concept of property rights [101, p. 55]. The consequence of economic Romanization in Britain was the emergence of villas, which, like Roman ones, specialized in producing surplus agricultural products [12, pp. 161–186]. The Roman institution of wills also penetrated into the local pre-classical common law during the expansion of the Romans. Also inspired by Roman legal practice was the institution of juries, later represented in the form of a college of spiritual magnates at the sessions of county courts (*shire-moots*) [84, p. 65].

Gradually, *vulgarized criminal law* developed in Britain, in which individual provisions of Roman law and Brittonic-Celtic norms on crimes (*Romano-British criminal law*) were mixed [89]. Describing the state of ancient Celtic and Gaelic criminal law in his *Notes*, Julius Caesar mentions such crimes as murder, theft, and robbery, as well as usurpation of power and corruption (Gallic War. 1.4.1; 6.13.5; 6.16.5). Among the most severe punishments, he singles out the prohibition of criminals from performing religious rites and declaring them outlawed (Gallic War. 6.13.6-8), also mentioning the death penalty (Gallic War. 1.4.1; 6.16.4). But the most commonly applied sanction was the imposition of property penalties. Caesar describes them as '*praemia poenasque'* ('reward'

[1] Javolen Prisk is best known for his statement (D. 50. 17. 202) 'Every definition in civil law is dangerous, for it is rare that one cannot be overthrown' (Lat. *Omnis definitio in iure civili periculosa est; parum est enim, ut non subverti posset*) [75, p. 29].

and 'fines/penalties')[1], referring to the dual nature of property sanctions as a monetary restitution and as payment of the price of violated honor, which was known both in early Celtic laws and in Old Irish and Welsh criminal law [60; 64, pp. 125-127]. Under this local customary law, it was allowed for the plaintiff/victim to seize the criminal if the latter did not go to trial voluntarily [30, p. 22-30]. We see this practice in early Roman law with terminology related to Welsh-Irish law [42, pp. 272-275].

Early medieval historian Gildas the Wise (500–570) was quite critical of the traditional law of Roman Britain and local criminal law practice: 'In Britain there are <…> judges, but they are unjust. They sit in the judge's chair, but rarely strive to observe the norms of legal proceedings. <…> They keep many chained people in prisons, whom they, burdening with chains, torment more by their cunning than according to their deserts' [6; 21].

Professor W. G. Miller traced the origins of criminal law in Roman Britain by examining early monuments of Anglo-Saxon law. He noted that at the first stage of the formation of the *criminal law system*, they combined both civil (private) torts and specifically criminal (public) prohibitions and sanctions. But at the same time, 'the local society's ideas about what was criminal and punishable by law depended on the general traditional ideas about what was just and what was unlawful' [72, p. 48, 90–95].

During the period of Roman expansion, these criminal-law principles of the local Britons had to be conformed with such sources of law as imperial constitutions, comitial laws, and court decisions on individual cases, as well as commentaries on them made by Roman lawyers.

Subsequently, doctrinal influence was exerted by criminal-law fragments of codified acts of the Roman Empire, including Book 9 of the *Theodosian Code*, Books 47 and 48 of the *Digest of Justinian*. By analogy with the works of Roman lawyers, in Romano-British law crimes were divided into three categories depending on the method of prosecution: 1) *publica judicia*, 2) *extraordinaria crimina*, 3) *private delicte*.

Crimes of the category '*publica judicata*' included acts specifically prohibited by specific laws and carrying serious penalties, with or without capital punishment. Such most serious offenses were listed in titles 4–15 of Book 48 of the *Digest of Justinian* [95].

Attempting to give legal assessment of the enshrinement of *publica judicata* rules in Roman criminal law, English jurist J. F. Stephen pointed out that 'they did not seem to differ entirely from our modern laws on criminal consolidation, and their very formulations were as carefully worked out and firmly expressed as those of our own Acts of Parliament. <…> Just as the Consolidation Acts of 1861 define murder and theft' [90, p. 14].

The *extraordinaria criminum* category of crimes comprised offenses for which the victim could initiate criminal prosecution on their own initiative, but in this case no special investigation (*quaestio*) was carried out and no specific punishment was established. According to Book 47 of the *Digest*, these included family offenses, illegal abortion, professing new religions, extortion of a bribe, judicial corruption, false accusation, inflated prices, cattle theft, vagrancy, tomb robbery, etc. [96].

The third category – *privata delicta* – included offenses that entailed a certain result for the injured party (for example, *actio furti* and *actio injuriarum*).

Later, in the Anglo-Norman period, this Roman typology of crime based on the division into three groups, in a certain way, contributed to the formation of the famous English triad of crimes: high treason or felony; common law misdemeanors; private torts [90, p. 12].

J. F. Stephen rightly noted a certain similarity between the way in which, over time, the Roman categories of *publica judicia* and *extraordinaria crimina* formed a single type of crime entailing discretionary punishments, just as in English law were gradually eliminated almost all the essential differences between felony and misdemeanor [90, p. 13].

Conclusion

At the beginning of the 5th century, Roman rule in Britain ended, and the period of *sub-Roman Britain* began [55, pp. 11–15]. This phase of self-determination of Britain as a whole was rather short, limited to one-generation transition from the military-political power of the Romans and Britons to the new early-medieval domination of the Germanic tribes of the Anglo-Saxons (Lat.

[1] Caesar. Gallic War. 6.13.5: '[si caedes facta, si de hereditate, de finibus controversia est,] Druides rem decernunt, praemia poenasque constituent' (Lat.) translates to: '[If a murder has been committed, if there is a dispute about inheritance, or about boundaries], the Druids decide on the matter and determine the penalties and rewards'. But the meaning of the phrase *praemia poenasque* in the Caesar's work is not completely clear [67, p. 136].

adventos Saxonum), with the 420s considered to be the starting point of their invasion in the context of similar military-colonial migrations of the Germans [44, pp. 186–190].

But the legal domination of the Romans in Britain, which lasted for almost four centuries, left its noticeable mark on the genesis of the Anglo-Saxon legal tradition (*pre-common law*), along with the restructuring of the island's ethnopolitical structure according to the Roman model and other Roman heritage (the municipal system, the Latin language, the network of Roman roads, the rose as a symbol of the state, etc.). At the same time, the too noticeable difference in the level of civilization and legal literacy of the Roman conquerors and the conquered Briton-Celts resulted in the fact that Roman law, being an integral part of the metropolitan government apparatus, mainly regulated relations between the Romans themselves and then gradually 'left' the territory of the British Isles together with the last Roman legions [11].

The collapse of the Roman administrative and political structures in Britain, which became the first large province to leave the Empire in the 410s, led to a departure from Roman-style legislation, the abolition of the Roman tax system, the cessation of minting Roman coins, etc. As Gildas the Wise noted, at the beginning of the 6th century Roman law was still applied in the sub-Roman society of the Britons by inertia [55, pp. 3–12]. According to F. Pollock and F. W. Maitland, 'institutions which at present have the most domestic and English appearance may nevertheless ultimately be linked through Norman customs with the system of government of the Roman Empire as it developed in its last centuries' [79, p. xxxiii].

The codification of Roman law at the court of Roman-Byzantine ruler Justinian in the early 6th century did not go unnoticed in Britain. The resulting *Digest* would eventually have an indirect influence on the legislation and law enforcement practices of the post-Roman Anglo-Saxon kingdoms. As Professor F.W. Maitland has vividly put it, 'English law begins to speak just when Roman law has spoken what will, in a certain sense, be its final words', meaning that the Law Code of king Ethelbert (Æthelbert, 601/604) appeared precisely in the period after the codification under Byzantine Emperor Justinian [68, p. 165]. It is also important to emphasize that in 596 an envoy from Pope Gregory, who had already been familiarized with the *Digest of Justinian*, arrived in Britain – that was St. Augustine of Canterbury, the future Archbishop of Canterbury. He arrived with forty other Benedictine missionaries, whose personal law was Roman law, and who not only continued Christianization of the Britons, converting Kentish king Ethelbert, the author of the earliest code of laws, to the new faith, but also strengthened the position of Roman law, the legacy of which did not disappear in the Heptarchy but was only regaining its former positions. Roman missionaries drew the attention of the Kentish king to the technique of codification of law and to other reforms of the great Justinian. Being under this Roman-Byzantine influence, Ethelbert ordered to systematize the laws of the Kentish kingdom and to publish the first code of these laws in the 'Roman style' (Lat. *juxta exempla Romanorum*), which was directly indicated by Venerable Bede (Bede. Hist. eccl. II, Ch. 5) [85, p. 319]. This precedent of systematization of legal norms according to the 'Roman model' was followed by several later Anglo-Saxon kings.

According to English legal scholar P. Stein, after the conquest of Britain by the Germanic Anglo-Saxon tribes and regardless of their direct acceptance of the British-Roman heritage, 'some traditional remnants of the laws, as well as the religion of the Roman Britons, were preserved, not taken into special account by the conquerors, who were only concerned with the amount of rent in money or in kind' [87, p. 4]. As F. Pollock and F. W. Maitland correctly noted, 'German and Roman law were making advances towards each other. If the one was becoming civilized, the other had been sadly barbarized or rather vulgarized' (*barbarized/vulgarized Roman law*) in comparison with classical Roman jurisprudence [79, p. 15].

Over time, Roman law regained its 'intellectual expansion', doctrinally influencing the legal consciousness of local judges and scholars who stood at the origins of the national *common law tradition*, including the early medieval lawyers Glanvill and Bracton [9, pp. 38-40; 59, p. 6]. By the 7th century, most kingdoms of the Heptarchy had developed a methodology for studying Roman law and technique for its practical application in legal disputes [19, p. 664; 105, p. 103]. For several centuries, up until the 11th century, Roman law was taught and studied at the Cathedral School in York [84, p. 319].

Island lawyers began to closely analyze the political and legal concepts of the former metropolis and the legal texts of the ancient Romans in order to subsequently be able to incorporate these time-tested structures and rules into royal *codes of laws* and judicial practice. In the process of formation of the *early tradition of common law* with its unique specificity, a special role was played by the synthesis of late Roman, Celtic, and Germanic elements of legal proceedings and law-making techniques.

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Administrative-Law Regulation: The Subject, Method, System

The study was conducted within the framework of the scientific school 'Organization and administrative-law foundations of public administration in the penal system', functioning on the basis of the Academy of the FPS of Russia (Ryazan); https://apu.fsin.gov.ru/area/scientific_activities/nsch.php

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Introduction: *the article explores doctrinal problems associated with defining the subject of administrative-law regulation and identifying the main constitutional-law trends that influence the subject and system of modern administrative law.* ***Purpose:*** *to form an idea of the subject and method of administrative (administrative-procedural) law, to determine the place of these branches in the system of public law, to systematize the intra-branch structure of the sub-branches and institutions.* ***Methods****: systemic-structural method, used in forming an idea of the system of legal impact; methods of analysis, synthesis, induction, deduction, used in formulating the author's definitions; comparative-legal method, used to compare domestic (Russian) and foreign types of administrative-law regulation; historical-legal method, employed to consider the evolution of Russian and foreign legislation regulating administrative relations.* ***Results:*** *the study has found two interrelated categories – the 'subject' and 'method of legal regulation' – to be the criteria for dividing the legal system into branches, also serving as means of intra-branch structuring of sub-branches and institutions. The subject is a specific sphere of social relations, separate from others. The method of legal regulation is a single structured system of legal impact, represented by a unique (for each branch of law) set of combinations of primary methods of legal impact (first structural level), means of legal impact (second level), and techniques of legal impact (third level).* ***Conclusions:*** *taking into account the abovenamed criteria, it is proposed to distinguish the following branches within the system of public law: administrative law, administrative-procedural law, administrative-tort law, and judicial administrative-procedural law (administrative justice).*

Keywords: administrative-law regulation; administrative legal relations; system of administrative law; subject and method of legal regulation

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Information in Russian

Административно-правовое регулирование: предмет, метод, система

Исследование проведено в рамках деятельности научной школы «Организация и административно-правовые основы государственного управления в УИС», функционирующей на базе Академии права и управления Федеральной службы исполнения наказаний (г. Рязань); https://apu.fsin.gov.ru/area/scientific_activities/nsch.php

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Введение: *статья посвящена анализу доктринальных проблем, связанных с определением предмета административно-правового регулирования и основных конституционно-правовых тенденций, оказывающих влияние на предмет и систему современного административного права.* ***Цель:*** *сформировать представление о предмете и методе административного (административно-процессуального) права, определить место данных отраслей в системе публичного права, систематизировать внутриотраслевое построение подотраслей и институтов.* ***Методы:*** *системно-структурный метод, примененный при формировании представления о системе правового воздействия; методы анализа, синтеза, индукции, дедукции, использованные при формулировании авторских определений; сравнительно-правовой метод, давший возможность соотнести отечественный и зарубежные типы административно-правового регулирования; историко-правовой метод, позволивший рассмотреть эволюцию российского и зарубежного законодательства, регламентирующего административные отношения.* ***Результаты:*** *установлено, что критериями разделения системы права на отрасли, также служащими средствами внутриотраслевого построения подотраслей и институтов, являются две взаимосвязанные категории: «предмет» и «метод правового регулирования». Предмет – это определенная, обособленная от других сфера общественных отношений. Метод правового регулирования являет собой единую структурированную систему правового воздействия, представленную уникальным для каждой отрасли права набором сочетаний первичных способов воздействия (первый структурный уровень), правовых средств (второй уровень) и правовых приемов (третий уровень) воздействия.* ***Выводы:*** *с учетом обозначенных критериев предлагается выделить в системе публичного права следующие отрасли: административное право, административно-процессуальное право, административно-деликтное право и судебное административно-процессуальное право (административная юстиция).*

Ключевые слова: административно-правовое регулирование; административные правоотношения; система административного права; предмет и метод правового регулирования

Introduction

The system-forming category of any branch of law is the subject of legal regulation. A clear definition of the subject allows scientists and law enforcement officers to concentrate their efforts on the problem of systematization of the relevant branch, building of inter-branch links with other branches of the legal system. In this regard, defining the subject is a key research task for the further formation of a certain scientific doctrine. We must not forget that the subject of any branch is not a 'static' category that is not subject to change. It develops, changes and is adjusted under the influence of a system of political, legal, and socio-economic factors, including changes in the state and legal structure, constitutional reforms, modernization of the sectoral legislation itself, and the introduction of modern technologies into everyday life. This predetermines the need for a prompt response to the relevant changes in order to maximize the adaptation of the branch of law and sectoral legislation to new conditions. The study of the subject and system of administrative law is especially relevant today. This branch is a 'supra-branch foundation' not only for public law but

also for the entire system of state and social structure of the country. As Professor C. Coglianese rightly notes, 'the study of administrative law requires immersion in a wide range of issues of social science: both normative and positive political theory; individual and organizational behavior, as well as law, politics, sociology, public administration and economics' [63, p. 2]. It should be noted that the subject of administrative law is so voluminous and goes beyond the framework of a separate branch of law that it allows us to speak of a certain 'absorption' of related public law branches by administrative law, the formation of complex (interbranch) legal entities from them that combine the general principles of public administration (administrative or administrative-procedural law) with the peculiarities of its implementation in a particular area. This, in turn, gives rise to the emergence of such complex legal structures as administrative-economic, administrative-financial, military-administrative law [12, p. 40], or administrative-law regulation in the environmental, financial, information, penal, and other spheres. The attribution of the relevant sphere to administrative-law regulation is based on the public nature of social relations arising in the process of performance of their functions by bodies vested with administrative powers. In this case, the branch of legislation that actually regulates the relevant social relations is assigned a derivative (auxiliary) role. Naturally, such an approach is criticized by scientists from other public-law sciences, who point out the impossibility of regulating the relevant branch-specific relations by the norms of administrative and/or administrative-procedural legislation. For example, in the theory of financial law, a consensus has developed that relations directly related to the performance by government bodies of functions ensuring the planned formation, distribution, and use of state monetary funds necessary for the implementation of public tasks and the satisfaction of general social needs are regulated by the norms of financial legislation and are included in the subject of financial law [56, p. 24; 57, p. 37; 58, p. 59; 59, p. 14]. Representatives of environmental law also substantiate the position that management relations related to environmental protection constitute the subject of environmental law and are regulated not by administrative (administrative procedural) legislation but by the norms of environmental legislation [25, pp. 135-203; 16, pp. 187-256].

The problem of defining the subject of administrative (administrative-procedural) law and the formation of its system is aggravated by the unclear normative systematization and structuring of administrative and administrative-procedural legislation caused by the absence of a basic (preferably codified) federal law (or laws) regulating the foundations of public administration in the Russian Federation, including securing(s) the following:

– administrative relations as an independent and separate from others sphere of legal regulation, by analogy with tax, budget, water, forestry, land, and other legislation;

– a single structured system of executive authorities at all levels;

– the main (typical) state functions and the spheres of their implementation by bodies vested with authority;

– the procedure for the implementation of (typical) state functions;

– the process of interaction between private and public entities aimed at ensuring the implementation of the rights, freedoms, and legitimate interests of citizens enshrined and guaranteed by the Constitution of the Russian Federation.

The only codified normative legal act that can undoubtedly be classified as administrative and administrative-procedural legislation is the Code of the Russian Federation on Administrative Offenses[1]. Other normative legal acts of the federal, regional, and local levels can be classified as acts of administrative and administrative-procedural legislation conditionally due to the absence of a clearly defined and enshrined in legislation sphere of social relations regulated by the relevant legislation and referred to as 'administrative relations'.

The Subject of Administrative Law and the Main Trends That Shape the Understanding of This Category

Modern Russian administrative law has largely retained the features of the administrative law of the Soviet period. This is not surprising, in the Soviet Union, especially after the Great Patriotic War, basic scientific schools were formed that laid the foundations for modern administrative-law and administrative-procedural science. The reason for the formation and most dynamic

[1] Code of the Russian Federation on Administrative Offenses: Federal Law of the Russian Federation No. 195-FZ of December 30, 2001. *Collection of Legislative Acts of the Russian Federation*. 2002. No. 1 (Pt. 1). Art. 1.

development of administrative law in our country during the Soviet period was the objective need of the state for scientific support for the functioning of a unified system of public administration in the Soviet Union represented by an independent type of bodies performing organizational and administrative functions – state administration bodies[1]. The Constitutions of the USSR of 1936 (Chapter 5) and 1977 (Chapter 16) secured the constitutional and legal status of these bodies, granting them the appropriate powers in all areas of the social and state structure. Legal regulation of public administration activities was carried out by normative legal acts, which in their totality formed an independent and largest branch of Soviet law, namely, administrative law or the law of public administration. The organization of interaction between citizens, organizations, and the state in that historical period was built through direct targeted administrative influence exerted by government bodies on citizens and organizations. The direct influence of the subject of management (government body) on the object of management (citizen), direct and feedback links formed within the framework of such influence, as well as the interaction of the subject and object of management with the external environment, represented the only effective form of interaction between the authorities and society at that time. A citizen was perceived as an integral part of the state, whose activities should be subordinated to state interests and aimed primarily at solving national problems. In this regard, disputes and contradictions should not and cannot arise between the state apparatus and the citizen, since their joint creative activity is united by a common socially useful goal and is aimed at building, strengthening, and developing a socialist state, within the framework of which public and private interests are harmoniously combined. As Professor A. I. Elistratov noted, 'Soviet administrative law does not need that emphasized opposition of the administrative bodies and the court, which was supposed to serve as a guarantee of the public rights of citizens in a bourgeois state' [24, p. 7]. At the same time, law, performing the role of a universal regulator of social relations, ensured a single process of public administration. That is, public administration was carried out in accordance with and in fulfillment of the requirements of the legislation regulating social relations in two interconnected spheres: in the sphere of the internal organization of the state apparatus (primarily state administration bodies) and in the sphere of external power management relations between the state and citizens. The set of organically interconnected material and procedural norms and institutions regulating these social relations constituted the subject of administrative law – an independent branch of the Soviet legal system. Professor I. I. Evtikhiev characterized the specific features of the legal properties of legal relations that constitute the subject of Soviet administrative law as follows: 'in terms of the parties involved – one of the parties to an administrative-legal relationship must necessarily be an executive-distributive body; in terms of the form – it arises not through contractual agreements between the parties, but by virtue of the order of the authorized governing body; in terms of the conditions of occurrence – the issuance of an order by the administration establishing this administrative-legal relationship is the responsibility of the administration upon the occurrence of certain specific facts or conditions (excluding the optionality feature); in terms of content, an administrative-legal relationship is not associated with property relations; in terms of jurisdiction – dispute resolution and the imposition of sanctions related to the existence of administrative-legal relations and administrative-law torts occurs in an administrative (not judicial) manner' [23, pp. 10-11]. As the author notes, administrative-legal relations are characterized by the totality of all the designated legal properties [23, p. 11]. Thus, administrative legal relations of the Soviet period were linear (relations between the manager and his subordinates), imperative, non-property, and extra-judicial in nature.

The system of administrative law, which included a general and a special part, was generally recognized. The general part covered general issues of public administration. The special part was devoted to public administration in individual sectors: defense, foreign affairs, foreign trade, justice, industry, agriculture, public health, and social security [23; 44; 51]. The system of administrative law presented in the Soviet period is still the most widespread in the science of administrative law [2; 5; 8; 9; 10; 31].

[1] Constitution of the Union of Soviet Socialist Republics: approved by the Extraordinary VIII Congress of Soviets of the USSR on December 5, 1936 (with subsequent amendments and additions). Available at: https://constitution.garant.ru/history/ussr-rsfsr/1936/red_1936/3958676; Constitution of the Union of Soviet Socialist Republics: adopted at the Extraordinary Seventh Session of the Supreme Soviet of the USSR of the Ninth Convocation on October 7, 1977. Available at: https://constitution.garant.ru/history/ussr-rsfsr/1977/red_1977/5478732/.

With the adoption of the Constitution of the Russian Federation[1] in 1993, the nature of the relationship between the state, society, and citizens changed. A citizen ceased to be an object of administrative influence but is perceived as a subject of administration whose rights and freedoms are the highest value for the state and must be ensured by public authorities at all levels. This entailed a change in the system and structure of public authorities, the state's rejection of the terms 'public administration' and 'public administration body'. The bodies of public administration were replaced by executive authorities formed in the interests of the citizens of the country and called upon to implement executive and administrative functions aimed at ensuring and protecting the rights and freedoms of man and citizen enshrined in the Constitution of the Russian Federation and Russian legislation. Ensuring the fundamental constitutional rights and freedoms of man and citizen are the main target guidelines and priority areas of activity of all state bodies for the modern Russian state. The modern Russian state not only does not deny the possibility of conflicts and disputes between private and public entities but, on the contrary, guarantees an independent and impartial consideration of the relevant dispute and the issuance of a fair decision in accordance with the law. The fundamental change in the nature of interaction between citizens and the state was due to the fact that direct state and administrative influence, which had a subject-object nature, was replaced by interaction between equal entities. The state in its relations with citizens does not manage them but forms, through the implementation of the rule-making function, a legal framework in which citizens and organizations are provided and guaranteed opportunities to independently and fully implement the rights and freedoms enshrined in the Constitution of the Russian Federation and legislation. Only in the case of going beyond the established legal framework does the state resort to direct administrative influence through the use, among other things, of measures of state coercion. Relations between private and public entities are relations of two types: administrative and organizational. A similar division of types of influence/impact is found in the administrative law of China, where 'private individuals act as an object of administrative management and a partner of a state body' [69, p. 52]. Management relations are characterized by imperativeness, legal inequality of its participants, and the ability of the entity vested with authority to apply measures of state coercion. Organizational relations are associated with the order (process, procedures) of implementing certain activities. As E. S. Sergeeva states, 'the formal feature of basic organizational relations is their close connection with the procedure, which presupposes the following conditions: a specialized method of implementation; a written form of consolidation; clearly established procedure and terms of implementation' [42, pp. 168-169]. Procedural regulation of the activities of public administration bodies is given a special place in the system of administrative law in the United States. As W. F. Fox notes, 'most modern courses in administrative law analyze how cases pass through a particular department, and not the essence of the cases themselves' [64, pp. 1-2].

Another trend that has a direct impact on the subject of administrative law is the trend of subject-based 'branching' of the public-law spheres related to administrative law, i.e. the formation, along with administrative law, of such branches of law as: financial law, environmental law, information law, energy law, land law, water law, forest law, etc. The subjects of these branches include, among other things, management relations associated with the implementation of public authorities' powers in the relevant sphere of social relations, this clearly defined by the subject of the branch. Does this mean that administrative and administrative-procedural legislation ceases to have its regulatory impact on social relations in these branches of public law? The answer to this question is that administrative legislation plays a kind of constitution in the sphere of public law regulation and ensures regulation of the most general strategic issues of the organization and implementation of executive and administrative activities by public authorities, forming a domestic model of public administration. The specifics of the implementation of this model, reflected in industry legislation, must take into account the requirements of administrative legislation and not conflict with it.

Finally, the third trend that has a direct impact on the content of the subject of administrative law is the place of administrative and administrative-procedural legislation in the system of legal regulation of social relations, as enshrined in the Constitution of the Russian Federation. In accordance with Item 'j' of Article 72 of the Basic Law, administrative and administrative-procedural legislation, which are the basis of these legal branches, are under the joint jurisdiction of the Russian Federation

[1] *Russian Gazette*. 1993. 25 December. No. 237.

and its subjects. The following conclusions can be drawn from the legal prescription specified in the Constitution of the Russian Federation.

Firstly, the legislator singles out the norms of administrative-procedural legislation as an independent category, separating them from substantive administrative-law norms, thereby forming at the constitutional level the legal basis for the subject-based separation of administrative-procedural law as an independent branch of the Russian legal system.

Secondly, as the legislation refers to the joint jurisdiction of the Russian Federation and its federal subjects, its sources are federal laws as well as laws adopted in accordance with them and other normative legal acts of the federal subjects of the Federation (pursuant to Part 2 of Article 76 of the Constitution). In this regard, the question arises: 'Can federal constitutional and federal laws not referred to the joint jurisdiction of the Russian Federation and its subjects refer to acts of administrative or administrative-procedural legislation, that is, be sources of administrative law?'. The answer to this question is of fundamental importance for defining the content of the subject of administrative law and its sources. To answer it, it is necessary to refer to the decision of the Constitutional Court of the Russian Federation. Resolution No. 1-P of January 9, 1998 'On the case of verifying the constitutionality of the Forest Code of the Russian Federation'[1] established that federal constitutional and federal laws not referred to the joint jurisdiction of the Russian Federation and its subjects can regulate forest relations, becoming sources of forest legislation. Drawing an analogy with administrative and administrative-procedural legislation, it can be argued that its sources can also be federal constitutional and federal laws that are not referred to the joint jurisdiction of the Russian Federation and its subjects. The provision formulated in Part 2 of Article 76 of the Constitution of the Russian Federation – that federal laws are issued on matters of joint jurisdiction of the Russian Federation and subjects of the Russian Federation and laws and other regulatory legal acts of subjects of the Russian Federation adopted in accordance with them – only vests subjects of the Russian Federation with rule-making powers in areas attributed by the Constitution of the Russian Federation to the joint jurisdiction of the Russian Federation and its subjects. This provision ensures the implementation of the basic constitutional principle of building the Russian state – the principle of federalism, and cannot be interpreted as a prohibition or obstacle to the implementation of regulatory and legal regulation of relevant areas by federal constitutional and federal laws. In accordance with Item 'a' of Article 71 of the Constitution of the Russian Federation, the adoption of all federal laws belongs to the jurisdiction of the Russian Federation, and not to the subjects of joint jurisdiction of the Russian Federation and its subjects, and is carried out exclusively by the State Duma of the Federal Assembly in accordance with the procedure regulated by Articles 104-108 of the Constitution of the Russian Federation. The only feature of the consideration of draft federal laws on subjects of joint jurisdiction of the Russian Federation and subjects of the Russian Federation is the procedure for their coordination with the subjects of the Russian Federation (Article 109)[2]. Thus, sources of administrative and administrative-procedural legislation may be federal constitutional, federal laws, and by-laws adopted in accordance with them. These normative legal acts must have an inter-branch (complex) nature of legal regulation. For example, Law of the Russian Federation No. 5473-I of July 21, 1993 'On Institutions and Bodies Executing Criminal Penalties in the Form of Imprisonment'[3], being a source of administrative law, contains the norms of such branches of law as financial law (Article 7 'Financial support of the penal system', Article 34 'State insurance and compensation for damage in the event of death (perishing) or injury of workers and employees of institutions executing punishment and pre-trial detention facilities'), civil law (Article 11 'Property of the penal system'), criminal-executive law (Article 15 Execution of criminal penalties in institutions executing punishment', etc.)

Thirdly, the categories 'administrative-procedural legislation' and 'legislation on administrative proceedings' are not identical. Legislation on administrative proceedings is an element of the unified system of federal procedural legislation, which, in accordance with the Constitution of the Russian Federation, is under the exclusive jurisdiction of the Russian Federation (Item 'n' of Article 71). This conclusion is based on the provision of Part 1 of Article 2 of the Code of Administrative Procedure of the Russian Federation, in accordance with which the procedure for implementing administrative proceedings is regulated exclusively by federal legislation[4]. Thus, the norms of the Constitution of the Russian Federation differentiate procedural legislation in the public law sphere into two types: proceedings on administrative

[1] Collection of Legislative Acts of the Russian Federation. 1998. No. 3. Art. 429.

[2] Regulations of the State Duma: Resolution of the State Duma of the Federal Assembly of the Russian Federation No. 2134-II GD of January 22, 1998. Available at: http://duma.gov.ru/duma/about/regulations/.

[3] Bulletin of the Congress of People's Deputies and the Supreme Council of the Russian Federation No. 33 of August 19, 1993. Art. 1316.

[4] Code of Administrative Judicial Procedure of the Russian Federation: Federal Law of the Russian Federation No. 21-FZ of March 8, 2015. *Collection of Legislative Acts of the Russian Federation*. 2015. No. 10. Art. 1391.

cases regulated by the Code of Administrative Procedure of the Russian Federation (i.e. judicial administrative process) and administrative process regulated by legislation referred to the joint jurisdiction of the Russian Federation and its federal subjects, represented by the Code of the Russian Federation on Administrative Offenses, laws of the federal subjects, and other regulatory legal acts at the federal and regional levels regulating the procedure for interaction between the court, bodies vested with powers, and private entities in the consideration of individually defined cases and the issuance of administrative or judicial decisions on them.

All of the above trends characterize:

– the constitutional-law foundations of administrative and administrative-procedural legislation;

– the modern system of public administration in Russia, the content and nature of the administrative impact exerted on private-law perties in the process of performing public functions;

– the relationship between administrative law and other public-law branches of the Russian legal system, including the nature and degree of 'penetration' of administrative-law regulation into other public-law branches;

– the increased role of the court in matters of ensuring the balance of private and public interests in the process of interaction between the state apparatus and citizens due to the formation of the national system of administrative justice.

Thus, modern administrative legal relations constituting the subject of administrative law are social relations regulated by administrative and administrative-procedural legislation, namely:

1) relations developing within the executive power system, including between bodies and organizations vested with administrative powers, and supra-branch externally authoritative management relations;

2) general organizational relations in the sphere of interaction between bodies vested with administrative powers and citizens and organizations;

3) protective administrative-tort relations;

4) relations in the sphere of judicial protection of public interests of the state, as well as of the rights and legitimate interests of private law entities, from illegal actions (decisions) of public administration bodies.

The range of legal relations that constitute the subject of administrative and administrative-procedural law allows us to assert that this branch is not similar to foreign models of administrative-law regulation and has significant distinctive features. For example, the administrative law of the PRC is a branch designed to primarily regulate relations in the sphere of control over the activities of state power. According to Professor Z. Wang: 'In the legal system of China, administrative law is defined, in essence, as the law related to control over the activities of the executive branch. The main goal of administrative law is to preserve the powers of the government within their legal boundaries in order to protect citizens from abuse' [69, p. 52]. In the USA, according to Professor J. L. Mashaw, administrative-legal relations can be differentiated into three categories: constitutional-administrative relations related to the approval, appointment, and removal from office of the highest officials of the country who have organizational and administrative powers; organizational and administrative relations in the sphere of the internal structure of the system of administrative bodies and the order (procedures) for the implementation of their administrative actions; relations in the sphere of judicial supervision over the legality of the actions of administrative bodies [65, pp. 991-992]. At the same time, as the author notes, the procedural aspects of organizational and administrative relations 'dominate the current concept of administrative law so much that it allows us to speak of this area as an 'administrative process', and not as an area of administrative law' [65, p. 978]. In European countries, administrative relations are considered mainly in the context of administrative proceedings (administrative justice). According to P. Craig, it was the EU courts that made the main contribution to the development of the theory of EU administrative law, filling it with basic principles such as proportionality, fundamental rights, legal certainty, legitimate expectations, equality, and procedural fairness [62, p. 5]. Z. Akhtar, analyzing the administrative law of France, points to the ever-increasing role of judicial supervision mechanisms over executive and administrative activities in the sphere of relations between citizens and officials of administrative bodies [61, p. 224].

An analysis of scientific literature reveals a global trend of expanding the scope of administrative-law regulation by including judicial-administrative relations in the subject of administrative law. This trend, regardless of the form of government and political system, is quite natural and follows from the very essence of democratic institutions based on the rule of law and the principle of separation of powers. In China, administrative litigation has become a generally recognized feature of the political and legal landscape of the country after the entry

into force of the Administrative Procedure Law of 1989 [68, p. 218]. For modern Russia, the EU countries, and the USA, judicial control and supervision over the activities of administrative bodies has always been a mandatory and most important area of legal regulation for society. In all states of the Asian region, the processes of expanding the judicial presence in the sphere of administrative relations are also taking place, but with varying degrees of intensity [68, p. 213].

However, it would be wrong to assert that administrative relations in the EU states are exclusively relations in the sphere of administrative proceedings. In Germany, for example, scientists distinguish three approaches to classifying social relations as administrative-legal ones:

– the theory of subordination, based on the application of the method of 'superiority and subordination' between bodies of authority and citizens;

– the subject theory: legal provisions that grant the right or oblige a state body to perform a specific public function;

– the theory of interests, reflecting the public goals (interests) underlying the emergence and development of the corresponding legal relations [67].

To summarize, we note that the subject of domestic administrative law is unique, which is due to: the peculiarities of the Russian legal system and legislation, including the presence of independent administrative-protective legislation, which is not typical for most foreign states; the supra-sectoral nature of both externally authoritative administrative and organizational relations that constitute the subject of this branch.

Doctrinal Approaches to Characterizing the Administrative Law System

Leading scholars in the field of science of administrative law have made repeated attempts to provide doctrinal substantiation for new models, these meeting the requirements of modern legislation, of the construction of the administrative law system. These attempts focused on the identification of the most significant and consistent criteria that allow structuring this system as well as on the identification of system-forming blocks (sub-branches, institutions) in it.

I would like to outline some modern approaches to characterizing the administrative law system.

First approach: preservation and adaptation of the administrative law system developed during the Soviet period to modern socio-political conditions and current legislation, with dividing it into general and special parts [3; 4; 11]. The general part includes issues characterizing the foundations of public administration:

– forms, methods, measures of public administration;

– ensuring legality in public administration;

– administrative responsibility;

– administrative process;

– civil service, etc.

A special section is devoted to the specifics of public administration in the economic, socio-cultural, and administrative-political spheres.

Second approach: division of administrative law into two independent branches of law:

1) administrative law [2, 6], including general (fundamentals of public administration; subjects of administrative law; forms, methods of public administration; ensuring legality in public administration; administrative offenses and administrative liability; civil service, etc.) and special (public administration in various spheres and industries) parts;

2) administrative-procedural law [13], including the theory of administrative process and the legal foundations of administrative and procedural activities, and administrative legal proceedings.

Third approach: division of administrative law into three blocks: management law; police law; administrative justice [18].

Fourth approach: preservation of the division of administrative law into general and special parts proposed in the Soviet period, but on other grounds. The first block in the administrative law system is general administrative law, which includes 'legal norms that apply equally to all areas of organization and functioning of management' [48, p. 439]. The general administrative law system includes 'those rules, norms, principles, concepts, and legal institutions that are applicable to all areas of administrative law; in other words, it regulates the typical, comparable, common in the management system' [48, p. 439] – this is the concept and essence of public administration; subjects of management actions; structure and content of public administration; management process; administrative coercion; administrative-jurisdictional process; administrative process or administrative-law judicial protection of the rights and freedoms of citizens from illegal actions and decisions of management bodies and officials; compensation for harm and damage caused to individuals and legal entities in an administrative manner; control and supervision in the sphere of public administration [34; 35]. The special part unites legal norms regulating specific areas of management activity, for example: construction law, road law, business law, police law, service law, etc. [48, p. 441].

Fifth approach: rejection of the traditional division of administrative law into general and special parts and division of this branch into the following blocks: the nature and system of administrative law; subjects of administrative law and process; administrative-law regulation; the mechanism of administrative-law management, including management in various spheres; administrative process [55].

Sixth ('functional') approach: identification, analysis, and systematization of the basic functional spheres of social relations regulated by administrative law, including: the sphere of administrative rule-making; the sphere of administrative granting; the sphere of administrative obligation; the sphere of administrative incentives; the sphere of administrative sanctions; the sphere of counteracting administrative torts; the sphere of resolving administrative disputes; the sphere of counteracting administrative cases [12]. Administrative-procedural regulation is represented by the 'integration' theory of administrative process, which includes two types of process: judicial administrative process and executive (extra-judicial) administrative process [50, 52]. The main target guidelines of the administrative process are: procedural support for the implementation of the main functions by state bodies and bodies vested with administrative-public powers and legal proceedings in administrative cases.

Seventh approach: inclusion in the system of administrative law, in addition to the general and special parts, of the third part, the content of which is the administrative law of foreign countries [1] or administrative-procedural activity [7].

Eighth (scientific-qualifying) approach: it reflects the legally permissible areas of research in administrative and administrative-procedural law enshrined in the passport of scientific specialty 5.1.2. 'Public law (state law) sciences (hereinafter referred to as the passport). In the passport, the term 'administratively' is used 8 times – in the context of administrative coercion measures, proceedings on administrative offenses, administrative procedures, and administrative justice. (For comparison, the passport of specialty 12.00.14 'Administrative law; administrative process' (2017), characterizing all areas of public administration and interaction of private and public entities, mentions the term 'administratively' 43 times[1].) The passport proposes a new term 'publicly', which is used more than 20 times and replaces, or rather absorbs, the term 'administratively'[2]. The passport also does not mention such a basic unifying administrative-procedural category as 'administrative process'. It can be stated that a 'quiet revolution' has taken place in the science of administrative law, expressed in a significant narrowing of the sphere of legal regulation, which is the subject of administrative and administrative-procedural law and, as a consequence, a reduction in the corresponding areas of scientific research. Not a single approach to the characterization of the administrative law system formed in science and outlined in this paper corresponds to such a 'narrow' understanding of its subject.

The impression is that when formulating the passport of specialty 5.1.2. 'Public law (state law) sciences', its author (authors) took as a point of departure the requirements of Item 'j' of Article 72 and Part 2 of Article 76 of the Constitution of the Russian Federation, which refer administrative and administrative-procedural legislation to the joint jurisdiction of the Russian Federation and its federal subjects, the sources of which are exclusively federal laws, as well as laws adopted in accordance with them and other regulatory legal acts of the subjects of the Federation. Such normative legal acts are, for example: the Code of the Russian Federation on Administrative Offences, Federal Law No. 59-FZ of May 2, 2006 'On the Procedure for Considering Appeals from Citizens of the Russian Federation' (hereinafter referred to as Federal Law No. 59-FZ)[3], etc. Other normative legal acts regulating the implementation of public administration in such areas as information, financial, customs, environmental, natural resources, etc., in the areas of state control (supervision), state and municipal service, according to the developers of the passport, do not relate to administrative and administrative-procedural legislation and do not constitute the subject of these legal branches. The term 'public-law' is used with regard to the designated areas.

It would not be an exaggeration to say that such a variety of sometimes contradictory and inconsistent approaches to the content and characteristics of

[1] On Approval of the Nomenclature of Scientific Specialties in Which Academic Degrees Are Awarded: Order of the Ministry of Education and Science of the Russian Federation No. 1027 of October 23, 2017. Access from the legal reference system 'Garant'.

[2] On Approval of the Nomenclature of Scientific Specialties in Which Academic Degrees Are Awarded, and Introduction of Amendments to the Regulation on the Council for the Defense of Dissertations for the Academic Degree of Candidate of Sciences and for the Academic Degree of Doctor of Sciences, approved by Order of the Ministry of Education and Science of the Russian Federation No. 1093 of November 10, 2017: Order of the Ministry of Science and Higher Education of the Russian Federation No. 118 of February 24, 2021. Access from the legal reference system 'Garant'.

[3] Collection of Legislative Acts of the Russian Federation. 2006. No. 19. Art. 2060.

the system of administrative law does not exist in any other branch. The reasons here are objective and lie in the subject of administrative law, the diversity, and unsystematized nature of its sources.

Thus, the reliance of scientists on the subject as the main and only criterion for dividing the legal system into branches, which also serves as a criterion for the intra-branch construction of sub-branches and institutions, does not allow reaching a consensus regarding the place of administrative law in the public law system and the internal construction of this branch.

The Method of Legal Regulation of Administrative Relations

The central elements in the system of legal regulation allowing to differentiate branches of law, to separate independent branches from complex legal entities are the subject and method of legal regulation of social relations. As rightly noted by professors N. I. Matuzov and A. V. Malko: 'The division of law into branches and institutions is based on two criteria: 1) the subject of legal regulation; 2) the method of legal regulation. They act as system-forming factors' [30, p. 399]. Discussions about the method of legal regulation, which serves as an independent criterion for dividing legal relations into branch types, are characteristic not only of the domestic legal system. As noted by professor B. G. Mattarella, many scientists use the criterion of the 'power and subordination' method to classify social relations as administrative-legal [66]. According to professor S. D. Knyazev: 'it is precisely in the method of administrative law that the changing needs of management relations in legal regulation, adequate to those radical political and economic changes, should be reflected' [26, p. 48].

As a methodological basis for substantiating the place of administrative and administrative-procedural law in the system of public law, as well as the intra-branch structure of these branches, I would like to highlight the concept of a single subject and method of legal regulation formulated by Professor V. D. Sorokin [45]. According to the scientist, 'the method of legal regulation can exist and perform its social function only as a system of three initial methods of impact – permission, prescription, and prohibition' [46, pp. 87-88]. Understanding the method of legal regulation as 'a system of closely interacting legal impact methods of influencing people's behavior in the form of permission, obligation, and prohibition' is quite common today in legal literature [36, p. 19; 37, p. 27; 53, p. 9; 54, pp. 93-94]. As Professor V. L. Kulapov rightly notes, 'a diverse combination of three methods of legal impact within the method of legal regulation is an indicator of its flexibility and universality, which makes the method of legal regulation one of the most effective means of organizational state-authority influence on the behavior of people in society' [27, p. 103].

Primary methods of legal impact are not the only categories that characterize the method of legal regulation. According to V. D. Sorokin, 'the method of legal regulation includes a set of legal methods, means, and techniques of legal impact exerted by social management systems on the socio-legal environment as a whole and on its constituent elements' [46, p. 65]. In solidarity with the position of the scientist are modern researchers who also consider the method of legal regulation as a system of interconnected techniques, means, methods of legal impact on the behavior of people, with the help of which the established legal order in society is ensured [14, p. 144; 19, p. 36; 33, pp. 202-203; 43, pp. 80-96]. As E. K. Shcherbakova notes: 'methods of legal regulation combine in a certain ratio the techniques, means, and methods of legal impact that are necessary and sufficient to achieve legally significant goals' [60, p. 13].

Thus, primary legal methods, legal means, and legal techniques together form a system of legal impact that characterizes the method of legal regulation of social relations. This system is structured and consists of three levels. The upper level of the structure is a method of legal regulation consisting of a system of legal methods of influencing the object and subject of legal regulation [36, p. 19]. Each method of legal impact, as V. L. Kulapov notes, is represented by a system of means of legal impact. A legal means, in turn, is a system of techniques of legal impact [28, p. 330].

Scientific research into the method of legal regulation has been mainly focused on a systemic analysis of the primary legal impact methods (permission, prescription, and prohibition) and their unique combinations in various branches of the single legal system. As to such categories as 'means of legal impact' and 'techniques of legal impact', they have been studied insufficiently. Meanwhile, as fairly noted by A. V. Milkov, 'the problem of defining the concept of 'legal means' is quite acute since its use is often arbitrary, not supported by appropriate analysis, and does not provide a clear idea of its semantic boundaries' [32, p. 113]. Professor M. N. Marchenko identifies this category with such categories as 'legal phenomena', 'legal

factors', 'legal conditions', which can be considered interchangeable [39, pp. 358-359]. At the same time, one should agree with the position of Yu. B. Baturina that 'a legal means is an independent scientific concept. In the system of concepts of legal theory, it does not play an additional, auxiliary role but the role of an independent category that reveals its side of the law, as do other concepts of legal theory' [17, p. 135].

Characterizing the category 'legal means', Professor S. S. Alekseev wrote that, from a general theoretical standpoint, these are 'institutional phenomena of legal reality that embody the regulatory force of law, which play the role of its active centers' [15, p. 15]. This definition allows us to come to the following conclusions characterizing the content of the category of 'legal means': firstly, these are tools that ensure the implementation of legal norms through active influence on the social environment, the management system or certain subjects; secondly, this is an objectively existing phenomenon – a mandatory institution of the legal system. P. V. Popinov and E. K. Shcherbakova also define a legal means as a legal instrument through the application of which the goals and tasks of legal regulation are achieved, and the interests of legal entities are satisfied [38, p. 7; 60, p. 12]. In turn, B. I. Puginskiy points out that this category is complex and represents 'combinations (combinations) of legally significant actions performed by subjects with a permitted degree of discretion and serving to achieve their goals (interests) that do not contradict the legislation and interests of society' [40, p. 87].

Summarizing the above, we note that the category 'legal means' is a complex legal instrument of active influence of law on the social environment, the management system or certain subjects, through the implementation of which the goals are achieved, and the tasks of legal regulation are solved.

Legal impact techniques, in turn, characterize the internal content of legal impact means, being the primary category in the system of legal impact. Legal techniques express 'consistent and accentuated use of legal impact means in the process of their influence on the will and consciousness of the addressees' [28, p. 330].

The set of methods, means, and techniques of legal impact is a single structured system of legal regulation of social relations that has a unique (for each branch of law) set of combinations of primary methods of legal impact (the first structural level), means of legal impact (the second level), and techniques of legal impact (the third level).

Within the framework of such a three-level structure, the primary methods of legal impact determine the basic type of legal regulation. The modern legal doctrine allows us to distinguish three basic types of legal regulation: permissive (civil law), prescriptive (public law), prohibitive (criminal law). The presented approach, associated with the differentiation of areas of scientific knowledge in law by the primary method of legal impact, is, today, the main one and is used in the certification system of scientific and pedagogical personnel. Thus, legal sciences are divided into three areas: 5.1.2. 'Public law (state law) sciences', with the prescriptive primary method of legal impact being predominant; 5.1.3. 'Private law (civil law) sciences', with the permissive primary method of legal impact; 5.1.4. 'Criminal law sciences', with prohibition as the main primary method of impact. In addition, procedural law is organically 'integrated' into the system of public law, private law, and criminal law regulation.

Legal means are legal instruments with the help of which the vector direction and target guidelines of legal impact are determined. The use of an independent category 'legal means' allows us to detail the corresponding primary method of impact, highlighting in it such features as the grounds, nature, and goals of the relationship between the participants in the corresponding legal relationship. These features are the grounds for dividing legal impact means into separate types.

Legal techniques is the most numerous legal category. Techniques reflect individual industry features and tactical tasks solved by a participant in a legal relationship during the direct implementation of legal impact.

The Place of Administrative and Administrative-Procedural Law in the System of Public Law

Public law is characterized by prescriptive primary method of legal impact. This method equally applies to the state apparatus and to citizens and organizations, and is manifested in the legal obligations of all participants in public-law relations to comply with established legal regulations or act in strict accordance with them. However, the direction of the legal impact itself in public law regulation can be diametrically opposed: in one case,

the mandatory requirement is addressed to a citizen, organization, or lower state body (official), in another, to the state apparatus from a citizen (organization). The direction of the legal impact to a subject not vested with power forms the relationship 'power-subordination', in which such a legal means as 'descending subordination' [22, p. 31] (administration, management) is implemented. The following methods act as legal techniques of influence in the prescriptive method and 'descending subordination': coercion, stimulation, encouragement, etc. This group of legal impact techniques may include subordination techniques in the executive power system. Thus, administrative law (public administration law) is a branch of law characterized by a combination of a subject (social relations developing within the executive power system and supra-sectoral external power management relations) and a system of legal impact, which is a combination of a prescriptive primary legal impact method, a legal means of 'descending subordination', and legal impact techniques of power influence ensured by the force of state coercion. The procedure for implementing typical state functions in the public administration system, such as: rule-making (adopting normative legal acts of public administration); control and supervisory and the function of managing state property can be combined into the category of 'management process'. A separate group of administrative relations in administrative law are administrative-contractual relations. They are characterized by a system of legal impact represented by a combination of the prescriptive primary method of impact and the legal means of 'absolute consensus'. This legal means is typical for civil-law relations and represents the possibility of voluntary entry into a legal relationship only with complete non-resistance of its parties. However, unlike civil legal relations with permission primary method of legal impact, entry into contractual relations in administrative law is carried out in the case of a direct indication in the authorizing or obligatory administrative-law norm of the possibility and (or) necessity of concluding the relevant agreement, i.e. it is combined with the prescriptive primary method of legal impact. Finally, the last combination of the primary method and legal impact means applied in regulating public-administrative relations is a combination of the prescriptive method of legal impact with the legal means of 'legal compromise'. Legal compromise, as a legal impact means, is most typical for labor relations and is characterized by a system of mutual obligations and legal guarantees for their provision for the participants of the relevant legal relations (employer and employee). The difference, by analogy with administrative-contractual relations, lies in the primary prescriptive method legal impact consisting in the obligation established in the legislation on civil service to ensure the execution of public powers by specially authorized officials with the status of civil servants. This combination is used in regulating relations in the sphere of civil service.

The system of administrative law will be similar to the system of Soviet administrative law and can be presented as consisting of the general part (including institutions that characterize the foundations of public administration, such as: subjects of administrative law; forms, methods of public administration; ensuring legality in public administration; management process; administrative-contractual regulation; civil service) and special part (devoted to the organizational-structural construction of the public administration system in various spheres).

Another combination of the primary legal impact method, means of legal impact, and legal impact techniques is presented in organizational relations in the sphere of interaction of bodies vested with authority with citizens and organizations when the direction of the legal order is addressed to the source of power (the state apparatus) on the part of citizens (organizations). In this case, the prescriptive method of legal impact will be combined with the legal means of 'ascending subordination' [21, pp. 31-35; 22, pp. 27-31] or 'reordination' [29, p. 225]. The essence of relations of this type is based on constitutional provisions directly indicating that the functioning of the state apparatus is aimed at achieving the main goal – this is the unconditional provision of human rights and freedoms, as the highest value of the state. Thus, the leading role of citizens of the country, representing its multinational people, in the system of public administration is secured and guaranteed. Through the implementation of the legal means of 'ascending subordination', a balance of private and public interests in the social management system is ensured. The external form of expression of the legal means of 'reordination' are administrative-procedural rules regulating the organization and direct interaction of public authorities and citizens, with formally defined target guidelines for this interaction, with

a certain system of mutual obligations, and legal guarantees for their provision. The procedural form of relations of this type was defended by Professor N. G. Salishcheva, according to whom, the interaction of the administrative apparatus with citizens and other entities when considering citizens' appeals to this apparatus for the implementation of their rights and legitimate interests in one form or another must have mandatory procedural content [41, p. 153]. The importance of procedural regulation of relations of this type was expressed by J. L. Mashaw: 'I hope that administrative lawyers can be convinced to go beyond the framework of judicial doctrine and the fundamental requirements of external administrative law in order to see how administrative procedures actually function at the departmental level and how they can be improved' [65, pp. 991-992].

The characteristics of this type of relations are as follows:

– the initiator of the relations is always a private-law party;

– these relations arise (change and terminate) directly between the state as a source of public authority and a citizen (organization);

– the substantive basis of these relations is based on legal administrative discretion, i.e. on the possibility of a public administration official's choosing a possible option for his/her law enforcement behavior based on the results of an assessment of a certain legal and factual situation;

– relations of this type do not imply the possibility of applying state coercion measures to private-law parties.

Public administration bodies in relations implemented in the system of the primary prescriptive legal impact method in combination with the 'ascending subordination' perform the function of a mandatory primary administrative control, similar in its content to the preliminary form of financial control used in financial law. The objectives of the activities of public administration bodies in organizational relations in the sphere of interaction with citizens and organizations are:

a) ensuring the implementation by private law parties of the rights and legitimate interests enshrined in the Constitution of the Russian Federation and legislation;

b) ensuring the quality and stability of the public administration system by identifying and minimizing the risks associated with the implementation by citizens and organizations of individual, including potentially dangerous, types of activities.

When the prescriptive method of legal impact and the legal means of 'ascending subordination' are implemented, the following will act as legal impact techniques: administrative and legal complaints, licensing and permitting proceedings (procedures), proceedings (procedures) in the sphere of rendering public services, etc.

The presented combination of the subject of legal regulation, the method, means, and techniques of legal impact allows us to single out administrative-procedural law as a separate branch of law in the structure of public law, with the inclusion of institutions regulating:

– firstly, the principles of organizational interaction between public authorities and private law parties. In order to form a unified legal framework regulating the foundations of administrative and procedural activities in the sphere of interaction between the state apparatus and citizens (organizations), we support the concept substantiated by professors Yu. N. Starilov [47, 49] and K. V. Davydov [20] on the need to adopt Federal Law 'On Administrative Procedures'. This law, along with Federal Law No. 59-FZ, will create a legal basis for the further development and improvement of a unified administrative and procedural legislation at the federal and regional state levels;

– secondly, positive administrative proceedings (procedures) in the sphere of implementation of certain types of economic activity: licensing, quotas, certification, etc.;

– thirdly, permit proceedings (procedures) implemented in the administrative-political and socio-cultural spheres – citizens' appeals to public authorities for the purpose of implementing constitutional rights, such as: the right of citizens to association, including the right to create *trade unions* to protect their interests (Article 30 of the Constitution of the Russian Federation); the right to hold meetings, rallies, and demonstrations, marches and pickets (Article 31 of the Constitution of the Russian Federation); the right to receive higher education (Article 43 of the Constitution of the Russian Federation); the right of a foreign citizen and stateless person to political asylum (Article 63 of the Constitution of the Russian Federation), etc.

The third group of administrative and administrative-procedural relations comprises relations of legal responsibility, i.e. protective administrative-tort relations. This type of relations is characterized by the implementation of the prescriptive method of legal impact based on the administrative prohibition of committing certain actions. These relations are associated with the violation of a legal prescriptive in the form of a prohibition and arise after its commission (the violation of the prohibition acts as a legal fact of the emergence of a protective administrative-tort relationship).

The legal impact means for such a variant of implementing the primary method of legal impact will be 'retrospective projection', i.e. establishing in the violated legal prohibition, formally determined by the subject, the features and composition of the administrative offense enshrined in a specific norm of the Code of the Russian Federation on Administrative Offenses.

The features of 'retrospective projection' acting as a means of legal impact are as follows:

1. This means is implemented with a permissive, prescriptive, and prohibitive type of legal regulation of social relations and is a mandatory procedural form of the corresponding type of legal regulation. The procedural form is a necessary means of ensuring a balance of public and private interests when bringing an offender to legal responsibility, resolving a legal dispute.

2. The main method of interaction between participants in legal relations in 'retrospective projection' is the judicial-arbitration method: relations between participants in the process are built in such a way that in resolving the most significant legal issues there is an independent and impartial arbitrator between them.

3. The purpose of 'retrospective projection' is an objective independent assessment of the actions (inactions) of participants in legal relations with regard to the presence or absence in these actions (inactions) of the signs and elements of an offense as well as of a violation of a contractual or other requirement and obligation.

4. The essence of 'retrospective projection' is: the activities of specially authorized persons aimed at determining the compliance of the actions (inactions) committed by the subject of legal relations with the content of the prohibitive norm of law establishing legal liability for such actions (inactions) and/or causing other negative legal consequences to him; independent (including judicial) assessment of the activities of specially authorized persons implemented in accordance with the procedure of the relevant type of legal proceedings (civil, administrative, criminal);

5. The result of 'retrospective projection' is the official reaction of the state to the projection in the form of appointment and execution of a specific measure of state or legal coercion in relation to the person who committed the offense or allowed the violation of a contractual or other obligation.

With such a combination of the primary method and means of legal impact, legal impact techniques are represented by a single system of actions based on the norms of substantive and procedural administrative-tort legislation ensuring the formation of the corresponding projection. These include the activities of authorized officials associated with bringing offenders to administrative responsibility. In the system of legal impact techniques with this type of legal regulation, it is possible to distinguish coercive procedural-enforcement techniques represented by measures ensuring proceedings in a case on an administrative offense.

The second group of legal impact techniques is the techniques expressing the state's reaction to the formed projection, i.e. the techniques related to the implementation of administrative-law sanctions. These techniques of impact, with such a combination of the primary method and means of impact, are administrative penalties that act as an independent category of administrative coercion measures.

The analyzed combination of the primary method, means, and techniques of legal impact is characteristic of administrative-tort law.

The branches of the criminal law block are characterized by a combination of the primary legal impact method in the form of legal prohibition, a legal means in the form of 'retrospective projection', and legal techniques ensuring the formation of projection (criminal law and criminal procedural law) and the state's reaction to the formed projection (criminal-executive law). The combination of the primary method, legal impact means, and legal impact techniques applied in the prohibitive type of legal regulation is to a certain extent similar to the system of legal regulation characteristic of administrative-tort law. The difference lies in the primary legal impact method. For the prohibitive type, the legal prohibition is absolute, which does not imply the possibility of its observance or execution by the participant of the relevant legal relationship. The prohibitive nature of the order in the prescriptive type of legal regulation, on the contrary, presupposes the possibility, with proper execution or observance of mandatory requirements, of the subject of the legal relationship not to be subjected to compulsory state influence.

The fourth and final combination is a combination of a predominantly permissive or prescriptive (mixed type) method ща legal impact and 'retrospective projection'. This type is typical for relations in the sphere of judicial protection of the rights and legitimate interests of the state or private law entities from illegal actions (decisions) of public administration bodies and represents administrative proceedings or administrative justice.

Results

The concept of a single method of legal regulation developed by V. D. Sorokin allows us to streamline the system of public law and to distinguish the following branches in it: administrative law, administrative-procedural law, administrative-tort law, and judicial administrative-procedural law (administrative justice). Each of the designated branches has a constitutional basis for isolation, has a homogeneous sphere of regulated social relations, a unique combination of the method of legal impact, legal impact means and legal impact techniques, unity and organic combination of material, and procedural-procedural norms and institutions.

The use of a three-level structure of elements (method-means-technique) characterizing the method of legal regulation allows us to systematize the branch division within the unified legal system of Russia. For example, the independence of the financial law branch is determined not only by the subject of the relevant branch but also by the system of legal impact represented by the primary prescriptive method, the legal means of 'descending subordination', and a special category of legal impact techniques – techniques of financial and economic impact on the financial system (by finance, on finance, and with the help of finance). Environmental law is characterized by the presence of ecological and legal compensatory, and restorative legal impact techniques aimed at the natural environment and its individual components (greening methods). Combinations of primary legal impact methods, legal impact means, and legal techniques are implemented within the framework of a single legal system and allow for a comprehensive legal impact on participants in legal relations. With such a comprehensive influence, the primary combination in the system 'method – means – technique of legal impact' acts as a system-forming one. This combination forms the basic type of legal regulation with its main target guidelines. Other primary methods, legal means, and legal techniques within the basic type of legal regulation perform a supporting function and are derivatives of it. As an example of the interrelation and interdependence of impact methods, means, and techniques, it is necessary to consider criminal-executive legal relations. Legal relations of this type are characterized by a combination of the primary prohibitive method, the legal impact means of 'retrospective projection', and a system of legal techniques that ensure the state's response to the formed projection. Regulatory and protective measures of influence on convicts regulated by criminal-executive legislation act as such techniques aimed at achieving the goals and solving the problems of criminal and criminal-executive legislation. These goals consist of the correction of convicts and the prevention of new crimes, i.e. they have a personal (in relation to a specific convict) educational and corrective focus. Within the framework of the basic type, legal relations of 'power and subordination' between the personnel of the correctional institution and the convicts arise, develop, and cease. They are characterized by a prescriptive primary method of legal impact combined with the legal impact means of 'descending subordination'. This primary impact method, legal impact means, and legal techniques (including coercive measures) within the framework of the basic type of legal regulation are secondary and ensure the achievement of the main goals of the criminal-executive legislation. Thus, in the event of detection of signs of an offense in the actions of a convicted person, an official of the penal system is granted the right to apply a coercive measure aimed at stopping unlawful behavior. This measure is nothing more than a derivative of the basic (prohibitory) type of legal regulation, a legal impact technique related to a combination of: the primary impact method – prescription, the legal impact means – 'descending subordination', and the impact technique – coercion. The combination under consideration in criminal-executive legal relations ensures their normal course, i.e. ensures the achievement of the main goals of criminal and criminal-executive legislation.

Conclusions

1. The subject of administrative-law regulation consists of four types of legal relations: supra-branch managerial, general organizational, administrative-tort, and judicial administrative-procedural relations.

2. The criteria for dividing the legal system into branches, which also serve as means of harmonious and balanced intra-branch construction of sub-branches and institutions, are two interrelated categories: 'subject' and 'method of legal regulation'. The subject is a specific sphere of social relations, separate from others. The method of legal regulation is a single structured system of legal impact represented by a unique set of combinations of primary methods of legal impact (first structural level), means of legal impact (second level), and techniques of legal impact (third level) for each branch of law. Various combinations of primary methods, legal means, and legal techniques are implemented within the framework of a single legal

system and allow for a comprehensive legal impact on participants in legal relations.

3. Taking into account the designated criteria, it is proposed to distinguish the following branches in the system of public law: administrative law, administrative-procedural law, administrative-tort law, and judicial administrative-procedural law (administrative justice).

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Conceptual Foundations and Legal Regulation of Countering Disinformation: A Comparative Analysis Through the Lens of Interdisciplinarity

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Introduction: *disinformation is currently among the most complex challenges for legal regulation. Different legal systems respond differently to such challenges under conditions of geopolitical tension. The phenomenon of disinformation is analyzed by representatives from various scientific fields, but it has not been sufficiently explored from a legal perspective, and it has yet to find its place in domestic (Russian) legislation. At the same time, in foreign countries the term 'disinformation' has firmly established itself in legislation and is actively researched by jurists as well as representatives from other sciences. Particular importance is placed on countering disinformation, the relevant legal practices are being formed, especially these concerning countermeasures against disinformation in cyberspace.* ***Purpose:*** *the study aims to provide a comparative analysis of the legislation of the EU, the USA, and Russia in the field of combating disinformation, define the legal essence of disinformation, and identify the shortcomings of Russian legislation in this area.* ***Methods:*** *the comparative-legal method, the method of juridical hermeneutics, the historical-legal method, and a systematic approach are used to study the phenomenon of disinformation as a concept that may find reflection in various areas of Russian law – criminal, administrative, and informational law.* ***Results:*** *the author has analyzed the legislation of the EU, the USA, and Russia, examined how legal sciences in Russia and abroad define disinformation, what approaches to countering disinformation are proposed by legal scholars, and compared these findings with conclusions drawn by specialists from other fields.*

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Conclusions: *currently Russian legislation is not fully adequate to deal with the broad spectrum of challenges associated with the spread of disinformation. In this regard, EU legislation is significantly more effective in addressing tasks related to combating disinformation through the application of various regulatory methods, detailed formulation of norms and definitions. Foreign legislation in this sphere is largely aimed at countering Russian interests, which poses an independent challenge to the sovereignty of the Russian Federation.*

Keywords: disinformation; internet platforms; moderation; infodemic; fake news; digital technologies; Digital Code

Information in Russian

Концептуальные основы и правовое регулирование противодействия дезинформации: сравнительный анализ через призму междисциплинарности

Статья подготовлена в результате работы в рамках Программы фундаментальных исследований Национального исследовательского университета «Высшая школа экономики» (НИУ ВШЭ)

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Введение: *дезинформация – один из сложнейших вызовов для правового регулирования. Различные правовые системы по-разному реагируют на такие вызовы в условиях геополитической напряженности. Анализ феномена дезинформации ведется представителями разных наук, при этом с юридической точки зрения данное понятие изучено недостаточно. За рубежом термин «дезинформация» прочно занял свое место в законодательстве, активно исследуется как юристами, так и специалистами иных научных направлений. Большое значение придается противодействию дезинформации, формируется правоприменительная практика, особенно в части противодействия дезинформации в киберпространстве.* ***Цель:*** *сравнительный анализ законодательства ЕС, США и России в области противодействия дезинформации, определение юридической сущности дезинформации и выявление недостатков российского законодательства в области противодействия дезинформации.* ***Методы:*** *сравнительно-правовой метод, метод юридической герменевтики, историко-правовой метод и системный подход применяются для изучения феномена дезинформации как понятия, которое может найти отражение в различных отраслях российского права – уголовном, административном и информационном.* ***Результаты:*** *автором проанализированы законодательства ЕС, США и России, а также определения дезинформации, подходы к противодействию дезинформации учеными-юристами в сопоставлении с выводами специалистов из других областей.* ***Выводы:*** *российское законодательство в настоящее время не в полной мере соответствует широкому спектру вызовов, связанных с распространением дезинформации. В этом отношении законодательство ЕС значительно эффективнее в решении задач по противодействию дезинформации за счет применения различных методов регулирования, подробного изложения норм и определений. Зарубежное законодательство в данной сфере в значительной степени направлено на противодействие интересам России, что является самостоятельным вызовом для суверенитета РФ.*

Ключевые слова: дезинформация; интернет-платформы; модерация; инфодемия; фейковые новости; цифровые технологии; цифровая трансформация; фейк-ньюс; Цифровой кодекс

Shame on you, comrade, for involving militsiya and spreading disinformation!
Pechki-lavochki, fiction film, 1972, USSR

Introduction

In an era of widespread computerization, where information and communication technologies (ICTs) are radically transforming nearly all spheres of social interaction, the issue of false, unreliable, or misleading information (disinformation) has become one of the key concerns in ensuring public safety within the Internet environment. At the same time, Russia and foreign jurisdictions have developed significantly different approaches to countering disinformation — ranging from the use of divergent conceptual frameworks to differing methods for identifying the essential characteristics of disinformation as a socially dangerous phenomenon and for preventing its spread. These differences can be explained by various factors, including legal culture, specific features of socio-political development, and, not least, varying assessments of the societal danger posed by disinformation. It is advisable to employ a combination of specific juridical methods of scientific inquiry — such as legal hermeneutics (including socio-political and teleological analysis of relevant legal norms and relationships), comparative legal method, and historical-legal method (limited in scope to events of the 21st century) alongside interdisciplinary and systemic approaches. This methodology will help determine the legal nature and meaning of the concept of 'disinformation', examine the main approaches to countering disinformation in Russia, the United States, and the European Union, and provide an assessment of the current Russian regulatory framework on combating disinformation considering its adequacy to contemporary socio-political challenges and human rights protection standards. The primary focus of this study lies in analyzing the normative regulation of measures aimed at countering disinformation disseminated via the Internet, particularly through online platforms. This emphasis is justified by the fact that internet platforms, including social networks, audiovisual services, and search engines, currently serve as the principal channels for the global dissemination of disinformation.

First and foremost, it should be noted that the term 'disinformation' is not currently used in Russian legislation. The task of ensuring public safety — expressed through the need to prevent the spread of false information — is addressed by introducing a number of definitions into the Criminal Code of the Russian Federation (hereinafter referred to as the Criminal Code), the Code of Administrative Offenses of the Russian Federation (hereinafter referred to as the Administrative Code), Federal Law No. 149-FZ 'On Information, Information Technologies, and on Information Protection' of July 27, 2006 (hereinafter referred to as Law No. 149-FZ), and other legislative acts. Among these are cumbersome formulations such as 'public dissemination of knowingly false information about circumstances posing a threat to citizens' lives and safety' (Article 207.1 of the Criminal Code), 'public dissemination of knowingly false significant information entailing grave consequences' (Article 207.2 of the Criminal Code[1]), and others. In other words, the interpretation and application of these provisions within the context of safeguarding human rights presents a considerable challenge. It requires an understanding of the socio-political context as well as an assessment of the severity of the act and its consequences — a task that often proves highly complex due to the specific nature of these legal relationships.

In contrast to the domestic (Russian) approach, the legislation of the European Union — specifically the EU Digital Services Act (DSA) employs the term 'disinformation' as an overarching concept encompassing various types and subtypes of disinformation, along with a listing of categories of legal relations that may be negatively affected by it. For example, Article 95 of the DSA formulates this as follows: 'disinformation with a real and foreseeable negative impact on public health, public security, civil discourse, political participation and equality'[2].

The difference in approaches to defining misleading information necessitates an analysis of the underlying reasons for adopting specific formulations as well as an assessment of the advantages and disadvantages of the respective legislative acts concerning the definition of the term 'disinformation'.

An examination of criminal, administrative, and information legislation leads to the conclusion that none of these legal branches employs a central, foundational concept that would provide a general description of false or unreliable information. Instead, definitions are repeatedly created anew — overloaded with adjectives tailored to address emerging socio-political security challenges — and are linguistically insufficiently connected to one another. This significantly complicates

[1] Regulation (Eu) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act). Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32022R2065.

[2] Regulation (Eu) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act). Available at: https://eur-lex.europa.eu/eli/reg/2022/2065/oj.

the understanding and subsequent interpretation of each individual provision within legislative acts, undermining the systemic coherence of codified laws such as the Criminal Code and the Administrative Code.

It is noteworthy that, in contrast to the domestic approach, the European Union is currently attempting to systematize the regulation of digital services and internet platforms. A significant role in this initiative is played by the set of norms aimed at countering disinformation — in particular, the concept of disinformation has been explicitly defined, and various mechanisms to prevent its spread have been developed.

Given these fundamental differences between the approaches to ensuring public safety in this area in Russia and the EU, and considering the current stage of acute geopolitical confrontation between the Russian Federation and the European Union, it appears necessary to conduct a hermeneutic analysis of the concept of disinformation in the legislation of certain states (primarily those regarded as unfriendly at this historical stage), along with a socio-political and comparative legal analysis. This would allow for the identification of shortcomings in the domestic legislative approach and the development of new proposals for improving disinformation-related legislation.

From a socio-political perspective, governments and non-governmental organizations across various countries speak of disinformation as a serious threat. The issue of strengthening legislative efforts to counter the spread of false and misleading information became particularly acute after the COVID-19 pandemic, when it became evident that this threat possesses both national and global dimensions. UN Secretary-General António Guterres described the consequences of disinformation, using the term 'the first global infodemic'[1], referring to the specific phenomenon of a widespread outbreak of false information about COVID-19. This disinformation posed not only vital risks of infection with a dangerous virus but also undermined global efforts aimed at preventing its spread. A vivid illustration of such threats is the international anti-vaccination ('anti-vax') movement, which actively disseminated so-called medical disinformation during the pandemic[2]. At the same time, the universality and scale of the threat posed by the pandemic contributed to an increase in self-regulation — including content moderation by leading internet platforms and their cooperation with government authorities[3] — which preceded legislative measures in this area.

The urgency with which legislative measures to counter the spread of disinformation were adopted during the pandemic had a negative impact on their quality. The models of such counteraction were insufficiently balanced from the perspective of assessing their long-term effects on the relationship between public safety and the right to freedom of speech and thought, and did not include evaluations of their long-term socio-economic consequences. During the active phase of the pandemic, policymakers in a number of foreign countries leaned toward the necessity of restricting the expression of individual opinions on health-related issues (primarily vaccination)[4]. For the first time in many years, states with different political systems imposed relatively strict restrictions on the collection and dissemination of information that had previously not been prohibited by law in order to protect public health and well-being in accordance with decisions made at the international level[5]. The legitimacy of such measures is being re-evaluated over time, including due to the gradual reconsideration of the key postulates that formed the truth/disinformation matrix in the context of the pandemic. In this regard, a significant role is played by the report of the U.S. House Select Subcommittee on the Coronavirus Pandemic Response[6] (the U.S. Congress COVID-19 Report), which has drawn conclusions previously clearly

[1] For more details, see: World Health Organization. Managing the COVID-19 infodemic: Promoting healthy behaviors and mitigating the harm from misinformation and disinformation. Joint statement by WHO, UN, UNICEF, UNDP, UNESCO, UNAIDS, ITU, UN Global Pulse, and IFRC. Available at: https://www.who.int/ru/news/item/23-09-2020-managing-the-covid-19-infodemic-promoting-healthy-behaviours-and-mitigating-the-harm-from-misinformation-and-disinformation.

[2] For example, the Russian Direct Investment Fund reported having recorded over 300 information attacks targeting at the Sputnik V vaccine. For more details, see: https://tass.ru/ekonomika/21116295.

[3] Self-regulatory measures implemented by digital platforms during the pandemic did not demonstrate an ideal performance since professional doubts expressed by medical doctors and biologists regarding the effectiveness of certain anti-COVID-19 measures were often used as grounds for imposing the harshest restrictions on their authors, regardless of their professional status or achievements. There are well-founded concerns that such actions — in the absence of effective judicial remedies — constitute censorship, i.e., are unlawful.

[4] 'They're killing people': Biden denounces social media for virus disinformation. Available at: https://www.nytimes.com/2021/07/16/us/politics/biden-facebook-social-media-covid.html.

[5] WHO updates COVID-19 guidelines on masks, treatments and patient care. Available at: https://www.who.int/news/item/13-01-2023-who-updates-covid-19-guidelines-on-masks--treatments-and-patient-care.

[6] Final Report of the Select Subcommittee on the Coronavirus Pandemic Committee on Oversight and Accountability. After Action Review of the COVID-19 Pandemic: The Lessons Learned and a Path Forward. Available at: https://oversight.house.gov/wp-content/uploads/2024/12/2024.12.04-SSCP-FINAL-REPORT-ANS.pdf.

classified in the U.S. and the EU as disinformation[1] – for example, regarding the origin of the COVID-19 virus, which, according to U.S. lawmakers, emerged as a result of a laboratory leak in Wuhan[2], China, or the ineffectiveness of mask mandates (a subject of intense debate at the height of the pandemic).

In legal science and practice (especially in the domestic context), there is still no universally accepted definition of disinformation. This is confirmed by the author's review of existing domestic and foreign scholarly literature. To at least partially address this gap, we conducted an analysis of existing definitions of the concept in other scientific disciplines — such as sociology, political science, psychology, linguistics, journalism, and computer science — comparing them both among themselves and with legal perspectives on the issue. Such a study is being carried out for the first time in Russian jurisprudence and is aimed at addressing the existing gap in this area of scientific knowledge.

The Phenomenon of Disinformation Through the Lens of Social Science

According to sociologists I. Piryutko and L. Kulemin, deception is not the goal of disinformation; the goal is to influence public opinion on a specific issue [30, p. 329]. This was particularly evident during the COVID-19 pandemic — the so-called 'infodemic' was hardly consciously orchestrated with the aim of deceiving the public. For example, many anti-vaccination advocates genuinely believed in the information they disseminated online and promoted their own position, diverging from the official narrative[3]. Artificial intelligence (AI) tools were employed to monitor social media posts in efforts to combat COVID-19-related disinformation [69, p. 60]. Researchers studying the Russian 'infodemic' note that social networks possessed a unique power in spreading deceptive content, describing this as a key factor behind their distinctive role during that period [24, p. 557]. Coronavirus-related fake news often included reports, references to authoritative sources, and quotations from experts [24, 558]. Deliberate measures were applied to enhance credibility and persuasive impact.

D. Makurova notes that 'the distinction between disinformation and misinformation in the media at the linguistic level is quite blurred' [21, p. 63]. She identifies three types of disinformation: (1) statements claiming that truthful information is false; (2) presenting false information as true; and (3) rumors, which, in her view, constitute unverified information. It should be noted that from the perspective of legal regulation, this conclusion is of particular interest, as the identification of three distinct types of disinformation could be reflected in legislation, serving as a basis for differentiated liability for the dissemination of misleading information. Apart from legislative measures, this approach may also be applied in social media algorithms to impede the spread of disinformation.

It is necessary to note that within the context of disinformation research, elements of political science discourse are addressed, such as the 'post-truth era' and 'fake news'[4]. The latter is often defined similarly to the second type of disinformation in D. Makurova's classification — when false information is presented as true. In particular, this interpretation was proposed by B. Kalsnes in 2018 [46] and supported by N. Urusova in 2023 [65, p. 20]. Some authors, such as J. McDougal, emphasize the importance of improving media literacy, considering it a kind of 'antidote' against disinformation [22, p. 36]. However, it should be noted that developing critical thinking and increasing awareness regarding the need for comprehensive verification of information does not provide absolute protection against false or distorted information received and disseminated by individuals. The possibility

[1] For example, a study published in the official journal of the American Medical Association claimed that the theory about the artificial origin of COVID-19 constitutes 'disinformation'. Furthermore, the study asserts that 'as of January 18, 2023, it was confirmed that 1,100,000 COVID-19-related deaths could have been prevented if public health recommendations had been followed'. For more details, see: Sule S, DaCosta MC, DeCou E, Gilson C, Wallace K, Goff SL. Communication of COVID-19 misinformation on social media by physicians in the US. *JAMA Netw Open*. ANGLE. 2023. Vol. 6. No. 8. P. 7.

[2] U.S. Congress COVID-19 Report. P. 1.

[3] As was noted earlier in the paper, with the end of the pandemic, the question of which theories and statements regarding Covid-19 were unequivocally false, and which could have been the subject of public discourse but were banned while their authors were punished, did not receive an unambiguous answer. The aforementioned report of the US Congress on Covid-19 may be the basis for reviewing a significant number of convictions for spreading disinformation. This fact should be considered as a warning against applying too harsh measures to counteract disinformation due to possible changes in views and assessments of the events that have occurred.

[4] It should be emphasized that the term 'fake news' is used both in legal literature and in live discussions among legislators.

of cognitive biases must also be taken into account, which, in turn, falls within the domain of psychological research. Nevertheless, measures aimed at enhancing media literacy and identifying fake news in news streams are increasingly becoming part of governmental policies countering disinformation in many countries[1] as well as at the level of the United Nations[2].

Continuing the examination of findings from the human sciences regarding methods of countering disinformation, it should be noted that scholars outside the legal field have also proposed noteworthy insights into regulatory approaches in this area. Linguist V. Makashova identifies three main methods of combating disinformation: (1) law enforcement practices and legal prohibitions; (2) technological measures such as blocking and traffic throttling; and (3) improving media literacy [20, pp. 191–192].

It is worth noting that even before the pandemic, Russian-language publications discussed the development of search bots and the application of machine learning technologies to detect disinformation [26, pp. 128-130].

Additionally, some authors propose so-called 'data journalism' as a tool for countering disinformation, citing the example of elections in Bangladesh [12, pp. 29–32]. By 'data journalism' we mean the rapidly growing role of statistical data in the production and dissemination of information in the modern digital world — described as 'the future of journalism' (i.e., the use of various databases and open sources) [54, pp. 227-48].

O. S. Issers refers to media fakes as mystification and argues that their purpose in the digital environment is not always to mislead [13]. In particular, he identifies as the targets of disinformation so-called 'communicative games with the consumer' and even provocative social advertising. However, media fakes are often used for personal discreditation, and modern technologies now make it possible to create fake videos (deepfakes) that can be indistinguishable from the original without specialized software [Ibid]. Public figures, especially politicians, are particularly at risk since the more original video footage of a person is available online, the more realistic the fake can be. In this regard, it should be noted that the issue of legislative countermeasures against deepfakes is currently one of pressing concern, requiring further research.

The study of the phenomenon of information war is of great importance in the analysis of the prerequisites for changing the legislation on countering disinformation where disinformation is regarded as an example of conducting combat operations [9]. The phenomenon of information warfare has been extensively examined in Russian political science [23, 15] and psychology [58; 1; 3] as well as in military science, including works by experts in military law [5; 32; 17; 29].

In a frequently cited article, L. Kunakova notes that 'within the framework of the psychological paradigm, information warfare is understood as the latent influence of information on individual, group, and mass consciousness through methods such as propaganda, disinformation, and manipulation with the aim of forming new views on the socio-political organization of society by altering personal value orientations and fundamental attitudes' [18, p. 93].

From the perspective of improving legislation on countering disinformation, it is necessary to consider the possibility of supplementing criminal legislation with a provision establishing liability for conducting information warfare against the Russian Federation based specifically on the definition outlined above. Such a provision could be reflected in a note to the corresponding new article in the Special Part of the Criminal Code. Referring to the views of experts in military law, one must agree with the thesis put forward by Professor E. Kalinina who states that 'The main challenge to information security lies in the insufficiency of the regulatory framework governing the relevant relations at both national and international (regional and universal) levels' [14, p. 20]. Moreover, the number of such challenges continues to grow.

Events related to global geopolitical tensions during the 2022-2025 period continuously demonstrate that the boundary between military actions on land, at sea, and in the air, and combat operations in the information space is not simply becoming blurred. The informational component of attack methods, within the context of armed conflict, is no longer a supporting tool but is moving to the forefront. In assessing the effectiveness of the current system of measures aimed at countering disinformation, it is necessary to consider the viewpoint of the renowned expert on information warfare, Professor A. Manoylo, who states: 'Conditions must be created such that these attacks [of information warfare] simply do not reach the psyche of ordinary people. If, however,

[1] See, for example: Report by the European Regulators Group for Audiovisual Media Services (ERGA), titled 'Improving Media Literacy Campaigns on Disinformation', which outlines efforts to promote best practices in media literacy and counter disinformation within EU member states. Available at: https://erga-online.eu/wp-content/uploads/2021/01/ERGA-SG2-Report-2020-Improving-Media-Literacy-campaigns-on-disinformation.pdf.

[2] Don't be misled – a new UN course will teach you how to spot fake news. Available at: https://news.un.org/ru/story/2022/11/1434332.

they penetrate through all the barriers constructed – or not constructed – by the state and still reach public consciousness, then ordinary citizens become victims of information warfare'[1]. From a legal perspective, it is important to emphasize that the state bears special responsibility for ensuring effective measures to protect citizens from information-psychological operations conducted by adversaries. Currently, such a function is not legally assigned to any specific state body, and liability for such actions remains limited, arising only for individuals who directly disseminate misleading information.

The Phenomenon of Disinformation in the Focus of Legal Sciences

To form a sufficiently objective understanding of how the concept of disinformation is interpreted in domestic and foreign scholarship, as well as to assess the contribution of legal research to the analysis of this phenomenon, we deemed it necessary to conduct a semantic analysis of published works mentioning the term 'disinformation' from 2019 to 2024. This approach will help not only to grasp the bigger picture but also to identify hot topics currently developing most rapidly as well as detect gaps that have not yet been addressed by academic research. These findings will serve as confirmation of the scientific novelty of the author's conclusions regarding the need to integrate insights from other disciplines into the legal discourse on disinformation and to develop specific recommendations for improving legislation in this area.

When examining the most frequently cited works on disinformation among Russian legal scholars, we utilized data from the Russian Science Citation Index (RSCI) — a national information and analytics system containing over 6 million publications by Russian authors, as well as citation data from more than 4,500 Russian journals[2]. This system allows for a sufficiently objective assessment from the perspective of scientometrics regarding the relevance and demand of corresponding publications over time, by topic, and in terms of citation rates as it contains the largest volume of indexed data compared to other domestic electronic libraries [34].

Turning to the most frequently cited works authored by legal scholars on the topic of disinformation, several conclusions can be drawn. According to data from the Russian Science Citation Index (RSCI), the most cited work on issues related to disinformation is a study by D. Bakhteev [6]. In this article, the term 'disinformation' is mentioned only briefly and appears just twice throughout the text. The next most cited work, according to RSCI data, is an article by N. Golovanova [11]. This study provides an overview of the legislative framework in place at the time (six years prior) and foreign policy initiatives related to disinformation. It offers a relatively objective description of then-emerging trends toward defining disinformation as a key challenge to the existing legal order in the states of the European Union, the United Kingdom, the United States, and other countries identifying themselves as part of the so-called Western world. It should be noted that the trends identified in that article have since intensified significantly. At the same time, the study does not fully address all questions concerning the nature of disinformation or models for combating it.

The 2005 joint article by S. Andreev, L. Bertovsky, and V. Obraztsov does not focus on the issue of countering disinformation but rather examines the use of disinformation as a tool to mislead criminals in the interests of investigative and operational-search activities [4]. Further down the list of most cited works in the RSCI is a study by E. Nevzgodina and N. Parygina, which addresses disinformation in the context of protecting business reputation. This treatment forms part of the authors' specialized concept applicable within a narrowly focused analysis of a particular legal institution, but it does not constitute a comprehensive study of disinformation as a serious threat to the legal order [25]. The final work among the top 100 most cited publications indexed in the RSCI is an article by S. Girko, in which the term disinformation is mentioned only once [10].

If we narrow the search for the term 'disinformation' to the section Information law within the RSCI, only 29 scholarly works are indexed. Among these, just 21 have been published in the last five years. Moreover, 13 of the listed works have never been cited at all. This quantitative analysis vividly illustrates the current state of research in this field. The number of publications addressing disinformation within the Russian science of information law is indeed minimal. This scarcity correlates with the fragmented and inconsistent level of legislative regulation surrounding the issue, which, in turn, lacks the necessary scholarly scrutiny. Such a situation does not align with the scale of current challenges and threats from the perspective of ensuring information security in the Russian Federation.

[1] Under the barrage of information attacks: Is it possible to counter information warfare? An interview with the Professor A. Manoylo. Available at: https://wciom.ru/expertise/pod-snarjadami-vbrosov-mozhno-li-protivostojat-informacionnoi-voine.

[2] For more details, see: eLIBRARY.RU – Russian Science Citation Index: about the project.

Regarding foreign research dedicated to disinformation, the following can be noted. Using the online platform ScienceDirect by Elsevier and searching by the keyword 'disinformation', we found that 1,975 studies on this topic have been indexed since 2019. Of these, 810 publications (41.01%) fall under the category of social sciences. In the field of medicine (without specifying subfields), 510 studies were identified, and 96 in immunology and microbiology. A further 221 publications pertain to psychology, amounting to 41.87% combined. Introducing an additional search criterion — the term 'Covid' reveals that 581 studies are devoted to the pandemic or its consequences. When we introduced additional keyword 'law', the search yielded only 100 works out of the total 1,975. This number appears insufficiently representative to draw comprehensive conclusions.

A similar search conducted in the Taylor & Francis scientific literature database showed more relevant results. The total number of publications was 6,947, of which 275 were classified by their authors as legal research. This allows for certain conclusions to be drawn based on the analysis of the entire corpus using semantic search methods as well as through a direct examination of the most cited or otherwise distinguishable works. It should be noted that out of the total indexed studies, 2,873 (41.36%) also address the topic of the pandemic.

The most general conclusion is that a significant impulse for research on this topic was given during the COVID-19 pandemic. This is confirmed by the quantitative analysis of the publications described above.

Lacking specialized expertise in medicine, the author is not in a position to offer a strictly medical perspective on the issue of disinformation. However, it is appropriate to reiterate that views on which theories regarding the response to COVID-19 constitute disinformation and which fall under the protection of freedom of speech remain subject to significant change even today[1]. This, in turn, requires the development of mechanisms for restoring the rights of individuals who have suffered from unjust restrictions and for providing compensation, including limitations imposed by internet platforms based on their own independently developed moderation policies.

An analysis of legal research within the topic discussed allows for several conclusions and the identification of certain trends. Out of 6,947 works addressing disinformation indexed in the Taylor & Francis database, 2,125 refer to Russia — almost invariably in a negative context. This is to some extent predictable, given the geopolitical context. For example, among the most relevant works according to the system are those with titles such as: *The Russian Military's Biological Warfare Disinformation Campaign and the Russo-Ukrainian War* [37]; *Fake leads, defamation and destabilization: how online disinformation continues to impact Russia's invasion of Ukraine* [47]; *Truth with a Z: disinformation, war in Ukraine, and Russia's contradictory discourse of imperial identity* [65]. In general, several narratives can be distinguished.

First, foreign academic literature tends to provide highly negative assessments of Russia's actions in cyberspace. A dominant narrative is the claim that Russia engages in disinformation dissemination [64; 60; 58; 45], which significantly limits opportunities for scientific cooperation in research on this topic or even excludes such cooperation altogether.

Second, when evaluating Russian legislation on countering disinformation and internet regulation, clearly negative assessments prevail, in contrast to more positive evaluations of EU legislation. For example, A. Peukert notes that 'among liberal democracies, the European Union has adopted the most comprehensive measures to combat both illegal and lawful but harmful forms of disinformation across various types' [54].

Overall, as Stephen C. Hutchings observes, the discourse on Russia and disinformation largely reduces to a 'manifestation of resistance against deceptive practices associated with totalitarian regimes and contemporary authoritarian states hostile to democratic governance' [44].

The logic of 'countering disinformation by tyrannical and authoritarian regimes' is based on a highly politicized and biased matrix of judgments. This is clearly demonstrated in works such as the study by L. Marlene and K. Limonier, *Beyond 'Hybrid Warfare': A Digital Exploration of Russia's Entrepreneurs of Influence*, which portrays the Russian political system as a network of actors engaged in projecting unlawful interference in the affairs of other states through disinformation [48]. Such framing significantly undermines the objectivity of the assessments made within these studies.

However, it should be noted that there are critical voices within Western academic discourse that point to the shortcomings of the existing collusion or 'triumvirate' formed between major media outlets, academic

[1] This circumstance became particularly evident during the administration of D. Trump, as it rejected the set of narratives officially endorsed by the administration of J. Biden. See, for example: The CIA changed its stance on the origins of COVID-19. Available at: https://www.rbc.ru/politics/26/01/2025/6795bb7c9a7947126718ec24.

circles, and political experts[1] — a coalition that has received strong backing from the American political establishment obsessed with the idea of 'restoring the power of knowledge dissemination to a group of objective gatekeepers' [35]. As Stephen C. Hutchings aptly observes, a veritable academic edifice has emerged in the West around the study of disinformation. In his view, this entire apparatus is being constructed with the purpose of 'suppressing oppositional knowledge from within the liberal world order' [44]. He also notes that the discourse advanced by governmental bodies and non-profit organizations engaged in 'countering disinformation' in the West is often linked to 'blurring the line between semantic disinformation detection and the fight against hate speech' [Ibid].

This observation is also significant from a legal perspective, as it allows us to examine the processes underlying the formation of legislative objectives. Therefore, if our goal is 'to reveal the true intent of the legislator' [7, p. 83], we must inevitably resort to a teleological analysis of the original motives and assumptions that formed the basis of the emerging body of anti-disinformation legislation in the West.

Regarding the use of the term disinformation in foreign research, it should be noted that the application of this term in international academic and law enforcement practices has made it possible to integrate large volumes of scientific information, which in turn has positively influenced the analysis of data in this field. The analysis of studies reviewed in this work shows that the refusal to use this term in legislative and law enforcement practice in the Russian Federation may limit the potential for scientific exploration in this area. This is due to the fact that legal research in this field has not sufficiently integrated insights from other disciplines such as linguistics, psychology, journalism, and military science. It appears that the improvement of legislation on countering disinformation is impossible without incorporating findings from these related fields.

Comparison of Legislation and Practices on Countering Disinformation in the EU, the USA, and Russia

1. European Union's Approaches to Countering Disinformation: Regulatory Features and Challenges for Russia

The European Union has been paying significant attention to countering disinformation at both the technological and regulatory levels from the past decade up to the present. Regulation in this area can be broadly divided into self-regulatory initiatives encouraged by the European Commission and EU legislation.

Among the most significant self-regulatory instruments is the 2022 Code of Practice on Disinformation (Code of Practice)[2]. This self-regulatory instrument is notable for its comprehensive and multifaceted nature. It is not an official legislative act; however, the European Commission previously issued official Guidance to the Code of Practice on Disinformation[3], which formed the basis for the updated 2022 version of the Code, replacing the 2018 edition. Participation in the Code is based on adherence to a common agreement, a step that has been taken by numerous major technology corporations, including Google, Microsoft, Adobe, TikTok, Meta*, Vimeo, and Twitch. In addition, this initiative involves organizations and platforms engaged in news dissemination and advertising, such as Reporters Without Borders, The Global Disinformation Index, the World Federation of Advertisers, the European Association of Communication Agencies, and other stakeholders[4].

Of particular interest for studying potential self-regulation models that have not yet been applied in Russia is the system of measures set forth in the Code of Practice. It includes 44 commitments and 128 specific measures aimed at preventing the spread of disinformation. Among the most significant are: preventing the monetization of disinformation dissemination, ensuring transparency in political advertising, cooperation during election periods, and the use of structural indicators. It should be emphasized that this Code of Practice is by no means declarative in nature — it is deeply operational

[1] This phenomenon has acquired the unofficial name 'BigDisinfo'. The term is a reference to concepts such as BigPharma and BigTech, which reflect the influence of large corporations on decision-making in the field of healthcare and technology respectively. In this context, 'BigDisinfo' refers to the significant influence exerted on the discourse about disinformation by mainstream media outlets and the network of analytical and political centers that operate in conjunction with them.

[2] The 2022 Code of Practice on Disinformation. Available at: https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation.

[3] Commission presents guidance to strengthen the Code of Practice on Disinformation. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2585.

[4] The full list of signatories to the agreement is available at the following link. Available at: https://digital-strategy.ec.europa.eu/en/library/signatories-2022-strengthened-code-practice-disinformation.

* Meta Corporation is recognized as extremist in the Russian Federation, and its activities are banned in the Russian Federation by the decision of the court.

and ensures the integration of internet platforms into the anti-disinformation framework being developed by the European Commission. This framework encompasses numerous initiatives encouraging self-regulation, including the publication of documents such as the 2018 Action Plan Against Disinformation[1], annual reports assessing the implementation of the Code of Practice, and others. Another direction within self-regulation involves the establishment of umbrella organizations, such as the European Digital Media Observatory (EDMO). EDMO is a non-governmental organization that unites and coordinates the activities of entities and platforms engaged in fact-checking (verifying the accuracy of information), supports research, and monitors the effectiveness of practices used to counter disinformation[2].

A significant role in the regulation of disinformation countermeasures at the EU level is played by the aforementioned EU Digital Services Act (DSA)[3]. It is noteworthy that even in the preamble of the DSA (Article 2), 'illegal content, online disinformation' are explicitly identified as major threats. Overall, the term 'disinformation' appears 13 times throughout the text of the DSA, providing a sufficiently detailed understanding of the concept. From the perspective of normative interpretation, based on the content of the DSA text, primary attention should be paid to Article 95, which specifies the nature of the threat to public safety posed by disinformation: '…disinformation with a real and foreseeable negative impact on public health, public security, civil discourse, political participation and equality'. Article 104 of the DSA refers to 'possible negative impacts of systemic risks on society and democracy, such as disinformation or manipulative and abusive activities, or any adverse effects on minors'. Thus, according to the Digital Services Act, disinformation is deceptive or misleading or manipulative information the dissemination of which poses a systemic risk to society and democracy, resulting in real and foreseeable negative effects on public health, public safety, the well-being of minors, civic discourse, the ability to participate in political life, and the realization of the principle of equality. This definition, although cumbersome, fully reflects the textual meaning embedded by the legislator into the concept of disinformation. Nevertheless, when assessing the EU's system of measures aimed at preventing the spread of disinformation, it is necessary to take into account the conclusions made in the previous section — namely, that regulatory measures against disinformation, in their essence and original intent, are directed toward establishing control over the dissemination of information within the EU. This includes, in effect, the absorption of the informational sovereignty of individual Member States, since the bureaucratic apparatus of the European Council, empowered under the DSA, acquires almost full control over the EU's unified information space (Article 2 of the DSA).

For a complete teleological interpretation of this structurally complex and multifaceted law and its accompanying regulatory framework, it is necessary to examine the informal practices of the European Commission related to countering disinformation. In particular, the conflict between the leadership of the European Commission and the owner of the X platform (formerly Twitter), Elon Musk, deserves close attention. On July 12, 2024, Musk stated that the European Commission had proposed a secret deal to the X platform aimed at introducing censorship on the platform in exchange for refraining from imposing penalties. He also noted that other platforms have agreed to this deal[4]. The statements made by Elon Musk can be linked to the previously analyzed Code of Practice on Disinformation, and the imposition of significant penalties is explicitly provided for under the Digital Services Act (DSA). Musk's claims are further supported by other documented events. On December 23, 2023, a preliminary investigation was opened against X concerning alleged non-compliance with the DSA's provisions prohibiting 'dark patterns' as well as restrictions on researchers' access to internal platform data and the dissemination of disinformation. Additionally, the European Commission invited employees of X, offering them the opportunity to report potential violations of EU legislation under conditions of anonymity in order to assist the ongoing investigation[5]. In general, X faces a fine of up to 6% of its global annual turnover if the company is found guilty of the violations under consideration.

[1] Joint Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: Action Plan against Disinformation (JOIN (2018) 36 final). Available at: https://digital-strategy.ec.europa.eu/en/library/action-plan-against-disinformation.

[2] Available at: https://digital-strategy.ec.europa.eu/en/policies/european-digital-media-observatory.

[3] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act). Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R2065.

[4] European Commission offered secret censorship to X social network — Musk. Available at: https://tass.com/economy/1816441 (in Russ.).

[5] Commission sends preliminary findings to X for breach of the Digital Services Act. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3761.

Later, on August 25, 2024, the founder and CEO of Telegram, Pavel Durov, was arrested in France on a number of serious charges directly related to the French authorities' concerns over the quality of content moderation within the Telegram messaging service[1]. On August 29 of the same year, information emerged indicating that the European Commission had launched a preliminary investigation into the potential underreporting of the number of those using the messenger in Europe[2]. Following his arrest, Durov repeatedly emphasized the need to improve the quality of content moderation within the messenger, which ultimately became his 'personal priority'[3].

These examples demonstrate that, in the context of countering disinformation, the EU employs not only official but also unofficial measures that affect the interests of the Russian Federation in the information space.

2. Approaches of the United States to Countering Disinformation: Regulatory Features and Challenges for Russia

The structure of U.S. legislation regarding the regulation of information circulation significantly differs from that found in European countries. It would not be an exaggeration to say that the United States has developed a uniquely robust tradition of protecting freedom of speech rooted in a broad doctrinal understanding of its boundaries. This tradition stems not only from the text of the First Amendment to the U.S. Constitution but also from numerous judicial precedents continuously clarifying the limits and practical specifics of implementing the right to expression and self-expression [40]. Nevertheless, against the backdrop of escalating political struggle in the U.S., where increasing political polarization among the population is dividing the country into two increasingly irreconcilable camps[4], perspectives on whether the uncompromising approach to protecting freedom of speech should be preserved are beginning to undergo erosion [36].

The culmination of these processes was the first election of Donald Trump as U.S. President in 2016, which significantly intensified the discourse on the extent to which major internet platforms are capable of influencing public opinion, elections, and domestic and foreign policy. It also highlighted how such platforms can serve as effective tools for external interference through the dissemination of disinformation by malicious actors, raising questions about the consequences and accountability for such actions [63]. In many ways, this process continues to the present day, each time gaining new momentum — as was the case following the events of January 6, 2021, which led to the landmark decision by all major internet platforms[5] to simultaneously suspend the account of the sitting U.S. President. This incident underscores the level of autonomy that internet platforms have acquired in the United States, particularly in their ability to interpret the boundaries of freedom of speech and to engage in self-regulation. To assess the scale of this phenomenon, one may refer to the following figure: in 2020 alone, Facebook* removed approximately 12 million individual messages from private groups, with 87% of these being identified as prohibited content based on platform rules — all without human involvement in the decision-making process[6]. Overall, the company places significant emphasis on combating disinformation by prohibiting 'coordinated inauthentic behavior' (CIB). In 2018, a public definition of this concept was provided: This kind of behavior is not allowed 'because we don't want people or organizations creating networks of accounts to mislead others about who they are or what they're doing'[7]. In other words, the focus is on countering organized disinformation campaigns. Importantly, no official communication regarding this issue with intelligence agencies of any states – including the United States – is disclosed at the official level (it is presumed that such communication does not take place). However, based on several other statements by Facebook* representatives, it can be concluded that cooperation with intelligence agencies of Western countries most likely does occur. It should be specifically emphasized that no effective judicial procedure for challenging content moderation measures exists in the United States. This issue is particularly relevant for Russian users, who are regularly subjected to restrictions imposed by major online platforms[8]. As evidence supporting this thesis, one can refer to the fact that a federal court even denied the

[1] A source reported that Durov's arrest was in compliance with the EU Digital Services Act. Available at: https://tass.ru/obschestvo/21682013

[2] The EU is investigating whether Telegram has underreported the number of its European users. Available at: https://3dnews.ru/1110155/bryussel-podozrevaet-telegram-v-sokritii-kolichestva-polzovateley-es.

[3] Pavel Durov's personal Telegram channel. Available at: https://t.me/durov/342.

[4] Americans see little bipartisan common ground, but more on foreign policy than on abortion, guns. *Pew Research*. Available at: https://www.pewresearch.org/short-reads/2024/06/25/americans-see-little-bipartisan-common-ground-but-more-on-foreign-policy-than-on-abortion-guns/.

[5] Twitter bans President Trump permanently. Available at: https://edition.cnn.com/2021/01/08/tech/trump-twitter-ban/index.html.

[6] Our latest steps to keep Facebook groups safe. Available at: https://about.fb.com/news/2020/09/keeping-facebook-groups-safe/.

[7] Removing bad actors on Facebook. Available at: https://about.fb.com/news/2018/07/removing-bad-actors-on-facebook/.

[8] Roskomnadzor demanded that Facebook and Google cease censoring Russian media outlets. Available at: https://www.gazeta.ru/tech/2020/10/28/13336639/censorship.shtml.

* Product of Meta Corporation, which is recognized in Russia as an extremist organization whose activities are banned in the Russian Federation by the decision of the court.

then-sitting U.S. President Donald Trump the restoration of his account following its suspension in the aftermath of the events of January 6, 2021[1].

It should be noted that such a high level of autonomy enjoyed by online platforms is made possible by specific features of U.S. federal legislation. A key legal instrument governing the relationships between internet platforms, users, and the executive branch is Section 230 of Title 47 of the Communications Decency Act of 1996 (CDA). This provision grants internet platforms the status of a 'publisher', which, under established interpretations of the First Amendment to the U.S. Constitution (Bill of Rights), endows them with rights like those of traditional media to determine their own editorial policies — that is, to publish or remove content based solely on their internal editorial guidelines. This legal status quo significantly enhances the importance of self-regulation by online platforms, including in matters such as defining what constitutes disinformation, how it is removed or restricted, and what enforcement measures are applied to violators.

Nevertheless, it would be mistaken to assume that the United States lacks mechanisms for influencing internet platforms in terms of shaping the direction of disinformation moderation. For example, technology entrepreneur Elon Musk, who acquired the corporation Twitter in 2023, reported that the platform's previous owners held weekly secret meetings with representatives of the Federal Bureau of Investigation (FBI), the Department of Homeland Security (DHS), and the Directorate of National Intelligence (DNI). Based on the data presented by Musk, Twitter received direct requests from the FBI to remove content and accounts — often in coordination with other major social networks and technology companies. Acknowledgment of the FBI exerting pressure on Meta* regarding the removal of disinformation from its platforms also came from Mark Zuckerberg, who made this known in an open letter to the U.S. Congress. He noted that, in a number of cases, the removal of content and accounts was a mistake, expressing regret over these actions considering newly emerged information[2].

Significant attention at the federal legislative level is devoted to countering deepfakes — audio, photo, and video materials generated using artificial intelligence tools that contain substantial distortions or alterations intended to mislead the viewer or listener. In particular, authority to take measures aimed at identifying and countering media content manipulation was granted to the U.S. Department of Defense as early as 2020 under the relevant National Defense Authorization Act [8, p. 220]. Nevertheless, such regulation remains in a kind of gray zone due to the protections guaranteed by the First Amendment to the U.S. Constitution that prevents any federal agency from being granted specific official powers to restrict the dissemination of content. As a result, policy in this area has shifted toward informal influence operations, whereby relevant intelligence agencies or officials from the presidential administration persuade online platforms to take certain actions outside the framework of the law — effectively violating it.

3.3 Approaches to Countering Disinformation in the Russian Federation

According to the new draft Decree of the President of Russia 'On the Strategy for Countering Extremism in the Russian Federation' (Project No. 01/03/07-24/00149268 of July 22, 2024)[3] prepared by the Ministry of Internal Affairs of Russia, various methods of manipulating public opinion and spreading misleading information — including the discrediting of the Armed Forces of the Russian Federation and the performance by state bodies of their official duties — are identified as among the main ways of destabilizing the socio-political and socio-economic situation in the Russian Federation. Such practices contribute to the intensification of radical and extremist sentiments within Russian society.

Russian President Vladimir Putin has repeatedly emphasized that an information war is being waged against Russia. On May 22, 2022, he stated that 'a real aggression, a war in the information space, has been unleashed against Russia'[4].

[1] Federal judge rejects Trump's lawsuit challenging Twitter ban. Available at: https://www.pbs.org/newshour/nation/federal-judge-rejects-trumps-lawsuit-challenging-twitter-ban.

[2] Mark Zuckerberg says Meta* was 'pressured' by Biden administration to censor Covid-related content in 2021. Available at: https://edition.cnn.com/2024/08/27/business/mark-zuckerberg-meta-biden-censor-covid-2021/index.html.

[3] Draft Decree of the President of the Russian Federation 'On Approval of the Strategy for Countering Extremism in the Russian Federation'. *Federal Portal of Draft Legal Acts*. Available at: https://regulation.gov.ru/Regulation/Npa/PublicView?npaID=149268.

[4] Putin states that a war has been unleashed against Russia in cyberspace. Available at: https://tass.ru/politika/14686131.

* Meta Corporation is recognized as extremist in the Russian Federation, and its activities are banned in the Russian Federation by the decision of the court.

In February 2023, the President of Russia further elaborated on his position, noting that 'this struggle has always been accompanied by confrontation in the information space. It has been this way throughout our entire history. And what is happening today, alongside the special military operation, is merely an escalation of the ongoing struggle that has always existed'[1]. Item 52 of the section 'Information Security' in the Strategy for National Security of the Russian Federation addresses the threats posed by disinformation: 'In order to destabilize the socio-political situation in the Russian Federation, misleading information is being disseminated, including knowingly false reports about threats of terrorist attacks'[2].

Thus, the problem of information warfare and the spread of disinformation as its key instrument is officially recognized at the highest state level, and countering disinformation is among the most significant tasks currently facing legislators and law enforcement practitioners. However, as demonstrated by the review of domestic academic literature in this field, the issue remains insufficiently studied at present. The challenge of improving legislation aimed at countering disinformation remains unresolved. Existing regulatory measures largely rely on approaches developed during the pandemic, which are characterized by a lack of systemic structure and consistency – a fact confirmed by previously cited examples of abuses in the implementation of anti-disinformation efforts. Legislation in this area remains largely experimental, lacking support from thorough legal research or consistent law enforcement practice, and suffers from the absence of a systematic approach to its formation.

For example, since 2020, 26 amendments have been introduced into Federal Law No. 149-FZ of July 27, 2006 'On Information, Information Technologies, and on Information Protection' (hereinafter referred to as Law No. 149-FZ). The absence of a unified norm on countering disinformation forces lawmakers to create numerous overlapping and cumbersome legal constructions, which are difficult to understand for both laypersons and professionals alike. This trend is also evident in the Criminal Code. In recent years, Chapter 24 of the Criminal Code has been significantly expanded. Among the additions are new articles: 205.2, 207.1, 207.2, 207.3, 280, 280.1, 280.3, and 280.4:

Article 205.2. Public calls to carry out terrorist activities, public justification of terrorism or propaganda of terrorism;

Article 207.1. Public dissemination of knowingly false information about circumstances that pose a threat to the life and security of citizens;

Article 207.2. Public dissemination of knowingly false information of public importance that entailed grave consequences;

Article 207.3. Public dissemination of knowingly false information about the use of the Armed Forces of the Russian Federation, exercise by state bodies of the Russian Federation of their powers, assistance by volunteer units, organizations, or persons in the execution of tasks assigned to the Armed Forces of the Russian Federation or troops of the National Guard of the Russian Federation;

Article 280. Public calls to carry out extremist activities;

Article 280.1. Public calls for actions aimed at violating the territorial integrity of the Russian Federation;

Article 280.3. Public actions aimed at discrediting the use of the Armed Forces of the Russian Federation for the protection of the interests of the Russian Federation and its citizens, maintenance of international peace and security, exercise by state bodies of the Russian Federation of their powers, assistance by volunteer units, organizations or individuals in the execution of tasks entrusted to the Armed Forces of the Russian Federation or the troops of the National Guard of the Russian Federation.

The listed articles of the Criminal Code criminalize the dissemination of various types of misleading information, but each time a new definition introduced instead of using the unified concept of 'disinformation'. In some cases, such as when it comes to the propaganda of terrorism (Article 205.1), this approach is justified. In other instances, however, it appears clearly redundant and cumbersome, for example, in Article 207.1: public dissemination of knowingly false information about circumstances *posing a threat to citizens' lives and safety*; in Article 207.2: public dissemination of knowingly false significant information *entailing grave consequences*.

There are other articles in the Criminal Code of the Russian Federation associated with the dissemination of knowingly false information, for example, Article 354 'Public Calls for the Waging of an Aggressive War', Article 354.1 'Rehabilitation of Nazism': the objective aspect of these crimes primarily consists in the dissemination of disinformation. It appears that such offenses could be

[1] Putin states that there has always been an ongoing struggle with Russia. Available at: https://tass.ru/politika/16950005.

[2] Decree of the President of the Russian Federation No. 400 of July 2, 2021 'On the National Security Strategy of the Russian Federation'. *Collection of Legislative Acts of the Russian Federation*. 2021. No. 27. Art. 5351 (Pt. 2).

grouped into a separate chapter where all criminal offenses related to the dissemination of disinformation would be consolidated. Within this chapter, it would be possible to provide a general definition of disinformation as a broad concept, avoiding the need for repetitive definitions in each specific offense where the objective aspect involves the dissemination of disinformation. In that case, cumbersome formulations could be avoided, and references could be limited to expressions such as 'disinformation against the Armed Forces', 'disinformation against state authority', 'disinformation aimed at propagating destructive ideology' etc. This approach would be similar to that used in EU legislation; in general, most offenses could be systematized as the dissemination of disinformation or the dissemination of destructive information of a certain type, clearly identifying the relevant specificity.

From the experience of the EU, it would be possible to adopt the practice of state-guided self-regulation, whereby online platforms, journalists, and representatives of civil society come together to develop specific codes of practice aimed at countering disinformation. In this regard, it is important to avoid a formalistic approach where such agreements do not impose mandatory compliance with the obligations undertaken. In the EU, in similar cases, a mechanism is used that involves the establishment of special bodies by the parties to the agreement endowed with appropriate powers for monitoring and ensuring compliance with the commitments made.

Conclusions

Then in-depth study of academic literature on disinformation demonstrates that Russian and foreign researchers are moving in different directions. In Russia, the term 'disinformation' is used relatively restrictively and somewhat chaotically — primarily in law enforcement practice and in the media — whereas abroad, this phenomenon, and accordingly the terminology associated with it, receives significant attention both at the legislative level and within academic literature across various disciplines. Regarding the challenges of countering disinformation, foreign jurisdictions are actively developing legislation, conducting academic research, and involving online platforms in efforts to combat disinformation. These platforms participate not only as implementers of legal requirements but also as stakeholders engaged in the process at the organizational level — they play a role in shaping so-called 'soft law' and are involved in co-regulation and self-regulation of legal relations in this area.

It appears that insufficient scholarly attention to the term 'disinformation', along with the lack of legislative initiatives aimed at introducing this term into Russian law, does not align with the current tasks facing the legislator, especially considering that countering the spread of false information has become one of the key issues in information warfare where effective regulation of the information space is critically important.

An analysis of the development of information legislation and measures to counter threats in the information space shows a lack of systemic approach in preparing corresponding legislative initiatives. This problem will become particularly evident when developers of the Digital Code begin drafting its relevant sections — a priority once again emphasized by the President of the Russian Federation[1]. It is already evident that the current version of Federal Law No. 149-FZ does not allow its relevant provisions to simply be transferred into the new Code — these provisions do not meet the generally accepted criteria for the systematization of legislation. Specifically, it is not possible to 'ensure systemic normative regulation of a single type of social relations by creating a unified, legally and logically coherent, internally consistent regulatory act that reflects the substantive and legal specifics of the structure of distinct subdivisions within the legal system' [2, p. 254].

The aforementioned circumstances, as well as the fact that the legislator itself acknowledges the necessity of codifying information law regulations in the form of a Digital Code, predetermine the need to transition information legislation toward overarching concepts such as disinformation. Especially since this term is widely recognized in foreign legal science and has been thoroughly addressed in other domestic disciplines — such as political science, sociology, psychology, journalism, etc. — as confirmed by the findings of this study. In other words, expanding legal research on disinformation, integrating this term into legislation, and appropriately revising norms related to the dissemination of false information is not only advisable but also necessary from the standpoint of systematizing Russian information legislation. Otherwise, the quality of regulating the corresponding legal relations will fail to meet the criteria of a codified regulatory act, as previously noted.

[1] Putin pledges to provide additional momentum to the development of the Digital Code of the Russian Federation. Available at: https://www.interfax-russia.ru/moscow/news/putin-poobeshchal-pridat-dopolnitelnyy-impuls-razrabotke-cifrovogo-kodeksa-rf.

It appears that an independent Russian perspective on the nature and definition of disinformation is necessary in the process of introducing this concept into legislation. It is proposed to include in the draft Digital Code a separate section dedicated to countering destructive information that would specify various types of such information, including disinformation among them. Considering achievements in other academic fields, the following definition of disinformation is proposed: *'destructive information aimed at misleading society through deception with the purpose of undermining fundamental value orientations enshrined in the Constitution of the Russian Federation, violating public order, inciting panic, or disorganizing or discrediting the activities of government and military authorities'.* Particularly important in this context is the legislative establishment of guarantees for freedom of speech protecting individuals who speak 'uncomfortable truths', specifically those reporting on crimes and abuses identified by members of civil society. As is known, this issue has been raised at the highest level; however, the principle 'it is acceptable to be mistaken, but unacceptable to lie'[1] should receive legislative expression. It is proposed to establish in the Criminal Code a principle prohibiting the criminal liability of individuals who disseminate information about planned or committed crimes, even if such information may be considered discrediting with respect to government or military authorities. However, to prevent abuse, in case the disseminated information is refuted during judicial proceedings, it is proposed to impose substantial fines on such persons. Clarification of these norms requires broad academic and public discussion. However, the current absence of mechanisms balancing the right to freedom of speech with the requirement to protect the interests of the state and society in the information space is now acutely felt.

In general, it should be noted that countering disinformation is an extremely complex task: it is often impossible to determine whether specific information is accurate at the moment of its dissemination. This fact underscores the necessity of involving civil society institutions in efforts to counter disinformation, which, in turn, requires amendments to the Information Security section of the Strategy of National Security of the Russian Federation. This section should be supplemented with concrete measures aimed at preventing the spread of disinformation, necessitating the introduction of a separate subprogram linked to the Strategy. It is proposed to supplement the Strategy with the definition of disinformation developed in this study.

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The Holy Inquisition in the History of the Formation of Modern Criminal Procedure

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Introduction. *The article provides a comparative analysis of the procedure in trials against heretics, witches, and sorcerers as presented in the 15th-century treatise Malleus Maleficārum (Hammer of Witches) and modern Russian legislation on criminal procedure. Without assessing the very fact of prosecution on religious grounds, the author of the paper traces the similarities in the logic of evidence collection, interpretation, and evaluation by comparing the methods used by medieval and modern investigators. The institute of investigative torture, used by the Inquisition to extract confessions, is described separately.* ***Purpose:*** *this study aims to trace the continuity between modern criminal proceedings as well as the tactics and methodology of criminalistics and the Inquisition's procedures, applied in the case of crimes against faith.* ***Methods:*** *general scientific methods of analysis, generalization, analogy, dialectics; special scientific methods of comparative legal analysis, content analysis.* ***Results:*** *an analysis comparing the procedure for the conduct of investigations and witch trials described in the Malleus Maleficārum with modern criminal procedural legislation showed the following common features of these: the general logical line of investigators' activities aimed at collecting evidence of guilt and innocence; focus on uncovering the truth related to clarifying the objective circumstances of a crime.* ***Conclusions:*** *many provisions of the treatise Malleus Maleficārum have been preserved in modern criminal proceedings with minor changes. At the same time, some features of the Inquisition contradicted modern principles such as the independence of judges, respect for the honor and dignity of the individual, personal integrity, the presumption of innocence, and the right to appeal against procedural actions and decisions. Principles such as adversariality and the right of the accused to a defense, although present, were expressed in a much more limited form. The general accusatory orientation of the Inquisition also distances it from modernity. However, from an external, procedural point of view, it had a goal similar to that of modern proceedings – the establishment of the truth, the protection of the innocent from false accusations.*

Keywords: Malleus Maleficārum; Inquisition; criminal procedure; heresy; crime against faith

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Information in Russian

«Святая инквизиция» в истории формирования современного уголовного процесса

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Введение: *в статье приводятся результаты проведенного автором сравнительного анализа порядка ведения процесса в отношении еретиков, ведьм и колдунов, изложенного в изданном в XV веке Трактате "Malleus Maleficarum", с современным российским уголовно-процессуальным законодательством. Не давая оценок самому факту преследования людей по религиозным соображениям, автор прослеживает схожесть между средневековым и современным следователями в контексте логики в сборе и получении доказательств, их интерпретации и оценке. Отдельно рассмотрен институт пытки, применяемой инквизицией для получения признательных показаний.* ***Цель:*** *проследить преемственность, связывающую уголовно-процессуальный порядок производства по уголовным делам, а также криминалистическую тактику и методику с порядком производства инквизиции по преступлениям против веры.* ***Методы:*** *общенаучные методы анализа, обобщения, аналогии, диалектики; также применялись частнонаучные методы сравнительно-правового анализа, контент-анализа.* ***Результаты:*** *сравнительный анализ порядка проведения следствия и суда над ведьмами, описанного в Трактате «Malleus Maleficarum», с современным уголовно-процессуальным законодательством показал общую логическую линию работы следователя по сбору доказательств вины и невиновности, а также общую направленность на познание истины, связанной с выяснением объективных обстоятельств совершенного преступления.* ***Выводы:*** *в современном уголовном процессе сохранились с незначительными изменениями многие положения Трактата "Malleus Maleficarum". Вместе с тем инквизиционный процесс обладал рядом черт, противоречащих современным принципам, таким как независимость судей, уважение чести и достоинства личности, ее неприкосновенность, презумпция невиновности, право на обжалование процессуальных действий и решений. Такие принципы, как состязательность сторон и право обвиняемого на защиту, хотя и присутствовали, выражались в значительно более ограниченной форме. Общая обвинительная направленность инквизиционного процесса также отдаляет его от современности. Однако с внешней, процессуальной, точки зрения можно отметить схожую с современностью цель – установление истины, защита невинных от ложного обвинения.*

Ключевые слова: «Молот ведьм»; инквизиция; процесс; ересь; преступление против веры

Introduction

Traditionally, the medieval inquisitor is depicted as a wizened old man, a religious fanatic who lost his human feelings in the habit of mortifying his flesh, while being satiated with absolute power in deciding human fates. This image was vividly depicted on the pages of Victor Hugo's novel *Notre Dame de Paris* in the person of Claude Frollo: 'It was an austere, grave, morose man's face. The man could not have been more than thirty-five years old; meanwhile, he was already bald, and only a few strands of sparse graying hair still remained on his temples; his broad and high forehead was furrowed with wrinkles' [5]. The unattractive appearance seems to identify the inquisitor with the 'dark role' he played in the world of ordinary people. He was the terrifying 'punishing sword' of the Roman Catholic Church, which mercilessly eradicated any manifestations of dissent, one word from him is enough to ruin the life of a person he dislikes.

But was the Holy Inquisition[1] what modern culture portrays it to be? Were medieval heresy trials really an example of the lawlessness and arbitrariness of judges caused by their complete lack of control over local authorities? Or was this image formed under the influence of historically established hostility toward Catholicism, the institution of which was the Inquisition, in the mentality of Protestant countries (mainly in the United States of America and Great Britain) that form the modern cultural agenda? At the same time, it should be noted that in these countries, trials of witches in the 16th and 18th centuries were no less widespread and cruel. An example is the notorious Salem Witch Trial, state Massachusetts, the USA, which took place from 1692 to 1693, during which 19 people were convicted and hanged [2].

Obviously, any historical phenomenon, especially the one that is centuries away from the researcher, must be considered in accordance with the principle of historicism, taking into account the conditions that gave rise to its formation and development [9]. Therefore, the present study does not provide an assessment of the very fact of prosecution by Church for differences in religious views, nor does it assess the existence of responsibility for professing heretical teachings. The field of research is deliberately limited to the consideration of the main legal and procedural aspects of the investigative and judicial process conducted by inquisitors in cases of crimes against faith.

The paper deals with the Treatise *The Hammer of Witches* (Latin *Malleus Maleficārum, Maleficas, & earum hæresim, ut phramea potentissima conterens*), written between 1486 and 1487 by an inquisitor, Dominican monk H. Kramer, as the main source of information on the procedure for conducting preliminary and judicial investigations against witches and sorcerers [8]. This work (hereinafter referred to as the Treatise[2]) summarizes both previously published instructions on the persecution of witches [15; 16; 1] and the experience of the author, who served as an inquisitor in Germany and Northern Italy, personally conducting the famous witch trials in the Trent bishopric (9 representatives of the Jewish community were accused of witchcraft and executed), and in Ravensburg (2 women were convicted and burned). In total, according to his own memoirs, during his career he condemned to death more than 200 witches, sorcerers, and their accomplices [19].

The Treatise includes three parts. The first one is devoted to proving the existence of witchcraft and its dangers. This chapter provides a classification of witches and sorcerers, their mystical nature, and justifies the need for both spiritual and secular authorities to eradicate such manifestations within the controlled territory. The second chapter gives a detailed description of the methods of bewitchment and counteraction to them. In this study, the first two parts of the Treatise are important only as an illustration of the religious worldview of the people of that era, for whom the evidence of the existence of divine manifestations, as well as magic and witchcraft, was beyond doubt.

Of much greater interest is the third part of the Treatise, devoted to detection and prosecution of witches as well as evidence of their guilt. Analyzing the structure of the text of this section, divided into 34 questions, it is possible to trace the logic of the inquisitor's investigative thinking, which is relevant, including for modern officials performing the functions of criminal prosecution. The hypothesis of the study is the statement that a significant part of the investigative and procedural actions described in the Treatise, as well as their sequence and procedure, have been preserved in modern criminal procedure legislation with minimal changes and are considered as the basis of the classical criminal procedure and criminalistic tactics.

It should be noted that in the period described by H. Kramer, criminal law and criminal procedure law were not codified. Therefore, the Treatise combines provisions relating to both branches. For convenience of perception, the paper presents the actions described by H. Kramer in the order presented in the current version of the Criminal Procedure Code of the Russian Federation[3]. This will make it possible to trace the continuity of the modern criminal procedure in relation to the Inquisition.

The Subject of Investigation and Proof

Modern criminal legislation establishes the existence of sufficient data indicating signs of a crime as the grounds for initiating a criminal case and conducting investigation (see Article 140 of the Criminal Procedure Code of the Russian Federation). An exhaustive list of acts recognized as crimes by modern

[1] Derived from Latin *Inquisitio Haereticae Pravitatis Sanctum Officium* , which can be translated as 'Department for the Investigation of Heretical Sinfulness'.

[2] Treatise (derived from Latin word *tractatus*, which means subjected to examination) is one of the literary forms corresponding to a scientific essay containing a discussion on an issue (often polemically pointed), which is aimed at presenting a principled approach to the subject [13, p. 502].

[3] Criminal Procedure Code of the Russian Federation No. 174-FZ of December 18, 2001 (as amended on March 20, 2025). Access from the legal reference system 'ConsultantPlus'.

criminal legislation is contained in the Special Part of the Criminal Code of the Russian Federation[1].

H. Kramer also points out the commission of a specific crime, i.e. heresy, as the basis for starting the Inquisition process, naming heresy the subject of investigation and proof. Heresy is divided into two types: simple heresy and witchcraft heresy. Formal legal grounds are given for regarding the suspect's behavior as various manifestations of heresy. The formulations used, whose meaning may be not fully understood by a modern secular person, were obviously familiar to people of that epoch and were related to the length of time a person was in a state of interdiction from the church and his behavior during that period.

Of special interest are the names used by the author for various types of crimes that are considered to be heresy. The medieval Inquisition procedure does not distinguish between the concepts of 'suspicion' and 'accusation', and various forms of suspicion of heresy are regarded as independent crimes, entailing appropriate penalties, which will be discussed in more detail in the relevant section of this study. There are distinguished slight suspicions, strong suspicions, and grave suspicions [8, p. 334].

Slight suspicion may arise in cases where there is a general assumption of a person's guilt, and light evidence, for example, human rumors, attendance at secret religious meetings, household features that differ from the behavior accepted in this area, excommunicvation for one year [8, p. 334].

A 'strongly suspected' person is someone considered to have heretical views, but who hides them, makes gifts, protects, etc. He may also be a person who uses a spell without harming people or livestock can be considered highly suspicious [8, pp. 334-335]. A person may also be considered 'strongly suspected' if there is evidence incriminating heretical perversion and indirect evidence, but there is no physical evidence, personal confession and witness testimony, as well as if a person interdicted from the church has been evading appearing before a spiritual judge for a year [8, p. 343].

A person against whom there are pieces of evidence indicating his guilt, such as the execution of threats, should be considered 'gravely suspected'. Despite the presence of several pieces of direct evidence, the sorcery/witchcraft activities of the suspect have not been confirmed through his own confession, physical evidence, and direct incriminating testimony [8, pp. 345–346]. Excommunicated persons who have been avoiding appearing before a spiritual judge for more than one year may also be regarded as 'gravely suspected'. This degree of suspicion deprives a person of the right to legal protection and determines his uncontested condemnation as a heretic [8, p. 346].

Witchcraft heresy presupposes, in addition to the practice of heretical teaching, the systematic practice of witchcraft, that is, the commission of magical acts capable of influencing nature and people [12, p. 99].

Procedural Investigative and Judicial Jurisdiction

Modern criminal procedure legislation provides for the conduct of preliminary investigations in criminal cases of different types of crimes by different subjects – the so-called investigative jurisdiction (Article 151 of the Criminal Procedure Code of the Russian Federation). The Treatise also focuses on resolving this issue. It should be noted that during the period of the events described in Europe, there were two independent systems of courts – ecclesiastical, responsible for handling cases of crimes against faith, and secular, dealing with cases of violation of state laws [16]. Speaking on the jurisdiction of cases against heretics, H. Kramer points out that trials against people convicted of simple heresy can be considered by ecclesiastical diocesan courts. If it concerns witchcraft heresy, then such processes should be carried out with the involvement of both spiritual and secular courts, since such crimes relate not only to matters of faith but also entail causing real harm to human life and health, as well as property ('livestock, field cereals' [8, p. 294]).

In witchcraft heresy, both spiritual and secular crimes merge, in connection with which witchcraft is recognized as equally dangerous by both the Church and the state, since socially dangerous consequences encroach, among other things, on the interests protected by secular law, and the secular judge considering the case of witchcraft simultaneously serves the cause of the Church and the state [8, p. 292, 312, 328]. At the same time, the diocesan court, when considering cases of its competence, was limited in the possibility of imposing punishments, and for sentencing, particularly related to the deprivation of the convicted person's life, handed him over to the secular authorities [8, p. 310].

[1] Criminal Code of the Russian Federation of June 13, 1996 No. 63-FZ (as amended on July 31, 2025). Access from the legal reference system 'ConsultantPlus'.

Principles of the Inquisition Process

In the Inquisition process, like in the modern process, a special place was given to the basic principles of its implementation. Pursuant to Part 1 of Article 6 of the Criminal Procedure Code of the Russian Federation, one of the purposes of criminal proceedings is to protect individuals from unlawful and unjustified charges and convictions. In his research, H. Kramer repeatedly mentions that the main goal of justice is the establishment of the truth and warns the reader against the risk of convicting the innocent and acquitting the guilty, as equally dangerous mistakes [8, p. 312]. The part describing the course of investigative actions focuses on the quality of the evidence obtained, primarily on its reliability. For example, the red-hot iron trial, the right to demand which is granted to the accused of witchcraft, is designed primarily to protect the innocent from unfair accusation [8, p. 329]. The reliability of witness statements is also subject to verification. For instance, prior to interrogation a witness is warned about the sin of perjury [8, p. 355]. If the incriminating testimony of a witness differs from other evidence, which causes the court to doubt their reliability, the witness may be called and questioned again. At the same time, if the judge sees that the witness is embarrassed to confess to perjury, he may be asked to do so secretly to avoid convicting an innocent person. If a witness giving incriminating testimony hesitates and raises doubts with the judge, he may be taken into custody and convicted of committing the sin of perjury, the punishment for which is bread and water life imprisonment [8, pp. 355–357].

To prevent a miscarriage of justice, H. Kramer recommends that judges, if in doubt about guilt, should not rush to pronounce a sentence, and postpone the decision for several years, during which new circumstances may be revealed, as well as additional witnesses and other evidence may appear [8, p. 356]. As a measure of the reliability and sufficiency of the available evidence, as well as the punishment imposed, the author suggests appealing to one's own conscience [8, p. 297]. This principle has been preserved in modern criminal proceedings. According to Article 17 of the Criminal Procedure Code of the Russian Federation, the investigator and the judge must evaluate evidence according to their inner conviction, guided by the law and conscience.

Parties to Criminal Proceedings

Section II of the Criminal Procedure Code lists all participants in criminal proceedings as well as explains their legal status. There are distinguished the court, the prosecution, the defense, and other participants. The Treatise provides similar division, but there are peculiarities explained by the specific features of criminal proceedings in cases against faith. The main difference between Inquisition trials and modern criminal proceedings is the unification of the functions of the court and prosecution in the person of the inquisitor.

Trial

As mentioned above, a criminal trial against a witch could be conducted by both a spiritual judge (a bishop or an inquisitor) and a secular one. In the latter case, the judge had to be specially authorized to do so by the bishop or inquisitor, thus acting as a simultaneous representative of the Pope and the Emperor [8, p. 305]. The bishop is the permanent representative of the Church authority in a particular territory (diocese) [7]. An inquisitor is a special emissary of the Pope sent to a certain state or region to prosecute heresy [6].

The Suspect, Accused, and Defendant

The substantive content of the procedural status of the person in respect of whom the case is being conducted seems rather vague in the text of the Treatise. Despite the use of terms such as the 'suspect', 'accused', 'defendant', they do not carry such a specific semantic meaning as in the modern process. Some types of suspicions themselves contain signs of a committed crime and are punishable. Therefore, we believe that if it is not a question of a prejudicial court decision declaring a person suspected of heresy, then this person should be perceived as someone against whom a case is being conducted, but no final decision has been made.

The Defense Party

In the modern criminal procedure, among the main participants on the part of the defense there are distinguished the suspect, the accused, the legal representative, and the defender.

Inquisition trials, contrary to popular stereotypes, had signs of competition. For example, a suspect accused of witchcraft had the right to defense, which was realized by providing a lawyer acting as his defense party in the trial, as well as by familiarizing himself with the essence of the charges. These rights have been

preserved within the modern trial and are expressed in Article 47 of the Criminal Procedure Code of the Russian Federation. It should be noted, however, that the lawyer is not appointed on the instructions of the defendant because, according to H. Kramer, otherwise he can be 'easily bribed, will be prone to verbal arguments and malicious' [8, p. 306]. The Treatise specifies the requirements with regard to the personal qualities of a lawyer, such as honesty, loyalty, modesty (so as not to be insolent or voluble), love of the truth. If a woman is suspected of witchcraft, then a lawyer acts on her behalf since a woman cannot be a subject of criminal proceedings. A defender may be provided not from the very beginning of the investigation, but only after two interrogations.

Upon entering the trial, a defender is given the opportunity to familiarize himself with the case materials so that he can conclude for himself about the guilt or innocence of the defendant. The specified right can also be found in modern Criminal Procedure Legislation (see Article 53 of the Criminal Procedure Code of the Russian Federation). An attorney should only agree to defend the accused if he considers the cause to be righteous, otherwise, it is necessary to abandon the case. For participation in a trial, an attorney is entitled to remuneration, in the amount typical in this country, but if he refuses the case due to its hopelessness, he is obliged to return the funds received to the defendant [8, p. 307]. H. Kramer emphasizes that the function of the defender is not to defend heresy, but the innocent from false accusations thereof.

The eleventh question of the third part of the Treatise describes the duties of a defender. After receiving the main counts from the judge, he must hand them over to the accused without specifying the names of the witnesses, offering to guess on his own. At the same time, the attorney should provoke the defendant to disclose the names of people who, in his opinion, gave false testimony to disclose the enemies. The attorney hands over the names indicated by the defendant to the judge. He must investigate these circumstances for possible hostility between witnesses and the defendant, as well as for false accusations. If such circumstances are established, the accused shall be subject to full acquittal and release on condition of renouncing revenge [8, p. 309].

Other Participants

In addition to the judge, there are assistants participating in the process. A secular judge has a notary public; an inquisitor has a cleric. Their functions include certifying the decisions of the judge and the inquisitor, and they also read out the text of the charge at the court session [8, p. 343]. The Treatise also mentioned scribes who keep records as well as attesting witnesses (see Article 60 of the Criminal Procedure Code of the Russian Federation).

Challenges

Chapter 9 of the Criminal Procedure Code of the Russian Federation provides for a number of circumstances that exclude the possibility of a person's participation in criminal proceedings and entail their challenge. There is a similar section in the Treatise.

To achieve the purpose of a criminal trial, namely, to establish the truth in the case, it was possible to challenge witnesses who were in mortal enmity with the accused of witchcraft. Such enmity included a person's desire to cause death, injury, or deprive of a good name. Other forms of hostility, such as 'female hostility', did not automatically lead to the challenge of such witnesses, but required that the judge check these statements more closely and also required confirmation by other pieces of evidence. However, such witnesses could be challenged if the defendant himself considered them to be his deadly enemies [8, p. 299]. At the same time, the challenge of witnesses who were in dead enmity was possible only in the absence of other evidence, otherwise such testimony remained in the case, but were to be perceived only as indirect [8, p. 311].

The twelfth question of the third part of the Treatise is devoted to deadly feud. For a judge to better understand its essence, H. Kramer suggests a number of tactics.

One tactic is to provide the accused and the lawyer with an accusatory material with a list of witnesses presented in the order not matching the order as they appear in the case file. After that, the accused is asked to point out his deadly enemies. If he points to all the witnesses, then this gives reason to doubt his testimony. If he names specific individuals, it makes it easier to establish the true nature of the enmity.

Another tactic is to identify whether the suspect has deadly enemies capable of giving false testimony, which is to be done after the second interrogation, but before providing the suspect with an attorney. The accused who is not experienced in legal matters and is not aware of the institution of challenge may answer the question negatively. However, if he names his deadly enemies and they turn out to be among the prosecution's witnesses, this may serve as a reason for the judge to verify their testimony.

Before an attorney is provided, the suspect may also be asked to familiarize himself with the list of witnesses who have given incriminating testimony (without presenting their contents). If the suspect answers negatively to the question of whether he knows anyone from this list, then later, after communicating with the defender, he will no longer be able to point to this person as a deadly enemy.

One more tactic involves familiarizing the defendant with the accusatory material and clarifying his assumptions about those who gave incriminating

testimony against him. If the suspect correctly identifies the witness and points to him as a deadly enemy, the judge should investigate this statement. In this case, it is recommended to seek help from the advice of knowledgeable people who are aware of the relationship between the accused and the witness. This piece of advice should finally resolve the issue of the existence of deadly enmity [8, pp. 312–315].

Circumstances to Be Proven

In the same way as in modern criminal proceedings, the circumstances to be proven in Inquisitio

n trials included the fact of the commission of a crime, as well as the guilt of the person suspected thereof, the circumstances characterizing his personality, the nature and extent of the harm caused by his actions, aggravating and mitigating circumstances, and data affecting the possibility of his release from punishment.

As was mentioned above, the Inquisition process is focused on the commission of crimes against the faith, namely, on professing heretical teachings or witchcraft. According to A. Shannon, heresy should be understood as the deliberate denial of the articles of the Catholic faith as well as the open and persistent defense of erroneous views. A heretic should be recognized as a believer who is familiar with Catholic doctrine and nevertheless denies it and preaches something contrary to it [18].

Evidence and Proof

Evidence that initially points to the guilt of a person and serves as grounds for suspicion includes the person's being disgraced, the signs of witchcraft, as well as the testimony of witnesses. These include the obviousness of the act (when the perpetrator was caught committing an act that has signs of heresy, for example openly preaching heretical teachings, making a threat in front of witnesses, which was followed by relevant consequences, etc.), unanimous testimony from witnesses, and the person's own admission of guilt [8, p. 302, 311, 355]. If the object of suspicion is witchcraft that has caused harm to people or property, then the causal relationship between the defendant's action (for example, a threat) and the consequence is subject to proof. Herewith H. Kramer notes in this regard that diseases can have different sources, and women tend to use threats in disputes among themselves. Accordingly, the causal relationship must be confirmed by other evidence [8, p. 311].

Modern legislation on criminal procedure obliges the investigator, prosecutor, and judge to evaluate each individual piece of evidence in terms of its relevance (relevant to the specific case under consideration), admissibility (obtained legally, by an appropriate subject, from an appropriate source and has received appropriate procedural implementation), reliability (contains information that corresponds to reality), and the totality of evidence is checked for sufficiency to make a decision on a criminal case (see Article 88 of the Criminal Procedure Code of the Russian Federation).

Similar requirements for evidence can be traced in the text of the Treatise. Let us take a closer look at the sufficiency of evidence to convict a suspected witch against whom a previously burned witch has testified. The thirty-third question of the third part of the Treatise is devoted to this topic. Pursuant to it, one fact of the testimony of a burned witch, not confirmed by other pieces of evidence, shall be insufficient, and so the person shall be acquitted [8, p. 364]. H. Kramer draws attention to the fact that the witch has already been convicted by a court verdict of treason to the faith and serving the devil, and therefore her testimony deserves little trust. Thus, the signs of modern procedural prejudice can be traced in the Treatise, namely, taking into account the earlier verdict when evaluating evidence in a new case (see Article 90 of the Criminal Procedure Code of the Russian Federation). If, in addition to the testimony of another witch, there is a bad rumor about a person, but there is no other evidence, *purgatio canonica* (canonical purgation) shall be performed. If a person is 'slightly suspected' of heresy, for example, a man accepted the advice and help of a witch in the matter of seducing a woman, or as a result of the testimony of another person taken into custody, he is also subjected to *purgatio canonica*, as well as the abjuration of heresy. Those 'strongly suspected' of heresy (for example, because of obstructing the actions of the Inquisition aimed at persecuting witches and heretics), who were pointed out by the burned witch, shall be sentenced to public abjuration of heresy under threat of transfer of secular power. If a person arouses the strongest suspicion of heresy due to a complex of evidence, including the testimony of a burnt witch, he shall be sentenced to life imprisonment. The latter case presupposes the incriminating testimony of a burned witch against a person who confessed to heresy and repented, without previously being a repentant heretic. Such a person shall be handed over to the secular authorities for sentencing [8, pp. 363–367].

It is noteworthy that the amount of evidence determines the final qualification of the crime and, as a result, the punishment imposed. In this matter, the Inquisition differs from the modern process, where the charge does not correlate with the volume of evidence obtained.

As an example of sufficiency of evidence, it is also possible to cite the process described in the thirty-fourth question regarding witches who practice witchcraft and midwives who use witchcraft in the treatment of patients. As evidence, the judge should pay attention to the suspect's secrecy about the means of treatment, their awareness of hidden things, selectivity in the treatment of people with similar symptoms, etc. Also H. Kramer recommends paying attention to the old age of the healer, her bad lifestyle, her conviction for adultery, as well as the presence of convicted witchcraft in her family [8, pp. 367–370].

The second question of the third part of the Treatise provides an example of the formal amount of evidence under which an accusation of witchcraft heresy should be considered proven – two witnesses who agree in their testimony. However, H. Kramer, paying attention to the severity of the crime and the severity of the punishment, recommends not limiting oneself to a formal approach to the sufficiency of the evidence base, but striving to obtain the maximum possible amount of evidence [8, pp. 396–397]. This indicates a desire for the most objective assessment of the defendant's actions, and the exclusion of the possibility of convicting innocent people.

Admission of Guilt

The defendant's admission of guilt and its evidentiary value deserve special attention. One of the stereotypical ideas about the Inquisition is its desire to obtain self-incriminating testimony from the defendants in any way, including through tortures [3]. This is partly true, but the motive for such actions is usually misinterpreted. It is necessary to consider the peculiarities of the religious worldview of the people of that era, based on the Christian understanding of man's place in the world, and the widespread belief in the existence of an immortal soul and an afterlife [10]. It should be noted that the purpose of obtaining a confession, from the point of view of H. Kramer, is not to convict an innocent man, but to save his soul. Confession is the way to repentance and salvation of the soul of a Christian who has fallen into heresy. Repentance should be sought only if there is other solid evidence of guilt, and this should be done solely in the interests of the defendant himself [12].

The admission of guilt was, among other things, of procedural significance. First of all, the law prohibited the imposition of the death penalty on a person who did not confess to a crime, even if there was other evidence convincingly incriminating him in heresy [8, p. 315]. Such a rule appears to be primarily religion-based. The execution of an unrepentant person deprived his soul of the possibility of salvation. If there was evidence of guilt, but there was no repentance thereto, the heretic was considered unrepentant [8, p. 336]. In this regard, H. Kramer repeatedly mentions that the death sentence cannot be pronounced on someone who has not confessed to the commission of the crime [8, p. 333], and the truth must come from the defendant himself [8, p. 320]. At the same time, there are two types of recognition, i.e. voluntary (a preferred type of confession) and a forced one [8, p. 333].

The author describes several sophisticated ways to gain confession.

If the trial is carried out on a witch who refuses to make a confession, a respectable man from her social environment should be sent to her, who she trusts and who should start a conversation about what might incriminate her. At the time, there should be witnesses outside the doors who listen to all the words spoken by the witch [8, p. 327].

The second tactic is as follows: the accused is informed that due to the irrefutable evidence of his guilt and the absence of confession, he will be subjected to torture. After that, the person is placed in a cell, where he must wait alone for the start of the interrogation. At this time, friends may be allowed to see him to persuade him to give voluntary testimony. H. Kramer argues that 'persistent reflection, harsh conditions of detention and the exhortations of respectable people often incline the accused to repentance' [8, p. 340].

It should be noted that in modern criminal proceedings, the testimony of the accused is also recognized as evidence. Nevertheless, according to Part 2 of Article 77 of the Criminal Procedure Code of the Russian Federation, self-incriminating testimony is not sufficient in itself and must be supported by other kinds of evidence.

Torture

Analyzing the medieval Inquisition process, one cannot ignore such a method of obtaining a confession as torture. The question of whether torture was used by the Inquisition can be answered with all certainty in the affirmative. H. Kramer considers it as one of the types of investigative actions and describes in sufficient detail the motive, purpose, as well as the legal grounds and procedure for its conduct.

First of all, it should be reminded once again that the purpose of inflicting torture is to establish the truth and obtain a confession [8, p. 320]. Accordingly, if the tortured person confirms false testimony due to his weak character in order to end his torment, the main purpose of torture, i.e. telling the truth by the defendant, cannot be considered achieved [8, p. 340]. H. Kramer also points out the criminalistic significance of torture, which makes it possible to identify witchcraft signs in the tortured, such as the absence of tears, insensitivity to pain, rapid recovery after the procedure, etc. [8, p. 347].

Speaking on the procedure for the infliction of torture against the defendant, it should be noted that it was only used in cases where all other tactics – these of compelling confession from persons whose guilt in heresy and witchcraft had been investigated and proven – had turned out to be fruitless [8, p. 339]. Torture can be imposed only for those crimes that are punishable by death [8, p. 317]. At the same time, torture can be imposed only by a joint decision of the bishop and the inquisitor [8, p. 292]. As procedural prerequisites for the torture H. Kramer points to the lack of a guilty plea when the crime is obvious, the presence of evidentiary incriminating testimony from witnesses, and significant evidence. Torture is inflicted by pronouncing a sentence, which is announced to the defendant [8, p. 339].

Before a torture begins, the judge makes one last attempt to obtain a confession without using violence, for which the person sentenced to torture and placed in prison shall be visited by his friends who try to convince him to confess. According to H. Kramer, reflections on the impending torture, harsh prison conditions, and exhortations often contribute to witches renouncing heresy and making a confession [8, p. 318].

If it is impossible to avoid torture, the court should take precautions not to fall under the witch's spell, expressed in the form of pity, as a result of which the hearts of the judge and assessors lose their severity, which can lead to her acquittal. To do this, the witch should be carried into the courtroom backward and not allowed to see anyone except her executioners [8, p. 323]. For security reasons, before the torture begins, the defendant undresses so that there are no magical objects hidden among his clothes that could obstruct the process [8, p. 318], all body hair should be shaved off [8, p. 323]. If the person subjected to torture is a witch, these procedures shall be performed by respectable women [8, p. 318].

After the preparatory procedures, the defendant shall be handed over to the executioners, who, in his presence, must prepare instruments of torture to frighten him and persuade him to make a confession one last time. Then a moderate torture begins, that without bloodshed [8, p. 318]. In the process, torture can be stopped at any time by anyone present, so that the initiator can try to exhort the tortured [8, p. 318]. Regarding the severity of the torture inflicted, H. Kramer notes that it must correspond to the severity of the crime committed [8, p. 319].

After the start of the torture, the judge proceeds to the interrogation, starting with questions about the least serious charges, since they are the easiest to obtain a confession [8, p. 319]. The entire course of the interrogation shall be recorded by a notary public. If the person being tortured made a confession, the torture shall be suspended, and this person shall be taken to another room to take evidence. If moderate torture did not lead to a result, and the defendant did not admit guilt, more severe instruments are shown to him, and it shall be reported that the torture will continue the next day. It should be noted that this is not a new repetition of the torture, but a continuation of the earlier one, because it is prohibited by law to torture a person twice in the absence of new evidence [8, pp. 319–320]. H. Kramer recommends observing the tortured person before prescribing more severe torture to determine whether he has the gift of perseverance that allows him to withstand pain, since 'the grace of shedding tears' is a gift from God. Accordingly, the absence of tears (especially for women) is a convincing sign of the effect of witchcraft charms [8, pp. 321–322]. In some cases, if there is no strong or grave suspicion against the defendant, tears can serve as proof of innocence, and the defendant can be released [8, p. 322].

On the second day of torture, the witch shall be risen on the rack. After that, the torture continues, during which incriminating witness statements are read to her [8, p. 326]. If no confession has been received from the tortured person within three days, the torture shall be stopped [8, p. 340].

H. Kramer pays special attention to the possibility of promising the tortured life in the event of a guilty plea. There are three ways to solve this problem. The first is to promise life, but to keep silent about the fact that if convicted, the defendant will be sentenced to life imprisonment. The second way is to make a promise of life, but to endure the life for a while, after which the defendant shall still be burned to death. The third way is to promise to save the life and then transfer the defendant to another judge for sentencing. H. Kramer recommends resorting to the first method, adding that many witches persist in interrogation only out of fear of death [8, pp. 318–319].

Pre-Trial Restrictions

Modern criminal procedure legislation provides for a wide range of measures applied to the accused to ensure criminal proceedings, primarily to prevent the possibility of his escape, attempts to influence other participants in the process, as well as the continuation of criminal activity (see Article 97 of the Criminal Procedure Code). Similar measures were described by H. Kramer. Unlike the modern Criminal Procedure Code of the Russian Federation, the Treatise considers only two possible restrictive measures applied to a person suspected of heresy. They are imprisonment and personal surety. The basis for the application of both preventive measures is the presence of bad rumors, evidence, and incriminating testimony of witnesses. If there is a respectable person who is ready to vouch for the suspect, the latter can be released while awaiting his trial. If he escaped,

the crime should be considered proven. If there is no guarantor, there will be a reason to suspect that the person may escape. Under the given circumstances he shall be placed in prison. In any case, the choice of restrictive measures was left to the judge's discretion [8, p. 303]. H. Kramer urges that precautions should be taken when arresting a witch and recommends lifting her off the ground and carrying her to the cell in a basket or on shoulders, as this helps to avoid further persistence and denial during interrogation [8, p. 34].

At the time of the suspect's arrest, a thorough search should be carried out at his place of residence to find instruments of witchcraft and other evidence of guilt [8, p. 304].

Procedural Terms

Article 6.1 of the Criminal Procedure Code of the Russian Federation prescribes the conduct of criminal proceedings within a reasonable time, the violation of which harms the rights and interests of the participants in the process.

When discussing the terms of the heretical trial, H. Kramer points to the need for a shortened court procedure devoid of unnecessary formalities. The judge should stop excessive verbal arguments that slow down the consideration of the appeal case, as well as arguments by defenders, and their calling unnecessary witnesses [8, p. 399].

Initiation of a Criminal Case (Reasons and Grounds, Procedure)

According to the logic of this paper, comparing the Inquisition process with the process under modern legislation, the next issue to be considered is the stages of the process.

The first stage of the Inquisition process, which can be conditionally identified with the modern stage of initiation of criminal proceedings (see Article 140 of the Criminal Procedure Code of the Russian Federation), is described in the first question of the third part of the Treatise 'On the appropriate methods for initiating proceedings'. Three grounds for that are given there.

Firstly, proceedings are to be initiated if someone accuses another person of heresy and presents evidence. At the same time, an unsubstantiated accusation may serve as a basis for punishment for making false statements.

Secondly, the charge is brought by a person who does not vouch for the accuracy of his information and is not ready to provide evidence (the so-called denunciator). The said person reports the crime because of his zeal in the faith.

Thirdly, an inquisitor has heard a rumor about witches and sorcerers that have appeared in a certain area. This process is called the Inquisition [8, p. 293]. H. Kramer notes that the first of the grounds is almost not applied, and most of the processes begin either through denunciation or Inquisition.

In this case, drawing parallels with modern legislation on criminal procedure, one can also note a significant similarity in the logical approach for initiating criminal proceedings. In the Treatise, the basis is information on the commission of a crime against faith, the reasons are a message about a specific person or information received from other sources.

The Start of a Trial

The denunciation process begins with a general call for witnesses. By the judge's order, an announcement is posted on the doors of churches and administrative buildings stating that everyone, under the threat of excommunication, must appear within 12 days and expose to the court persons who are rumored to be heretics or witches. If the prosecution is carried out by a secular judge, he shall warn of secular punishment for non-compliance with this regulation. At the same time, the public is informed that any denunciator shall be released from liability if his denunciation is not confirmed. The denunciated persons give their testimony to the judge in the presence of a notary public, as well as two witnesses, and a protocol shall be kept [8, pp. 294-295]. Before giving evidence, the denunciator shall take an oath placing his hand on the four Gospels of the Lord or on the cross that he is going to tell only the truth. During the interrogation, the judge must find out from the denunciator in what way he got to know about the events described, and whether he saw it himself. If the interrogated person is an eyewitness, then it is necessary to find out who else was present. If he only heard about the crime, then he must tell from whom, and who else was present at the time. The listed questions are addressed to the denunciator after giving the main testimony. After the interrogation is over, he is asked to swear again on the four Gospels or on the cross that his denunciation is not based on evil will, hatred or malice, and he does not hide anything out of a sense of affection toward the suspect. He is also ordered to remain silent about his interrogation [8, p. 296].

The most common Inquisition trial takes place without inviting denunciators and accusers. The basis, as mentioned above, is information received by the inquisitor about a witch or sorcerer acting in a particular area. In this case, the trial begins with the announcement of the inquisitor's sole decision, read out in the presence of a notary public, a scribe and two witnesses [8, p. 296].

Interrogation of Witnesses

The fourth question of the third part of the Treatise is devoted to the requirements that witnesses must meet. Any person can be a witness in religious trials, including excommunicated persons, criminals, serfs against their

masters, repentant perjurers, heretics, and even witches. Spouses, sons, and household members are also allowed to give testimony [8, p. 298]. At the same time, people who are in death enmity with the suspect, which was described above, shall not be allowed to testify. The testimony of persons who have a non-fatal enmity toward the defendant can be regarded as indirect evidence [8, p. 310].

The Treatise provides for the possibility of forcing witnesses to testify under threat of accusing them of heresy. It should be noted that modern legislation also can be exemplified with witness liability for refusing to testify (see Article 308 of the Criminal Code of the Russian Federation). Paragraph 70 of the Criminal Procedure Code of the Federal Republic of Germany establishes arrest for up to 6 months as a measure of procedural coercion for a witness who unreasonably refuses to testify [4, p. 107].

A judge, a notary public or a scribe, and two witnesses shall be present during the interrogation of a witness [8, p. 301]. The identities of the denunciators and witnesses are hidden from the defendant to protect them from revenge, the danger of which is expressed in the nobility of the defendant's family, the power of money, and malice [8, p. 305].

The Involvement of an Expert

The Criminal Procedure Code of the Russian Federation provides for the possibility of involving persons with expertise in certain areas as participants in criminal proceedings (see Articles 57–58 of the Criminal Procedure Code of the Russian Federation). Similar provisions were included in the Treatise.

In cases where the subject matter of the investigation is the imposition of a spell on a person that has caused a deterioration in health, the court is instructed to use the help of people knowledgeable in medicine who must answer the question of whether the disease can be cured by natural methods of modern medicine, or whether there is a spell [8, p. 311].

Interrogation of the Accused

Much attention in the Treatise is paid to the tactic of interrogation of the accused, which is divided into several acts. First of all, it is necessary to find out the origin of the interrogated person, his place of residence, who the parents were, the circumstances of their death, the circumstances of their upbringing, and the social environment. It is also necessary to inquire whether the person believes in the existence of witches and their ability to perform witchcraft. H. Kramer points out that at the first interrogation, most witches and sorcerers, to deflect suspicion from themselves, answer this question negatively [8, p. 301].

During the second act of interrogation, the accused is asked questions about the nature of the suspicion, for example, why there is a bad rumor about him, what prompted him to make threats soon after which bewitchment occurred, why he touched a person who soon became ill, etc. [8, pp. 301–302].

If the accused requests a confrontation with denunciators and witnesses who give incriminating testimony, he shall be refused, because the contrary puts the lives of those who testified against him in danger [8, p. 305]. As was mentioned above, one of the purposes of the interrogation of the accused was to admit his guilt and repent. For reaching this aim, H. Kramer considers it appropriate to use torture and other tricks described above. However, it should also be recalled that such tactics shall be applied only to a person whose guilt is confirmed by other evidence and is beyond the doubt of the judge. Such tactics are not aimed at condemning the innocent, but at saving his soul by repentance.

Sentencing

At the end of the trial, the judge passes sentence. The Treatise describes three types of sentences including reprieved (interlocutory), final, and prescribed. These types of sentences represent various forms of procedural expression of a court decision.

The type of reprieved sentence has the procedural meaning of a modern court ruling, which is adopted by a judge alone, does not influence the investigation of the case de facto, but only influences the current issues of the trial [11]. These are the withdrawal of witnesses, postponement of sentencing or punishment, etc. [8, p. 333].

The final sentence resolves the process and contains a decision on all charges, including punishment therefor [8, pp. 333-334].

The prescribed sentence is a form of explanation that a higher judge gives to a lower judge on how to act in relation to the defendant [8, p. 334]. It seems to have the meaning of modern resolutions of the Plenum of the Supreme Court of the Russian Federation.

Violation of the form of pronouncing a sentence (for example, a decision can only be pronounced by a judge during the day) entails its invalidity, and it does not matter whether it is pronounced orally, without prior writing, or read from a previously compiled manuscript. The verdict can be read personally by the judge or his deputy.

H. Kramer also highlights two grounds for granting a suspended sentence when the convicted person is pregnant at the time of sentencing until the moment of giving birth to a child, as well as if the convicted person had previously admitted guilt, after which he has begun to deny it [8, p. 334].

Types of Court Decisions

The Treatise contains a detailed description of the form and content of sentences imposed upon various results of judicial investigation.

The first tactic of pronouncing a sentence – an acquittal against an innocent person – is described in the twentieth question of the third part of the Treatise. Analyzing the recommended structure of the text, it is possible to identify the main structural elements characteristic of modern judicial acts comprising the introductory, descriptive-reasoning, and operative parts. First, information is provided concerning the judge, the accused, and the nature of the charges. Then there is described the content of the charges, the materials obtained during the investigation, and the results thereof in such a statement as 'we have not found what is presented as blame to have legitimate confirmation'. The operative part contains the following order: 'herewith we announce, explain, and definitively decree that nothing has been found against you that could lead to suspicion of heresy or witchcraft. Therefore, we are ending the investigation and the trial against you and releasing you. This sentence has been pronounced'.

H. Kramer recommends avoiding the use of the word 'innocent' when passing an acquittal, replacing it with the words 'lawful proceedings have not revealed a crime', which means that sufficient evidence of guilt has not been obtained. This makes it possible to resume the process in case of new evidence of a crime. Such a sentence can be pronounced by both a spiritual judge and a secular one [8, pp. 336–337].

The second tactice of pronouncing a sentence is given in the twenty-first question of the third part of the Treatise. It is applied to the accused about whom there is a bad rumor but there is no other evidence of him practicing witchcraft. This, in H. Kramer's opinion, excludes the possibility of an acquittal and requires that the person be subjected to *purgatio canonica* (canonical purgation) so that the faithful could learn about his good reputation. At the same time, it is prescribed where, at what time, and in the presence of how many witnesses *purgatio canonica* should take place. It consists in pronouncing an oath on the Gospel that the condemned person has never adhered to the heresy of which rumor accuses him and has not preached it. The witnesses must swear on the Gospel that they consider the oath to be true. The procedure should take place in the area where there was a bad rumor about the convict [8, pp. 337–338].

In accordance with the third tactic, described in the twenty-second question of the third part of the Treatise, a sentence is pronounced against a person who is ill-known and shall be subject to interrogation under torture. The grounds for the use of torture have been described above. This sentence appears be a type of interim court rulings [8, pp. 339–340].

The fourth tactic of pronouncing a sentence against a person who is 'slightly suspected' of heresy, for whom there is only indirect evidence. At the same time, no guilty pleas, physical evidence, or witness statements incriminating the perpetrator have been obtained during the investigation. In this case, the guilty party shall be sentenced to public renunciation of heresy. This renunciation is pronounced in the local language at a community meeting, as a form of purification from suspicion. After that, the judge shall warn the convicted person that if he falls back into heresy after his renunciation, he shall be considered 'strongly suspected' and shall be handed over to the secular authorities for final judgement without regret [8, pp. 341–342].

According to the fifth tactic, given in the twenty-fourth question of the third part of the Treatise, a sentence is pronounced against a 'strongly suspected' person. As we mentioned above, these include persons against whom incriminating testimony has been given, but there is no witness testimony, physical evidence, or personal confession. Nevertheless, the evidence is highly suspicious. In such a situation, the person is sentenced to undergo *purgatio canonica* described in the fourth tactic. After the renunciation, the judge shall pass a sentence on the defendant. H. Kramer emphasizes that a 'strongly suspected' person who has cleansed his soul in this way cannot be sentenced to either burning or life imprisonment. However, he may be punished for those acts that aroused suspicion of heresy by imprisonment for a certain term. Along with the main criminal punishment, additional spiritual punishment may be imposed, for example, standing on the porch of a church with a piece of wax of a certain weight, making a pilgrimage [8, pp. 343–345].

In the sixth tactic, described in the twenty-fifth question of the third part of the Treatise, a sentence shall be pronounced against a person who arouses strong (grave) suspicion, the criteria of which were described earlier. A person who has not repented of heresy may be handed over to the secular authorities for burning. However, if a person under threat of execution undergoes the *purgatio canonica* described in the fourth and fifth tactics of pronouncing the sentence, the judge may remove excommunication from him and impose punishment. This may include, depending on the severity of the offense, life or temporary imprisonment, the obligation to wear a monastic scapular[1], the obligation to stand on the steps of the church at certain times on certain days, etc. At the same time, the court reserves the right to mitigate, aggravate, modify, and fully or partially release from punishment in the future. H. Kramer

[1] Scapular (derived from the Latin *scapula*, which means 'a shoulder blade') is the name of an element of monastic attire in Catholicism, which later also passed to a special consecrated object (small scapular) worn by Catholics according to a vow. Available at: https://dic.academic.ru/dic.nsf/ruwiki/1333846.

notes that the purpose of applying punishment is to warn the convicted person and others against committing similar crimes in the future [8, pp. 345–348]. In this case, an analogy with the goals of punishment declared by modern criminal legislation should be appropriate, namely the correction of the convicted person and the prevention of the commission of new crimes (see Part 3 of Article 43 of the Criminal Code of the Russian Federation)[1].

Punishment

The twenty-sixth question of the Treatise is devoted to the types of ecclesiastical punishments imposed on repentant heretics, accompanying the oath of purification. These may include: the obligation on certain Sundays and holidays to stand barefoot and bareheaded in front of the church doors during worship, holding wax of a certain weight, which shall be placed on the altar after the end of the service, fasting on certain days for a certain time, a ban on leaving the city for a certain period, presentation to the bishop or to the judge on certain days, etc. Such a sentence can be commuted or cancelled due to the repentance and humility of the convicted person [8, p. 350].

The twenty-eighth question of the Treatise describes the actions taken against a person who has repeatedly fallen into heresy, and who has previously undergone renunciation and *purgatio canonica.* This case is defined in modern criminal legislation as recidivism. It is regarded as a circumstance that increases the degree of danger to a person, and, as a result, entails a more severe punishment (see Article 18 of the Criminal Code of the Russian Federation). Speaking on the medieval religious trial, one can underline that the commission of a crime in a state of recidivism implied a non-alternative punishment in the form of the death penalty. At the same time, as noted earlier, the issue of bodily death in that period was given less importance than the salvation of the soul. Therefore, H. Kramer instructs the judge to send two respectable men to the accused man in prison, so that they inform him of the inevitability of the upcoming execution and convince him to take care of the salvation of the soul, purifying it by confessing the crime and receiving Holy Communion.

After receiving repentance, the inquisitor notifies the representative of the secular authorities of the place and time of the transfer of the criminal who has fallen into heresy. If the convicted person has a spiritual dignity, then, before he is transferred to the secular authorities, this status shall be removed from him by the bishop through the rite of deposition and the sequential removal of church vestments.

In the future, the judge, or on his behalf, a notary public or a cleric, pronounces the sentence. It must contain the circumstances of the original crime, information about the renunciation and subsequent *purgatio canonica*, as well as an indication of the re-falling into heresy, listing the circumstances of the new crime. The sentence ends with the formula 'and as one of those who have repeatedly fallen into heresy, we remove you from our spiritual court and leave you to the secular authorities. But we ask the secular court to moderate the sentence so that you will not be in danger of bloodshed or death'. H. Kramer points out in this regard that the inquisitor, while uttering such words, shall be aware of the inevitability of execution as the only alternative punishment for committing a heretical crime in a state of recidivism, thus distances from the further fate of the convicted person. The author recommends avoiding communication about the upcoming punishment, and communication with the convicted person, so that he would not be personally embittered by the judge. Instead, as mentioned above, people who he trust shall be sent to him in order to prepare him to accept the death penalty, strengthen faith and humility, and accompany him until his death [8, pp. 350–353].

Similarly, a sentence is passed against persons who have confessed to heresy and have not repented, including the case of committing a crime in a state of recidivism [8, pp. 353–355].

Conclusions

Following the analysis performed, the research hypothesis about the significant contribution made by the representatives of the Holy Inquisition to the formation of the modern criminal process can be considered confirmed. Obviously, the Inquisition process has a number of features that contradict modern principles such as the independence of judges, respect for personal honor and dignity, inviolability of a person, the presumption of innocence, and the right to appeal against procedural actions and decisions. Principles such as the adversarial nature of the parties and the right of the accused to a defense, although present, were expressed in a much more limited form. The general accusatory orientation of the Inquisition process also distances it from modernity. At the same time, the instructions on the conduct of Inquisition proceedings set out in the Treatise have an internal logic, describe the course and results of investigative and procedural actions from the beginning of the persecution to the sentencing. Without taking into account the religious orientation of the process and the subject of the investigation, this being controversial in modern context, and evaluating the process from an external, procedural point of view, we can note a goal similar to that pursued by judicial proceedings today – establishing

[1] Criminal Procedure Code of the Russian Federation No. 174-FZ of December 18, 2001 (as amended on March 20, 2025). Access from the legal reference system 'ConsultantPlus'.

the truth, protecting the innocent from false accusation. To this end, the judicial process provides for the institutions of disqualification of witnesses, liability for false testimony, as well as the participation of a defense lawyer. The use of torture by Inquisition courts, on the contrary, is not criminalistic in nature and has nothing to do with obtaining evidence of the defendant's guilt or with the desire to convict an innocent person. It has an exclusively religious nature, based on an understanding of the value of a human soul's salvation, which is perceived as false by a modern person, but was quite logical for people with mystical thinking of that era. Similar approaches to the collection and evaluation of evidence have been preserved in modern criminal proceedings, criminalistic tactics and methods: the commission of a crime as the grounds for criminal proceedings to be conducted; resolution of the issue of investigative and judicial jurisdiction in various types of criminal cases; the basic principles of criminal proceedings, the focus of the process on excluding the conviction of the innocent; formalization of the status of various participants in the proceedings; the presence of a certain competitiveness and the possibility of the accused to defend himself during the investigation, including the withdrawal of witnesses; evidence and circumstances to be proved; motives and grounds for the application of preventive restrictive measures; the establishment of a reasonable term of criminal proceedings; the procedure and sequence of certain investigative actions, interpretation of evidence obtained; the form of a court verdict and the procedure for its delivery.

It should be emphasized that the present research is not aimed at covering the entire continuous development of criminal procedure from the Middle Ages to the present time including important stages associated with the evolution of public legal awareness, this having led to significant humanization.

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The Role of Sanctions in Violating International Legal Guarantees of Health Protection

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Introduction*: sanctions and unilateral restrictive measures have a significant impact on the pace of technological development, availability of medicines and medical devices, and implementation of social guarantees, thus leading to a humanitarian catastrophe in each specific state, which can undoubtedly be assessed as a violation of fundamental human rights formulated in the UDHR and ICESCR.* ***The purpose*** *of the study is to systematize doctrinal views and legal mechanisms intended to counteract the socio-economic consequences of sanctions and unilateral restrictive measures. The research* ***methods*** *employed in the research include a set of general scientific methods (systemic method, modeling, formal-logical method) and specific scientific methods (inter-branch, historical-legal, comparative-legal, formal-legal methods).* ***Results****: in the foreign doctrine of international law, the concepts of sanctions and unilateral restrictive measures have been equated, which legitimizes the policy of foreign states regarding uncontrolled application of those. The international community has consistently attempted to develop legal mechanisms that would allow certain categories of goods and services to be exempted from restrictions imposed. However, the threat of 'secondary sanctions' against legal entities interacting with states subject to sanctions or unilateral restrictive measures, which entails potential economic losses, prevents these mechanisms from being used to the fullest extent.* ***Conclusions****: healthcare technologies, as well as the means of their production and development, should be exempted from the influence of sanctions or unilateral restrictive measures. A similar approach should be applied to technologies used in the production of medicines and medical devices, many of which are defined as dual-use technologies. In the context of the failure of international law to counter the socio-economic consequences of sanctions and unilateral restrictive measures at the domestic level, there are being*

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developed special legal mechanisms aimed at achieving technological sovereignty, protecting the well-being of the population, and ensuring human security.

Keywords: sanctions; secondary sanctions; right to health; right to benefit from scientific progress; social protection; provision of medicines; unilateral restrictive measures; humanitarian exceptions

Information in Russia

Роль санкций в ограничении обеспечения международно-правовых гарантий охраны здоровья человека

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Введение: *санкции и односторонние ограничительные меры оказывают существенное влияние на темпы технологического развития, доступность лекарственных средств и медицинских изделий, обеспечение выполнения социальных гарантий, что в комплексе приводит к гуманитарной катастрофе в каждом конкретном государстве и, бесспорно, является нарушением основополагающих прав человека, сформулированных во Всеобщей декларации прав человека и Международном пакте об экономических, социальных и культурных правах.* ***Цель:*** *систематизация доктринальных воззрений, а также правовых механизмов противодействия социально-экономическим последствиям применения санкций и односторонних ограничительных мер.* ***Методы****: в ходе работы использован комплекс общенаучных (системный, моделирования, формально-логический) и частнонаучных (межотраслевой, историко-правовой, сравнительно-правовой, формально-юридический) методов.* ***Результаты:*** *в зарубежной доктрине международного права произошло отождествление понятий «санкции» и «односторонние ограничительные меры», что легитимизирует политику зарубежных государств в отношении их бесконтрольного применения. Международным сообществом последовательно предпринимались попытки сформировать правовые механизмы, позволяющие исключить из-под вводимых ограничений определенные категории товаров и услуг. Однако угроза «вторичных санкций» в отношении юридических лиц, осуществляющих взаимодействие с государствами, находящимися под действием санкций или односторонних ограничительных мер, и, как следствие, потенциальные экономические потери не позволяют использовать эти правовые механизмы в полной мере.* ***Выводы:*** *технологии здравоохранения, а также средства их производства и разработки должны исключаться из-под влияния санкций или односторонних ограничительных мер. Аналогичный подход необходимо применять в отношении технологий, используемых при производстве лекарственных средств и медицинских изделий, многие из которых определяются как технологии двойного назначения. В условиях несостоятельности международного права в противодействии социально-экономическим последствиям применения санкций и односторонних ограничительных мер на внутригосударственном уровне разрабатываются специальные правовые механизмы, направленные на достижение технологического суверенитета, охрану благосостояния населения, а также обеспечение безопасности человека.*

Ключевые слова: санкции; вторичные санкции; право на здоровье; право на пользование результатами научного прогресса; социальная защита; лекарственное обеспечение; односторонние ограничительные меры; гуманитарные исключения

Definitions of 'Sanctions' and 'Unilateral Restrictive Measures'

In recent decades, the use of restrictive measures against states, referred to as 'sanctions' or 'unilateral restrictive measures', has increased significantly in various regions of the world.

Academic literature presents various approaches to defining the content of these concepts. Documents of international organizations, as well as doctrinal sources, contain such definitions as: 'unilateral coercive measures', 'unilateral restrictive measures', 'unilateral sanctions', 'international sanctions', or simply 'sanctions'[1].

In foreign international law doctrine, these concepts are often equated, this obscuring their true normative and ideological differences. For instance, in the research of J. Combacau, sanctions are defined as 'measures taken by a state acting alone or jointly with others in reply to the behaviour of another state, which, it maintains, is contrary to the international law'. B. Carter, having thoroughly examined U.S. legislation and practice regarding unilateral 'sanctions', argues that both terms can be used interchangeably [15, pp. 1166-1167]. German professor M. Bothe has also proposed to use the term 'sanctions' to refer to any measures applied by subjects of international law in response to undesirable or potentially unlawful actions by another state.

This position of legal scholars, scientifically legitimizes the political will of foreign states to some extent, which also equates these concepts and the conditions for their application. For instance, the U.S. International Trade Commission uses the term 'unilateral economic sanctions', defined as 'any unilateral restriction or condition on economic activity with respect to a foreign country or foreign entity' imposed 'for reasons of foreign policy or national security'[2]. Similarly, the European Parliament's Committee on International Trade employs the term 'sanctions' to describe unilateral economic restrictions imposed by individual states.

In academic literature, sanctions and unilateral restrictive measures are subject to an informal classification based on the scope of their impact on states [14, pp. 137-154]. 'Comprehensive' restrictive measures are designed to exert total influence on all spheres of a state's activities, whereas 'targeted' sanctions are applied to specific sectors, aiming to minimize potential risks of human rights violations. For example, the comprehensive economic sanctions against Iraq following the 1991 Gulf War devastated nearly the entire Iraqi infrastructure. Catastrophic humanitarian consequences of the UN Security Council (UNSC) sanctions against Iraq led to a reassessment of sanction policies, shifting toward a selective approach targeting specific economic sectors and individuals directly linked to the state's unlawful actions.

However, it should be noted that over time the position on defining the normative content of the term 'sanctions' in foreign international law doctrine has evolved, so today the opinion is divided. Some studies acknowledge that responses to unlawful actions by a state can take either a decentralized form (unilateral measures) or a centralized form (multilateral measures). According to scholars, the differences between these two categories are fundamental. Unilateral restrictive measures adopted by an affected party represent a form of ensuring justice and applying proportionate countermeasures, while multilateral restrictive measures demonstrate the role of the international community in safeguarding the international legal order. Publications also emphasize that the imposition of multilateral restrictive measures (sanctions) falls under the exclusive prerogative of the UN Security Council [22, pp. 175-214; 23, pp. 141-142; 24, pp. 190-206].

In Russian doctrine of international law, a clear distinction has been established between the concepts of 'sanctions' and 'unilateral restrictive measures'. The legitimacy of sanctions is rooted in coordinated actions by the international community and legally binding UN Security Council resolutions, whereas unilateral restrictive measures are imposed by one sovereign subject of international law against another — legally equal in status [7, pp. 21-31; 2, p. 38; 11, p. 12; 12, p. 8].

A. V. Kalinin emphasizes that the legitimacy of sanctions is based on internationally coordinated actions within a specific institutional framework, aimed at restoring and maintaining international peace and security [3, p. 31]. In his research on the normative distinctions between 'international sanctions' and 'unilateral restrictive measures', K. V. Kritsky argues that

[1] Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights: Note by the Secretariat. 2018. A/HRC/39/54. Available at: https://www.ohchr.org/en/documents/thematic-reports/ahrc3954-report-special-rapporteur-negative-impact-unilateral-coercive.

[2] Overview and Analysis of Current U.S. Unilateral Economic Sanctions. Investigation No. 332-391. U.S. International Trade Commission. Washington. 1998. Available at: https://www.usitc.gov/publications/docs/pubs/332/PUB3124.PDF.

the term 'sanctions' should be reserved for collective restrictive measures adopted by the UN Security Council to uphold peace and security [8, pp. 206-207]. I. I. Lukashuk similarly highlights that the UN International Law Commission classifies as 'international legal sanctions' only those coercive measures imposed by intergovernmental organizations explicitly authorized to apply them [9, p. 41]. A. Y. Kapustin shares this view but notes the impossibility of developing a unified definition of sanctions due to vastly differing state practices in their application [4, p. 87]. Meanwhile, M. A. Keshner points to the lack of terminological consistency, which facilitates the misuse of the term 'sanctions' in reference to unilateral restrictive measures [6, p. 59]. However, unilateral restrictive measures possess several distinctive characteristics: they are imposed by decision of national authorities; primarily targeted at economic sectors; aimed at protecting state interests; applied extraterritorially, i.e., enforced beyond the state's territory or jurisdiction. Furthermore, the subjects imposing unilateral restrictive measures are typically states or groups of states, while the objects (targets) may include: sovereign states; specific individuals and legal entities engaged in activities deemed undesirable or unlawful by the imposing state [16, p. 340]; third countries that refuse to join such measures against the primary target state[1].

The conclusions presented by the authors can be easily confirmed by reference to Article 39 of the UN Charter, which establishes the exclusive authority of the UNSC to determine measures necessary for maintaining international peace and security. While the term 'sanctions' does not explicitly appear in the UN Charter, the Security Council itself qualifies the coercive measures it adopts under Article 41 precisely as 'sanctions'. This position is reinforced by the UN General Assembly (UNGA), which has clarified that the term 'multilateral economic sanctions' refers exclusively to measures authorized by the UNSC[2]. The GA has further emphasized that only measures adopted by the UNSC under Article 41 of the UN Charter constitute multilateral sanctions, while all other measures must be classified as unilateral coercive measures. This interpretation has been echoed by the UN Special Rapporteur on the negative impact of unilateral coercive measures, who stated that: 'Unilateral measures may be taken by States or regional organizations in compliance with international legal standards only: that is, they are taken with the authorization of the Security Council acting under Chapter VII of the Charter of the United Nations, and they do not violate any international treaty or customary norm'[3]. The Special Rapporteur further concluded: 'Unilateral sanctions that do not satisfy the above criteria constitute unilateral coercive measures and are illegal under international law'[4].

Based on the analyzed doctrinal sources and documents of international organizations, two principal approaches to classifying restrictive measures can be identified. According to the differential approach unilateral restrictive measures refer to measures implemented by one or several states under national legislation and possessing extraterritorial effect. Sanctions are collective economic measures adopted by the UN Security Council under Article 41 of the UN Charter. The Unified Approach encompasses all restrictive measures – whether imposed unilaterally by states or multilaterally by international organizations – under the umbrella term 'sanctions'.

Despite extensive scholarly examination of implementation mechanisms of sanctions and unilateral measures, Russian legal science currently lacks comprehensive systemic studies that provide: a rigorous legal assessment of their consequences and evaluation of their impact on protecting fundamental social and cultural human rights.

The Position of International Organizations on the Application of Unilateral Restrictive Measures

Recognizing the scale of the socio-economic consequences of unilateral restrictive measures for entire regions of the world, international organizations are paying increasing attention to assessing their legitimacy.

[1] Negative impact of unilateral coercive measures on the enjoyment of human rights: Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights. 2019. A/HRC/42/46. Available at: https://www.ohchr.org/ru/documents/thematic-reports/negative-impact-unilateral-coercive-measures-enjoyment-human-rights.

[2] Economic measures as a means of political and economic coercion against developing countries: Report of the Secretary-General. New York. UN. 10 Oct. 1989. A/44/510. Available at: https://digitallibrary.un.org/record/78262?ln=ru&v=pdf.

[3] Unilateral coercive measures: notion, types and qualification: Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan. 2021. A/HRC/48/59. Available at: http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/48/59&Lang=E.

[4] Ibid.

The UNGA has adopted numerous resolutions condemning the use of unilateral restrictive measures. For example, the 1965 UNGA Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty established that 'no state may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind' (para. 2)[1]. The inadmissibility of unilateral economic, political, and other measures is further emphasized in the 1965 Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States[2], Article 32 of the 1974 Charter of Economic Rights and Duties of States, and other key documents[3]. The application of unilateral restrictive measures contradicts the fundamental principles of international law, as outlined in the 1970 Declaration on Principles of International Law[4]. For example, 'the principle of non-intervention prohibits the use or encouragement of economic measures aimed at influencing the exercise of a state's sovereign rights. It was stated in the 1986 ruling of the International Court of Justice in the case of Nicaragua v. the United States, which found that unilateral restrictive measures violate the principle of non-intervention.[5] Similarly, the principle of the sovereign equality of states implies an obligation for states to refrain from applying economic and other forms of pressure.

The 1981 Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States establishes the obligation of states to refrain from any measures in the economic, social, technical, and trade spheres that could be interpreted as interference in a state's domestic affairs. A separate focus should be made on the provisions, prohibiting the use of transnational corporations (TNCs) under a state's jurisdiction 'as instruments of political pressure or coercion against another state, in violation of the UN Charter'[6]. The 1984 UNGA resolution further emphasizes the need to refrain from economic restrictions that are incompatible with the UN Charter and violate obligations under bilateral and multilateral agreements[7]. Additionally, the 1993 Vienna Declaration and Program of Action calls upon states to abstain from any unilateral measures that obstruct trade relations and hinder the full realization of human rights as enshrined in universal international treaties[8].

However, it is important to note the contradictory positions within UNGA resolutions regarding the application of unilateral restrictive measures. The UNGA regularly adopts two distinct sets of resolutions addressing various aspects of the negative impact of unilateral sanctions. These documents repeatedly emphasize the need to refrain from economic restrictions that are incompatible with the UN Charter and violate obligations under bilateral and multilateral agreements [9]. Since 1983, the UNGA has been adopting annual resolutions considering unilateral restrictive measures as a tool of political and economic coercion against developing countries. Over time, these resolutions have also incorporated provisions addressing the impact of unilateral sanctions on human rights.

[1] Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States; Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Available at: http://www.un.org/ru/documents/decl_conv/declarations/intlaw_principles.shtm.

[2] Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty. 1965. A/RES/2131(XX). Available at: https://legal.un.org/avl/pdf/ha/ga_2131-xx/ga_2131-xx_e.pdf.

[3] Charter of Economic Rights and Duties of States. 1974. A/RES/3281(XXIX). Available at: https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2778/download.

[4] The United Nations General Assembly Resolution A/RES/2625(XXV). Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. 1970. Available at: https://treaties.un.org/doc/source/docs/A_RES_2625-Eng.pdf.

[5] Nicaragua v. United States of America. International Court of Justice. 27 June 1986. General List. No. 70. Available at: https://www.icj-cij.org/node/103143.

[6] Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States. 1981. A/RES/36/103/. Available at: https://docs.un.org/A/RES/36/103.

[7] Economic measures as a means of political and economic coercion against developing countries: Resolution adopted by the General Assembly. 1984. A/RES/39/210. Available at: https://www.ohchr.org/sites/default/files/Documents/Issues/UCM/Res/A-RES-39-210.pdf.

[8] Vienna Declaration and Programme of Action: Note by the Secretariat. A/CONF.157/23. Geneva. UN. 12 July 1993. 28 p. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action.

[9] Economic measures as a means of political and economic coercion against developing countries: Resolution adopted by the General Assembly. 1984. A/RES/39/210.

At the same time, it should be noted that during 1960 - 1980s, the UNGA also systematically adopted resolutions calling for restrictive measures against certain states. The notable examples include: UNGA Resolution 2107 (1965)[1], which recommended imposing a series of restrictions against the Government of Portugal; UNGA Resolution 2383 (1968), targeting Southern Rhodesia[2]; UNGA Resolution 1899 (1963), directed against South Africa[3]. Additionally, in response to Israel's military operations in the 1980s, the UNGA urged states to halt all military, economic, financial, and technological assistance to Israel, as well as the supply of personnel, to prevent its aggressive policies against Arab states and the Palestinian people.

The development of the UN Millennium Development Goals (MDGs), later succeeded by the Sustainable Development Goals (SDGs), increased the international community's attention to the negative impact of unilateral restrictive measures on the socio-economic well-being of states. UNGA Resolution 70/1 (adopted on 25 September 2015), which established the SDGs, includes a recommendation to refrain from unilateral sanctions that are inconsistent with international law and the UN Charter and that hinder full economic and social development.

The issue of unilateral restrictive measures has also been addressed in the Draft Articles on Responsibility of States for Internationally Wrongful Acts, prepared by the International Law Commission (ILC). This document outlines the legal framework for cases where a state bears responsibility for violating international obligations and establishes conditions for lawful countermeasures between states[4].

Under WTO agreements, unilateral restrictive measures are considered discriminatory and violate the provisions of Article I (Most-Favored-Nation Treatment) and Article XI (General Elimination of Quantitative Restrictions) of the GATT. This position is supported by a number of Russian legal studies [13, pp. 169-170]. The only exceptions are circumstances defined under Article XXI of the GATT, which allows measures necessary for national security, including the prevention of threats to peace or acts of aggression, taken in self-defense or in compliance with UN Security Council resolutions. However, scholars note that the wording of these exceptions is rather abstract and ambiguous, allowing for broad interpretations [1, p. 48]. For instance, the United States has repeatedly justified unilateral sanctions by citing 'national security threats'.

The role of unilateral restrictive measures in undermining human rights has been repeatedly addressed by the Office of the UN High Commissioner for Human Rights (OHCHR). The High Commissioner has emphasized that states have an obligation to refrain from unilateral coercive measures that violate internationally guaranteed human rights protections, particularly in vulnerable economies[5].

The Sub-Commission on the Promotion and Protection of Human Rights, in its Resolution 1997/35 of 28 August 1997 titled 'The Adverse Consequences of Economic Sanctions on the Enjoyment of Human Rights', expressed deep concern over the impact of economic sanctions on compliance with the UN Charter, the Universal Declaration of Human Rights (UDHR), and other international human rights treaties. The resolution outlined key concerns regarding their application: humanitarian consequences for the most vulnerable populations; exacerbation of income inequality; promotion of illicit and unethical business practices. In 2000, the Sub-Commission issued a comprehensive report analyzing the legitimacy of sanctions and unilateral restrictive measures under international law, while also proposing recommendations to mitigate their adverse effects on human rights obligations[6]. The report emphasized that the core rationale behind economic sanctions – exerting economic pressure on civilian populations to induce political change – proves counterproductive in practice, only deepening human suffering without achieving intended policy outcomes.

In response to the growing scale of unilateral restrictive measures, the UN Human Rights Council

[1] Question of Territories under Portuguese administration: Report of the Secretary-General. 1965. A/RES/2107(XX). Available at: https://docs.un.org/A/RES/2107(XX).

[2] Question of Southern Rhodesia. UNGA Res 2383. 1968. Available at: https://digitallibrary.un.org/record/202688?v=pdf.

[3] Question of South West Africa. A/RES/1899. 1964. Available at: https://digitallibrary.un.org/record/204109?v=pdf.

[4] Responsibility of States for internationally wrongful acts. Resolution adopted by the General Assembly. A/RES/56/83. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N01/477/97/PDF/N0147797.pdf?OpenElement.

[5] Thematic study of the Office of the United Nations High Commissioner for Human Rights on the impact of unilateral coercive measures on the enjoyment of human rights, including recommendations on actions aimed at ending such measures. Geneva. UN. 11 Jan. 2012. A/HRC/19/33. Available at: https://docs.un.org/A/HRC/19/33.

[6] The adverse consequences of economic sanctions on the enjoyment of human rights: working paper. Prepared by Marc Bossuyt. Geneva. UN. 21 June 2000. E/CN.4/Sub.2/2000/33.

(HRC) has taken steps to systematically examine and counteract this issue. In Resolution 27/21, the HRC decided to hold biennial panel discussions on unilateral coercive measures and human rights, involving member states, relevant UN bodies, agencies, and other stakeholders. Additionally, the HRC established the mandate of a Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, tasked with monitoring and reporting on the humanitarian and legal consequences of such measures.

Summarizing the thematic reports presented by the Special Rapporteur, it should be noted that most of them highlighted the negative impact of unilateral measures on the accessibility of healthcare technologies[1]. The conclusions of the latest 2021 report by the Special Rapporteur stated that 'economic, financial, and trade sanctions against states, as well as embargoes on maritime, land, or air transport, make it impossible to procure and deliver necessary technological, medical, and other equipment, spare parts, reagents, medicines, vaccines, food, and other essential goods, thereby impeding the realization of basic civil, economic, social, and cultural rights, as well as the right to development'[2].

Non-governmental organizations and the expert community have also attempted to assess the impact of unilateral restrictive measures on human rights. For example, on September 28, 2011, Maastricht University and the International Commission of Jurists organized a conference, which resulted in the adoption of the Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social, and Cultural Rights. These principles require states to fully comply with their human rights obligations when 'designing, implementing, and terminating any sanctions regime' and to refrain from imposing embargoes on 'goods and services essential for meeting core obligations'.

In Russian doctrinal sources, a critical attitude has also developed toward assessing the legitimacy of unilateral restrictive measures. According to M. V. Keshner, unilateral coercive measures lack legitimacy and are unjustifiably referred to as sanctions, since the principle of sovereign equality of states excludes the possibility of one state lawfully imposing sanctions against another state or group of states unilaterally [5, p. 147].

In the thesis of K.V. Kritsky, it is argued that unilateral measures by one state against another are inconsistent with fundamental international legal principles, primarily the principle of sovereign equality of states and the inadmissibility of interference in the internal affairs of states [8, p. 11].

While exploring the practice of applying unilateral restrictive measures, special attention should be paid to the problem of 'secondary sanctions', which are understood as restrictions imposed on the activities of a state or legal entity in relations with a state in respect of which unilateral restrictive measures have been introduced. Under the threat of potential financial consequences, organizations refuse to interact with counterparties located in a state subject to sanctions, even if the service provided or the goods supplied are not subject to restrictive measures.

Based on doctrinal sources, as well as documents of international organizations, it should be concluded that the application of unilateral restrictive measures contradicts the basic principles of international law: the principle of sovereign equality of states, non-use of force, self-determination of peoples, non-interference in the internal and external affairs of states, peaceful settlement of international disputes, cooperation between states and the conscientious fulfillment of obligations assumed under international law[3].

The Impact of Sanctions and Unilateral Restrictive Measures on Access to Healthcare

Since the introduction of UNSC sanctions and unilateral restrictive measures, numerous academic studies and documents from international organizations have highlighted their negative impact on the socio-economic sector.

[1] Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights. 2015. A/HRC/30/45; Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights. 2018. A/HRC/39/54. Available at: https://www.ohchr.org/en/documents/thematic-reports/ahrc3954-report-special-rapporteur-negative-impact-unilateral-coercive; Unilateral coercive measures: notion, types and qualification. 2021. A/HRC/48/59. Available at: https://docs.un.org/A/HRC/48/59.

[2] Targets of unilateral coercive measure: notion, categories and vulnerable groups: Note by the Secretary-General. 2021. A/76/174/Rev.1. Available at: https://documents.un.org/doc/undoc/gen/n21/245/76/pdf/n2124576.pdf?token=WJKHRWJeGDDp4yymsD&fe=true-.

[3] Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Adopted by The United Nations General Assembly Resolution A/RES/2625(XXV) on 24 Oct. 1970. Available at: https://treaties.un.org/doc/source/docs/A_RES_2625-Eng.pdf.

UN Secretary-General Kofi Annan noted in his speech that, despite the importance of sanctions as a means of enforcing the will of the international community, they remain a 'blunt' instrument that harms large numbers of people who are not their intended targets[1]. In the Millennium Report, dedicated to the role of the UN in the 21st century, the UN Secretary-General emphasized the detrimental effects of economic sanctions on populations, pointing out that their application often only strengthens the position of the ruling authorities[2]. Concerns about the humanitarian consequences of sanctions have also been raised by the UN Security Council[3].

The resolutions by the Commission on Human Rights regarding the application of unilateral coercive measures have stated that some countries, leveraging their dominant position in the global economy, continue to intensify the adoption of unilateral coercive measures against developing countries that obviously violate international law, such as trade restrictions, blockades, embargoes, and asset freezes aimed at preventing these countries from fully exercising their right to determine their own political, economic, or social systems[4].

The effectiveness of sanctions as a tool for ensuring peace and security has been repeatedly called into question. For example, UN Security Council sanctions achieved the intended outcome in only 10% of cases[5], while reducing life expectancy in targeted countries by 1.2–1.4 years [19, p. 27]. The UN Children's Fund (UNICEF) reported that infant mortality in certain regions of Iraq doubled after sanctions were imposed[6]. A study on the impact of sanctions on life expectancy indicators conducted in 1995 – 2018 confirmed their negative effects [20, pp. 60-62].

The human right to health was first enshrined in international instruments under the 1946 Constitution of the World Health Organization and was subsequently elaborated in Article 25 of the 1948 Universal Declaration of Human Rights (UDHR) and Article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR). These international legal instruments established an obligation for states to cooperate in the progressive realization of the human right to health.

The use of sanctions that directly or indirectly affect the social area leads to restrictions on the fulfillment of the human right to health, as has been repeatedly noted in the work of the Committee on Economic, Social and Cultural Rights (CESCR). For example, CESCR General Comment No. 14 calls on states to 'consistently' refrain from imposing sanctions that limit access to medicines and medical equipment. The issue of the impact of 'economic sanctions' on the protection of human rights is addressed in CESCR General Comment No. 8 of 1997[7]. The document summarizes the consequences of UN Security Council sanctions on the implementation of the ICESCR, including their significant impact on disruptions in the supply of medicines. At the same time, paragraph 12 of the Comment formulates the need to establish a list of goods that should be exempted from sanctions to mitigate potential adverse effects on protection of the rights recognized in the ICESCR.

The introduction of unilateral restrictive measures and sanctions does not also lead to widespread restrictions on the human right to health but also results in discrimination against vulnerable populations (the elderly, women, children, and persons with disabilities) in accessing medical and social assistance. For example, countries under sanctions experience increased child mortality rates due to limited access to vaccination and

[1] Secretary-General reviews lessons learned during 'Sanctions Decade' in remarks to International Peace Academy Seminar: [statement, 17 Apr. 2000] [by the Secretary-General]. Available at: https://www.un.org/press/en/2000/20000417.sgsm7360.doc.html.

[2] 'We the Peoples': The Role of the United Nations in the 21st Century: Millennium Report of the Secretary-General of the United Nations. United Nations Department of Public Information. New York. 2000.

[3] Letter dated 13 April 1995 from the Permanent Representatives of China, France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States to the United Nations addressed to the President of the Security Council. S/1995/300. New York. UN. 13 Apr. 1995. Available at: https://docs.un.org/S/1995/300.

[4] Situation of human rights in the territory of the former Yugoslavia: 5th periodic report on the situation of human rights in the territory of the former Yugoslavia submitted by Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 32 of Commission resolution 1993/7 of 23 February 1993; Human rights and unilateral coercive measures. UN. Commission on Human Rights. E/CN.4/RES/1995/45. Available at: https://digitallibrary.un.org/record/227032?ln=en.

[5] United Nations Security Council. Subsidiary Organs of the United Nations Security Council – Fact Sheets 2022; United Nations Security Council sanctions regimes, 2022. Available at: https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/subsidiary_organs_factsheets.pdf.

[6] Children's death rates rising in Iraqi lands, UNICEF reports. Available at: https://www.nytimes.com/1999/08/13/world/children-s-death-rates-rising-in-iraqi-lands-unicef-reports.html.

[7] Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment no. 8: The relationship between economic sanctions and respect for economic, social and cultural rights. 1997. E/C.12/1997/8. Available at: https://docs.un.org/E/C.12/1997/8.

chronic malnutrition. The fundamental principles prohibiting discrimination on various grounds are outlined in international human rights treaties of a universal nature, including Article 7 of the Universal Declaration of Human Rights (UDHR), Article 26 of the International Covenant on Civil and Political Rights (ICCPR), and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which establishes the obligation to combat discrimination in realizing the right to the highest attainable standard of health. In General Comment No. 20, the Committee on Economic, Social and Cultural Rights (CESCR) emphasized that non-discrimination and equality are fundamental components of human rights and are essential in the realization of economic, social, and cultural rights.

Economic shocks, manifested in high inflation rates, currency devaluation, and reduced budget revenues caused by the imposition of restrictive measures, directly impact the funding of the healthcare system. This leads to decreased accessibility of medical services and insufficient staffing in the healthcare sector. Rising poverty rates significantly limit access to private healthcare. Sanctions and unilateral restrictive measures negatively affect social determinants of health, impacting not only a person's physical condition but also their social and mental well-being.

Particular attention should be paid to the issue of establishing state responsibility for the extraterritorial consequences of unilateral restrictive measures, as reflected in the position of the International Court of Justice in the 2018 case concerning alleged violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Iran v. United States of America). According to the Court's ruling, restrictions on the import and purchase of goods essential for humanitarian needs such as food and medicines, including vital medications, treatments for chronic diseases or preventive measures, as well as medical equipment, can have severe detrimental effects on the health and lives of people in Iran.

The consequences of sanctions and unilateral restrictive measures became particularly acute during the spread of infectious pandemics. The coronavirus pandemic, which emerged in 2020, affected nearly every country within months, regardless of wealth levels, inflicting catastrophic socio-economic damage, unprecedented GDP losses, rising unemployment, and the collapse of healthcare systems [10, p. 177]. Sanctions and unilateral restrictive measures only exacerbated the healthcare crisis and deepened states' vulnerability in the face of the threat. The UN General Assembly Resolution A/RES/77/214, 'Human Rights and Unilateral Coercive Measures', emphasizes that medicines, including vaccines, must not be used as a tool for political coercion, especially during global public health emergencies.

The CESCR Statement on the COVID-19 Pandemic and Economic, Social, and Cultural Rights pays special attention to the impact of unilateral measures on the accessibility of medical equipment. For example, it states that 'any restrictions imposed on domestic supplies must be proportionate and take into account the urgent needs of other countries'. Para. 22 of the CESCR Statement specifically addresses the negative impact of 'unilateral economic and financial sanctions' on healthcare systems, particularly concerning the procurement of essential medical equipment and supplies[1].

On May 11, 2020, the European Commission issued guidelines to facilitate the delivery of humanitarian aid to combat COVID-19 in countries subject to EU sanctions. These guidelines stipulate that: EU sanctions should not hinder the delivery of humanitarian aid; each EU member state must appoint a contact person to discuss the provision of COVID-19 response resources; humanitarian exemptions must be ensured, and in the case of COVID-19, limited activities not covered by exemptions may be permitted; humanitarian organizations must demonstrate compliance with the exemptions[2].

Unilateral restrictive measures resulted in significant consequences on healthcare in various regions of the world. Since 1961, the United States has imposed unilateral economic restrictive measures against Cuba, including a comprehensive trade embargo that extends to the import of medicines and medical equipment. These restrictions have significantly impacted access to healthcare, posing a direct threat to public health systems [18, p. 1248]. For instance, the number of medicines available in Cuba decreased from 1,297 to 889. Considering that

[1] Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights: Statement by the Committee on Economic, Social and Cultural Rights. 2020. E/C.12/2020/1. Available at: https://docs.un.org/E/C.12/2020/1/.

[2] Commission Guidance Note on the Provision of Humanitarian Aid to Fight the COVID-19 Pandemic in Certain Environments Subject to EU Restrictive Measures (Brussels, 11.5.2020; C (2020) 3179 final). Available at: https://finance.ec.europa.eu/system/files/2022-07/220630-humanitarian-aid-guidance-note_en.pdf.

most essential drugs are developed by multinational pharmaceutical corporations based in the U.S., Cuban doctors have access to fewer than 50% of new innovative medicines[1]. A notable example is the case of a Swedish pharmaceutical manufacturer that had been operating in Cuba since 1970. However, after its acquisition by an American company in 1994, the manufacturer ceased drug supplies to Cuba.

While analyzing the consequences of sanctions and unilateral restrictive measures, it is essential to highlight the fundamental role of actors in international relations that are not traditional subjects of international law in ensuring every person's right to the highest attainable standard of health. For example, transnational corporations (TNCs) in the medical and pharmaceutical industries, which serve as a crucial driving force behind technological advancement, significantly influence both the expansion of access to life-saving diagnostic and treatment methods and the restriction of such access, especially among vulnerable populations. Even in cases where unilateral restrictive measures against a state are not intended to affect the supply of medicines or medical equipment, nor to suspend any forms of cooperation in research or technology transfer, TNCs may still decide to cease their operations in the country. The issue of TNCs' responsibility in ensuring the human right to health has been systematically addressed on multiple occasions within the framework of special procedures of the Human Rights Council and UN human rights treaty bodies[2].

It is important to note that the use of unilateral restrictive measures does not limit the obligations of transnational corporations (TNCs) to uphold human rights, as outlined in the documents of international organizations and discussed in detail in the previous section of this research. Another issue is voluntary support of unilateral restrictive measures by TNCs, which decide to suspend their operations in a given state, thereby restricting access to certain goods and services, including healthcare technologies.

Thus, the application of sanctions and unilateral restrictive measures has a systemic impact on the protection of human health by reducing healthcare funding, increasing poverty rates, limiting access to essential health technologies, and constraining the state's capacity in production and research activities. Such consequences indicate a consistent restriction in the fulfillment of a range of human rights, including the right to the highest attainable standard of health, the right to enjoy the benefits of scientific progress, and others.

Legal Mechanisms to Counter the Social Consequences of Sanctions

Following provisions of Article 2 of the ICESCR, the imposition of sanctions or unilateral restrictive measures implies that the targeted state has an obligation to protect economic, social, and cultural human rights to the maximum extent of its available resources. Subsequently, the CESCR elaborated on this obligation, taking into account objective differences in the socioeconomic development levels of states and, consequently, disparities in access to healthcare. In General Comment No. 3 (1990), the CESCR stated that even in situations of significant resource scarcity, the state must ensure reaching of at least minimum essential level of each of the rights enshrined in the ICESCR. In the context of the right to health, this obligation entails access to a minimum of essential medicines, medical equipment, and services, as defined by the WHO[3].

As previously noted in this study, the imposition of any restrictive measures against a state hinders the full realization of social guarantees for its population. However, such situations should not justify discrimination, requiring states to take all possible measures, including negotiations with other states and the international community, to minimize the adverse effects of sanctions and unilateral restrictive measures on the rights of vulnerable groups in society. It is important to emphasize

[1] Denial of Food and Medicine: The Impact of the US Embargo on Health and Nutrition in Cuba: Executive Summary. American Association for World Health. 1997. Available at: https://www.american.edu/centers/latin-american-latino-studies/upload/impact-of-us-embargo-on-health-nutrition-in-cuba-1997.pdf.

[2] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Expert consultation on access to medicines as a fundamental component of the right to health. 2011. A/HRC/17/43. Available at: https://digitallibrary.un.org/record/706244?ln=en. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie: Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework. 2011. A/HRC/17/31. Available at: https://digitallibrary.un.org/record/705860?ln=en.

[3] WHO. General Comment No. 3: The nature of States parties' obligations (Article 2, para 1) (1990). Adopted by the Committee on Economic, Social and Cultural Rights at the Fifth Session. E/1991/23, 14 December 1990. Available at: https://docs.un.org/E/1991/23.

that states applying unilateral restrictive measures, as well as international organizations imposing sanctions on specific states, bear the obligation to implement measures that mitigate their negative consequences and ensure the protection of human rights.

Any sanctions regime or unilateral restrictive measures typically includes exemptions for certain economic activities to ensure the protection of human rights, referred to in academic literature and international organization documents as 'humanitarian exemptions'. The international community's recognition of the consequences of sanctions regimes imposed on a number of states has facilitated the implementation of humanitarian programs aimed at minimizing their socio-economic impact. However, the UN Office of the High Commissioner for Human Rights has acknowledged that the UNSC resolution on Afghanistan did not lead to the expected improvement in access to humanitarian aid.[1] This was largely due to the U.S. freeze on Afghanistan's foreign assets and the cautious stance of banks regarding resuming operations with organizations in the region.

Studies on the consequences of applying humanitarian exemptions have demonstrated their arbitrary and inconsistent interpretation in practice[2]. The verification procedures established by various Security Council sanctions committees remain burdensome, and obtaining approvals for supplies under sanctions regime exemptions is not always feasible [25, pp. 73-74]. For example, a study by the UN Office for the Coordination of Humanitarian Affairs (OCHA) revealed the inefficiency of exemption approval procedures for the supply of various goods, leading to increased poverty, resource shortages, the growth of black markets, illicit trade, and corruption'. The President of the International Federation of Red Cross and Red Crescent Societies emphasized that humanitarian aid must reach countries regardless of sanctions, while noting that humanitarian exemption procedures are extremely lengthy and require additional funding.[3] As of March 2023, UN sanctions are in effect in nine out of the ten major countries receiving assistance from the International Committee of the Red Cross, including Syria, the Democratic Republic of the Congo, and Yemen.

The ambiguity, arbitrary nature, and inconsistent interpretation of humanitarian exemptions in the application of sanctions and unilateral restrictive measures have led to delays, confusion, and, in some cases, the rejection of requests for the export of humanitarian goods. Procedural difficulties in obtaining permission for tax-exempt shipments and the fear of legal prosecutions related to sanctions enforcement hinder the operations of transnational corporations and international organizations.

Under the regime of unilateral restrictive measures imposed by the United States, humanitarian exceptions are also supposed to be used. The authority to impose restrictive measures against foreign states in the event of an external threat to U.S. national security was first granted to the U.S. President under the Trading with the Enemy Act of 1914. Subsequently, in 1976, the National Emergencies Act was adopted, followed by the International Emergency Economic Powers Act in 1977, which established the modern legal framework for imposing unilateral restrictive sanctions. The list of countries whose economic relations were restricted under this legislation at various times included: Haiti (1991–1994); Iraq (1990–2004); Liberia (2001–2004); Libya (1986–2004, and again since 2011); Nicaragua (1985–1990); Panama (1988–1990); Serbia and Montenegro (1992–2003); Sierra Leone (2001–2004); Iran (since 1979); Myanmar (since 1997); Sudan (since 1997); Zimbabwe (since 2003); Syria (since 2004); Belarus (since 2006); North Korea (since 2008); Russia (since 2014).

The enforcement of unilateral restrictive measures is overseen by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC). The sanctions regime is mandatory for all U.S. citizens, regardless of their location, as well as for individuals and entities within the U.S. and U.S.-registered legal entities with foreign branches. Humanitarian exemptions under unilateral restrictive measures are granted in the form of two types of licenses, allowing individuals or legal entities to engage in certain types of transactions: a general license permits a specific type of

[1] Resolution 2615 (2021). Adopted by the Security Council at its 8941st meeting on 22 December 2021. Available at: https://docs.un.org/en/S/RES/2615(2021).

[2] Inter-Agency Standing Committee Working Group (IASCWG) (2000) 'Background paper on economic sanctions and human rights', XLI Meeting, 18–19 May 2000. Available at: https://interagencystandingcommittee.org/system/files/legacy_files/WG41_7.pdf.

[3] 'COVID-19 a wake-up call to international community: urgent need for global solidarity to prevent poverty and food insecurity around the world'. *International Federation of Red Cross and Red Crescent Societies* [website], 2020. Available at: https://www.ifrc.org/press-release/covid-19-wake-call-international-community-urgent-need-global-solidarity-prevent.

activity for a defined category of persons, while a specific license authorizes a particular entity to participate in a designated activity. However, the existence of a licensing mechanism does not fully ensure the protection of human rights and societal well-being. A notable example is the use of humanitarian exemptions under unilateral sanctions against Iran, which include exceptions 'for conducting or facilitating transactions related to the supply of agricultural commodities, food, medicine, or medical devices to Iran'. Yet, in practice, these measures have failed to achieve the intended outcomes[1].

In order to enhance the effectiveness of humanitarian exemptions by international organizations, a number of practical recommendations have been formulated. For instance, the CESCR proposes: establishing a mechanism for predicting and monitoring the consequences of UN sanctions; developing more transparent principles and procedures based on the concept of human rights respect; expanding the list of goods and services supplied under sanctions exemptions; granting designated technical agencies the authority to independently determine necessary exemptions[2].

The implementation of humanitarian exceptions is significantly influenced by sanctions enforcement practices, particularly overcompliance – adhering to measures beyond the stipulated requirements. This trend is especially evident in the banking sector as financial institutions seek to minimize risks associated with dealings involving entities under sanctions or unilateral restrictive measures. Such behavior by banks is driven by fear of the aforementioned 'secondary sanctions'. Foreign companies subject to secondary sanctions may be denied the ability to conduct business in the state that imposed the sanctions, while foreign individuals may be barred from entering the sanctioning country, and their assets within it may be frozen.

The restriction on bank transfers had a significant impact on the availability of various goods and services, including healthcare technologies. The processing time for bank transfers in Syria and Venezuela has increased from 2 to 60 days, while the fee per transfer has risen from 0.5% to 10%. Such practices reduce the efficiency of humanitarian programs, which allocate part of their funding to cover bank transfer costs [17, pp. 38-39]. Another example is the refusal of the Portuguese bank Banco Novo to process payments for the purchase of vital medicines and medical supplies by the Bolivarian Republic of Venezuela due to U.S.-imposed sanctions, highlighting the devastating impact of sanctions on securing the right to health in Venezuela.

The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) issued a general license permitting financial transactions involving the Central Bank of the Islamic Republic of Iran for the supply of medicines, medical equipment, and other goods to combat COVID-19 [3.] In his 2013 report, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran specifically addressed the issue of access to healthcare technologies under unilateral economic measures.[4] Paragraph 68 notes that financial sector sanctions have the greatest impact on the supply of innovative medicines for treating life-threatening diseases. However, insurance companies are reluctant to cover air cargo shipments to the Islamic Republic of Iran, and delivered batches of medicines are often near expiration due to significant delays in transportation. [5]

In order to establish a systematic approach to the application of humanitarian exemptions, the UNSC adopted a resolution in 2022 for the first time, which enshrined the commitment of states, international organizations, and other subjects of international and national law, affirming the possibility of their use for all countries subject to UNSC sanctions. For example, the resolution articulated the principle that 'the provision, processing, and payment of funds, other financial assets or economic resources, and the provision of goods and services

[1] Executive Order 13645 of June 3, 2013. Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Freedom and Counter-Proliferation Act of 2012 and Additional Sanctions with respect to Iran. Available at: https://www.govinfo.gov/app/details/CFR-2014-title3-vol1/CFR-2014-title3-vol1-eo13645/context.

[2] Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights: Statement by the Committee on Economic, Social and Cultural Rights. 17 Apr. 2020. Available at: https://digitallibrary.un.org/record/3856957?ln=en.

[3] United States of America, Department of the Treasury, General License No. 8, authorizing certain humanitarian trade transactions involving the Central Bank of Iran, 27 February 2020. Available at: https://ofac.treasury.gov/media/48841/download?inline.

[4] Situation of human rights in the Islamic Republic of Iran: Note by the Secretary-General. 2013. A/68/503. Available at: https://digitallibrary.un.org/record/759270/files/A_68_503-RU.pdf?ln=es.

[5] 'Preliminary findings of the visit to the Islamic Republic of Iran by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights'. 18 May 2022. *OHCHR* [website]. Available at: https://www.ohchr.org/sites/default/files/2022-05/Irancountry-visit-conclusions-SR-UCM-17May2022%20-EnglishPersian.docx.

necessary to ensure the timely delivery of humanitarian assistance or to support other activities that help meet basic human needs'[1] does not constitute a violation of the asset-freezing obligations imposed on states.

To counter the catastrophic socio-economic consequences of sanctions and unilateral restrictive measures, special legal mechanisms are being developed at the national level. For example, in recent years, a number of fundamental changes have been made to policy documents governing various areas of state development. Additionally, legal mechanisms have been established to achieve technological sovereignty, safeguard public welfare, and ensure human security.

Decree of the President of the Russian Federation No. 121 issued in March 16, 2022, introduced measures to ensure socio-economic stability and protect the population in the Russian Federation, including those aimed at safeguarding public health, such as guaranteeing uninterrupted access to medicines and medical devices. To fulfill this objective, the Government of the Russian Federation is actively implementing a range of measures affecting various stages of the life cycle of healthcare technologies.

For example, the mechanism of compulsory licensing has been systematically examined in the context of public health issues. The application of this mechanism is envisaged in the interests of national defense and security, as well as public health, based on a decision by the Government of the Russian Federation in accordance with Article 1360 of the Civil Code of the Russian Federation[2], or by a court decision under Article 1362 of the Civil Code[3]. To systematize approaches of applying the compulsory licensing mechanism, Decree of the President of the Russian Federation No. 122 of February 15, 2024, mandated the establishment of a subcommittee on the use of inventions, utility models, and industrial designs[4]. This subcommittee operates under the Government Commission on Economic Development and Integration, chaired by the Minister of Economic Development of the Russian Federation. It brings together representatives from the Ministry of Economic Development, the Ministry of Industry and Trade, the Federal Antimonopoly Service (FAS), and Rospatent, as well as relevant federal executive bodies overseeing the industries where inventions, utility models, or industrial designs are supposed to be used without the patent holder's consent.

Another mechanism designed to ensure sustainable access to medicines amid the potential impact of unilateral restrictive measures was the establishment of the Interdepartmental Commission for Identifying Medicine Shortages.[5] The document outlines the situations that lead to shortages, enabling a special regulatory regime for certain medicines. Specifically, this includes granting temporary authorization for the distribution of a batch of a medicine that has registered analogues in the Russian Federation under the INN (International Nonproprietary Name) or allowing the import of a medicine in foreign packaging.

To foster technological independence in the healthcare sector, particular attention is given to funding research activities. For example, subsidies from the federal budget are allocated for the development of advanced pharmaceutical industry technologies. This mechanism is referred to as 'shelf patents' and involves the development and establishment of production capacities for certain medications before the expiration of patent protection, ensuring uninterrupted access in case of shortages.

[1] Resolution 2664 (2022). Adopted by the Security Council at its 9214th meeting on 9 December 2022. Available at: https://digitallibrary.un.org/record/3997259?ln=en&v=pdf.

[2] See: Decree of the Government of the Russian Federation No. 3718-r of December 31, 2020; Decree of the Government of the Russian Federation No. 3937-r of December 27, 2023.

[3] See: Ruling of the Ninth Commercial Court of Appeals. Available at: https://kad.arbitr.ru/Document/Pdf/0a497aee-9564-4487-a140-8d1e17fcfcb0/78514371-8c45-48ef-a5ba-e77b4fd29f1b/A40-185112-2022_20230925_Postanovlenie_apelljacionnoj_instancii.pdf?isAddStamp=True.

[4] 'On Improving the Procedure for Making Decisions on the Use of Inventions, Utility Models, and Industrial Designs for the Purpose of Ensuring the Economic Security of the Russian Federation': Decree of the President of the Russian Federation No. 122 of February 15, 2024.

[5] 'On the Interdepartmental Commission for Determining Inventory Shortage or Risk of Occurrence of Inventory Shortage of Medicinal Products, Issuing Conclusions on Determining Inventory Shortage or Risk of Occurrence of Inventory Shortage of Medicinal Products, on the Possibility (Impossibility) of Temporary Circulation of a Series (Batch) of an Unregistered Medicinal Product, and on the Possibility (Impossibility) of Circulation in the Russian Federation of a Series (Batch) of a Medicinal Product in Packaging Intended for Circulation in the Territories of Foreign States, Medicinal Products in Respect of Which There Is Inventory Shortage or Risk of Its Occurrence, in connection with the Introduction of Economic Restrictive Measures against the Russian Federation, as well as on the Approval of the Forms of the Said Conclusions': Order of the Ministry of Health of the Russian Federation No. 339n of May 19, 2022.

Conclusion

An analysis of Russian and foreign international law doctrines indicates the formation of fundamentally different approaches to assessing the legitimacy of unilateral restrictive measures applied by a state or a group of states to create conditions for altering the political trajectory of certain countries. The presented arguments support the position prevailing among Russian legal scholars, which holds that the application of unilateral restrictive measures is unlawful and that sanctions should only be imposed in accordance with UN Security Council resolutions, as stipulated by the UN Charter.

Sanctions and unilateral restrictive measures significantly impact the protection of fundamental economic, social, and cultural rights by hindering technological development, limiting access to medicines and medical equipment, and undermining social guarantees. All these effects taken together lead to humanitarian crises in affected states and constitute a clear violation of fundamental human rights as enshrined in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Healthcare technologies, as well as the means of their production and development, should be exempt from sanctions or unilateral restrictive measures.

The international community has consistently attempted to establish legal mechanisms to exempt certain categories of goods and services from imposed restrictions. However, the threat of 'secondary sanctions' against legal entities engaging with states under sanctions or unilateral restrictive measures and the resulting potential economic losses prevents the full utilization of the 'humanitarian exemptions' mechanism. Under such circumstances, the proposal for continuous monitoring by states imposing unilateral restrictive measures over the activities of organizations ensuring access to vital healthcare technologies and socially critical goods gains high practical significance. Particular attention should be paid to the banking sector, where transaction restrictions significantly reduce the availability of medicines or food. Equally important is the issue of ensuring access to technologies used in the production of medicines and medical devices, many of which are classified as dual-use technologies, directly affecting the production capabilities of states under restrictive measures.

It is also worth noting that establishing the mandate of the Special Rapporteur on unilateral coercive measures has undoubtedly highlighted the growing problem of unilateral restrictive measures being applied against developing states. However, despite years of consistent work by two Special Rapporteurs, no practical mechanisms have been developed to mitigate the consequences of such measures.

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International Legal Regulation of the Military-Force Approach to the Fight Against Terrorism at the Universal and Regional Levels (taking the examples of the UN and the CIS)

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Introduction: *international terrorism is a modern global threat that requires joint efforts of states to counter it, these undertaken within the framework of multi-aspect anti-terrorist cooperation, including law enforcement and military-force components. At the universal level, under the auspices of the United Nations (UN), there is no common understanding regarding the establishment of a legal regime governing the use of military forces and means by states to respond to terrorist threats. As a result, there has been gradually formed the so-called political regime of the 'war on terrorism'. Meanwhile, at the regional level, under the auspices of the Commonwealth of Independent States (CIS), there has been formalized international legal regulation that governs military-force counteraction to terrorist threats through the legitimate use of military forces and means within the framework of a special legal regime of the 'counter-terrorism operation' (hereinafter referred to as the CTO), which has significant differences from the traditional regime of the use of armed forces and the 'war on terrorism'.* ***Purpose:*** *to identify and compare approaches of states at the universal (UN) and regional (CIS) levels to the international legal regulation of military-force counteraction to terrorism; to substantiate the need to develop international legal foundations for the CTO regime at the universal level.* ***Methods:*** *general scientific and specific scientific methods.* ***Results:*** *gaps in the regulation of the CTO regime at the universal level were identified; tested models of state behavior in the so-called 'war on terrorism' were studied, with problems revealed in applying the provisions of international humanitarian and anti-terrorist law. The international legal and organizational foundations for regulating the CTO regime within the CIS were studied; prospects for the development of the concept of military-force counteraction to terrorism were formulated.* ***Conclusions:*** *in modern realities, the military-force approach of states to*

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the fight against terrorism is most effectively implemented within the framework of comprehensive and multicomponent activities under the legal regime of the CTO, which allows combining law enforcement and military tasks facing the states. The CTO regime has been tested and has proven its effectiveness within the framework of anti-terrorist cooperation of the CIS member states.

Keywords: terrorism; military-force fight against terrorism; war on terrorism; illegal combatants; counter-terrorism operation; military-police operation; United Nations; Commonwealth of Independent States

Information in Russian

Международно-правовое регулирование военно-силового подхода к борьбе с терроризмом на универсальном и региональном уровне (на примере ООН и СНГ)

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***Введение**: международный терроризм является современной глобальной угрозой, противодействие которой требует объединения усилий государств в рамках многоаспектного антитеррористического сотрудничества, включающего правоохранительную и военно-силовую компоненту. На универсальном уровне под эгидой ООН отсутствует единое понимание относительно закрепления правового режима, регламентирующего применение государствами военных сил и средств реагирования на террористические угрозы. Как следствие, наблюдается поэтапное оформление так называемого политического режима «войны с терроризмом». Однако на региональном уровне под эгидой СНГ оформлено международно-правовое регулирование военно-силового противодействия террористическим угрозам посредством легитимного применения военных сил и средств в рамках специального правового режима «контртеррористической операции» (КТО), имеющего существенные отличия от традиционного режима применения вооруженных сил и «войны с терроризмом». **Цели**: выявление и сопоставление подходов государств на универсальном уровне (ООН) и на региональном уровне (СНГ) к международно-правовому регулированию военно-силового противодействия терроризму; обоснование потребности в разработке на универсальном уровне международно-правовых основ режима КТО. **Методы:** общенаучные и частнонаучные методы познания. **Результаты**: выявлены пробелы в регламентации режима КТО на универсальном уровне, исследованы апробированные модели поведения государств в так называемой «войне с терроризмом» с определением проблем применения положений международного гуманитарного и антитеррористического права. Изучены международно-правовые и организационные основы регулирования режима КТО в рамках СНГ и сформулированы перспективы развития концепции военно-силовой борьбы с терроризмом. **Выводы**: в современных реалиях реализацию военно-силового подхода государств к борьбе с терроризмом эффективнее всего вести в рамках комплексной и многокомпонентной деятельности, обеспечиваемой правовым режимом КТО, который позволяет сочетать в себе правоохранительные и военные задачи, стоящие перед государствами. Режим КТО прошел апробацию и доказал свою эффективность в рамках антитеррористического сотрудничества государств – членов СНГ.*

Ключевые слова: терроризм; военно-силовая борьба с терроризмом; война с терроризмом; незаконные комбатанты; контртеррористическая операция; военно-полицейская операция; Организация Объединенных Наций; Содружество Независимых Государств; ООН; СНГ

Introduction

Today humanity is facing major threats, one of which is terrorism, retaining its destructive potential and posing a huge challenge to international peace, security, as well as the stability of states and regions[1]. Since the beginning of the 21st century, when a trend toward globalization of terrorism emerged, the spaces for terrorist attacks have expanded, including to the sphere of information and communication technologies (hereinafter referred to as ICT)[2], the ideology of terrorism has become ubiquitous and widespread, including in the global information field[3], the ways and methods of committing terrorist acts have become much more complex, this leading to an increasing number of terrorist victims and extending scale of infrastructure destruction.

For example, according to the Global Terrorism Index 2024[4], the number of terrorism-related deaths increased by 22% (to 8,352), the highest figure since 2017. The epicenter of terrorist attacks has shifted from the Middle East to Africa (the Central Sahel region), accounting for more than half of all victims of terrorist attacks. There can also be noted a positive trend: the number of terrorist attacks globally has decreased by 22% (to 3,350 attacks); the number of countries reporting terrorist attacks has decreased to 50. However, it follows from that the impact of terrorism is becoming increasingly concentrated, with ten countries accounting for 87% of all terrorism- related deaths.

Trends also include an active use of drones in attacks by certain terrorist groups, especially ISIS*, Boko Haram*, the use of GPS, ICT, including the Internet, by terrorists and their supporters for committing, inciting, financing, and planning terrorist acts, for recruiting. A negative factor is the significant increase in the number of terrorist attacks (by over 90 %) and deaths among the population (by over 98 %) in war zones, which highlights the close link between armed conflicts and terrorism[5].

As a result, it is a growing trend that states, when conducting counter-terrorism operations (CTOs) and taking other counter-terrorism measures, engage not only police structures but also armed forces, which appears objectively justified. There is no doubt that such operations are necessary both to ensure the national security of each state and to prevent a specific terrorist threat from escalating into a threat to international peace and security. In the doctrine of international law and practice, the concept of military-force counter-terrorism began to develop [17].

However, the absence of a special international legal regime of counter-terrorism in the framework of CTOs involving law-enforcement and military forces of states raises a number of questions as to whether counter-terrorism refers to the activities aimed at maintaining law and order or to military activities [6, p. 116]. This distinction has theoretical and practical significance, for example, when it comes to the question of whether an international judicial body has jurisdiction to consider relevant cases in the event that a particular state has violated its obligations under international human rights law (hereinafter also referred to as IHRL) or international humanitarian law (hereinafter also referred to as IHL) when conducting counter-terrorism operations. No less important is the definition of norms and principles applicable to anti-terrorism operations in the light of their military-force nature. This first of all refers to the norms of IHL, IHRL, and international criminal law.

It should be noted that, for the most part, counter-terrorism issues are most fully regulated in national jurisdictions within the framework of developed legal regimes. At the level of individual international and regional organizations, there have also been developed legal concepts of counter-terrorism taking into account the qualification of these unlawful acts not simply as a transnational crime, but as an act threatening international peace and security. These organizations include

[1] Joint Position of the SCO Regional Anti-Terrorist Structure, the CIS Anti-Terrorism Center, and the CSTO Secretariat on Countering Terrorism and Extremism of 16 February 2022. *CSTO* [website]. Available at: odkb-csto.org/documents/accepted-docs/sovmestnaya-pozitsiya-regionalnoy-antiterroristheskoy-shos-antiterroristheskogo-tsentr/#loaded.

[2] 8th Review of the United Nations Global Counter-Terrorism Strategy (A/RES/77/298). UN Documents on Cybersecurity and New Technologies. *UN Counter-Terrorism Centre (UNCCT)* [website]. Available at: https://www.un.org/counterterrorism/cct/programme-projects/cybersecurity.

[3] Terrorists use social media for radicalization, recruitment, funding, planning and execution of terror activities. *INTERPOL* [website]. Available at: https://www.interpol.int/Crimes/Terrorism/Analysing-social-media.

[4] Global Terrorism Index 2024. Report. Available at: https://www.visionofhumanity.org/maps/global- terrorism-index/#/.

[5] Ibid.

* An international terrorist organization banned in the Russian Federation.

the European Union, African Union, NATO, SCO, and a number of major international organizations created in the post-Soviet space – the Collective Security Treaty Organization and the CIS. It should be noted that all the organizations have different approaches and models of combating terrorism and international terrorism.

The article will explore the CIS's experience in the context of counter-terrorism within the framework of CTOs and during joint anti-terrorist exercises and operations arranged by the competent authorities of the CIS member states[1]. The choice of the CIS as an example for the study is absolutely justified. Over the years, it has proven to be a unique organization whose achievements are highly appreciated at the UN level[2].

The member states of the CIS note with concern that serious hotbeds of instability persist in the world with a tendency to expand their geography and intensity. Perhaps the most essential threat to the region's security is the complex situation along the CIS borders neighboring Afghanistan, associated with the escalating tensions in the northern parts of the country and the possibility of their spread to the territories of the Central Asian states.

In 2023, one of the meetings of the foreign ministers of China, Russia, Pakistan, and Iran devoted to Afghanistan emphasized the danger of Afghanistan's internal situation associated with terrorism as all terrorist groups based in the country continue to pose a serious threat to regional and global security[3].

Thus, due to the increased tension of the military-political situation on the borders of the CIS member states, as well as the continuing high terrorist activity of a number of groups basing in Afghanistan, it seems highly relevant to study the military-force aspects of counter-terrorism within the regional legal frameworks and institutional structures of the CIS.

The International Legal Approach of the UN and the CIS to the Definition of Terrorism, Its Legal Nature, and Counteraction to Terrorism

A comparative legal study into the universal approaches to the war on terrorism and the regional frameworks for counter-terrorism operations under the auspices of the CIS should begin with an examination of key definitions relevant to this topical issue. First of all, let us focus on the legal qualification of the category of 'terrorism' as an unlawful act the fight against which is the basis for coercive actions, criminal-law measures, and the use of force by the competent authorities of states.

United Nations. The current international legal framework against terrorism is quite extensive at the universal level and includes 19 international legal treaties[4], on the basis of which many types of terrorism, ranging from those related to aviation security to those threatening nuclear security, have been criminalized. These treaties are significant universal foundations for counter-terrorism cooperation of the states and are referenced in many regional counter- terrorism acts[5].

Despite the significant number of universal anti-terrorist agreements and arrangements adopted under the auspices of the UN, states have not yet managed to develop common approaches to the elements of the offense of terrorism. The 1999 International Convention for the Suppression of the Financing of Terrorism is perhaps the only convention of those mentioned above that criminalizes the financing of any act that constitutes an offense under the scope of one of the UN 'sectoral treaties' against terrorism, as well as of 'any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of

[1] Joint anti-terrorist exercises of the competent authorities of the CIS Member States. *CIS Anti-Terrorism Center* [website]. Available at: https://www.cisatc.org/132.

[2] 30 years ago the CIS received the observer status at the UN General Assembly. *CIS Internet Portal*. Available at: https://e-cis.info/news/566/117883/.

[3] Samarkand Declaration of the Fourth Meeting of Foreign Ministers of Afghanistan's Neighboring States of 14 April 2023. *Ministry of Foreign Affairs of the Russian Federation*. Available at: https://mid.ru/ru/foreign_policy/international_safety/1863617/.

[4] See: Treaties Database, United Nations Office on Drugs and Crime (UNODC). Available at: https://sherloc.unodc.org/cld/v3/sherloc/treaties/search.jspx#?mv=treaties&c=%7B%22filters%22:%5B%7B%22fieldName%22:%22treaty.type_s1%22,%22value%22:%22International%22%7D,%7B%22fieldName%22:%22treaty.topics.topic_s%22,%22value%22:%22Terrorism%22%7D%5D,%22match%22:%22%22,%22startAt%22:20,%22sortings%22:%22%22%7D.

[5] See, for example: Council of Europe Convention on the Prevention of Terrorism 2005, Shanghai Convention on Combating Terrorism, Separatism and Extremism 2001.

armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act'[1]. According to scholars, this definition contains general understanding of the key attributes of terrorism, but this is where the unity of approaches ends while discrepancies begin. [7; 11; 12]. For example, with the support of a number of Western states, the doctrine of 'state terrorism' is developed and widely implemented, which allows legitimizing interference in the internal affairs of states in violation of the imperative principles of international law under the pretext that, from their point of view, a particular state provides logistical and financial assistance to terrorists [1, pp. 47-48]. At the same time, according to the opposite standpoint, terrorism and terrorist offenses can only be committed by private actors out of connection with the state [11, p. 42]. In support of this approach comes the doctrine and practice of international criminal law, according to which terrorism has not yet joined the ranks of traditional international crimes such as the crimes of aggression, genocide, war crimes, or crimes against humanity committed on behalf of the state by its highest officials. To date, terrorism falls within the mandate of only one hybrid body of international criminal justice, the Special Court for Sierra Leone (Article 3 of the Statute of the Special Court for Sierra Leone of January 16, 2001)[2]. The hybrid nature of this judicial body implies the application not only of international law but also of national law, so here legal issues can also be resolved in the absence of a single international legal definition of terrorism.

There is no unified position on the definitional approach to the concept of terrorism either. Some scholars see no great need for an exhaustive definition of terrorism in modern international law as the main issues of cooperation between states in the fight against terrorism are 'covered' by existing 'sectoral' agreements, and the problem is not acute enough to justify efforts necessary to agree on the definition [13, pp. 32-34].

The draft Comprehensive Convention on International Terrorism, proposed by India as early as 1996, has never been adopted despite periodic calls for that by various states[3]. There are discussions with regard to the scope of application of the future treaty. For example, problematic is the question of whether the convention could be applied to the actions of the armed forces of a state during clashes with non-state actors engaged in armed struggle for self-determination. It is not clear what criteria can be used to distinguish between terrorist actions and manifestations of the right to self-determination by nations and peoples expressed through struggle. Among important unresolved issues is the definition of 'international terrorism' and the problem of developing certain criteria to qualify the fact of 'internationality' of terrorist activity. Another controversial problem is that of state financing of terrorism [11, pp. 296-305; 12, pp. 174-183].

However, despite the lack of a complete and detailed definition of terrorism adopted by the international community, today states take similar positions on the key elements of this criminal act and related unlawful criminal acts, which is confirmed by the development of multilateral anti-terrorist cooperation under the auspices of the UN, international regional cooperation under the auspices of relevant organizations, as well as cooperation at the bilateral level. At the same time, the task of developing and legally formalizing a universal definition of 'terrorism' is still on UN agenda.

Commonwealth of Independent States. Modern terrorism, along with such challenges as extremism and separatism, directly threatens the interests of the CIS member states, which determines the development of a targeted practice-oriented anti-terrorist policy of the post-Soviet states. The UN undoubtedly plays a leading role in shaping the universal counter-terrorism agenda. The consistent and constructive position of the CIS states with regard to the UN is enshrined in the Statement of the heads of CIS states on international relations in a multipolar world adopted in 2023[4].

The implementation of counter-terrorism co-operation under the auspices of the CIS relies on a complex international legal framework. First of all, it is necessary to mention the very first counter-

[1] International Convention for the Suppression of the Financing of Terrorism of 9 December 1999. Art. 2. Annex.

[2] The RSCSL Agreement and Statute. *Residual Special Court for Sierra Leone* [website]. Available at: https://rscsl.org/the- rscsl/documents/.

[3] Fight against International Terrorism Impeded by Stalemate on Comprehensive Convention, Sixth Committee Hears as Seventy-Third Session Begins, GA/L/3566, October 2018. UN General Assembly. Sixth Committee. Available at: https://press.un.org/en/2018/gal3566.doc.htm.

[4] Statement of the Heads of States Being the Commonwealth of Independent States Members on International Relations in a Multipolar World, 13 October 2023. *Official website of the President of the Russian Federation*. Available at: http://kremlin.ru/supplement/6023.

terrorism treaty aimed at ensuring aviation security in connection with illegal acts of criminal interference – Agreement on cooperation to ensure the protection of civil aviation from acts of illegal interference of May 26, 1995[1]. The next was the Agreement on Cooperation of the CIS Member States in Combating Crime of November 25, 1998[2], which defined 'international terrorism' and 'hostage-taking' as organized crime the fight against which requires cooperation between the competent authorities of the CIS member states. The most important agreement on combating terrorism, which was the first special thematic treaty of the CIS that established the definition of 'terrorism' was Treaty on Cooperation of the CIS Member States in Combating Terrorism dated June 4, 1999[3] (hereinafter referred to as the 1999 CIS Treaty), which was adopted in connection with the growth of terrorist activity in the post-Soviet space. The definition of terrorism, recognized as an unlawful criminal act, is presented in Article 1 of the analyzed treaty and has a rather voluminous construction.

Firstly, it is necessary to note the target component of terrorism presented in the definition. It reflects generally accepted international legal approaches, expressed, as a rule, in three aspects: violation of public security, influencing government decision-making, intimidation of the population. Among the characteristics provided in the definition, it is also stated that terrorism is aimed at causing damage and creates a risk of loss of life [11, pp. 13-17; 13, pp. 32-34].

Secondly, according to the treaty, terrorism is seen in a number of unlawful acts presented in Article 1 as well as in acts 'falling under the concept of terrorism in accordance with the national legislation of the Parties, as well as other universally recognized international legal acts aimed at combating terrorism'.

The 1999 CIS Treaty specified the basic areas of cooperation at the level of regional anti-terrorist collaboration, these practically tested worldwide, as well as stated institutional forms for the implementation of such cooperation, established the definition of 'terrorism' in view of the lack of a universal legal approach to this issue, and laid the foundations for the international legal response to acts of terrorism by the state parties to the treaty.

Analyzing the 1999 CIS Treaty, it is necessary to note its shortcomings. For example, the treaty lacks both the definition of 'international terrorism' and regulation of the fight against this criminal phenomenon. According to some authors, this shortcoming appears to be significant [11, pp. 147-149].

A significant role in the formation of the legal framework for combatting terrorism belongs to the Interparliamentary Assembly of the CIS (hereinafter – the IPA CIS), developing model legislation of the CIS[4]. In a number of aspects, the model legislation is ahead of the curve, offering options for resolving complex problems that have been formulated in the states for several years (but without presenting acceptable ways of regulation) [9, pp. 49-50].

The first model law 'On the Fight Against Terrorism' was adopted in 1998[5]. What deserves special attention in this law is not only the enshrinement of key definitions relating to the criminal-law fight against terrorism but also the introduction of such legal categories as 'international terrorism', 'CTO', 'CTO zone'.

Subsequently, under the auspices of the IPA CIS, various significant acts regulating individual aspects of the fight against terrorism were adopted[6], which made it possible to form by 2008 a detailed, structured, and mutually agreed set of norms that constitute the CIS anti-terrorism model legislation.

[1] Agreement on Cooperation to Ensure Protection of Civil Aviation from Acts of Unlawful Interference of 26 May 1995. *CIS Internet Portal*. Available at: http://old.e-cis.info/page.php?id=21645.

[2] Agreement on Cooperation of the CIS Member States in Combating Crime of 25 November 1998. *CIS Internet Portal*. Available at: http://old.e-cis.info/page.php?id=21492&ysclid=lzxv1bp5k8230459651.

[3] Agreement on Cooperation of the CIS Member States in Combating Terrorism of 4 June 1999. *CIS Anti-Terrorism Center* [website]. Available at: https://www.cisatc.org/1289/9115/135/9126/9128/275.

[4] The IPA CIS adopts model legislative acts and recommendations that take into account the experience of parliaments of the Commonwealth countries and international parliamentary organizations. See: Regulations on the Development of Model Legislative Acts and Recommendations of the Interparliamentary Assembly of the Member States of the Commonwealth of Independent States of 14 April 2005. Supplemented by the IPA CIS Resolution No. 31-21 of 25 November 2008. *Interparliamentary Assembly of the CIS Member States* [website]. Available at: https://iacis.ru/public/upload/files/1/515.pdf.

[5] No longer in force.

[6] For example, in 2004 a new version of the model law 'On Combating Terrorism' and amendments to it were adopted. Among the model laws adopted there also were laws 'On Countering Organizations and Persons Whose Activities Are Aimed at Carrying Out Acts of Terrorism in the Territories of Other States' (2004) and 'On Countering the Financing of Terrorism', amendments and additions to the model law for CIS member states on issues related to counter-terrorism, Recommendations on the unification and harmonization of national legislation of CIS member states in the field of counter-terrorism, including for the CSTO member states (2006), and a new version of the model law 'On Countering the Legalization of Illicit Gains (Money Laundering) and the Financing of Terrorism (2008).

A significant decision to update the legal foundations underlying the fight against terrorism was implemented in accordance with the Program of Cooperation of the Commonwealth Countries in Combating Terrorism and Other Violent Manifestations of Extremism for 2008-2010, which made it possible to elaborate amendments to the model law 'On the Fight Against Terrorism' of 2004 with taking into account new threats and realities. As a result, a new version of the basic anti-terrorism model law was adopted in 2009 with an updated title 'On Countering Terrorism'. Later, in 2013, there were developed Commentaries on the CIS model anti-terrorism legislation, important for implementation, and in 2015 – Recommendations on improving the legislation of the CIS member states in the field of countering technological terrorism.

These normative acts served as a basis for the development of national anti- terrorist legislation of the CIS member states, which leads to a conclusion about unified approaches developed to the formation of a system of legal regulation of counteraction to terrorism in the post-Soviet space.

An analysis of the evolution of the CIS model legislation on counter-terrorism reveals the following: in 1999 the cooperation among states was based on *combating* (fight against); after the new version of the anti-terrorist model law was adopted in 2009, the emphasis shifted toward *countering*.

According to Article 3 'Basic Concepts' of the 2009 CIS Model Law: 'countering terrorism is a complex multifaceted activity of state authorities and local self-government bodies aimed at:

- the prevention of terrorism, including the identification and subsequent elimination of causes and conditions conducive to the commission of acts of terrorism (terrorism prevention);

- detection, prevention, suppression, disclosure, and investigation of acts of terrorism (fight against terrorism);

- minimization and/or elimination of the consequences of manifestations of terrorism'[1].

The position of the IPA CIS, expressed in the approach and in the use of the concept of 'counter-terrorism', reflects the results of reforming and improving the system of anti-terrorist activities. In terms of meaning, the term 'counteraction' is broader than 'combating' (fight), as counteraction to something, in the case in question – to terrorist threats and their sources, is possible both in active forms, including the use of force, offensive actions, and in passive and non-force forms (economic, informational, social, educational, operational, ideological, political measures). Therefore, the use of the concept of 'counteraction' means the choice of a potentially successful, effective counter-terrorism concept within the CIS.

Thanks to this broad approach, under the auspices of the CIS there are carried out both the *fight against terrorism* in its classical sense, realized through detection, prevention, suppression, disclosure, and investigation of *acts of terrorism or terrorist offenses* (criminal-law and operational component) and a number of other actions taken by the authorities and related to the *eradication of terrorism itself* as 'an ideology of violence and the practice of influencing decision-making by state authorities, local self-government bodies, or international organizations' (Article 3 'Basic Concepts' of the 2009 CIS Model Law).

The model law under study also pays attention to countering *international terrorist activity*, which is identified as such if it is carried out:

- by a terrorist or terrorist organization on the territory of more than one state (or damages the interests of more than one state);

- by citizens of one state against citizens of another state, or on the territory of another state;

- outside the territory of states of which the terrorist and their victim are citizens (Article 3 'Basic Concepts' of the 2009 CIS Model Law).

The 2001 Model Law 'On Countering Organizations and Persons Whose Activities Are Aimed at Carrying Out Acts of Terrorism on the Territory of Other States' defines in Article 1 that *an act of international terrorism* is a terrorist act in which the subject committing it and the object of attack belong to more that one state. This definition does not possess constructive clarity, but from the analysis of this norm and the provision of the CIS Model Law of 2009 on international terrorist activity, it can be deduced that the key features of the 'internationality' of terrorism, which can be manifested in all elements of the offense.

[1] Model Law 'On Countering Terrorism'. Adopted at the thirty-third plenary session of the Interparliamentary Assembly of the CIS Member States (Resolution No. 33-18 of December 3, 2009). *CIS Anti-Terrorism Center* [website]. Available at: https://www.cisatc.org/1289/9115/135/9126/9129/249.

A comprehensive analysis of the CIS model anti-terrorist legislation leads to the conclusion that the criminal-law component of terrorism and related acts is given minimal attention in the first basic articles and provisions. Most of the articles are mainly of a practical nature and address the tasks of ensuring effective cooperation between state bodies within the framework of comprehensive and planned counter- terrorism activities. First of all, this refers to such direction of counteraction as neutralization of terrorists, ensuring the security of physical and legal persons, as well as minimization of consequences of acts of terrorism. These missions can be successfully fulfilled in the course of a CTO.

Interpretation and Legal Regulation of the Military-Force Fight Against Terrorism under the UN and the CIS Auspices

A serious problem with no universal interpretation and solution offered so far is the military-force approach to combating modern terrorism, developed and supported by the majority of states and international organizations, under which it is legitimate and justified to use military means and methods to protect one's internal and external security in cases of terrorist attacks and assaults.

Current trends are such that terrorist ideology unites like-minded individuals into groups that, over time, begin to surpass some states in both international influence and combat capability. Accordingly, the methods of combating terrorist groups and organizations are becoming increasingly tough. As rightly noted by T. Ferraro, 'in a situation of terrorist threat, states and international organizations, without any doubt, have a legitimate right and obligation to respond in order to ensure their own security and, in the case of states, the security of all those under their jurisdiction, as well as to restore and maintain international peace and security' [14, p. 133].

Thus, the ever-increasing paramilitary nature of terrorist organizations and the increasingly complex level of threats they pose to security prompt states to involve not only competent law enforcement structures but also state armed forces in the fight against terrorism[1].

In this context, there arises a question directly related to international legal regulation: can such operations be categorized as military operations, military activities of the state, or do they refer to the state's law enforcement activities? The answer to this question will have a direct impact on the choice of legal standards and the subsequently applicable law governing a particular counter-terrorism situation.

State military activities. In order to gain a clear understanding of what exactly military activities may include and whether CTOs may be classified as such, let as look at the interpretation of this term. Pursuant to the basic rule of interpretation of terms contained in international treaties as well as to Article 31 of the 1969 Vienna Convention on the Law of Treaties, terms should be interpreted according to the ordinary meaning of the words used in the context. According to the dictionary meaning of the phrase 'military activities', they are activities of the armed forces of a state[2].

However, if an analysis is confined by such a definition, situations may arise in practice in which states use armed forces in ways other than those intended, for example, to combat particularly dangerous forms of crime, including terrorist offenses.

To provide a more complete analysis of the issue, let us consider the South China Sea dispute between the Philippines and China, in which an international judicial body had to interpret the term 'military activities' in the context of the 1982 Convention on the Law of the Sea (hereinafter the 1982 Convention) taking into account the reservations enshrined in Article 298. In particular, para. 1(b) of Article 298 of the 1982 Convention establishes that a state may, if it wishes, exclude disputes relating to military activities from the jurisdiction of the bodies authorized under the 1982 Convention to settle disputes involving that state.

[1] For example, in the Middle East, South and South-East Asia, the Sahel countries, the Lake Chad Basin and East Africa, various counter-terrorism measures and operations have been taken and implemented by, among other competent authorities, the armed forces of States, acting either alone or as part of coalitions or under the auspices of international organizations, using military means and methods to combat local non-state armed groups. Since 2012 the United States has conducted dozens of targeted special military counter-terrorism operations against suspected terrorists in Pakistan, Yemen, Somalia, and Libya.

[2] Military Encyclopedic Dictionary. Ministry of Defense of the Russian Federation. Available at: https://encyclopedia.mil.ru/encyclopedia/dictionary/list.htm.

Similar reservations can be found in declarations by states recognizing compulsory jurisdiction of the International Court of Justice under Article 36(2) of its Statute, which does not limit reservations that states may make to any categories[1]. A reservation excluding military activities from the jurisdiction of the International Court of Justice is contained in the declaration under Article 36 (2) of the Statute of the Court made by the Greek government[2].

In the context of the present article, it is interesting to study the dispute between the Philippines and China over the South China Sea, resolved in 2016 by ad hoc arbitration. The South China Sea region is a disputed territory, this leading to periodic conflicts and clashes in the region. Some of China's actions in the South China Sea challenged by the Philippines as violating China's obligations included the construction of artificial islands and civilian infrastructure by the Chinese army, as well as a stand-off between military and non-military vessels of the two states in which no shots were fired.

Analyzing these two situations, the tribunal found that the involvement of the armed forces of a state is not the main criterion for classifying certain actions as 'military activities'. The construction works carried out in the region by the Chinese army were not recognized as 'military activities'. During the construction of civilian infrastructure, the Chinese authorities repeatedly emphasized the peaceful, non-military nature of those activities. The tribunal concluded that, given the nature of the activities in question, as well as the statements against interest made by the Chinese Government, the construction works did not fall within the scope of the military activities clause[3].

However, with respect to the confrontation between the military and non- military vessels of the Philippines and China, the ad hoc arbitration reached the opposite conclusion. A situation in which 'military and paramilitary vessels of two states are positioned opposite each other' demonstrating combat readiness was, in the view of the arbitral tribunal, a 'quintessentially military situation', even though no shots were fired by the parties. The ad hoc tribunal thus found that the confrontation in the South China Sea fell within the definition of 'military activities' and, as such, was excluded from the jurisdiction of the arbitral tribunal through China's reservation under Article 298 (1) (b).

The situation characterized by the arbitral tribunal is only an example of a military activities, and not a universal definition. It is clear from the South China Sea case that the nature and character of the actions analyzed prevail over the ordinary meaning of the term 'military actions', i.e., a clash between state forces and non-state actors without specific aggravating conditions and circumstances cannot automatically be recognized as military activities.

Given that terrorism and related terrorist offenses are criminal and prosecutable unlawful activities, the moment the military contingent of states becomes involved in a CTO does not automatically switch this regime to the military mode and does not automatically lead to classifying it as an 'armed conflict'. Otherwise, any situation in which specialized military units are engaged to fight crime should be considered as such, whether that be the fight against drug trafficking, or anti-piracy operations, or the release of hostages.

In support of this, here is a quotation from Article 19.2 of the 1977 Convention for the Suppression of Terrorist Bombings: 'The activities of armed forces during an armed conflict, as those terms are understood in international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by military forces of a State *in the exercise of their official duties,* inasmuch as they are governed by other rules of international law, are not governed by this Convention'[4].

From this provision follows a significant conclusion: if the armed forces of a state are engaged in the exercise of their official functions, the provisions of so- called anti-terrorism law[5] do not apply, the principles and norms of IHL come into operation as this is a case of military activities

[1] Statute of the UN International Court of Justice of June 26, 1945. Available at: https://www.un.org/ru/icj/statut.shtml.

[2] See: text of the current declaration of the Hellenic Republic made in accordance with Article 36 (2) of the Statute of the UN International Court of Justice. *United Nations Treaty Collection*. Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no= I-4&chapter=1&clang=_en#EndDec.

[3] South China Sea (Philippines v. China). PCA Case No. 2013-19. Award 2016. Para. 938.

[4] International Convention for the Suppression of Terrorist Bombings. Adopted by General Assembly Resolution 52/164 of December 16, 1997. Available at: https://www.un.org/ru/documents/decl_conv/conventions/bombing.shtml.

[5] Given that the question of the formation of international anti-terrorism law as an independent branch of international law is debatable, in the article this term is used to characterize the system of principles and norms governing the relations of subjects of international law on combating terrorism, including in connection with the implementation of the special legal regime of counter-terrorism – counter-terrorism operation.

conducted by the state. However, the involvement of army units in the implementation of the CTO regime has a narrow purpose – to eliminate an acute crisis situation, to reduce the level of a terrorist threat, which, due to its seriousness, not always can be neutralized by bodies other than the armed forces. In such circumstances, the armed forces of a state do not fulfil their official functions.

Meanwhile, in individual cases, domestic counter-terrorist activities may acquire a military nature and turn into a situation of armed conflict, usually of a non-international character[1]. In such circumstances, the CTO regime is transformed into the regime of martial law within a particular territory of the state.

A controversial issue that is conceptually important from the point of view of interpretation and development of qualification rules is the conduct of a CTO within the framework of the fight against international terrorism. According to the anti-terrorist resolutions of the UN Security Council[2], this fight is considered to be self-defense (collective or individual), which means that it is unambiguously recognized as military activities in the direct sense of the word, this making it possible to apply the principles and norms of IHL. In the scientific literature, these activities are often defined as the 'war on terrorism', the legal foundations of which were laid by the UN Security Council in 2001 after the notorious terrorist events. However, the question remains unresolved concerning the qualification of one-off situations where a state engages its armed forces to combat manifestations of acts of terrorism within the jurisdictions of third states: will such activities be considered military or law-enforcement activities? what international obligations will the competent authorities of the state have when fulfilling anti-terrorist missions? The most topical and complex issues related to this problem will be discussed in the next section of the article.

Thus, in practice one should not exclude situations where a state recognizes the transition of the CTO to the status of military activities. The transition of an anti-terrorist confrontation between state forces and terrorist organizations to the level of armed conflict determines the legal need for the entry into operation of the principles and norms of IHL regulating the rules of warfare. In such a transformation, the provisions of anti-terrorist law, designed for the period of peacetime, cease to operate.

Within the framework of the Russian doctrine of international law, it is essential to clearly distinguish the operation of the principles and norms of IHL from the principles and norms of international anti-terrorist law, the gradual formation of which should be one of the prospective key tasks of the progressive development of international law as a whole. It is not possible to recognize the set of international anti-terrorist norms as an integral part of IHL. These areas are independent and distinct from each other in terms of sources, special principles, as well as goals and objectives. Thus, it is necessary to differentiate between the regimes of military action within the framework of which the fight against international terrorism is conducted and the elements of the military-force fight against terrorism in peacetime.

It should be noted that scientific points of view on the possibility of regulating the CTO by legal prescriptions of IHL prevail among scholars of the Anglo-Saxon legal system, in which there is no clearly expressed branch-specific approach to law and it is possible to apply the norms of one branch to regulate similar issues within another branch [11, pp. 323-324]. It seems that such a model of law enforcement is inadmissible in the field of international security, especially in terms of human rights protection[3]. The algorithm of actions and decisions taken both independently by states and on behalf of international organizations in the fight against terrorism should be clearly regulated and

[1] The applicability of IHL to terrorism and counterterrorism, Report, October 2015. *International Committee of the Red Cross* [website]. Available at: https://www.icrc.org/en/document/applicability-ihl-terrorism-and-counterterrorism?ysclid=lzxvr7gw5d559117266.

[2] Such as UN Security Council Resolutions 1368 (2001), 1373 (2001), 2249 (2015), etc.

[3] Determining when IHL comes into operation is important to ensure its application, especially with regard to the prosecution of those suspected of IHL violations. A necessary precondition for charging someone with a war crime or for claiming universal jurisdiction, as outlined in the four Geneva Conventions of 1949, is to characterize the situation in which the violations took place as an armed conflict and therefore to determine that IHL is applicable. Terror, terrorization of civilians and other offenses related to terrorist acts and activities fall within the concept of 'war crimes' and are subject not only to national courts but also to international criminal justice authorities. The commission of terrorist offenses in peacetime gives rise to completely different consequences in the prosecution and criminal punishment of those involved in their commission. Moreover, the list of terrorist acts included in the block of 'war crimes' is considerably narrower in comparison with the list of all variants of manifestations of terrorist acts that are regarded as independent offenses.

based on treaties. The solution that seems preferrable here is a specialized universal international treaty, and the Comprehensive Convention on International Terrorism could potentially be such a treaty.

State activities to ensure compliance with legislation, law and order. The law-enforcement component of counter-terrorism must always be borne in mind. Thanks to the joint work of law enforcement agencies of states under the auspices of Interpol, mechanisms have been established for the exchange of intelligence and preventive operational information on transnational terrorist networks, which makes it possible to detect and suppress terrorist acts in a timely manner and to arrest suspects. Biometric data of individuals are exchanged through INTERPOL channels, which plays a significant role in identifying foreign terrorist fighters and in preventing them from crossing borders; there is an exchange of information between the military and police on complex counter-terrorism activities.

Particularly significant is the Interpole's role in the fight against terrorist attacks using CBRNE[1] materials – through information sharing and intelligence analysis, capacity building and training, and operational support[2]. The mechanisms of preventing and responding to these types of terrorist attacks are coordinated by certain authorities of states, including the police, customs, border guards, military, intelligence services, and environmental management bodies. These activities support UN Security Council Resolution 1540 (2004), which recognizes border control and law enforcement efforts as central to countering the proliferation and misuse of chemical, biological, and nuclear weapons by non-state actors.

Under the auspices of Interpole, law enforcement operations to suppress terrorist financing are conducted[3], a number of projects are implemented aimed at supporting countries in carrying out counter-terrorism activities and in building the capacity of their competent law enforcement agencies and security agencies involved in the conduct of CTOs[4], databases with information on foreign terrorist fighters used by states' law enforcement agencies in their CTOs are compiled[5]. Interpol, in cooperation with the UN Counter-Terrorism Centre (UNCCT), provides operational, investigative, and analytical assistance to states in implementing counter-terrorism strategies aimed at combating the use of new technologies by terrorists[6].

These examples of state cooperation within INTERPOL underscore the scope of the law-enforcement aspect of counter-terrorism and clearly characterize counter-terrorism as activities of the competent authorities of states aimed at ensuring compliance with legislation, law, and order.

It should be stressed that, unless the situation of confrontation between state forces and terrorist organizations escalates to the level of an armed conflict, CTOs should only be recognized as activities ensuring the compliance with legislation, law and order. In favor of this approach is the argument that, from a formal point of view, all states, in one way or another, have legislation prohibiting acts of terrorism and providing for the fight against terrorism as part of the integrated activities of law enforcement and security agencies. Therefore, a CTO aimed at preventing or suppressing a terrorist act can be considered an activity aimed at implementing and enforcing anti-terrorist legislation.

Thus, in modern realities it is a priority to fight terrorism within the framework of complex and multicomponent activities implemented under the legal regime of CTO, which makes it possible to combine law-enforcement and military tasks facing the state in the context of ensuring its internal and external security, maintaining law and order, and also contains guarantees of human rights protection [6, pp. 124-125]. Given the degree of threats posed by terrorist organizations, in some cases it is acceptable to recognize the fight against terrorism as 'military activities'.

Within the CIS framework, a clear position has been formed on the conditions and grounds for the use of the armed forces of states to combat terrorism. The key legal act regulating this issue is the model Instruction on International Humanitarian Law for the Commonwealth of Independent States (hereinafter referred to as

[1] CBRNE materials – chemical, biological, radiological, nuclear and explosives.
[2] INTERPOL and UN launch initiative on CBRNE terror threats. *INTERPOL* [website]. Available at: https://www.interpol.int/News-and-Events/News/2020/INTERPOL-and-UN-launch-initiative-on-CBRNE-terror-threats.
[3] Tracing terrorist finances. *INTERPOL* [website]. Available at: https://www.interpol.int/Crimes/Terrorism/Tracing-terrorist-finances.
[4] Counter-terrorism projects. *INTERPOL* [website]. Available at: https://www.interpol.int/Crimes/Terrorism/Counter-terrorism-projects.
[5] Preventing terrorist travel. *INTERPOL* [website]. Available at: https://www.interpol.int/Crimes/Terrorism/Preventing-terrorist-travel.
[6] Project CT-Tech. *INTERPOL* [website]. Available at: https://www.interpol.int/Crimes/Terrorism/Counter-terrorism-projects/Project-CT-Tech.

the 2018 CIS Instruction or Instruction) dated November 29, 2018[1]. Article 1 of the document notes that the Instruction 'is aimed at improving cooperation in the politico-military field, including through the development of relations with international organizations and states related to compliance with international and humanitarian law during armed conflicts and during the use of state armed units in peacetime in the CIS member states'.

Based on an analysis of this provision, it should be noted that within the state territories and jurisdictions of the CIS states, the use of state armed units is permissible in both wartime and peacetime. With regard to wartime, it is noted further on in the text that it refers to non-international and international armed conflicts. As to peacetime, *the use of troops (forces) in peacetime* means the fulfilment by troops (forces), in accordance with national legislation, of tasks in peacetime when the situation cannot be classified as an armed conflict, for example, in the case of taking measures aimed at countering terrorism and violent extremism (Art. 2). Thus, counter-terrorism measures imply the involvement of state arms, military and special equipment in peacetime.

The analyzed legal prescription of the Instruction incorporates the concept, discussed in this section of the article, according to which it is not always that situations of the use of the armed forces of a state can be classified as 'military activities' and it is not always that such situations are related to direct and immediate tasks, official functions assigned to the armed forces of states. According to the Instruction, the peacetime use of troops (forces) within the CIS is part of the complex of activities aimed at countering terrorism and ensuring the CTO regime.

Military-Force Fight Against Terrorism and the 'War on Terrorism': Universal International-Law Approaches to the Interpretation, Bases of Implementation, and Applicable Law

To date, no unified international-law approaches have been developed under the auspices of the UN to regulate the CTO, either in terms of the concept itself and its content, or in terms of the bases of implementation. In this context, it is necessary to distinguish between two types of operations, which, while having the same essence and objectives, differ in their legal regulation. These are domestic CTOs and CTOs conducted as part of the fight against international terrorism by the forces of some states on the territories of third states or within their own state jurisdictions.

The intrastate CTO regime is regulated by the norms of domestic law of a particular state, while the regulation of anti-terrorist operations on the territory of another state undoubtedly requires the formation of a unified international legal regulatory framework. The practice here is rather disparate, but at the same time there is an understanding of the multicomponent nature of such operations in terms of the forces and means involved. Meanwhile, the military-force fight against terrorism is defined far from being a peacetime activity of the state.

The first model of combating international terrorism is represented by the example of international legal cooperation between the Syrian Arab Republic and the Russian Federation[2] in the fight against ISIS*. This anti-terrorist cooperation, based on the imperative principles of international law, the provisions of the 1945 UN Charter, and bilateral treaties between the states, has led to successful results in the fight against terrorism in the region[3]. The example of Russian-Syrian relations in the context of the fight against international terrorism, associated with the situation of internal armed conflict,

[1] Resolution of the Interparliamentary Assembly of the CIS No. 48-6 of November 29, 2018 'On the Model Instruction on International Humanitarian Law for the Commonwealth of Independent States'. *Unified Register of Legal Acts and Other Documents of the CIS*. Available at: https://cis.minsk.by/reestr/ru/index.html#reestr/view/text?doc=6043.

[2] Syrian operation 2015-2017. *Big Russian* Encyclopedia [website]. Available at: https://bigenc.ru/c/siriiskaia-operatsiia-2015-2017-fa3d47

[3] President of the Syrian Arab Republic Bashar al-Assad, acting in accordance with Article 6 of the treaty 'On Friendship and Cooperation Between the USSR and the Syrian Arab Republic' of October 8, 1980 and the Agreement between the Ministry of Defense of the Russian Federation and the Ministry of Defense of the Syrian Arab Republic on Military Cooperation of July 7, 1994, made an official request to the Russian Federation for military assistance. As a result, on 26 August 2015, the Russian Federation and the Syrian Arab Republic concluded an Agreement on the deployment, at the request of the Syrian government, of an air group of the Armed Forces of the Russian Federation on the territory of Syria indefinitely at the Hmeimim airfield. On September 30, 2015 the Federation Council of the Russian Federation, in accordance with Article 102 'd', Article 106 'd' of the 1993 Constitution of the Russian Federation, approved the request of President of Russia V. V. Putin for the use of the Armed Forces of the Russian Federation outside the Russian Federation on the territory of the Syrian Arab Republic. That was a question of involving the air force to support the Syrian ground forces from the air, without conducting a ground operation. Thus, Russia's actions in Syria and around the Syrian problem are strictly regulated by international law and domestic legislation.

clearly demonstrates a variant of the legitimate-legal algorithm of cooperation between states in this sphere [2, pp. 374-375]. In this aspect, what seems ambiguous and debatable is the presence on the territory of Syria of an armed coalition of Western states led by the U.S. that aims to fight against ISIS* while openly supporting the opposition forces of Syria[1]. According to some researchers, the legal basis here is the UN Security Council Resolution 2249 of November 20, 2015, which calls on 'Member States in a position to do so to take all necessary measures in accordance with international law, <...> international human rights, refugee and humanitarian law <...> to redouble and coordinate their efforts to prevent and suppress terrorist acts committed specifically by ISIS*, also known as DAESH*, as well as other terrorist organizations'[2]. As scholars note, the call for UN members to take 'all necessary measures' is permissible in the context of the concept of self-defense used by most states to justify their operations to counter ISIS*, including when it comes to coalition action[3]. However, from a legal perspective, it is essential to note that the term 'self-defense' is never used. Critics of this resolution highlight that it does not actually authorize any actions against ISIS* and does not provide a legal basis for the use of force against ISIS* in either Syria or Iraq, as the resolution was not adopted under Chapter VII of the 1945 UN Charter. In addition, the Resolution does not use the formula 'acting in accordance with Chapter VII', which is commonly employed to indicate that the Security Council intends to take binding actions. Finally, the Security Council is supposed to *decide* or *sanction* actions rather than *call for* them[4].

At the same time, the fact of the simultaneous presence on the territory of Syria of the armed forces of several states, on the basis of an international treaty (like Russia) and on other grounds (like the United States), has led to a paradoxical situation in which the military departments of foreign states make agreements among themselves[5] to prevent incidents and assure air flights during operations in Syria conducted to combat ISIS*.

The second model of combating international terrorism. In international counter-terrorism practice, there are other mechanisms of combating international terrorism by the forces of some states on the territories of third states. Rather debatable, both from the point of view of the international law doctrine and from the position of law enforcement and interpretation of international acts, are the actions of the USA and its allies in the fight against international terrorism that were started in 2001 under the name of 'Global War on Terrorism' (GWOT), which in its essence is more a political phenomenon than a legal one. This issue has been widely covered in the scientific literature [3; 13; 15].

Looking into the details of the situation, it should be noted that after the terrorist attacks on the USA in 2001, there occurred a real paradigm shift in the construction of the domestic and international security system. The USA declared a widespread 'war on terrorism', the UN Security Council confirmed under the adopted resolution 1373 (2001) the right of states to self-defense in case of an attack by an international terrorist group [11, pp. 290-295]. It was for the first time since its foundation that NATO exercised the right to collective self-defense in accordance with Article 5 of the North Atlantic Treaty of 1949. Since then, NATO has positioned 'counter-terrorism' as a set of preventive, defensive, and offensive measures taken to reduce the vulnerability of forces, individuals, and property to terrorist threats and/or acts, to respond to terrorist acts[6]. And the Alliance's right

[1] Syrian alternative. An article by V. V. Putin published in the American newspaper 'New York Times'. *Official website of the President of Russia*. Available at: http://www.kremlin.ru/events/president/news/19205.

[2] Resolution 2249 (2015) adopted by the Security Council at its 7565th meeting on November 20, 2015. Available at: https://documents.un.org/doc/undoc/gen/n15/384/16/pdf/n1538416.pdf?token=afRvxANeSTrJIAclOe&fe=true.

[3] 'Legitimized self-defense - quo vadis security council?'. Available at: https://www.ejiltalk.org/legitimized-self-defense-quo-vadis-security-council/.

[4] Akande D., Milanovic M. The constructive ambiguity of the security council's ISIS* Resolution. *Blog of the European Journal of International Law*. Available at: https://www.ejiltalk.org/the-constructive-ambiguity-of-the-security-councils-isis- resolution/.

[5] A memorandum between Russia and the United States on ensuring the safety of aviation flights in Syria, signed by the military departments of the states. The text of the memorandum has not been distributed. The document regulates the actions of all aircraft and drones in the airspace of the Syrian Arab Republic and is designed to ensure flight safety. *RIA Novosti* [website]. Available at: https://ria.ru/20170407/1491723348.html?ysclid=lz9wsa1iwv905460792.

[6] Military Committee Concept for Counter-terrorism (MC 0472/1 (Final)). 4 December 2015 MC 0472/1 (Military Decision). North Atlantic Treaty Organization. Available at: https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2016_01/20160817_160106mc0472-1-final.pdf.

* An international terrorist organization banned in the Russian Federation.

to do so has been predetermined by the fact that 'weak and failed states allow terrorist organizations to create zones of instability along NATO's borders'[1]. In addition, the USA has also established its right to operate extra-territorially with the national counterterrorism strategy to achieve the global goals of stopping terrorist attacks on the USA, its citizens, its interests, and U.S. friends and allies around the world, which is supposed to ultimately help preserve and promote fundamental democratic values and way of life[2]. In general, this position is linked to the right to self-defense (individual and collective) sanctioned by the UN Security Council, which has now found support among many Western states.

A topical issue since the adoption of UN Security Council Resolution 1373 (2001), still not resolved unambiguously, is the question of the parameters of the obligations to be undertaken by states in relation to a number of branches of international law when conducting the 'war on terrorism' in self-defense. The text of the analyzed resolution did not contain provisions on this important and complex issue, which was characterized by some scholars as a significant omission [16].

This legal gap was partially filled with the adoption by the Security Council of Resolution 1456 (2003) establishing that 'States must ensure that any measures taken to combat terrorism comply with all their obligations under international law and must take such measures in accordance with international law, in particular international human rights, refugee and humanitarian law'[3]. However, the question of the implementation of certain provisions of the branches of law remained unclear. There were also not specified the parameters for the application of international anti-terrorism law, which, in terms of combating not only terrorism as an ideology but also terrorist acts as criminal acts, represent essential basic provisions.

The indication in the Resolution of the applicability of IHL norms in the fight against terrorism with no commentary provided gave rise to different interpretations and practices in the application of this provision, which can be traced back to the example of actions of the United States in the fight against Al-Qaeda* and the Taliban. As A. J. Carswell noted in his study, '...in the case of the war in Afghanistan in 2001-2002, the US-led coalition was engaged in an international armed conflict with the armed wing of the Taliban, since the latter were the armed forces of the de facto government of Afghanistan at the time. In fact, members of the Taliban armed forces should have been legally considered combatants and, when captured, prisoners of war, the treatment of which is governed by the Third Geneva Convention... On the other hand, the members of Al Qaeda* who fought in this international armed conflict did not fall within the legal definition of combatants. They belonged neither to the Afghan armed forces nor to a state-owned militia fulfilling the four defining criteria set out in Article 4 (A) (2) of the Third Geneva Convention, so legally they were 'civilians'...' [5]. In practice, as is known, the situation was different: after 2001, hundreds of individuals involved in terrorism were detained and transferred to the U.S. prison at the Guantanamo Naval Base without charges and without legal means to challenge their detention[4]. President G. Bush's administration argued that the USA was not obligated to provide the detainees with basic constitutional protections because the base was outside the U.S. territory. And with respect to the detainees it was not obliged to comply with the Geneva Conventions of 1949 regarding the treatment of participants in hostilities and civilians, because these treaties did not apply to 'unlawful enemy combatants' [15; 18].

In this context, what raises concerns are the disparate opinions of scholars and practitioners on the status of terrorists involved in an armed conflict and acting as one of the parties to such

[1] NATO's military concept for defence against terrorism. International military staff. Last updated: 19 August 2016. Available at: https://www.nato.int/cps/en/natohq/topics_69482.htm.

[2] A military primer to terrorism in the contemporary operational environment. US army training and doctrine command. *Federation of American Scientists* [website]. Available at: https://irp.fas.org/threat/terrorism/sup5.pdf.

[3] Resolution 1456 (2003) adopted by the Security Council at its 4688th meeting on 20 January 2003. *United Nations* [website]. Available at: https://documents.un.org/doc/undoc/gen/n03/216/07/pdf/n0321607.pdf.

[4] The Guantanamo Bay facility has become the center of a worldwide controversy over alleged violations of detainees' legal rights under the 1949 Geneva Conventions and allegations of torture or ill-treatment of detainees by U.S. authorities. The camp has been repeatedly condemned by international human rights and humanitarian organizations, including Amnesty International, Human Rights Watch, and the International Committee of the Red Cross, as well as by the European Union and the Organization of American States (OAS), for alleged human rights violations, including the use of various forms of torture during interrogations.

* An international terrorist organization banned in the Russian Federation.

a conflict. As S. Ojeda notes, 'no IHL provisions preclude NSAGs [non-state armed groups] listed as terrorists at international, regional or domestic level from being considered as party to an armed conflict within the meaning of IHL'[1]. If terrorist organizations are recognized in the broad sense as a subject of IHL and in the narrow sense as a party to hostilities, they must be considered, so to speak, non-state *combatants*, i.e., those fighting within the framework of an international armed conflict, or 'other organized armed groups' within the meaning of Article 1 of Additional Protocol II of 1977 to the Geneva Conventions of 1949, which appears to be unacceptable.

However, it is not possible to fully apply the term 'participant in an armed conflict' to terrorists because initially a terrorist is a person who deliberately and consciously carries out activities outside the law and is not endowed with legitimate authority to conduct hostilities and cause death to the enemy – the opposing party. Terrorist activities are criminal in nature, which has given rise to various interpretations regarding the status of terrorist criminals in armed conflict. They are proposed to be classified as 'unprivileged combatants', 'unprivileged belligerent', 'combatant that are illegal and (or) not enjoying the protection of conventions' [4, p. 53; 10; 18]. To be fair, it should be emphasized that there are no such categories in the current IHL sources. In addition, the term 'combatant' is only applicable to situations of international armed conflicts. As researchers note, 'in non-international conflicts, participants in armed protests should retain the status of civilians and be protected by the Fourth Geneva Convention' [4, pp. 54-58].

The legal uncertainty of the status of a terrorist in any type of armed conflict creates a situation in which IHL appears to apply to this category of persons, but only in some of its provisions, these determined by the specific situation (and, importantly, the positions of the states). It is not possible to apply the full range of norms and principles of IHL to terrorists and terrorist organizations within the framework of the 'war on terrorism', which, according to scholars, makes it necessary to apply 'norms of other legal complexes' [10, p. 194].

It follows from the presented arguments that in practice it is quite difficult and ambiguous to regulate by the provisions of IHL the relations within the framework of an armed conflict with the participation of non-traditional subjects, including terrorist organizations. It seems a debatable approach when terrorists are defined as subjects of IHL in the period of active hostilities while subsequently reservations are made about the inadmissibility of applying certain provisions of humanitarian law to them due to the criminal status of such participants, making them an unprivileged party in the war on terrorism. This is probably why the UN Security Council's anti-terrorism resolutions refer not only to the application of IHL but also to IHRL and refugee law. With regard to the protection of the rights of terrorists, scholars and human rights organizations agree that for this category of persons the protection mechanisms and guarantees provided within the framework of IHRL are broader than the scope of protection under IHL [10]. The situation with the so-called refugee law is similar.

Thus, the analysis of the existing international anti-terrorist practice and the developed doctrine makes it possible to conclude that in the case of war on terrorism through the implementation of the state's right to self-defense, which should be classified as direct military activities, it is not possible to use the full range of principles and norms of IHL in relation to terrorists, being a non-state opposing party[2]. The complexity of the situation lies in the fact that the anti-terrorist resolutions of the Security Council have not laid the foundations for a unified interpretation and application of the mechanism of self-defense in the fight against terrorism and the resulting relations between the opposing parties, which has contributed to the formation of fragmentary and contradictory practices in the implementation of IHL.

It seems that the military-force fight against terrorism requires the formation of a special anti-terrorist regime: it should be governed by norms and principles of a number of branches of international law operating in peacetime and also of IHL, with a reservation on the relevance and specific features of the application of the latter in peacetime when a CTO is conducted. This article offers a different view of the applicability of IHL in the fight against terrorism. It

[1] Global counter-terrorism must not overlook the rules of war. Available at: https://blogs.icrc.org/law-and-policy/2016/12/13/global-counter-terrorism-rules-war/.

[2] IHL should be subject to full implementation within the framework of existing sources in cases where a state officially recognizes an international counter-terrorism operation as an armed conflict, taking into account the scale, intensity, number of casualties and destruction, level of armament and coherence within the terrorist group. And in this case, the state is supposed to apply the entire set of IHL principles and norms, without any selective exceptions. Unfortunately, since 2001 such a practice has not developed.

seems that the idea of the implementation of the IHL provisions within the framework of the military-force fight against terrorism should first of all refer to its separate special principles – the principle of humanism and the principle of limitation in the choice of methods and means of warfare. As noted in the article, in modern conditions, in addition to law enforcement agencies of states, troops (armed forces) are also involved in ensuring the CTO regime. The behavior of law enforcement agencies is regulated by a significant number of legal acts relevant to law enforcement forces in terms of handling firearms, special means, dealing with physical persons during their detention, etc. Thus, the rules, limits, and grounds for the actions of law enforcement agencies during the CTO regime are normatively defined both at the national and international levels. The question remains unresolved as to whether the same criteria should be established for defining the boundaries of behavior for representatives of the armed forces engaged to implement the CTO regime in peacetime. By analogy, certain IHL principles regarding the use of certain military forces, means, and equipment should become such a benchmark.

Currently, at the regional level – under the auspices of the CIS, a positive practice of anti-terrorist cooperation has been developed within the framework of an integrated approach to the activities of law enforcement agencies and armed structures, which is implemented through a special legal regime of CTO.

International Legal Regulation of the Counter-Terrorism Operation Regime under the Auspices of the CIS and the Prospects for the Development of the Concept of Military-Force Fight Against Terrorism in the Light of Contemporary Challenges and Threats

At the regional level, the CIS has developed a legal framework regulating the fight against terrorism within the framework of CTO – the Model Law 'On Countering Terrorism' 2009 (hereinafter referred to as Model Law 2009) and the 2018 CIS Instruction. According to Article 2 of the 2009 Model Law, a CTO is a set of special, operational-combat, military, and other types of measures with the use of military equipment, weapons, and special means to suppress an act of terrorism, neutralize terrorists, ensure the security of individuals and legal entities, as well as to minimize the consequences of the act of terrorism[1]. Analyzing the definition, it is possible to conclude that counter-terrorism operations are a specific type of operations carried out in the field of counter-terrorism, which, in the conditions of terrorist activity of illegal armed groups, associations of militants, bandit groups, becomes a necessary, sometimes priority form of organization of the fight against terrorism.

In logical connection with the concept of 'counter-terrorism operation', Article 3 of the 2009 Model Law provides the concept of 'zone of a counter-terrorism operation' defining it as a certain space and specific objects where (within which) this operation is conducted. Article 20 of the analyzed model law stipulates that within such a zone a legal regime of counter-terrorist operation may be introduced, under which it is permissible, in accordance with the procedure provided for by the legislation of the state, to apply certain measures and temporary restrictions for the period of the counter-terrorist operation in respect of a fairly wide list of economic, political, cultural, and other rights and freedoms of individuals and legal entities for the purposes of suppression and disclosure of an act of terrorism, minimization of its consequences, and protection of vital interests of individuals, society, and the state.

Of scientific and practical interest is the issue of providing military support to CTOs in the territory of the CIS. Article 5 of the 2009 Model Law establishes the right to use the armed forces of the state for the purposes of:

'a) suppression of international terrorist activities outside the territory of the state;

b) suppression of acts of terrorism in the internal waters and territorial sea of the state, at the objects of maritime production activity located on the continental shelf of the state, as well as for ensuring the safety of national maritime navigation;

c) suppression of flights of aircraft used to commit acts of terrorism or hijacked by terrorists;

d) participation in carrying out a counter-terrorist operation'[2].

The 2018 CIS Instruction also stipulates that in the process of countering terrorism, the armed forces of a state may be called upon to fulfil certain combat tasks:

- suppression of flights of aircraft used to commit terrorist acts or hijacked by terrorists;

[1]The CIS Model Law 'On Countering Terrorism'. Adopted at the thirty-third plenary session of the Interparliamentary Assembly of the CIS Member States (Resolution No. 33-18 of 3 December 2009). *CIS Anti-Terrorism Center* [website]. Available at: https://www.cisatc.org/1289/135/154/249.

[2] Ibid.

- suppression of terrorist acts in the internal waters and territorial sea of a CIS member state, at the objects of maritime production activities located on the continental shelf of a CIS member state, as well as to ensure the safety of maritime navigation;

- suppression of international terrorist activities outside the territory of a CIS member state (if provided for by national legislation) (part 2 of Article 20).

These provisions reflect the generally recognized trend to involve not only law enforcement agencies but also security agencies in the fight against terrorism.

As has been noted, the grounds, limits, and restrictions on the activities of law enforcement agencies in the fulfilment of their assigned tasks and functions have been developed in sufficient detail at both the international and national levels. At the same time, the issue of the use of troops and forces in peacetime during the CTO regime certainly needs special detailed legal regulation. According to part 2 of Article 5 of the 2009 Model Law, the procedure and conditions for the use of the armed forces of the state in the fight against terrorism are determined by the universally recognized principles and norms of international law and the legislation of the state. In addition, according to Article 3 of the 2018 CIS Instruction, when carrying out a CTO, executive authorities, troops (forces), law enforcement agencies, and security bodies are guided by the norms and principles of IHL, IHRL, and national legislation.

With regard to IHRL, part 2 of Article 3 establishes the following: 'both in the event of an armed conflict of international or non-international character and in the case of combat tasks performed in peacetime, the application of norms of international human rights law may be limited on the basis of relevant provisions of national legislation, with unconditional respect for fundamental rights'[1].

With regard to IHL, the provisions of the 2018 CIS Instruction regulate the following rules ensuring the observance and implementation of this law. According to Article 5, the use of military force structures in the conditions of a CTO must be carried out in strict compliance with the norms of national legislation and taking into account the principles of IHL: lawfulness, necessity, and proportionality. Further on in the text of the Instruction, the norms elucidating this systemic concept of principles are given (parts 5, 7, 12 of Article 20).

The basis for ensuring the legality of the performance of combat tasks is strict compliance with the norms of national legislation and international law, as well as with the established rules of the use of weapons, military and special equipment (part 3 of Article 20 of the 2018 CIS Instruction).

Thus, the analysis of the legal foundations for the conduct of counter-terrorism operations under the auspices of the CIS in a complex combination of anti-terrorist activities of law enforcement agencies and military structures made it possible to identify the specifics of such operations, to justify their implementation in peacetime, despite the military contingent involved, as well as to define the requirements for compliance of such activities with the provisions of various branches of international law, including IHL, and the national legislation of states.

For CIS member states, cooperation with the competent authorities of foreign states in this field is a very important issue in the context of fight against terrorism. Counter-terrorism cooperation is based on bilateral and multilateral international treaties, including those of an inter-agency nature (part 3 of Article 4 of the 2009 Model Law). Such assistance within the CIS may be of a reciprocal nature since, in accordance with the international treaties of a state, specialized counter-terrorism units from foreign states may be engaged, where necessary, to suppress an act of terrorism in accordance with the procedure established by the legislation of the state (part 5 of Article 19 of the 2009 Model Law).

The conduct of joint anti-terrorist activities under the auspices of the CIS is legally established. The organizational principles and procedure for such cooperation are defined by special Regulations of 2002[2], which states that joint anti-terrorist measures are counter- terrorism activities carried out by the competent authorities of the Parties according to an agreed unified plan by special anti-terrorist units on the territories of the requesting Parties (Article 1.1).

The legal basis for joint anti-terrorist activities is formed by universally recognized principles and norms of international law, international obligations of the Parties and their national legislation, as well as the Regulation of 2002 (Article 1.2).

In order to ensure coordinated interaction between the competent authorities of the CIS member states in the field of combating international terrorism and other

[1] Regardless of the situation in which armed groups are used, the basic rules (for example, concerning the humane treatment of detainees) must be observed, the basis of which is Article 3, common to all four Geneva Conventions for the Protection of Victims of Armed Conflicts of 1949.

[2] Protocol on Approval of the Regulations on the Procedure for Organizing and Conducting Joint Anti-Terrorist Measures on the Territories of the Member States of the Commonwealth of Independent States of October 7, 2002. *CIS Anti-Terrorism Center* [website]. Available at: https://www.cisatc.org/1289/135/152/277.

manifestations of extremism, the Decision of the Council of Heads of State of the CIS dated June 21, 2000[1] established a permanent specialized sectoral body of the CIS – the Anti-Terrorist Center of the CIS member states (hereinafter referred to as the CIS ATC, the Center)[2].

Among the rather extensive tasks and functions of the Centre, it is necessary to mention the coordination-operational sphere of interaction between the competent authorities of the CIS member states in the fight against terrorism and extremism, within the framework of which, under the auspices of the ATC, joint anti-terrorist exercises are held annually, during which the following missions are worked out:

- the organization and conduct by the competent authorities of coordinated operational and investigative actions to detect and suppress the activities of persons planning to commit terrorist acts on the territories of the CIS states;

- information cooperation among the states participating in joint anti-terrorist exercises in the course of resolving a crisis situation;

- the conduct of special force operations to free hostages and suppress terrorist threats to critical facilities with the involvement of special units of security agencies and special services of the states participating in the exercises;

- the use of units of the armed forces, the national guard, and other units to fulfil the tasks of blocking and destroying large illegal armed terrorist formations[3].

Thus, the exercises include the training in performing a number of important operational-tactical and force missions under the CTO regime, which together contribute to improving the readiness of the security agencies, special services, and other security structures of the CIS countries to jointly counter terrorist challenges and threats and to maintaining peace and security in the region[4].

In recent years, there has been a favorable trend toward expanding and strengthening regional counter-terrorist cooperation by uniting the efforts of a number of international organizations in combating common threats of terrorism and extremism. Speaking of the post-Soviet space and, in a broader context, the Eurasian space of security, it is worth noting the Joint Position of the SCO Regional Anti-Terrorist Structure, the Anti-Terrorism Center of the CIS Member States and the CSTO Secretariat on Countering Terrorism and Extremism signed in 2022[5]. The document enshrines the general strategy for cooperation among the organizations in combating these illegal acts, making it possible not only to develop effective interregional cooperation but also to create a broad anti-terrorist coalition under the auspices of the United Nations as part of the coordination of the international community's efforts in the field of countering terrorism and extremism.

In accordance with this decision, successful joint exercises have been implemented, bringing together specialized structures of three important international organizations. In 2023 in the Kyrgyz Republic, it was for the first time that, within the framework of cooperation between the CIS ATC and the Executive Committee of the SCO Regional Anti-Terrorist Structure, was held the final stage (force phase) of the Eurasia-Antiterror – 2023 anti-terrorist exercises for the competent authorities of the member states of these organizations[6]. In the course of joint actions, there were practiced operational and information-logistical missions ensuring interaction between the CIS ATC Coordination Headquarters and the SCO RATS Executive Committee. At the end of the exercises, an anti-terrorist operation aimed at releasing hostages and neutralizing terrorists was successfully tested.

[1] Regulation on the Anti-Terrorist Center of the States Being Members of the Commonwealth of Independent States, approved by the Decision of the Council of Heads of State of the CIS of December 1, 2000 (as amended and supplemented by the Decisions of the Council of Heads of State of the CIS of 28 June 2006 and 28 September 2018). *CIS Anti-Terrorism Center* [website]. Available at: https://www.cisatc.org/132/166/189.

[2] The legal status, main tasks, and functions of the Center are defined by the Regulation on the Anti-Terrorist Center of the States Being Members of the Commonwealth of Independent States, approved by the Decision of the Council of Heads of State of the CIS of December 1, 2000. See: About the CIS ATC. *CIS Anti-Terrorism Center* [website]. Available at: https://www.cisatc.org/132.

[3] Coordination-operational activities of the CIS ATC. *CIS Anti-Terrorism Center* [website]. Available at: https://www.cisatc.org/1289/133.

[4] On the activities of the CIS Anti-Terrorism Center on coordination of interaction between national security agencies and special services. Available at: https://e-cis.info/news/566/96729/.

[5] Joint Position of the SCO Regional Anti-Terrorist Structure, the CIS Anti-Terrorism Center, and the CSTO Secretariat on Countering Terrorism and Extremism, 16 February 2022. Available at: https://odkb-csto.org/documents/accepted-docs/sovmestnaya-pozitsiya-regionalnoy-antiterroristicheskoy-shos-antiterroristicheskogo-tsentr/#loaded.

[6] Joint Anti-Terrorist Exercises of the Competent Authorities of the CIS Member States and SCO Member States 'Eurasia-Antiterror – 2023'. *CIS Anti-Terrorism Center* [website]. Available at: https://www.cisatc.org/1289/133/161/9366.

In July 2024, the CIS ATC delegation took part in the final stage of the joint anti-terrorist exercises 'Interaction-Antiterror – 2024' in the People's Republic of China. The exercises focused on coordinating the activities of the competent authorities of the SCO member states in countering cyberterrorism and on improving mechanisms for joint responses to terrorist attacks, including those carried out using unmanned and robotic systems[1].

In 2022, cooperation between the CSTO Secretariat and the CIS ATC was established in countering terrorist threats, including through joint exercises of special law enforcement units and special services conducted both within the framework of the CIS ATC and in the CSTO format. Holding joint exercises is an important step aimed at integrating efforts and strengthening the anti-terrorist potential of the CIS, SCO, and CSTO states.

Currently, under the auspices of the CIS ATC, approaches are being discussed to reforming CIS counter-terrorism activities and to developing new mechanisms for countering terrorism in the system of military-strategic activities. For example, the ATC is working on theoretical and practical development of a more complex and more effective model of countering terrorism within the framework of a joint military-police operation [6, pp. 127-128].

A *joint military-police operation of the CIS member states* should be understood as a set of activities, subordinated to a single plan, including intelligence, military, special, police, operational-combat, operational-investigative, humanitarian, and other activities with the use (demonstration) of military equipment, weapons, and special means aimed at preventing and suppressing terrorist and extremist crimes, neutralizing terrorists, ensuring the safety of individuals and organizations, as well as minimizing the consequences of terrorist and extremist crimes, with the participation of forces and means of units of the armed forces, law enforcement agencies, security bodies, and special services of the CIS member states, all under the single command [7, pp. 56-71].

A joint military-police operation is seen as a form of integrated application of international, inter-agency forces to eliminate terrorist threats. The aims of the operation and the tasks it addresses will make it possible to suppress terrorist activity, both at the initial stage and in the event of large-scale actions by terrorist formations, including those exported from outside. The ultimate goal of the operation is to stabilize the situation and restore constitutional law and order on the territory of one or more states, or part of their territory [8, pp. 37-39].

Thus, the CIS member states constantly monitor trends in the development of terrorism, assess the situation in the world and in the CIS's area of responsibility, which allows for the continuous development of regional counter-terrorism cooperation in the light of modern challenges and threats.

Conclusion

In modern conditions, military-force fight against terrorism is most effectively conducted within the framework of complex and multicomponent activities ensured by the legal regime of the CTO, which makes it possible to combine law-enforcement and military missions – these facing states when ensuring their internal and external security, maintaining law and order – and also contains guarantees of the implementation and protection of human rights. In certain cases, taking into account the degree of threats emanating from terrorist organizations, it is acceptable to recognize the military-force fight against terrorism as 'military activities' with the mandatory application of the principles and norms of IHL.

An analysis of the legal grounds for the conduct of counter-terrorism operations under the auspices of the Commonwealth revealed the specifics of such operations conducted by law enforcement and military structures in peacetime. Following that, the author defined the requirements for the compliance of such activities with the provisions of various branches of international law, including IHL, IHRL, international anti-terrorism law, and national legislation of states.

In view of the growing need for international cooperation in combating challenges emanating from international terrorist groups where such activities are transnational in nature, as well as in view of the lack of universal anti-terrorist regulation of CTOs and the tendency toward fragmentary practices of anti-terrorist operations, in the future, within the framework of the progressive development of international anti-terrorism law, it appears advisable to enshrine unified approaches to the CTO at the universal level in the provisions of the Comprehensive Convention on International Terrorism.

[1] On Participation of the CIS ATC in the SCO Joint Anti-Terrorist Exercises 'Interaction-Antiterror – 2024'. *CIS Anti-Terrorism Center* [website]. Available at: https://www.cisatc.org/1289/9141/145/142/9507.

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Mechanisms for Building Trust in AI-Assisted Justice Systems Through Cognitive, Emotional and Socio-Psychological Factors

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Introduction: *artificial intelligence (AI) is progressively gaining traction within legal and judicial spheres, which necessitates a re-examination of concepts such as transparency, fairness, reliability, and legitimacy. The implementation of explainable artificial intelligence (XAI) is a key element in ensuring trust in such systems, though 'explainability' does not in itself guarantee that people will begin to trust these systems.* ***Purpose****: the study aims to provide a detailed analysis and systematization of available scientific information on psychological mechanisms underlying the formation of trust in explainable artificial intelligence systems applied in the field of justice, with the cognitive, emotional, and socio-psychological aspects considered.* ***Methods****: the study employed methods of analysis and synthesis to explore the complex system of the formation of trust in explainable artificial intelligence in the field of justice. An analysis of a wide range of open sources, including scientific articles, legal documents and research reports, made it possible to categorize facts regarding the perception of computerized judicial decisions and the level of trust in them.* ***Results****: the research has established that trust in AI applied in the field of justice develops at the intersection of three key aspects: the understanding of the fundamentals of AI operations, emotional acceptance of the technology, and its adherence to social norms. The author explains the significance of transparency and explainability of AI decisions, of the ability of AI systems to interact with users on an emotional level, and of the role of public opinion and expert examination in trust development. The study has found correlations between perceived accuracy of AI systems and trust levels, elucidated the importance of empathetic characteristics in AI interfaces and the influence of group dynamics on trust formation.* ***Conclusions****: the findings demonstrate the need for a comprehensive approach to AI implementation in the legal sector that would consider both psychological and technological factors. The paper provides practical recommendations for increasing trust in AI in justice, including the development of training programs, standardized explainability schemes, and transparent audit mechanisms. Recommended areas of future research include studies into cross-cultural variations in attitudes to AI, long-term strategic consequences and ramifications of justice automation, and the development of methods for assessing the effectiveness of human-AI collaboration in court.*

Keywords: artificial intelligence; justice; trust; explainability; cognitive factors; emotional perception; socio-psychological aspects

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Механизмы формирования доверия к системам правосудия, использующим искусственный интеллект: когнитивные, эмоциональные и социально-психологические факторы

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Введение: *искусственный интеллект (ИИ; англ.: AI) активно внедряется в правовую и судебную сферы, что требует переосмысления концепций прозрачности, справедливости, надежности и легитимности. Внедрение объяснимого искусственного интеллекта (XAI) является ключевым элементом для обеспечения доверия к таким системам, однако сама по себе «объяснимость» не гарантирует, что люди начнут доверять системам.* ***Цель:*** *провести детальный анализ и систематизировать доступную научную информацию о психологических механизмах формирования доверия к системам объяснимого искусственного интеллекта в сфере правосудия с учетом когнитивных, эмоциональных и социально-психологических аспектов.* ***Методы:*** *методы анализа и синтеза были использованы для изучения процессов формирования доверия к объяснимому искусственному интеллекту в правосудии. Был проведен анализ широкого спектра открытых источников, включая научные статьи, юридические документы и отчеты исследований, что позволило категоризировать факты, касающиеся восприятия компьютеризированных судебных решений и уровня доверия к ним.* ***Результаты:*** *исследование показало, что доверие к ИИ в правосудии формируется на пересечении трех ключевых аспектов: понимание основ работы ИИ, эмоциональное принятие технологии и соответствие технологии социальным нормам. Статья объясняет значимость прозрачности и объяснимости решений ИИ, способности систем эмоционально взаимодействовать с пользователями, а также роли общественного мнения и экспертной оценки в развитии доверия. Обнаружены корреляции между воспринимаемой точностью систем ИИ и уровнем доверия к ним, обоснована важность эмпатических характеристик в интерфейсах ИИ и установлено влияние групповой динамики на формирование доверия.* ***Выводы:*** *результаты исследования демонстрируют необходимость комплексного подхода к внедрению ИИ в правовой сфере с учетом как психологических, так и технологических факторов. Сформулированы практические рекомендации по повышению доверия к ИИ в сфере юстиции, включая разработку программ обучения, стандартизированных схем объяснимости и прозрачных механизмов аудита. Перспективные направления дальнейших исследований включают изучение межкультурных различий в формировании того или иного отношения к ИИ, анализ долгосрочных стратегических последствий автоматизации правосудия и разработку методов оценки эффективности сотрудничества человека и ИИ в суде.*

Ключевые слова: искусственный интеллект; правосудие; доверие; объяснимость; когнитивные факторы; эмоциональное восприятие; социально-психологические аспекты

Introduction

Artificial intelligence is progressively gaining traction within legal and judicial spheres and constitutes a paradigm shift in the understanding of justice, which necessitates a re-examination and reconstruction of society's perception of issues such as transparency, fairness, reliability, and legitimacy[1]. In 2019 the United Nations Office on Drugs and Crime (UNODC) released a report highlighting the potential of artificial intelligence to achieve a better understanding of the nature and mechanisms of judicial processes so as to preclude algorithmic bias, ensure data privacy, and avoid erosion of human judgment in legal decision-making[2]. Human understanding of the reasoning and operation of such systems is ensured through the concept of explainable AI (XAI).

[1] European Commission. White Paper on Artificial Intelligence: A European approach to excellence and trust, 2020. Available at: https://ec.europa.eu/info/sites/default/files/commission-white-paper-artificial-intelligence-feb2020_en.pdf.

[2] UNODC. Artificial Intelligence and Robotics for Law Enforcement, 2019. Available at: https://www.unicri.org/artificial-intelligence-and-robotics-law-enforcement.

According to Article 13 of the Artificial Intelligence Act[1], high-risk systems must be developed with consideration of all cybersecurity aspects, under appropriate monitoring by human specialists, and specific mechanisms are to be implemented in order to effectively and professionally review the output of such systems. Meanwhile, even the 'explainability' feature of artificial intelligence is no guarantee that humans will start trusting AI systems, these based on neural networks, machine learning, deep learning, reinforcement learning, and other technologies covered by the general term 'artificial intelligence'. The objective of the study is to carry out a detailed analysis and systematization of available scientific information on psychological mechanisms underlying the formation of trust in explainable AI systems in the area of justice, while taking into account cognitive, emotional, and socio-psychological aspects. Cognitive, emotional, and socio-psychological processes play the biggest role in how individuals perceive computerized legal systems and judge whether they are objective, just, and proficient. The present paper is based on what was established in the 2018 European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems[2]. The Charter calls for adherence to basic principles such as respect for human rights, non-discrimination, security, transparency, and maintaining user control, particularly in sensitive law enforcement areas. Examination of these principles from a perspective of psychological trust mechanisms allows for a greater comprehension of AI implementation issues in the judicial field. An in-depth study of the determinants of trust in AI in the legal field is supposed to make a rich contribution to the debate on artificial intelligence regulation in the legal field. Providing a typology of the determinants offers a foundation for formulating efficient strategies and policies for building public trust in AI-enabled justice systems. This is the way to maintain basic values of a democratic state and ensure the rule of law in the implementation of new technologies in the judiciary.

Methodology

In the present research, the author employed the methods of analysis and synthesis of psychological processes and investigation into the complex process of the formation of trust in explainable artificial intelligence when applied in the justice system. The research methodology underlying this study was guided by international legal documents such as the Recommendation of the Council on Artificial Intelligence of 2019[3], which point to stakeholder collaboration and evidence-based evaluation when operating, managing, and controlling artificial intelligence. An examination of a wide variety of open sources, such as scientific articles, legal documents, and survey reports [2; 4; 37; 32; 10; 3, 17; 12; 9; 35; 33; 5; 6; 34; 7], as well as other types of research works listed in the references, made it possible to categorize facts concerning perception and the level of trust in computerized judicial rulings. A comprehensive analysis of diverse software tools used in legal practice [8] and review of relevant literature [10; 3; 14; 27; 23] helped to define major patterns and priority areas of research. This allowed for insight into the context of interaction of cognitive, emotional, and socio-psychological factors in the process of development of mechanisms of trust in AI systems in the area of jurisprudence.

Understanding the Principles of AI

An analysis of the level of trust in artificial intelligence systems in the justice sector with cognitive factors taken into account reveals a close relationship between the trust level and the degree of public understanding of the principles of AI operation. This understanding includes a set of theoretical and practical knowledge, as well as awareness of the potential and real application of AI systems in the context of law and legal proceedings. From a theoretical point of view, this includes concepts such as algorithms related to machine learning, neural systems, decision trees. From a practical point of view, this includes legal analytics, decision support systems, case management, etc. As various studies show, there is a positive correlation between the results that artificial intelligence systems produce and the level of trust in them [1; 29; 11].

In addition, according to studies, information-literate people demonstrate a 30% higher level of trust compared to those who do not have this level of knowledge or are in a state of digital nihilism[4]. 'Digital nihilists' can be described as people who tend to exaggerate fears and risks associated with such phenomena as handling artificial intelligence, using digital services, banks, transactions, cryptocurrencies, and other benefits of our century, while those fears are unfounded and not supported by practice.

The level of knowledge and understanding of the functioning and intended purpose of AI systems can vary significantly. The nature and degree of the correlation between such literacy and trust in AI depend on the specifics of a particular system and the context of its application in the legal sphere.

[1] European Commission. Proposal for a Regulation laying down harmonized rules on artificial intelligence (Artificial Intelligence Act), 2021. Available at: https://artificialintelligenceact.eu/.

[2] Council of Europe. European Ethical Charter on the use of artificial intelligence (AI) in judicial systems and their environment, 2018. Available at: https://www.coe.int/en/web/cepej/cepej-european-ethical-charter-on-the-use-of-artificial-intelligence-ai-in-judicial-systems-and-their-environment.

[3] OECD. Recommendation of the Council on Artificial Intelligence, 2019. Available at: https://legalinstruments.oecd.org/en/instruments/oecd-legal-0449.

[4] Berryhill J., Heang K., Clogher R., McBride K. (2019). *Hello, World: Artificial Intelligence and Its Use in the Public Sector.* Available at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/11/hello-world_7734f030/726fd39d-en.pdf

A good example here is Estonia, where population demonstrates a high level of digital literacy and where public trust in digital technologies, according to mass surveys, is around 80%[1]. This case convincingly shows that for building trust in justice systems that are based on electronic legal proceedings, it is, first of all, necessary to take measures aimed at improving digital literacy in the population so as to leave no room for prejudices, distortions, and fears.

Assessing the Accuracy and Reliability of an AI system

AI systems can operate in different ways, and the public perception of how accurately and reliably a particular AI-assisted system operates ultimately influences public trust in the judicial system as a whole. The factors behind positive perception are algorithmic accuracy, lack of bias, risk mitigation, resilience to cyberattacks, and adherence to program protocols when ensuring security. An empirical analysis shows that there is a very strong correlation between how effective a system appears to be and how much it is trusted. A negative example here is a system called COMPAS [17], which assesses the potential risk of recidivism. Although this program has been implemented in many organizations, public trust was low because many of the results were very inaccurate and unfair, violating the principles of ethics, mutual trust, non-discrimination, etc.

According to other studies, systems that achieve the trust level of at least 50% work very accurately, and all reports and statistics indicate that their violations and failures in operation reach almost 0% [12]. This suggests that information that is transmitted to interested parties and disseminated to the masses must be provided on terms of high transparency and accuracy, since there is a strict correlation between the accuracy of an AI system's operation and the level of trust in it.

The Perception of Explainability of AI Decisions

Explainable AI is a versatile solution to build trust in law enforcement and judicial processes. This concept enables the development of frameworks for analyzing AI outputs that support human decision-making and interpretation in legal contexts. In addition, research shows that there is a strong correlation between how explainable and understandable an AI is and the level of trust that users have in it [9].

AI systems applied in legal contexts must incorporate mechanisms that provide compelling evidence and justification for their decisions. This conclusion suggests itself after one of the studies where participants were provided with two systems functioning on different technologies: one worked on the basis of complex generative neural networks, and the other – on the basis of a simpler interpretable and understandable artificial intelligence based on decision trees. As this study showed, among the participants who used AI systems for legal applications, the simpler system, which produced more understandable results, while maintaining the same level of accuracy and fairness, inspired 60% more trust than the technically complex but less comprehensible system [35].

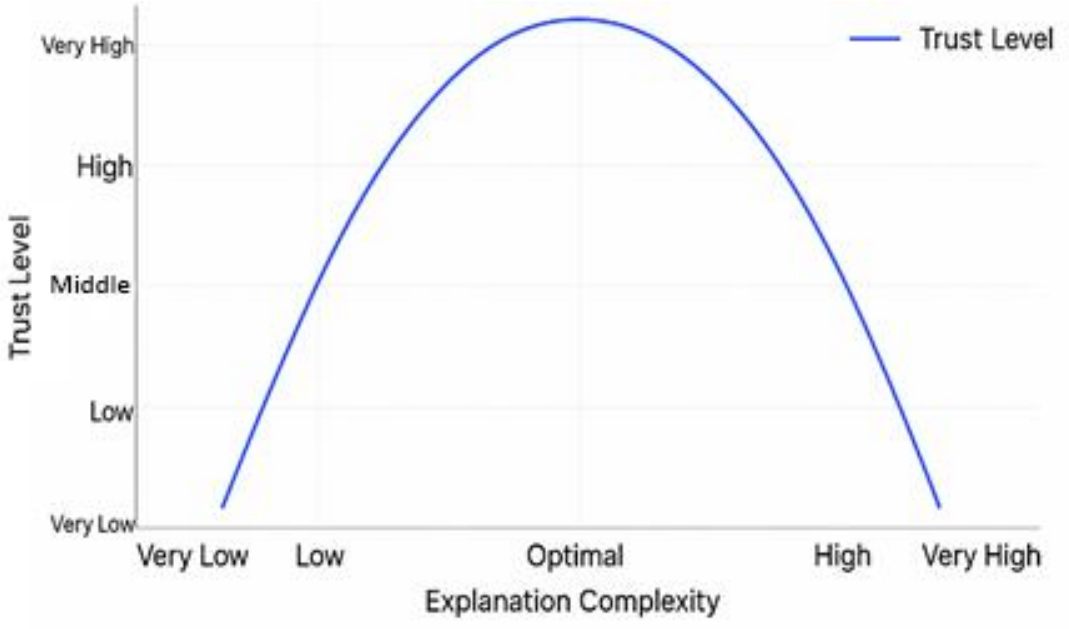


Fig. 1. The relationship between AI explainability and trust levels

[1] e-Justice factsheet, 2022. *e-Estonia* [website]. Available at: https://e-estonia.com/wp-content/uploads/factsheet_e-justice.pdf.

As shown in Fig. 1, there is a direct relationship between the level of public trust in AI systems and the level of complexity of the system, including its interpretability, up to the point where the system becomes too complex to understand, after which the relationship becomes inverse and the level of trust begins to decrease accordingly.

There is another system, called HART (Harm Risk Assessment Tool), which helps to understand whether the operation of an AI system is sufficiently clear for humans. [33]. It was developed by Dutch scientists and shows what approach should be taken to the transparency and interpretability of artificial intelligence results, and also selects which developers, working in a particular field, especially those related to the judicial and legal field, should be involved.

However, in some cases, there is no strict correlation between perceived competence, interpretability, explainability, on the one part, and trust level, on the other part: as some research findings show, if a system is not sufficiently complex, while the task being solved requires a high level of detail, the solutions that are used in simpler artificial intelligence systems will not be suitable [5]. Therefore, it is necessary to find a balance that would satisfy both the developers and the users and would promote user trust in artificial intelligence, which is possible to achieve when users understand the principles on which the AI system is built and when it is guaranteed that its results will not violate the ethical and humanistic principles. Therefore, it is very important to establish approaches to designing systems that would allow interaction between artificial intelligence and people, and to develop flexible interpretation mechanisms that would produce an analysis adapted to the complexity of the system and to user needs.

Emotional Aspects of Trust in AI in the Legal Sphere

Fear of Technology and Automation

The level of trust in artificial intelligence systems related to the justice system is strongly correlated with the concept of technophobia, or fear of using technical means. It is a psychological phenomenon manifested in cognitive-affective reactions to threats perceived by people from innovative technologies. As various studies show [6], there is an inverse relationship between how severe a person's technophobia is and what is the level of his/her trust in certain solutions that are applied with the use of artificial intelligence technologies. One of the striking examples to be given is the Austrian pilot program [34] that helps analyze documents in administrative courts using artificial intelligence. At first, there was strong resistance, and people did not trust this project as they were afraid that artificial intelligence systems would not be able to cope with those legal interpretations that they considered subtle, sensitive, and complex. However, thanks to the advertising campaigns conducted by the organization and to public involvement, it was possible to achieve impressive results: the level of citizens' trust increased by more than 40% over 6 months of the campaign [7]. This example clearly shows that the emotional resistance at the first stages of the introduction of an AI system, including a system that shows excellent accurate results, is a common phenomenon. Thus, the emotional aspects related to the acceptance of such technologies must be worked through gradually and with due understanding.

Empathy and the Perception of the 'Humanity' of AI Systems

AI systems that integrate anthropomorphic characteristics into their machine learning mechanism may be designed more effectively under the Computers Are Social Actors (CASA) paradigm. This concept holds that people tend to trust systems that demonstrate socially acceptable behavior and empathy [24]. Perceived empathy levels are highly correlated with levels of trust in legal applications. An example is an AI-powered online dispute resolution system in British Columbia [30]. This system uses sophisticated natural language processing specially designed to consider emotional nuances and criteria, which has been shown in research to increase user satisfaction by over 55% compared to conventional online systems [38]. The software showed to be more stable, and the level of perception of emotions and the nature of reactions of certain users played a significant role. This case makes it clear that integrating elements of emotional intelligence into an AI system with contextual awareness increases the level of trust in its application in the law enforcement sector. Therefore, human-centered AI that can navigate the incredibly complex landscape of basic emotions in such a challenging field as legal disputes is becoming increasingly in demand.

Emotional Attitude Toward Fairness of AI Decisions

Fairness is often subjective. Meanwhile, from the perspective of trust formation it is essential that AI systems provide decisions devoid of bias and discrimination. Algorithmic fairness, which is the result of applying a program that ensures technical accuracy and analyzes the results taking into account the 'past direction', i.e., various past cases in the relevant area, as well as cultural traditions, social ideas, and other such aspects, should be the focus of attention in such an area as justice.

Practice provides many questionable examples. For instance, facial recognition systems used in the UK, though being highly effective, showed discrimination against ethnic minorities, which suggests that biases and discrimination were perpetuated. This case tells us that such factors should become a focus of unprecedented attention, and that, before implementing a product in practice, a series of tests is to be carried out, with developers, participants, and testers coming to a conclusion that the system works without such gaps. As another study has shown, transparency with regard to how many potential biases were eliminated during beta testing, as

well as what data was provided to train artificial intelligence, improves the accuracy of its results up to 70% [15].

All this suggests that it is necessary to build holistic approaches to systems based on the principles of fairness and transparency taking into account the factors that influence the level of public trust in them (Table 1), and also to develop algorithms that can be interpreted and explained to society [39].

Table 1

Factors of trust in AI when applied in justice

Factor	Impact on trust level
Perceived empathy	Significant increase
Transparency of algorithms	Significant increase
Expert approval	Noticeable increase
User training	Strong increase over time
Interpretability and understandability of AI	Significant increase
Technophobia	Significant reduction
Pre-testing in other areas	Significant increase
AI as a complement to human labor	Moderate increase
Algorithmic fairness	Significant increase
Social norms and expectations	Moderate to strong increase
Group dynamics	Moderate to strong increase

Socio-Psychological Factors of Trust in AI in Justice

The Influence of Social Norms and Expectations

Social expectations and norms are an important factor in ensuring trust in such a complex phenomenon as artificial intelligence when applied in law enforcement. Social norms and expectations influence how people perceive and adopt technologies. There is a strong correlation between how society accepts artificial intelligence based on certain technologies in other areas and how society will treat artificial intelligence systems operating on similar technologies in law enforcement. For example, this has been proven in practice in Singapore [20], where relevant programs used intelligent case management systems that had previously been tested in other areas, and these programs gained a more than 65% higher level of trust than a system that had not previously been tested in practice [31].

This suggests that before introducing AI systems in areas such as litigation, it seems advisable to test them in less sensitive areas, such as law enforcement. Artificial intelligence should exist in close connection with legal processes, while, as studies show, the level of trust in AI systems increases by 40% when the system of neural networks and other technologies is an addition to human work, and not a replacement for it [19].

The Role of Authorities and Expert Opinion

An analysis of the opinions of authoritative experts who have a significant influence on the public perception of AI systems points to the significant role of epistemic trust in various contexts of AI application in the legal field. In addition, as showed an analysis of the literature, the endorsement by an expert council and authoritative figures in the field of artificial intelligence has a very strong effect on strengthening the level of public trust in explainable AI systems. For example, PROMETEA, which is an Argentinian program implemented in courts and prosecutors' offices, was first treated with great skepticism, but was highly praised by senior prosecutors and experts in the ethics of artificial intelligence [8]. Public trust in this system increased by more than 50% after a series of open seminars and lectures were held under the guidance of expert councils, explaining what the tasks of this system are, what tasks it can perform, what security measures are provided for its functioning [30].

Research also shows that criticism and negative feedback have a detrimental effect on trust levels, suggesting that a balanced approach and fair judgment of AI systems is needed.

Group Dynamics in the Perception of AI systems

Group use of certain AI systems is a phenomenon suggesting that the polarization of group tendencies and identity in a group can shape certain judgments and create a certain attitude and level of trust in explainable artificial intelligence in the field of justice (Fig. 2).

For example, the above-mentioned HART system was first accepted with a negative attitude, but after a course on the use of this system, where all its functions, shortcomings, advantages, and disadvantages were elucidated, the level of trust among officers increased by 60% over about 1 year [25]. This suggests that there are certain group dynamics, and the level of trust in a system can decrease or, conversely, increase, depending on how well-developed the AI system is and whether the users have managed to master the technology. In addition, advertising, mass media, and social media have a considerable impact on trust since collective perception is a highly important factor in today's world. For example, there are various communication strategies and marketing moves, with the involvement of various parties, persons, authoritative sources, and other mechanisms, that help to impact certain groups in a certain way so as to form a certain attitude and level of trust.

Fig. 2 clearly shows that there are interrelated factors influencing group dynamics in the perception of modern technologies, including AI, that determine and shape overall trust in AI systems.

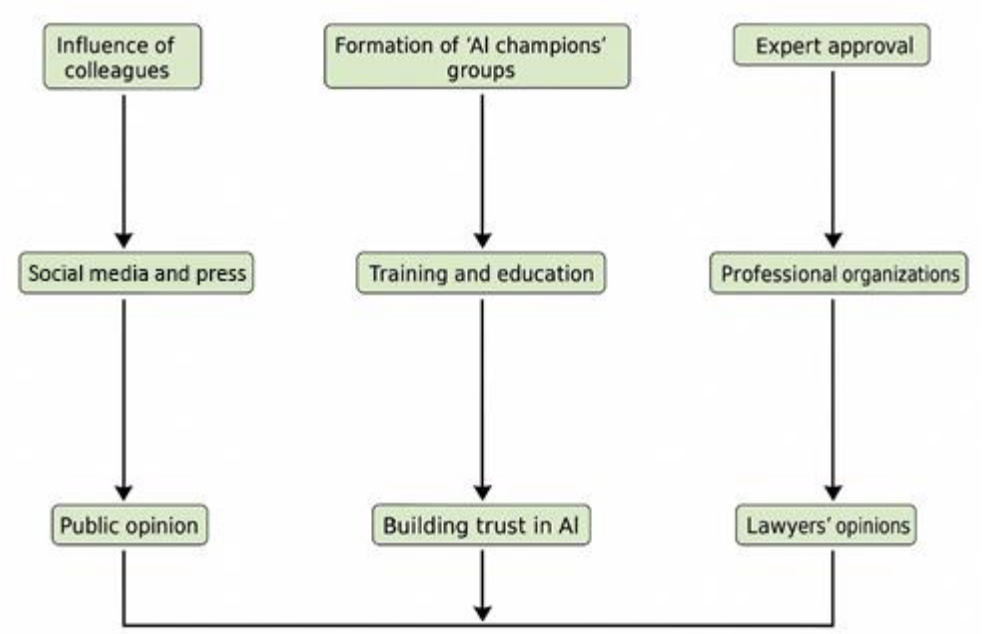


Fig. 2. Group dynamics in the formation of trust in AI

Transformation of Legal Consciousness under the Influence of AI

Changing Ideas about Justice

The modern world is undergoing a technological-legal transformation, which is manifested in the formation of an interaction between human judgment and decision-making with the use of algorithms. A good example is the e-justice system in Estonia, which has undergone a multi-stage development and implementation process. According to surveys, more than 70% of Estonian citizens rate this system as fair. A public opinion analysis also shows that the majority of respondents consider traditional justice systems without the use of artificial intelligence to be outdated and ineffective as the only instrument for administering justice [22]. Therefore, the level of digital trust is very high in this country. However, the population of many other countries, even technologically advanced ones, demonstrates a commitment to the idea that only non-automated systems represent justice. All this refers us to the concept of digital legal acculturation, which suggests that the formation of legal consciousness in the field of digital technologies affects the level of trust in general and shapes the attitude toward the effectiveness of certain systems that can complement justice with artificial intelligence in a given country.

The Evolution of the Concept of Legitimacy of Judicial Decisions

The legitimacy of judicial decisions, as a concept, is also undergoing a number of changes. There has emerged a concept of algorithmic legitimacy, which, in turn, reflects the emergence of a hybrid concept of legal authority, this combining human judgments formed by specialists and knowledge that is provided by artificial intelligence and supplements human knowledge.

For instance, in France there has been implemented a case management system called Predictice [21]. It is an AI-based platform that helps analyze historical court decisions to predict and create predictive models for various types of legal research. Initially, this system was treated by the legal community with some skepticism. However, after an information campaign was run to explain the benefits of the system and its further improvement, the level of trust has increased significantly. According to research, 65% of the surveyed lawyers noted that AI technologies effectively contribute to legal research, both from a scientific and from a practical point of view.

This example shows an expansion of the concept of legitimacy: artificial intelligence represents a combination of human and machine interaction, while functioning on objective data, and all this forms a new era based on the construction of objectivity and trusting relationships between machines and humans in a hybrid form.

Practical Recommendations for Increasing Trust in AI in Justice

Increasing trust in justice systems based on artificial intelligence involves a number of theoretical and practical recommendations that should be based on strategies taking into account various practical aspects [28]. When implementing comprehensive training programs devoted to the use of artificial intelligence in the legal field, it is essential that the principles of AI operation and its limitations, as well as the approach of explainable AI itself, be explained taking into account the principles of transparency and fairness [13; 36].

Standardized explainability schemes suggest that AI applications in the judicial field should facilitate understanding and transparency. In addition, a design that incorporates emotional intelligence, empathy, and

various other aspects in the interface of AI will also help build trust and enhance the ability of stakeholders to participate in the development of the system [11]. Furthermore, transparent audit mechanisms, ongoing reviews, international cooperation can help strengthen the creation of diverse points of view on improving user acceptance. It is also important to emphasize the need to follow pro-regulation trends worldwide, to adhere to global standards and codes that promote differentiation and consistency without violating these principles embedded in the system of artificial intelligence in the field of justice. These recommendations are aimed at creating a reliable system that could increase the level of trust in systems based on artificial intelligence technologies.

Discussion

The psychological mechanism of the formation of trust in AI systems within the legal field involves a sophisticated interaction of cognitive, emotional, and socio-psychological factors [18; 26]. Research findings show that public confidence in the use of AI systems in the judiciary depends not only on the technical efficiency of such systems but also on whether they meet social expectations and moral standards. Another central component is the explainability of AI, which is when users can see the rationale behind the decision-making. Such users' understanding and awareness subsequently facilitate the establishment of trust since users can make rational judgements concerning the system's competence. Research shows, however, that complete trust is usually unattainable due to the inherent limitations of purely rational assessment of AI systems (people cannot fully rationally evaluate all aspects of operation of complex AI systems, which prevents complete trust formation) [16]. Emotional factors, such as the ability of an AI system to empathize emotionally, are essential in establishing emotional trust. This makes it necessary to develop AI systems that can not only effectively address legal matters but also empathize with humans.

Particular attention should be given to socio-psychological processes behind the formation of trust in AI justice. Studies find social norms, group behavior, and influential voices to significantly influence the development of trust in machine-based mechanisms of justice.

This calls for an overarching approach to introducing AI in the legal system, considering not only technological but also social contexts. One of the important areas for future research is investigation into the long-term impact of AI implementation in justice on the attitudes developing in the general public with regard to fairness and legitimacy of the judiciary. Another potential research area is a deeper examination of cultural variations in the perception of AI in the legal field, which can be useful for the development of more universal and adaptive systems. Particular attention should be given to the question of how the combination of the human element and automation in judicial decision-making influences public confidence in the justice system as a whole. Thus, there is a clear need for additional interdisciplinary research integrating expertise in the areas of psychology, law, and information technology.

Conclusion

The research conducted is a comprehensive study into psychological mechanisms of building trust in explainable artificial intelligence within the legal system and legal process. Based on systematization and critical analysis of available scientific information, the paper reveals the main cognitive, emotional, and socio-psychological determinants of public perception of AI systems in the legal context.

The research findings indicate the need for a multidimensional strategy toward the AI development and deployment in the legal field. The main components of this strategy should include transparency and explainability of AI systems, consideration of emotional parameters of interaction with users, and adherence to social norms and values. The paper demonstrates that trust in AI in justice is established at the confluence of rational comprehension, emotional acceptance, and social approval.

It is necessary to develop general approaches for evaluating and enhancing the performance of human-AI collaboration within the legal process. This should involve the formation of mechanisms for increasing the degree of trust in hybrid decision-making systems and the development of training programs for legal professionals and the general public on the best modes of interaction with AI systems in the legal environment.

The future also looks promising for research on the ethics of the use of AI in justice, including the topics of algorithmic transparency, personal data protection, and algorithmic discrimination prevention. This field of research is highly correlated with the development of a normative set of rules governing AI application in the judiciary.

Another major field of future research is the examination of psychological mechanisms of society's adaptation to the growing involvement of AI in the legal field. This involves research on the transformation of legal consciousness of citizens, on their expectations from the judicial system, and on their readiness to trust technological solutions in the matters of justice.

All of these areas of research are important for ensuring harmonized development of AI in line with ethical standards and moral values. Such studies are expected to facilitate the formation of durable trust in AI systems in the field of justice through providing a foundation for the successful introduction of technologies in the legal sphere and safeguarding fundamental principles of justice and the rule of law in the digital era.

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