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## CONTENT

### EDITORIAL

<b>Tengiz Tatishvili</b> ACADEMIC CITATION INDICES AND DATABASES (DOI: <a href="http://dx.doi.org/10.14420/en.2014.3.1">http://dx.doi.org/10.14420/en.2014.3.1</a> ).....	5
--	---

### INNOVATIONS IN SCIENCE

<b>Olga Belousova, Elena Chibisova</b> INSTITUTIONAL SUPPORT OF THE STATE INNOVATION POLICY IN THE SYSTEM OF RUSSIAN LAW (DOI: <a href="http://dx.doi.org/10.14420/en.2014.3.2">http://dx.doi.org/10.14420/en.2014.3.2</a> ).....	8
---	---

### DEVELOPMENT OF DOCTRINE ON SOURCES OF LAW

<b>Alexey Vorivoshin</b> OPERATION OF REGULATIONS IN VIEW OF SCOPE OF PERSONS: APPROACHES TO CLASSIFICATION (DOI: <a href="http://dx.doi.org/10.14420/en.2014.3.3">http://dx.doi.org/10.14420/en.2014.3.3</a> ).....	17
<b>Garnik Adamyan</b> CORRELATION OF NOTIONS OF SOURCES AND FORMS OF CORPORATIONS LAW (DOI: <a href="http://dx.doi.org/10.14420/en.2014.3.4">http://dx.doi.org/10.14420/en.2014.3.4</a> ).....	24

### LEGAL THEORY

<b>Inna Proshina</b> THE IDEA OF «PRINCIPLE OF LAW» AS VIEWED BY THE PROPONENTS OF NORMATIVE THEORY (DOI: <a href="http://dx.doi.org/10.14420/en.2014.3.5">http://dx.doi.org/10.14420/en.2014.3.5</a> ).....	31
---	----

### COMPARATIVE LAW RESEARCH

<b>Elena Akopova</b> SYSTEM OF STATE ADMINISTRATION BODIES IN CHARGE OF ENVIRONMENT PROTECTION IN REPUBLIC OF KAZAKHSTAN (DOI: <a href="http://dx.doi.org/10.14420/en.2014.3.6">http://dx.doi.org/10.14420/en.2014.3.6</a> ).....	38
---	----

### JURISPRUDENCE: PRESENTATION OF THE TEXTBOOK

<b>Svetlana Boshno</b> MEANS AND METHODS OF LEGAL REGULATION (DOI: <a href="http://dx.doi.org/10.14420/en.2014.3.7">http://dx.doi.org/10.14420/en.2014.3.7</a> ).....	47
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## EDITORIAL

### ACADEMIC CITATION INDICES AND DATABASES

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An academic citation index becomes very important at the present time. In simple terms, it is an index of relevance of research papers, that is how often academic pursuits of an author in his/her creative work are used in scholarly works. A sort of «importance» factor of scholarly works. An academic citation index serves as a communication tool of a citing person with an author of a work cited and revelation of an amount of citing of any given scholar's works.

In the process of creation of scholarly works an author studies in the first place creative works on analogous subject matter. It affords opportunity to be aware of a level of a topic scholarly development, its timeliness and in general, at which stage of scholarly knowledge the studied processes are. In writing an author uses conclusions of other authors which help him to come to results which an author achieves as a result of his work. On the basis of the aforementioned, an author refers to words and conclusions of academics which he used in writing his work. Citation index follows reference data and keeps their count, but with that citation index databases contain full-text materials as well. It affords authors an opportunity in study of some work to switch to references cited and study works referred to in studied work. Consequently, citation index is useful not only as reference count and a sort of tool of determination of relevancy of scholarly works for society, but as a library where if necessary one can find required materials.

Today we have rather substantial volume of manifold citation systems of a sort of databases which include works of various authors in various academic areas, such as physics, chemistry, legal sciences, biology etc. Here are some of them: Web of Science, Scopus, Web of Knowledge, Astrophysics, PubMed, Mathematics, Chemical Abstracts, Springer, Agris, GeoRef. The largest are WEB OF SCIENCE and SCOPUS. It is worth mentioning that magazines included in the said citation systems automatically fall within the list of magazines recommended by the RF Higher Attestation Commission.

The citation index traces its roots to as early as 1873, legal sciences were the first (Shepard's Citations). After that the Institute for Scientific Information in 1960 introduces citation index for articles published in academic periodicals, «Science

Citation Index (SCI)». Subsequently social sciences were also included in CSI («Social Sciences Citation Index», SSCI), and arts and humanities («Arts and Humanities Citation Index», AHCI). From 2006, other systems similar to the above mentioned, such as: Google, Scholar etc., start to emerge.

From 2005, «Russian Science Citation Index» (RSCI) is created in Academic electronic library (AEL, eLIBRARY.RU). The project goal consists in formation of a national bibliographic database on academic periodicals. Analytical tool ScienceIndex has been developed. The RSCI project is being developed by company «Academic electronic library» (elibrary.ru). Currently the RSCI contains an immense amount of scientific information, almost 18 million research articles which are accessible on web portal eLIBRARY.RU, about 3,200 scientific and technical journals more than 2,000 of which are in the public domain. Besides Russian magazines, international magazines are also located on the eLIBRARY.RU platform. Availability of such amount of scientific information is indisputably of a huge value for the whole scientific world.

The database **Web of Science** is the most extensive abstract database and offers to researchers, administrators, teachers and students a quick access to quality interdisciplinary relevant information. It unites 3 bases: Science / Social Sciences / Arts&Humanities Citation Index. Those resources do not contain full texts of articles, but include references to full texts in primary sources and list of all references present in each publication, which allows one to receive within a short time the most complete bibliography on subject of interest (archive depth is 20 years).

Web of science comprises more than 50 million entries in 12,500 most influential magazines all over the world, including those in the public domain, 120,000 conference proceedings in the area of natural, social, human sciences and Arts. Magazines in Web of science undergo rigorous selection process. They should conform with all publishing regulations and standards and should be international as well, content of magazines themselves and naturally their citedness are subject to a rigorous analysis.

It is worthy of note that for Russian scientists in 2012 from February 1 to April 30, 2012, free access to Web of Knowledge was provided, which separates that service from many other foreign abstract databases on a paying basis. Currently many Russian universities set for themselves a task to introduce Russian academics to that database, which is achieved by provision of incentives to higher education institutions staff themselves. For example, Moscow State University incites only for publications in 25% leading magazines by impact factor (taking into account topical area);

Ural Federal University, Moscow Institute of Physics and Technology: incitement for publications depending on impact factor: publications in more impact-bearing magazines provide higher benefits.

There is available a Russian-language site **Thomson Reuters** (<http://wokinfo.com/russian/>). That site is developed especially for Russian scientists who would like to work with databases Web of science and is targeted

at education. It contains various training aids, presentations, video clips, webinars etc.

One more of the most authoritative bases is **Scopus**. The database contains citations and abstracts of articles published in more than 14,200 reviewed journals, 4,000 of which have international publishers. Scopus tracks many magazines and comprises a wide range of disciplines. In addition to references and abstracts, Scopus also provides bibliography of article and references to articles which were used in the original.

Scopus is an interdisciplinary database, includes articles on chemistry, physics, mathematics, engineering, social, biological, agricultural sciences, psychology, economics, and sciences about environment. Scopus also provides information about citedness with a reference to article. From 1996 Scopus provides a list of articles contained in reference list of each article.

The database Scopus takes an increasing meaning for Russian scholars. The Higher Attestation Commission (c 2010 the RF Higher Attestation Commission) has established a sufficient condition for inclusion of publication in the «List of leading peer-reviewed academic magazines and publications in which basic academic results of dissertations for a doctor's and a candidate's degree should be presented» its indexation in one of two leading world databases of tracking citedness: Web of Knowledge (Science Citation Index Expanded, Social Sciences Citation Index, Arts and Humanities Citation Index) or Scopus.

In January 2010 St. Petersburg State University brought into force an order «About consideration of citedness of academic and teaching and guiding works for the purposes of competitive selection for an academic teaching position in StPBSU». According to that order, claimants upon filling positions of teachers are to present data about citedness of works published by them in the last five years, in scientometrical databases Web of Knowledge, Scopus and RSCI.

For authors having more than one publication in Scopus, a special profile – register entry is made. That register entry contains information about an author: first name, last name, place of employment, area of research interests, number of publications, citings etc. A similar opportunity is available also for magazines and institutions. Those profiles also provide information about number of employees who are authors and have more than one publication, address of institution, list of publications in which the author is published etc.

**Tengiz Tatishvili, infotainment**

## INNOVATIONS IN SCIENCE

### INSTITUTIONAL SUPPORT OF THE STATE INNOVATION POLICY IN THE SYSTEM OF RUSSIAN LAW

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#### **Abstract.**

The article presents a vision of the place of the state innovation policy in the Russian legislative system. There is a need to improve the norms of the Russian law in the field of innovation management. The article highlights, that the need to create a coherent system of rules of law governing innovation activities, is caused by increase of efficiency of realization of measures of a state policy on development of national system of innovation as a new sphere of management. It is suggested as a factor of improving legislative norms to address to a legislative practice of regions of the Russian Federation.

#### **Keywords:**

state innovation policy, national system of innovation, the legal system, legislation, federal and regional laws.

In today's world, the country's competitiveness at the international level, national security and the welfare of its population are determined by the ability of the national economic system to reproduce and capitalize existing intellectual potential and in the future – an innovative product.

National innovation system (hereinafter – NIS) is an integral economic subsystem that provides human capital development and application of knowledge in the economy and then receiving benefits. The experience of countries with efficient NIS confirms that the state takes an active participation in its formation and development. Set of goals and objectives established by the state, as well as a complex of measures and instruments applied for their achievement, defines a separate sphere of government regulation, which is commonly referred to as the «state innovation policy».

Formation of a new sphere of government administration, caused by the objective requirements of modern civilized development necessitates the formation of regulatory system supporting it and appropriate conceptual apparatus.

When considering regulatory and legal support of the state policy in the Russian



Federation two things must be taken into account. First, the legal area of regulation of innovative activity in modern Russia is built hardly more than 20 years that is small enough period for formation of the debugged regulatory system.

Secondly, the period of development of the conceptual apparatus of the state innovation policy is also not long lasting compared to, for example, with the term «science and technology policy».

It should be noted that these are two different categories. State science and technology policy regulates the scope of conservation and enhanced production of knowledge, virtually ignoring its practical application. Innovation policy is based on the postulate that knowledge is the main productive force in the present economic system, because it brings value in its implementation in daily activities. Promotion of innovation, from the stage of its creation through the entire innovation cycle to the phase of mass production is provided with the close integration of science, education and production. This process needs institutional support, which the state implements. In the Russian system of law the concept of «State science and technology policy» is enshrined in the Federal Law of August 23, 1996 No. 127-FZ «On the science and state science and technology policy»<sup>1</sup> (table 1). This approach comes from the understanding of the state policy as an activity of the state to use its power to solve problems and achieve objectives of social and economic development of the country. In this case, the state policy is expressed in the performance of the state's major functions in relation to a particular area of regulation, taking into account its specificity. Its implementation gives rise to a particular combination of social and economic relations between the state and other subjects of scientific and technical activities on the creation, conversion and use of results of scientific and technological activities. State policy can be considered as a set of measures and instruments used by public authorities to achieve their objectives.

Law accurately and fully identifies the subject of regulation of science and technology policy of Russia, subjects of scientific and technological activities, basic provisions, policies and procedures, management, responsible public authorities and their powers, general questions of financing of scientific and technological activities, as well as the goals and objectives of the state policy. Provisions of the law and some aspects of the implementation of science and technology policy of Russia are clarified in a variety of later documents, such as the Doctrine of development of the Russian science<sup>2</sup>, the Basics of the policy of the Russian Federation in the field of development of science and technology for the period up to 2010 and beyond<sup>3</sup>, the Strategy of development of science and innovation in the Russian Federation for the period up to 2015<sup>3</sup>, the Message of the President of the Russian Federation to the Federal Assembly of the Russian Federation. First federal programs have been developed in this particular sphere.

1 Decree of the President of the Russian Federation dated 13.06.1996 № 884.

2 Letter from the President of the Russian Federation dated March 03, 2002 № Pr-576)

3 Approved by the Protocol of the Interministerial Commission for Science and Innovation Policy of February 15, 2006 № 1  
URL: [http://ris.extech.ru/policy/policy\\_basis.php](http://ris.extech.ru/policy/policy_basis.php).

Certain provisions of the state innovation policy appeared at the same time, but were actively developed in the 2000s. In addition to special tax rules, civil law, including the regulation of the rights of intellectual property, regulations relating to tariff and customs regulations. Regulations having the entitlement nature, have been introduced only in 2011 by the Federal Law of July 21, 2011 № 254-FZ «On Amending the Federal Law «On Science and State Science and Technology Policy»<sup>1</sup>. Comprehensive state program on the development of innovative areas of the Russian economy was approved in 2013<sup>2</sup>. In this regard, most of the basic concepts, principles, rules and mechanisms of public policy governing the innovation sphere, at present have not found the proper clearance in the Russian legislation, including «state innovation policy» concept.

The only official interpretation of this concept is presented in the Concept of Innovation Policy of the Russian Federation for the period 1998-2000<sup>3</sup> (see. Table 1).

The weakness of the provided interpretation is that the mechanisms of realization of the state innovation policy are limited to one-software-mechanism, whereas in international practice a broader toolkit is used.

In the draft law «On the innovative activity and state innovation policy» approved by the State Duma and the Federation Council of the Federal Assembly of the Russian Federation in 1999 and rejected by the President of the Russian Federation, the state innovation policy was defined more broadly<sup>4</sup> (see. Table 1). It should be noted that the document was recognized by experts as weak, having a lot of inaccuracies, inconsistencies with existing legal regulations. Strategy for science and innovation development in the Russian Federation for the period up to 2015 year established that the concept of «innovation policy» should be introduced in the Federal law «On state forecasting and programs of socio-economic development of the Russian Federation» and become a required section of the forecast of development of the Russian Federation. However, to date, this provision has not been implemented. At the same time, a number of legal acts have introduced some «variations» of this concept.

For example, in 2013, it was introduced into the Federal law «On the science and state scientific and technical policy» (hereinafter-Federal law on Science) the concept of «State support for innovative activity»<sup>5</sup>. Range of subjects of legal

1 Collection of Laws of the Russian Federation, July 25, 2011, № 30 (P. 1), Art. 4602.

2 Order of the Government of the Russian Federation dated March 29, 2013 № 467-p «On approval of the state program of the Russian Federation «Economic Development and Innovative Economy»; Decree of the Government of the Russian Federation dated December 21, 2013 № 2492-p approved the state program of the Russian Federation «Economic Development and Innovative Economy» in the new edition; Resolution of the Government of the Russian Federation dated April 15, 2014 № 316 «On approval of the state program of the Russian Federation «Economic Development and Innovative Economy» approved a new state program.

3 Approved by Resolution of the Government of the Russian Federation of July 24, 1998, № 832.

4 Art. 1 of the draft federal law «On innovative activity and state innovation policy» (adopted by the State Duma of the Russian Federation on December 01, 1999) // Legal service network «ConsultantPlus» URL: <http://base.consultant.ru>.

5 Paragraph 2 Art. 16.1 of the Federal Law of August 23, 1996 № 127-FZ «On Science and State Science and Technology Policy» (Ed. of July 07, 2013).

regulation is limited to entities conducting innovative activity, while innovation sphere also includes intermediaries and consumers of innovative products.

**Table 1. Normative legal binding of terms of innovation sphere in the Russian law system**

Document	The concept enshrined
Federal law dated August 23, 1996 No. 127-FZ «On the science and state science and technology policy»	State science and technology policy is an integral part of socio-economic policy that expresses the State's attitude to scientific and technical activity, identifies the objectives, directions, forms of activity of bodies of state power of the Russian Federation in the field of science, technology and implementation of science and technology.
	«Government support for innovation activity is a set of measures taken by the state bodies of the Russian Federation and the state bodies of the constituent entities of the Russian Federation in accordance with the legislation of the Russian Federation and legislation of constituent entities of the Russian Federation in order to create the necessary legal, economic and organizational conditions, as well as incentives for legal and natural persons carrying out innovation activities».

The basic policies of the Russian Federation in the field of development of innovation system for the period up to 2010 year	Policy of the Russian Federation in the field of development of innovation system is an integral part of the state science-technology and industrial policy, which is a combination of the state socio-economic measures aimed at creating conditions for the development of a competitive innovative products on the basis of the advanced achievements of science, technology and engineering, and increase of the share of such products in the production structure, as well as a system of promotion and sales of products and services in domestic and foreign markets».
Conception of innovation policy of the Russian Federation for 1998-2000 years	State innovation policy is an important part of state social and economic policy; identification by the state bodies of the Russian Federation and the state bodies of the constituent entities of the Russian Federation of goals of innovative strategies and mechanisms of support for prioritized innovation programs and projects.
The draft law «On innovation activity and state innovation policy» (1999)	State innovation policy is a part of the state socio-economic policy aimed at improving the state regulation, development and stimulation of innovative activity.

<p>The law of Moscow of June 06, 2012 N 22 «On science-technology and innovative activity in the city of Moscow»</p>	<p>Science- technology and innovation policies of the city of Moscow are an integral part of the state social and economic policy of the city of Moscow, representing a collection of legal, economic, social, information, consulting, educational, organizational and other measures executed by bodies of state authority of the city of Moscow, and aimed at supporting and developing scientific-technical and innovative potential of Moscow, creating conditions for the development of production of innovative products based on advanced technology, achievements of science and technology, and increase of the share of such products in the gross regional product, as well as the promotion and realization of innovative products in the domestic and foreign markets.</p>
<p>The law of Moscow of July 07, 2004 N 45 (ed. on November 30, 2005) «On innovative activity in the city of Moscow» (void)</p>	<p>The innovation policy of Moscow is a coordinated set of measures of Moscow public authorities aimed at legislative, economic, informational, organizational and instructive provision in the field of innovative activity, and taking into account innovation policies of the federal state authorities, the interests of the subjects of science and industry and priority issues of socio-economic development of the city of Moscow.</p>

<p>Law of the Novosibirsk region of December 15, 2007 No. 178-«On the policies of the Novosibirsk region in sphere of development of innovation system»</p>	<p>Policy of Novosibirsk Region in sphere of development of innovation system (hereinafter policy on development of the innovation system) is an integral part of the state scientific-technical, educational, industrial and investment policy representing a set of socio-economic measures executed by governmental authorities of Novosibirsk Region, and aimed at creating conditions for ensuring the complex interaction of subjects of innovative activity and promoting the development of the integration processes in the implementation of science and technology, innovation and educational activities.</p>
<p>The model law «On innovation activity» (adopted in Saint Petersburg on November 16, 2006 by the Resolution of the Interparliamentary Assembly of the CIS Member States No. 27-16)</p>	<p>State (national) innovation policy is one of the directions of state social and economic policy, which consists in developing and implementing the goals and objectives of the sustainable development of the economy, creating the necessary conditions for reducing the technological gaps, ensuring the competitiveness of domestic production and the national security of the state.</p>
<p>The model law of the subject of Russian Federation «On state support of investment activity on the territory of the Russian Federation»</p>	<p>Government support for innovative activity is a set of measures in the area of innovation policy, undertaken by the bodies of state power of constituent entities of the Russian Federation in accordance with the legislation of the Russian Federation and legislation of the constituent entity of the Russian Federation in order to establish legal, economic and organizational conditions for the promotion and development of innovative activity in the territory of the subject of the Russian Federation.</p>

On the other hand, the Guidelines of the policy of the Russian Federation in the field of development of innovation system for the period up to 2010 year provide the wording «the policy of the Russian Federation in the field of development of

innovation system»<sup>1</sup>. In this approach, the emphasis in public administration focuses on the production and marketing of products, whereas such important subsystems of NIS as the production and dissemination of knowledge, support in the initial stages (start-up), provision of the technological capacity and choice of development priorities are represented as minor, although their development for formation of NIS is not less important. The following question, which is expedient to consider in conjunction with the innovation policy, is the category of «innovative activity». Innovative activity can also be considered on three components characterizing the degree of participation of researchers, inventors and entrepreneurs in the implementation of innovative activity within a certain period: research, inventive; business (economic activity concretized as the production of this or that product or rendering specific services). This feature is the basis for the international standard of classification of branches of industries, economic classifications of the System of National Standards<sup>2</sup>.

In the theory of the innovation study, such term as «innovative activity» has been developed. In the Russian terminology, a type of activity associated with the transformation of ideas (usually the results of scientific research and development or other scientific and technological achievements) into a technologically new or improved products or services introduced in the market, new or improved technological processes or production methods (transfer) of services used in practice is understood under innovative activity. From the definition of the concept of «innovative activity», adopted by the Organization for Economic Cooperation and Development (OECD), «all scientific, technological, organizational and commercial activities, leading to the actual implementation of the innovation or intended for this purpose» are referred to this activity.

The problem of terminology is one of the main problems that inevitably arises when trying to organize the mechanism of regulation of innovative relations, and with decision of which on doctrinal scientific level it is necessary to begin the formation of a coherent regulatory system of regulation of certain spheres of public relations.

Focus of the definition of innovations on the result seems quite the right approach toward building a terminological apparatus in the area of innovation of public relations, allowing highlight innovations as result of the innovation process, innovative activity. However, the inclusion into the definition of innovations such objects as a process and method is too expanding its borders. From the perspective of a broad approach to the understanding of innovations, this term is close in meaning to the word «modernization», characterizing severe changes in all spheres of public life. From the analyzed definition, it can be highlighted such feature of innovations as a novelty, suggesting that the development under implementation is a totally new or significantly improved in quality, properties, methods of use, etc.

Further, the practical applicability of the received developments and providing economic benefits in the future. If transferring the semantic emphasis

1 The basic policies of the Russian Federation in the field of development of innovation system for the period up to the year 2010, approved by the Government of the Russian Federation on August 05, 2005 No 2473p-P7.

2 Dulepin Y.A., Kazakova N.V. // Innovative Economy. – 2009. – № 11.

from development to product, then we get not the «practical applicability of the development» but a product implemented in the production that contains the results of development. Furthermore, the effect of innovation may be not only economical, but also social<sup>1</sup>.

It should be noted that one of the basic conditions for innovation development of society is the innovative activity of business entities, and their interest in participating in marketing of innovative products and services, investing in innovative projects. All organizations, both directly implementing innovative activity as well as facilitating its implementation, are in a certain economic and technological dependence, and only in the complex, in an indissoluble unity relationships and interactions can become a powerful force for innovation processes. The undoubted advantage enshrined in the Federal Law «On amending the Federal Law «On science and state science and technology policy» of the concept of innovative activity is a broad approach to its definition, allowing to emphasize the versatility and diversity of forms of expression of innovative activity: scientific, technological, organizational, financial and commercial activity. Meanwhile, the definition should reflect the essence of innovative activity not as an activity on the implementation of innovative projects, but as a process of creation and utilization of the results of intellectual work aimed at obtaining a new or improving produced product or the method of its production for the purpose of its practical implementation and / or receiving profit as a result of their promotion on the market in the form of goods, works or services. The definition should contain such legally important characteristics of innovative activity as autonomy, consistency, comprehensiveness, targeted focus, orientation to receiving socially beneficial effect.

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## DEVELOPMENT OF DOCTRINE ON SOURCES OF LAW

### EVOLUTION OF LEGAL CONSCIOUSNESS FROM ANTIQUITY TO MODERN AGE (THESES TO THE HISTORY OF LEGAL PHILOSOPHY)

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**Abstract.**

The definition of «regulations» is rather multi-variant, while the matter on the legal nature of regulations is a discussion point in view of the scope of persons covered by them (local legal statutory act or legal statutory act). In this article, the author reviewed the regulations of the legislative (by the example of the Council of Federation of the Federal Assembly of the Russian Federation) and executive (by the example of the Government of the Russian Federation) bodies in order to identify such regulations as the legal statutory or local legal statutory (in-house) acts, which will allow for clarifying the definition of the regulations. The author developed the classification for the parties subject to operation of the Regulations depending on the duration. There is permanent extension covering the members of the chamber and government and administrative officers and discrete (temporary) extension covering the specified persons at the moment of their interaction with the chamber or the government.

**Keywords:**

acts of self-regulatory organizations, governmental body, governmental, municipal and other institutions and organizations, corporate (in-house) acts, local legal statutory act, general public, legal statutory act, local self-government authority, rules, Government of the Russian Federation, legal act, law-making, procedure, regulations, Council of Federation of the Federal Assembly of the Russian Federation, standards, federal law.

The definition of regulations is currently rather vast, there being several examples below:

**Regulations** – masculine, French – statute, order or rule of any service,

explained in writing<sup>1</sup>.

**Regulations** (*French*, règlement, from «règle» – rule: 1) a body of rules setting the rule of procedure for the governmental agency, institution, organization (e.g., the Regulations of the Supreme Council of the USSR of 1979); 2) the order of administrating the meetings, conferences, congresses; 3) the title of certain acts issued by the international congresses and conferences (e.g., Vienna Act of 1815)<sup>2</sup>.

**Regulations** – statutory act setting the order of a meeting, proceedings, conference, congress etc., the rule of procedure for the governmental agency, commercial or non-commercial organization and an individual acting as an employee<sup>3</sup>.

Regardless of the existing definitions, the matter of the legal nature of the regulations through the scope of persons covered is a debating point: *a local legal statutory act* or *a legal statutory act*. Let us consider these notions.

*Legal statutory act* is an official document in writing issued in certain form by the competent lawmaker and aimed at establishment, amendment, enactment or cancellation of legal rules as binding prescriptions, permanent or temporary, intended for *indefinite range of persons* and designed for multiple use.

In view of the matter at issue, the key words of this definition are «*intended for indefinite range of persons*».

*Local legal statutory act* is a corporate (in-house) act issued by the authorized official of the company within its competence for the purpose of managing the activities of the company and relations between its members (in particular, corporate acts, acts of self-regulatory organizations, legal statutory acts of state companies, standards etc.). In view of the matter at issue, the key words contained in this definition are «*for the purpose of managing the activities of the company and relations between its members*».

The article contains the review of the regulations of the legislative (by the example of the Council of Federation of the Federal Assembly of the Russian Federation) and executive (by the example of the Government of the Russian Federation) bodies in order to identify them as legal statutory acts or local (in-house) legal statutory acts.

**Assertion on the regulatory nature.** Adherence to the rules of law by all actors constitutes the foundation of any law-governed democratic state, which Russia is declared to be under article 1 of the Constitution of the Russian Federation. Consequently, the rule considered is of particular significance.

It is noteworthy that the regulations contain the expressed recitation of the actors bound by it to comply therewith. Such actors include the governmental bodies, local self-government authorities, officials, individuals and associations, representatives of foreign states and mass media. Therefore, they are also bound to

1 Dahl V.I. Explanatory Dictionary of the Living Great Russian Language: Modern Spelling: In 4 volumes. Vol. 4. – M., 2001. – P. 141.

2 Soviet Encyclopedic Dictionary, 2nd edition. – M., 1983. – P. 1107.

3 Legal Encyclopedia. 6<sup>th</sup> edition revised and enlarged / edited by M. Yu. Tikhomirov. – M., 2011. – P. 816.

comply with the Regulations.

It is obvious that the regulations could not cover all the obligations of the individual and collective actors. Due to this fact, they provide for the general rule binding over these entities to comply with the regulations and, therefore, to perform the duties established therein. Thus, the regulations contain the «universal» duty.

Let us consider these ideas of the theory of law using the examples of the regulations of the legislative and executive bodies of the Russian Federation.

### **Legislative Power of the Russian Federation**

Regulations of the Federal Council of Federation of the Federal Assembly of the Russian Federation<sup>1</sup> was approved by the Act of 30 January 2002 No 33-SF «Concerning the Regulations of the Council of Federation of the Federal Assembly of the Russian Federation». The review of this legal statutory act makes it possible to conclude as follows.

The Regulations of the Federal Council of Federation of the Federal Assembly of the Russian Federation (hereinafter – the Regulations of the Council of Federation) determines the procedure of functioning and work of the Council of Federation.

The Regulations of the Federal Council came into effect upon being enacted on 30 January 2002. Upon entry into force of the Regulations, the original text thereof was published in such editions as «Official Gazette of the RF» («Sobraniye Zakonodatelstva RF»), 18.02.2002, No 7, p. 635, «Parliament Journal» («Parlamentskaya Gazeta»), No 35 – 36, 19.02.2002, «Bulletin of the Federal Assembly of the RF», 21.02.2002, No. 6, p. 279.

The operation of the Regulations of the Federal Council can be conditionally subdivided into permanent and discrete<sup>2</sup> extension. The operation of the Regulations has permanent extension to the officials of the Council of Federation<sup>3</sup>, members of the Council of Federation<sup>4</sup>, the Honorary Chairman of the Council of Federation of the Federal Assembly of the Russian Federation and the Chairman of the 1st Council of Federation of the Federal Assembly of the Russian Federation<sup>5</sup>, employees of the Central Office of the Council of Federation, while the discrete extension covers the entities and individuals interacting with the Council of Federation. The summary of the scope of the Regulations of the Council of Federation in the view of extension is shown in Table 1.

**Table 1.**  
**Summary of the Scope of the Regulations of the Council of Federation**

1 Act of 30 January 2002 No 33-SF «Concerning the Regulations of the Council of Federation of the Federal Assembly of the Russian Federation».

2 Discretion (from Latin «discretus» – dissected, discrete), discontinuity; opposed by permanence. For instance, discrete variation of any value in time means variation that occurs in certain time intervals (intermittently, in discrete steps).

3 Clause 2 art. 9 of the Regulations of the Council of Federation.

4 Clause 2 art. 2 of the Regulations of the Council of Federation.

5 Art. 10 of the Regulations of the Council of Federation.

## in the View of Extension

Title of the document	Nature of extension	
	Discrete extension to	Permanent extension to
Regulations of the Council of Federation of the Federal Assembly of the Russian Federation	President of the Russian Federation	Officials of the Council of Federation, members of the Council of Federation, the Honorary Chairman of the Council of Federation of the Federal Assembly of the Russian Federation and the Chairman of the 1st Council of Federation of the Federal Assembly of the Russian Federation, employees of the Central Office of the Council of Federation
	Chairman of the Government and members of the Government of the Russian Federation	
	First chief deputies of the federal executive authorities	
	Deputies of the State Duma of the Federal Assembly of the Russian Federation	
	Chairman, deputies, auditors of the Accounts Chamber of the Russian Federation	
	Chairman of the Constitutional Court of the Russian Federation, Chairman of the Supreme Court of the Russian Federation	
	Prosecutor General of the Russian Federation and other authorized persons	
	Chairman of the Investigative Committee of the Russian Federation and other authorized persons	
	Members of the Civic Chamber of the Russian Federation	
	Representatives of the local self-government authorities	
	Representatives of the foreign states	
	Representatives of mass media	
	Representatives of the research and expert institutions	

Relying upon the contents of the Regulations of the Council of Federation, within the framework of the discussed issue, it appears that the Regulations of the Council of Federation is a legal statutory act rather than a local legal act, as it is directed to an indefinite range of persons and is tailored for repeated application.

### **Executive Power of the Russian Federation**

Regulations of the Government of the Russian Federation (hereinafter – the Regulations of the Government) was approved by the Act of the Government of Russia of 1 June 2004 No 260 «Concerning the Regulations of the Government of the Russian Federation and the Statute on the Central Office of the Government of the Russian Federation»<sup>1</sup>.

The Regulations of the Government establishes the rules for administrating the work of the Government of the Russian Federation on exercising its functions.

Regulations of the Government was enacted upon being published in «Official Gazette of the Russian Federation» («Sobraniye Zakonodatelstva Rossiyskoy Federatsii»), 07.06.2004, No 23, p. 2313, and «Rossiyskaya Gazeta», No 119, 08.06.2004.

Regulations of the Government has undergone certain changes, due to direct revocation of the part thereof by other acts of the Government of the Russian Federation, the Ruling of the Constitutional Court of the Russian Federation of 29.11.2006 No 9-P (on holding clause 100 of the Regulations of the Government of the Russian Federation as approved by the Act of the Government of the Russian Federation of 01.06.2004 No 260 «Concerning the Regulations of the Government of the Russian Federation and the Statute on the Central Office of the Government of the Russian Federation» contrary to the Constitution of the Russian Federation, articles 10 and 104), judgment of the Supreme Court of the Russian Federation of 15.02.2007 No GKPI06-1355 (on revocation from the effective date of the court ruling of the paragraph 3 clause 108 of the Regulations of the Government of the Russian Federation approved by the Act of the Government of the Russian Federation of 01.06.2004 No 260).

Regulations of the Government approved by the Act of the Government of the Russian Federation in pursuance of article 115 of the Constitution of the Russian Federation shall be binding in the Russian Federation.

As in the example above, the operation of the Regulations of the Government can be conditionally subdivided into permanent and discrete extension. Operation of the Regulations of the Government is extended permanently to the Chairman of the Government, deputies Chairman of the Government, federal ministers, officials and employees and of the Central Office of the Government. While the discrete extension covers the entities and individuals interacting with the Government of the Russian Federation. Summary of the scope of the Regulations of the Government in view of extension is given in Table 2.

**Table 2.**  
**Summary of the Scope of the Regulations of the Government in the**

<sup>1</sup> Act of 1 June 2004 No 260 «Concerning the Regulations of the Government of the Russian Federation and the Statute on the Central Office of the Government of the Russian Federation».

## View of Extension

Title of the document	Nature of extension	
	Discrete extension to	Permanent extension to
Regulations of the Council of Federation of the Federal Assembly of the Russian Federation	President of the Russian Federation	Officials of the Council of Federation, members of the Council of Federation, the Honorary Chairman of the Council of Federation of the Federal Assembly of the Russian Federation and the Chairman of the 1st Council of Federation of the Federal Assembly of the Russian Federation, employees of the Central Office of the Council of Federation
	Chairman of the Government and members of the Government of the Russian Federation	
	First chief deputies of the federal executive authorities	
	Deputies of the State Duma of the Federal Assembly of the Russian Federation	
	Chairman, deputies, auditors of the Accounts Chamber of the Russian Federation	
	Chairman of the Constitutional Court of the Russian Federation, Chairman of the Supreme Court of the Russian Federation	
	Prosecutor General of the Russian Federation and other authorized persons	
	Chairman of the Investigative Committee of the Russian Federation and other authorized persons	
	Members of the Civic Chamber of the Russian Federation	
	Representatives of the local self-government authorities	
	Representatives of the foreign states	
	Representatives of mass media	
	Representatives of the research and expert institutions	

Relying upon the contents of the Regulations of the Government, within the framework of the discussed issue, it appears that the Regulations of the Government is a legal statutory act rather than a local legal act, as it is directed to an indefinite

scope of persons and is designed for repeated application.

Consequently, the regulations of a legislative or executive agency constitute a legal statutory act. In order to decide definitively upon this matter, the Federal Law «Concerning the Legal Statutory Acts in the Russian Federation»<sup>1</sup> should be enacted. It appears reasonable to incorporate into the law the following definition: **Regulations** are a special legal statutory act adopted for the purposes of regulating essential modes of administration and functioning of the governmental bodies, local self-government authorities, governmental, municipal and other institutions and organizations, establishing the rules of procedure for the legal person.

The statutory definition will remove the speculations and controversy of the legal status of the regulations and determines unambiguously their location within the system of legal acts.

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1. Act of 30 January 2002 No 33-SF «Concerning the Regulations of the Council of Federation of the Federal Assembly of the Russian Federation».
2. Act of 1 June 2004 No 260 «Concerning the Regulations of the Government of the Russian Federation and the Statute on the Central Office of the Government of the Russian Federation».
3. Federal Draft Law «Concerning the Legal Statutory Acts in the Russian Federation» (pilot draft). – M.: Institute of Legislation and Comparative Law under the Government of the Russian Federation, 2013.
4. Dahl V.I. Explanatory Dictionary of the Living Great Russian Language: Modern Spelling: In 4 volumes. Vol. 4. – M., 2001.
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<sup>1</sup> Federal Draft Law «Concerning the Legal Statutory Acts in the Russian Federation» (pilot draft). – Moscow: Institute of Legislation and Comparative Law under the Government of the Russian Federation, 2013.

## CORRELATION OF NOTIONS OF SOURCES AND FORMS OF CORPORATIONS LAW

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### Abstract.

The article analyzes bibliography of academic literature on regulatory legal acts and local legal acts. A comparison is made of attitudes of scholars of the Soviet and Russian jurisprudence. The author brings to light attributes of local legal acts which have synthesized the best practice of researchers and are enriched with the author's attitude. The division of local acts in intraorganizational and externally oriented ones developed by the author is valuable in practice. The author proposes classification of acts according to a number of persons subject to them. On quantitative basis the acts are divided in: 1) regulatory legal acts (affecting an indefinite range of persons); 2) local regulatory legal acts (affecting members of an organization); and 3) ad hoc legal acts (affecting a personified subject).

### Keywords:

legal act, local legal act, regulatory legal act, normalization, ad hoc legal acts, law enforcement acts, institution acts, organization acts, corporate acts, generality, generally binding character, competence of state power bodies, legal acts hierarchy.

A definition of a local legal act is not yet formed in legal science and corporate legal culture and is not established by legislation.

The notions formulated in the legal theory are substantially enriched owing to results of research of sectoral sciences – labor, social, municipal and other branches of law.

**History of terms.** Modern legal science develops theses on local law-making on a sufficiently elaborated foundation created by Soviet scholars. The national legal science of 1960–1980-s actively developed a theory of local law-making in respect to acts of socialist enterprises, collective farms, labor collectives. So, for example, within the confines of labor law theory those problems were developed by S.I. Arkhipov<sup>1</sup>, V.K. Samigullin<sup>2</sup> and other researchers.

1 *Arkhipov S.I.* The issues of perfection and development of local normative legal regulation // 27<sup>th</sup> Communist Party Congress and development of theory of state and law. Interacademic collection of scholarly works. – Sverdlovsk, 1987.

2 *Samigullin V.K.* Specification of law and local statutory regulation // Enforcement of Soviet law. Collection of academic works. Issue 30. – L., 1976. – P. 38–43; The same. Local rules and their types // *Pravovedeniye*. – 1974. – No 2. – P. 119–121; The same. Systematization of local rules of the Soviet law. Issues of theory: Diss. ... Cand. Legal Sci., 1976.



The Soviet legal theory, as noted by V.K. Samigullin, used the term «acts of state-owned enterprises, institutions and organizations», which were treated as a link of a system of regulatory legal acts established by the state. That was explained, among other things, by the fact that state was owner of enterprises, and acts of organizations were often issued on the basis of standard state forms, such as a Standard charter of a socialist enterprise. As a whole, the problem of local regulation was not immediate in virtue of uniformity of acts and consistency of the legal system. The doctrine about acts hierarchy was actually substituted with understanding of socialist discipline.

With the development of market relations and construction of new Russian nationhood, a critical need emerged of formation of exactly local legal acts. That was accounted for in no small part by quick growth of various legal persons. Subjects of law, citizens had no experience and created legal forms at a guess, trying and forming by their actions a new corporate culture. In the country emerged limited liability companies, joint stock companies, corporations, which was quite new after longstanding domination of socialist property and absence of private business. Theoretic and doctrinal formalization of corporate law took place in the works by T.V. Kashanina<sup>1</sup>.

**Scholarly attitudes to definitions.** The corporate law-making theory has sufficiently taken shape in modern legal science, substantial experience has been gathered which needs arrangement and development of appropriate recommendations. The principal directions of regulatory local law-making theory take shape in labor, corporate and municipal law. However local acts are also sufficiently actual in other branches of legislation.

The mentioned observations clearly show timeliness of subject matter of local legal acts definition.

Academic arguments in the field of division or identification of regulatory and local legal acts, as well as criteria of correlation of above-mentioned documents, are of major practical relevance for law-making and law enforcement.

Local legal acts are legal documents containing legal rules adopted by management entities in organizations of various forms of ownership and departmental affiliation<sup>2</sup>.

This definition is traditionally given in comparison with state regulatory legal acts. In comparative study such attributes of local acts are usually pointed out as their issuance by organizations or enterprises, negligible scope of persons on which they extend their effect, sublegislative nature and some others.

So, Ye.V. Karnaukhova in her work «Local regulatory legal act as an object of general theoretical study» distinguishes the following attributes of local legal acts:

1. They contain legal rules.
2. Local legal acts are subordinate, that is based on laws and subordinate acts,

1 See: *Kashanina T.V., Sudarkova Ye.A. Company law.* – M., 1997.

2 *Komarov S.A., Malko A.V. Theory of state and law.* – M., 1999. – P. 317.

cannot contradict them and are in subordinate situation in relation to laws.

3. Those legal acts are issued in an organization by a competent body. A main subject of local law-making is employer.
4. Local regulatory legal acts are issued by an organization for solution of in-house questions and act only within its limits<sup>1</sup>.

S.S. Alekseyev offers a following definition of a local legal act: local regulatory legal acts are regulatory subordinate acts issued by an organization only for solution of in-house questions and acting only within its limits. They are in-house in the strict sense of that word, expressing principles of decentralization in legal statutory regulation<sup>2</sup>.

In the opinion of S.A. Komarov and A.V. Malko, local regulatory acts are legal documents containing rules of law and adopted by management entities in organizations of various forms of ownership and departmental affiliation<sup>3</sup>.

A specialist in corporate law I.S. Shitkina identifies the following **special aspects of local legal acts**<sup>4</sup>:

- local legal acts are based on legislation and other legal acts and cannot contradict them;
- they enforce legislation and other legal acts;
- they are adopted within the limits of facultative authorization and not in contravention of legislative mandative interdiction;
- they are adopted by competent management bodies of organization according to established procedure and do not need approval or approbation by any other bodies, including state ones;
- they circulate among all subjects taking part in an organization interior relations: management bodies, shareholders, employees, administration, structural divisions;
- in some cases (that concerns principally social and labor field and social partnership issues) they are subject to obligatory discussion in work collectives, approbation or coordination with representative bodies of employees;
- they are taken into account by judicial law enforcement bodies in consideration of disputes resulting from internal operation of organization.

S.V. Ukhina suggests a following definition: «Local legal acts are rules and other instructions of universally binding nature, meant for certain group of persons and regulating main living environment of organization in question». She also distinguishes basic attributes inherent in local acts: 1) they are of rule-making nature; 2) a local legal act is always invested in documentary form (decision, order,

1 *Karnaikhova Ye. V.* . Systematization of local regulatory legal acts in the Russian Federation: general description and types: Synopsis of theses... Cand. Leg. Sci. – Tyumen, 2011.

2 See: *Alekseyev S.S., Yakovlev V.F.* Legal regulation of business relationships // *Soviet state and law.* – No 3. – P. 61–69.

3 *Komarov S.A., Malko A.V.* Theory of state and law. – M., 1999.

4 *Shitkina I.S.* Legal groundwork for the activities of a joint-stock company. A set of local regulatory acts. – M., 1997. – P. 256.

regulation, rules, instructions etc.); 3) they should have requisite details; 4) written form is necessary for achievement of uniformity of understanding requirements of a local act as well as possible sanctions for its application<sup>1</sup>.

A well-known scholar Yu.A. Tikhomirov distinguishes the following attributes of local acts: 1) their adoption in enterprises, institutions, organizations where functions of management and production, commercial, training, academic or other processes are directly combined; 2) coverage in local acts of all functions imposed by statute and regulation on corresponding structure; 3) limitation of action of local acts by field of activity of corresponding structures in establishment of procedures, grounds and range of subjects competent for taking decisions; 4) combination of managerial procedures of decision-taking with self-administration of labor collective, shareholders and others, with participation of non-governmental organizations<sup>2</sup>.

Distinguishing attributes of local regulatory acts, it is to be noted that all attributes of regulatory legal acts are inherent in them. So, for example, G.V. Khnykin distinguishes the following common attributes of state and corporate acts within the confines of labor law<sup>3</sup>:

1. Volitional content. A local regulatory act embodies will of that act developers as well as of subjects and participants of rule-making who expressed their stance on it at various stages of development, discussion and adoption of that document.
2. Official nature. Local regulatory acts get official nature owing to rule-making bodies. Raised requirements are established for centralized legal acts, including procedures of their adoption, publication and making available to law enforcement officials. Absence of official publication means that, first, a rule-making body performs its duties in full, second, grounds are created for infringement of rights and freedoms of citizens.
3. Plurality and hierarchic structure. Hierarchy of sources of law, i.e. establishment of subordinated connections between various forms of law, is material to formation of local regulatory acts system, too.
4. Universal nature is manifested in that they concern an indefinite range of persons of that organization and are meant for repeated application of local regulatory legal acts.
5. Competence of subjects authorized to create a regulatory act and procedure of its adoption are established by the RF Labor Code, other laws and legal acts. In some cases a law-maker grants rule-making bodies a right to establish procedures of regulatory act adoption themselves.

1 Ukhina S.V. Factors and criteria of optimization process of local rule-making // *Yuridicheskaya mysl. Research and practice magazine.* – 2008. – No 6. – 134–136.

2 Research and practice aid / A.V. Kashanin, Yu.A. Tikhomirov, S.V. Tretyakov et al.; exec.ed. Yu.A. Tikhomirov. – M.: *Yurisprudentsiya*, 2011.

3 See: Khnykin G.V. Role of local regulatory acts in the system of relations regulated by labor law // *Legal relations in the context of development of modern legislation and law enforcement: Proceedings of the International research and practical conference.* – Ivanovo, 2008. – P. 199–208.

6. Documentation. A local regulatory act is always a written document. Requirements for its form, language, style of exposition, structure and content, presence of corresponding requisite details are regulated centrally and formulated by scholars.
7. Intended purpose of regulation of socially important social relations.

Together with common features, G.V. Khnykin distinguishes specific special aspects of local legal acts: 1) sublegislative nature. The basis of their formation consists of legal rules of combined effect, which, taking into account local conditions, can be supplemented, elaborated or concretized; 2) a major dominating subject of local rule-making is an employer who can adopt local regulatory acts within the limits of his/her competence; 3) local regulatory acts are meant only for internal use only within the confines of a specific organization. Acts regulating labor and other relations most closely associated with them, are distinguished by higher closeness to employee in comparison with other legal acts; 4) local rules are distinguished by responsiveness to social organization of labor; 5) flexibility of application of labor legislation to specific production conditions and variety of local rules provide an opportunity to establish advantages of certain organizations over the others; 6) local rules have social orientation; 7) harmonization of interests of employees and employer through implementation of the checks and balances system of the parties exposed in corporate acts<sup>1</sup>.

Analysis of the mentioned positions of scholars and practice of corporate law-making makes it possible to emphasize acknowledged attributes of local legal acts to which the following ones are referred: 1) they contain rules of law; 2) are of sublegislative nature; 3) are adopted within an organization by competent bodies; 4) concern a certain group of persons; 5) have documentary form.

Among the attributes of a local act the most significant ones appear to be: origin of those documents, procedure of their adoption, issuing authority or person.

Specific nature of exactly local legal acts lies in the fact that they are not issued by agencies of state power and their functionaries. Their source is decision of an organization represented by its authorized bodies. However often a pretext, cause and ground of issuance of a local act is a state document. So, for example, a variety of documents in the field of circulation and protection of personal data is issued by legal persons on the strength of express instruction of the Labor Code or Federal law about protection of personal data. Such state initiative on issuance of act by an organization enables us to see in local legal acts a variety of sublegislative legal regulation.

Of principle is the issue of range of persons on which the effect of a local legal act is extended. Classification of legal acts in intraorganizational and externally oriented ones provides a means to determine its legal form and to establish its place in a legal regulation system. In other words, there are acts having effect on all and sundry, and there are those which have effect on members of organization

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<sup>1</sup> *Khnykin G.V. Establishment and development of local labor law in Russia // Studies of Law Department. Book 12. – M. – 2010.*

(enterprise, party or other structured entity). An effect of various acts within a system and outside it has a constitutional origin. So, in accordance with the Art. 15 of the RF Constitution, regulatory legal acts affecting the rights and freedoms of a person are subject to official publication. Interpretation of that rule allows us to state that an effect of an act within organization is a ground for implementation of act without its official or other publication. That thesis is not to be understood rectilinearly as a license to hide legal instructions of intraorganizational nature. The point at issue is that local acts meant for organization members are brought to an attention of members by other means. It being understood that all interested persons can have a look at it. So, a traditional method of familiarization in labor law is an employee's signature.

Intraorganizational nature of local acts means extension of acts effect on members of that organization, membership in organization, presence of organizational and legal connection between an issuing body and a subject of law directly. That problem is connected with determination of subjects on which the effect of a specific document is extended.

Of major significance for theoretic and legal studies is a notion of indefinite range of persons on which the effect of an act is extended. For corporate law a quantitative criterion is of no importance, it is presence of organizational connection that is important.

Regulatory acts are a form of positive law which acts regardless of a specific subject, it exists objectively. Corporate law is applied only to members of that corporation and is not extended on other persons.

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In light of the foregoing, local regulatory legal act may be regarded as a legal document which contains rules of law, is adopted by appropriate bodies of organization for regulation of intraorganizational issues and pertains to a certain range of persons. A definition «local act» is a generic one. Local acts can be regulatory or individual. A doctrine of regulatory legal acts issued by state power bodies can be adapted to local acts by reference to their specific features.

Classification of acts according to number of persons which it extends on, appears to be the following:

1) regulatory legal acts (affecting an indefinite range of persons); 2) local regulatory legal acts (affecting members of organization); and 3) individual ones (affecting a personified subject).

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## LEGAL THEORY

### THE IDEA OF «PRINCIPLE OF LAW» AS VIEWED BY THE PROPONENTS OF NORMATIVE THEORY

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#### Abstract.

Historically, the principles of law have been the debating point of the home legal studies. In this article, the author performed the retrospective research of reference works on the principles of law starting from the latter half of the 19th century and up to the present day. The author intentionally confined her research with the scholars representing legal positivism. The effect of Marxist-Leninist ideology can also be observed as the essential factor of the Soviet science of law. The author elucidated in the works reviewed the trend of dominant perception of the principles of law as the fundamental ideas reflected in the legislation. It is concluded in the article that establishing all the principles in the statute will not add to definiteness just as of the principles of law, so of the legislation in general. On the contrary, the indefiniteness and declarative nature of the statutory legal acts will grow. It is suggested that the principles of law should be developed on the doctrinal basis of the other non-positivist kinds of legal perception.

#### Keywords:

idea of law, principles of law, theories of legal perception, legal positivism, sociological approach, legal regulations, general theory of law, definiteness of law, indefiniteness of law, kinds of legal perception, fundamental principles, ideas of law, legal ideology.

The idea of «principle of law» is an element of the general theory of law and is permanently developing along with this science. The principles of law have been studied by the legal theorists, sectoral professionals and legal historians. The general idea of the principles of law is developed by the theory, specified and clarified in view of sectoral peculiarities in the appropriate research in the civil, criminal, procedural and other fields of law. The results of the sectoral research are systematized and generalized in the theory of law research. Historically, it is obvious that the principles of law doctrine is developing in accordance with the political, social, economic specific features of historical phases, as it is the rule-of-law state that presumes the public authority and the laws generated by it being bound by law.

The following specialists in the theory of law made a substantial contribution to creation and development of the theory of principles of law: N.K. Rennenkampff, M.N. Kapustin, K.S. Judelson, N.G. Alexandrov, A.F. Shebanov, B.V. Sheindlin, A.S. Pigolkin, S.S. Alexeyev, A.L. Zakharov, A.F. Cherdantsev, S.V. Boshno, T.N. Radko, M.N. Marchenko, N.I. Matuzov, A.V. Malko, and the sectoral scholars, such as S.N. Bratus, T.N. Dobrovolskaya, O.V. Smirnov, B.M. Semenyonov, G.A. Sverdlyk and others.

Starting the research, due account should be taken of the fact that the notion of the principle of law is subdued to more general notion of the principle. The word «principle» originates from the Latin word «principium» translated as «beginning», «foundation». Ancient Romans used to lay special emphasis onto the idea of the principle, believing that «the principle is the essence of everything» (*principium est portissima pars cujunque rei*). According to the linguists, including V. Dahl, the word «principle» means the scientific foundation, basis that should be adhered to; «the central idea, foundation of the system, constituting the generalization and distribution of any provision to all phenomena of that field, where such principle was abstracted»<sup>2</sup>.

Basing on the above definitions, one has to agree that the principle of law is an idea, basis, constituting the foundation of formation, including the law.

Russian theorist of law N.K. Rennenkampff wrote about the principle of law being the idea and essence of law as early as in the 19th century. He outlined six essential, in his opinion, foundations in their nature constituting the principles of law that were afterwards formulated by legal scholars: «1) the law determines and secures the public order and constitutes the indispensable appurtenance of each society at each stage of development; 2) the law designates the sphere of public activities of a human... and community life; 3) the law, appearing to be the public law, does not belong with the personal world of human...; 4) the law defines solely such human relations that can be found in certain external phenomena...; 5) the rules of law... are limited with the definition of the rules for public order and human activities...; 6) the law is the expression of the social thinking and power and, therefore, always carries the executive and coercive power»<sup>3</sup>. According to the opinion of M. N. Kapustin, «the law cannot stay out of the economic development, ideas, beliefs; it is conservative in its essence, but solely to the extent that its definitions shall not entrench the opinions, yet unsteady, and the foundations, yet unascertained»<sup>4</sup>.

In the Soviet legal science, this theme was studied in sufficient detail both in

1 Dahl V. Explanatory Dictionary of the Living Great Russian Language. – M., 1982. Vol. 3. – P. 431.

2 Philosophic Dictionary. – M., 1972.

3 Rennenkampff N.K. Essays of Legal Encyclopedia, 2nd edition. – M., P. 26-27.

4 Kapustin M. N. History of Law. Part I. – Yaroslavl, 1879. – P. 2.



theory of law<sup>1</sup> and in certain sectoral legal sciences.

However, there are several various approaches with regard to defining the notion of the «principle of law», depending on the perception of the essence of law within the limits of various types of legal perception. As this article is not aimed at development of the definition of the «principle of law» in view of the essence of law within the frame of various types of legal perception (positivist, natural law, libertarian), let us consider the idea of the «principle of law» within the frame of normative approach, dominating traditionally in the home legal science.

An important feature of the Soviet science was the considerable ideological aspect, manifested in the dominant Marxist-Leninist doctrine being reflected in the research of state and law. Within that period, the theory was prevailing, in particular, that the principles of law were defined as the guidelines expressing the class nature. Such approach was upheld by N.G. Alexandrov, A.F. Shebanov, B.V. Sheindlin. The principles of law served as declarations, slogans, but could not find practical application. A.L. Kononov pointed out that «the principle was understood to be not so much legal ideas as the political ones, appearing just as a certain landmark for the lawmaker of the legal policy. Exceptional positivist perception of law did not attach the meaning of independent sources of law to the principles, removing them out of the legislative regulations, and due to such perception alone they could not serve as the criteria for evaluating these rules, however such evaluation not being allowed either»<sup>2</sup>.

It may be said, that there is a concept in the home science of law that the principles of law should be understood as its fundamental elements, ideas, basing on which the law is operating as a single social organism. Such interpretation appears at most researches of both past and these days<sup>3</sup>.

According to the opinion of A.M. Vasiliev, «principles of law are not arbitrary in their nature, but are obviously determined by economic, social, political structure of society, existing in this country or another, social and class nature of the state and law, attitude of the ruling political and state regimes, basic principles of formation and operation of the political system of any society»<sup>4</sup>.

The research in definition and position of the principles of law has been continued in the works of Russian scholars. A.L. Zakharov pointed out that «the specificity of the principle as the element of knowledge is that it is in its essence the initial provision of such theory. It is the principles of the theory where other its

1 See: *Alexandrov N.G.* Socialist Principles of the Soviet Law // *Sovetskoye Gosudarstvo i Pravo* [Soviet State and Law]. – 1957. – No 11; *Sheindlin B.V.* Essence of the Soviet Law. – Leningrad, 1959. – P. 59–74; *Berchenko L.Ya.* Leninist Principles of the Socialist Law. – M., 1970; *Lukasheva E.A.* Principles of the Socialist Law // *Soviet Gosudarstvo i Pravo* [State and Law]. – 1970. – No 6; *Borisov G.L.* General Principles of the Socialist System and the Soviet Law: Synopsis of the thesis of candidate of legal sciences. – Kharkov, 1977.

2 *Kononov A.L.* On the General Principles of Law in French and Belgian Administrative Case Practice // *Gosudarstvo i Pravo* [State and Law]. – 2001. – No 3.

3 *Tchemobel G.T.* Lawmaking and Legal Science // *Lawmaking in the Russian Federation: Research, practical and teaching guide* / Edited by A. S. Pigolkin. – M., 2000. – P. 60.

4 *Vasiliev A.M.* Legal Categories. Methodological Aspects of Developing the System of Legal Categories. – M., 1976. – P. 216–225.

provisions are deduced from, such as laws, consequences etc.»<sup>1</sup>.

S.S. Alexeyev defines the principles of law as the fundamental ideas defining together the ideal construction (model) of state that could be identified as the rule-of-law state, while he relates the generation of such ideas to the objective and subjective factors: the culture, science, education level and other elements constituting the collective intelligence of this social system; moral and spiritual potential of the society, lack or existence of the sustainable mechanism for implementing the legal fundamentals in the activities of the governmental authorities, as well as the degree of absorption by a certain human of the law as his own freedom, realized and restricted by himself where and as necessary<sup>2</sup>.

At that, T.V. Klenova, sharing the point of the fundamental idea, marks that «the principles of law are existing irrespective of being or not being entrenched in special provisions of law»<sup>3</sup>. This theory is backed by other authors as well. Thus, A.F. Cherdantsev, M.N. Marchenko, N.I. Matuzov, A.V. Malko believe that the principles of the current law constitute the key guidelines, initial origin, that are pervading the law (constructing the system of law), designating its contents, directly comprising the law and defining the general thrust of legal regulation of the social relations, exemplifying the trends and regularities of law, promoting internal unity and interaction of various fields and institutions of law, legal rules and relations of the right and law (objective and subjective law)»<sup>4</sup>.

There is no denying of the «principle of law» being defined as the idea, foundation basing the formation of such phenomenon as the law in its entirety, as well as the idea reflected in creation and development of specific fields of law, statutes and regulations and the rule of law per se. However, despite of the fact that it is correct to define the principle of law solely as the fundamental basis of idea, such definition is an incomplete reflection of the very essence of this notion, as it does not give due regard to such attributes of the principles of law as regulatory entrenchment, imperative nature and social causality.

The regulatory entrenchment of the principle of law being recognized as the element of its scope enables to pose a question on the connection between the law and social reality. The issue of social causality was more completely elaborated in the Soviet period of development of the home legal science. Thus, K.S. Judelson conceived the following definition of the principle of law: legal principles are «the qualitative peculiarities constituting the ideological and political platform, class distinctness and specific social type of law. It is where lies the innermost dissimilarity of the law of one economic and social formation from another». Judelson defined the principles of the Soviet civil law of procedure as follows:

1 Zakharov A.L. Principles of Law: Matters of Theory and Practice / Principles of Law. – Samara, 2010. – P. 14.

2 See: Alexeyev S.S. Theory of State and Law: College textbook / edited by S.S. Alexeyev. – M., 1998. – 559 p.

3 Klenova T. Codification and Current Criminal Law Regulation. – Samara, 1995. – P. 34.

4 See: Cherdantsev A.F. Theory of State and Law: College textbook. — M., 2002. – P. 186–187; Marchenko M.N. General Theory of State and Law / edited by M. N. Marchenko. – M., 2007. – P. 22–24; Matuzov N.I., Malko A.V. Theory of State and Law: Textbook. – M., 2009. – P. 168–174.

principles are «such qualitative peculiarities of the field of law, expressed in its rules and uniting its institutes, that reflect the socialist nature and specific features of the Soviet civil procedural law and, therefore, the civil legal proceedings, define the prospects for the further development of such field of law and ensure the accomplishment of the mission of the civil procedure during the extensive building of communism»<sup>1</sup>.

S.S. Alexeyev believes that the principles as the fundamental ideas are represented by rules-principles practically expressed in the legal regulations. At that, the scientist fractionalized the principles into two large groups: social-wide (socioeconomic, political, ideological, political-national and moral foundations) and special juridical. Among the special juridical principles one can distinguish the principles general for the system of law as a whole, sectoral, intersectoral and the principles of particular legal institutes<sup>2</sup>.

The relation to the regulatory entrenchment of the principle of law serving as basic foundation reflecting the objective laws, regularities, trends and needs of the society and defining the essence of the entire legal system, sector or institute is emphasized by such scholars as V.I. Goyman, S.V. Boshno, O.V. Martyshin, T.N. Radko, N.A. Butakova<sup>3</sup>.

Some proponents of the regulatory entrenchment of the principles of law deem the principles of law to be certain rules<sup>4</sup>. A.F. Voronov believes that «the principle is a rule of law, obligatory rule of conduct for the parties to the regulated legal relations... the principle is not just «entrenched in rules», it is a rule of law itself»<sup>5</sup>.

The study of the scientific works of various periods starting with the latter half of the 19<sup>th</sup> century enables to conclude that the principles of law in the science of the state and law of the positivist perception type are recognized as the general provisions and guidelines of law (ideas, fundamentals) developed in view of the social, cultural, economic, political and legal factors existing within the territory of certain state, coming up with the regulatory entrenchment.

The designation of the principles of law is that they ensure the uniform articulation and the impact of the rules of law on the social relations through legal regulation and other forms of juridical treatment.

1 Judelson K. S. Soviet Civil Procedural Law. – M., 1965. – P. 35.

2 Alexeyev S.S. General Theory of the Socialist Law. – Sverdlovsk, 1963. – P. 151.

3 See: Goyman V.I. General Theory of Law and State: Textbook / edited by Lazarev V.V. – M., 2001. – P. 72–73; Boshno S.V. Theory of State and Law. Electronic teaching book. – 2007 (<http://www.alleng.ru>); Martyshin O.V. Theory of State and Law: Textbook / edited by O.V. Martyshin. – Moscow, 2009. – P. 217–224; Radko T.N. Theory of State and Law in Schemes and Definitions: Teaching book. – M., 2011. – P. 103–104; Butakova N.A. On the Idea of the Principles of Law // Istoriya Gosudarstva i Prava [History of State and Law]. – 2007. – No 16 (Consultant Plus Legal Reference System).

4 See: Principles of Law: Multi-author monograph / Zakharov A.L., Zakharova K.S., Revina S.N. – Samara, 2010. – P. 233–245.

5 Voronov A.F. Concerning the Idea, Meaning and Statutory Entrenchment of the Principles of Civil and Arbitration Procedural Law // Zakonodatelstvo [Legislation]. – 2003. – No 12. – P. 50.

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There is no substantial development of the definition of the principles of law in the home legal sciences. In practice, the same attributes of the principle of law are repeated from one research paper to another. We believe that the development of the theory of the principles of law within the frame of the normative legal perception is impossible, as the essence of this theory is aimed at unconditional entrenchment of the principle of law in statutes and regulations. However, such reflection in law will not result in washing out and diffusing the rules, rather than in specifying them. The stagnancy of knowledge is obvious, which is exposing the need in the comprehensive renewal of the doctrine of principles of law. The development appears to be possible and promising on the platform of sociologic approach to law or other types of perception of law.

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## COMPARATIVE LAW RESEARCH

### SYSTEM OF STATE ADMINISTRATION BODIES IN CHARGE OF ENVIRONMENT PROTECTION IN REPUBLIC OF KAZAKHSTAN

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#### **Abstract.**

On the basis of corpus of terms and concepts framed by the author, the article examines directions of the state environmental policy in Republic of Kazakhstan. The goal of ecopolitics is to make provisions for rational nature management and protection of environment. The author considers division of specific authorities in the context of general policy between agencies of the state power, including legislative and executive branches. Codified and other regulatory legal acts of the Republic of Kazakhstan, international legal acts, and law enforcement practices served as sources for the present article. The work has a comparative legal effect, since it introduces into academic circulation new sources of state with regard to the Republic of Kazakhstan.

#### **Keywords:**

agencies of state administration, environment protection, functions of state administration, environmental management, rational use of nature, ecology, preservation of natural habitat, ecolaw, Ecological Code of the Republic of Kazakhstan.

State administration in the field of ecology should be understood as an executive function of the corresponding state agency aimed at establishing basis for rational nature management and preservation of natural habitat.

Scope of state environmental management and preservation of natural habitat is governed by public interests and the state ecological policy. Aimed at ensuring rational use of nature and creation of friendly natural environment, this policy consists of improving interactions between the society and nature.

The following actions form the basis of the state policy:

- taking socioeconomic, ecological and other measures to support health of the population;

- developing models of rational nature management with regard to specific features of a certain region;
- overcoming influence of droughts and desertification;
- keeping balance between usage and conservation of biological diversity;
- harmonious exploitation and conservation of land resources;
- developing ecological safety.

The state accomplishes the given set of goals in the area of environment conservation through its administration agencies of general power and special competence.

The state agencies of general power include the President, Parliament, Government, local representative agencies.

Representative agencies are appointed to act a leading role in environment conservancy and rational nature management. The Parliament of the Republic of Kazakhstan is in charge of rule-making, which includes providing for legislative basis of the state environmental policy by specifying general directions of activities for the executive branch. This is why representative authorities do not participate directly in the law enforcement process. Their designation is to create the ecolaw, i.e. the legal base, which should establish a control base for environment protection and rational nature management.

The leading role in the law enforcement process is played by executive authorities and executive officers. The executive branch is in fact represented by a complex and ramified system of agencies. The efficiency level of the mechanism designed to apply the environmental law becomes apparent in this very system of agencies. Currently, the executive branch in the Republic of Kazakhstan (hereinafter referred to as the RK) is growing stronger, therefore the President plays a key role in the mechanism of enforcing law.

Presidential powers with regard to administering environment conservancy are sufficiently wide. He ratifies government programmes, issues decrees, acts and orders that are legally binding across all the regions of the Republic. Since the institution of presidency was established, there have been adopted more than one hundred of Presidential Decrees and Acts on questions of environment conservancy and rational nature management.

In order to improve structure of administration agencies in charge of environment protection and ensuring rational use of nature in the Republic of Kazakhstan, the President ordered to form a unified vertical executive establishment of state administrative agencies, which would act at the level of the Republic, its regions and districts and would control preservation and rehabilitation of the environment, reproduction and rational use of nature.

Scope of the general power of the government in the area of environment conservancy and rational nature management is specified by the Constitution of the Republic of Kazakhstan, and by the Presidential Edict of the Republic of Kazakhstan with a force of a constitutional law «About the Government» dated 18 December, 1995.

The government activity includes identifying and solving paramount general problems and establishing main directions in the given field, developing and implementing the state ecological programme, determining environmental standards and limitations with regard to use of natural resources. The content of the given authorities constitute the essence of state ecological activity. Normative



acts issued by the government of Kazakhstan have a considerable significance in regulating ecological matters.

In recent years there have been passed and put in force the Ecological Code of laws of the RK, the Law on Underground Resources and Subsoil Use: there have been amended Forest, Land and Water Codes of the RK. The government also ratified the sectorial programme «Jhasyl Damu» (the name in the Kazakh language) for the period from 2010 to 2014.

The system of environmental law comprises two subsystems: one with regard to conservation of nature, another – to natural resources. Before 2007 the former subsystem incorporated such laws as the «Environment Protection Act of the RK», «Ecological Expertise Act of the RK», etc. The latter subsystem still incorporates the Land Code, Forest Code, Water Code, etc.

Now the framework laws of the subsystem concerning conservation of nature are replaced with the Ecological Code of Laws of the Republic of Kazakhstan dated 09.01.2007 No 212–3. The Ecological Code of Laws was developed by staff of the legal department of the Ministry of Environment, legal scholars and legal advisers, working at large enterprises of Kazakhstan.

The content of the Ecological Code of Laws of the Republic of Kazakhstan is to represent the complicated structure of laws and regulations on natural resources, where legal relations with regard to use and protection of nature submit to the chief condition, i.e. to preserving the quality of nature. It is the Ecological Code of Laws that should set norms concerning ecological conditions of using land, mineral resources, forests, which will be specified in corresponding laws, namely, the laws «On Land», «On Subsurface Resources», «On Forests», etc. The Ecological Code of Laws must secure such a system of state administration, where the Ministry of Ecology and Biological Resources would act as the coordinating organ for Ministries engaged in using natural resources; in addition, it would report not to the Government, but directly to the Parliament of the Republic. The key measure to be taken to solve ecological problems in a more specified mode, would be allocating from the state budget a special fund for making environmental payments, which would be placed under supervision of the Ministry of Ecology and Biological Resources.

The Government participates not only in making norms and regulations, it also takes direct part in environment protection activities. Under the government there functioned the Committee on Environmental Conservation and Rational Use of Nature, established on 4 February, 1983 for systematic monitoring all activities conducted in the field of environment conservancy, and also for coordinating activities of ministries, executive departments, and public organisations working in the field. All these organisations were involved not only in protection of environment; they also interacted with international ecological organisations and were in charge of matters within their competence.

State agencies with special competence, acting under special government regulations or separately adopted governmental acts, are specially entitled to perform corresponding nature conservation functions.

By the scope and specific features of their competences the state agencies are divided into three groups: interindustry, sectorial and functional ones.

Interindustry agencies perform a complex of nature-oriented tasks. The Ministry of Environment of the Republic of Kazakhstan (hereinafter referred to as



the ME of the RK) belongs to this group. By its functions, the Ministry has a number of specific features. The first one is its complex approach to exercising their control and inspection functions. The second is that the Ministry of Environment is an economic ministry, which means it directly administers use of natural resources. This implies the third feature, namely, that the function of the state ecological control goes along with management of exploitation of natural resources, and this is the way it should be.

The said functions of the ME of the RK are distributed between executive departments, i.e. Ministerial Committees, which include:

1. the Committee on Environmental Regulation and Control;
2. the Committee on Forestry and Game Husbandry;
3. the Committee on Fishing Industry;
4. the Committee on Water Resources.

The legal status of the Ministry is determined by its functions which are: coordination, regulation, control and inspection, licensing (granting permits), enabling work of information systems, conducting international operations. Specially authorised agencies, as well as all other ministries and departments associated with use of natural resources and environmental impacts, are involved in coordinating activities aimed at protection of natural objects.

Within the framework of environmental management, the ME of the RK adopts norms and rules of use of natural resources, and rules of conducting such economic activities that influence the environment. These norms and rules are binding for all users of natural resources, irrespective of their departmental identity and forms of ownership.

Coordination is closely related to the regulatory function, in the course of performing which the ME issues normative acts on protection and harmonious exploitation of the natural habitat. The said acts are binding for all nature-protective bodies and users of natural resources.

The control and inspection activity of the Ministry is performed directly by its staff or through territorial offices. This work mainly consists in granting permits for ecosystem exploitation, in carrying out the State Environmental Expertise, in governing and running activities with regard to management and research concerning reserves of the Republic.

Part of the control and inspection function of the Ministry is its licensing function. In the context of performing this function and within its competence, the ME of the RK and its agencies perform the following activities:

- grant permits for release of pollutants, discharge of harmful substances, underground disposal of harmful substances, exploitation of the vegetable world and the animal world;
- determine normative standards, limitations, and conditions of using natural resources, develop standards for regulating environmental activity.

The information function takes an important place in work of the Ministry. In association with other agencies the ME ensures the functioning of ecological information systems. The ME of the RK is obliged to give timely and truthful information about environmental conditions and changes of the environment under the influence of economic activity. The Ministry, being the main body in charge of complex preservation of the natural habitat, plays a leading role in administering protection of natural reserves, making provisions for ecological

education, developing international cooperation in the area of environment protection and use of natural resources. The listed functions are assigned to its subordinate organisation – the Republican State Enterprise «Environmental Safety Information Analysis Centre of the Republic of Kazakhstan».

The Republican State Enterprise (hereinafter referred to as RSE) «Environmental Safety Information Analysis Center» works to create a uniform integrated data storage; keeping it up to date implies constant adding up systematised information on environmental safety and use of natural resources.

The RSE «Environmental Safety Information Analysis Center» comprises the following structural departments that accumulate statistical information:

- Ecological Information Centre;
- Aarhus Centre.

The Ecological Information Centre was created as part of the RSE «Environmental Safety Information Analysis Center» in compliance with the Order of the ME of the RK dated 12 September, No 264-п. In the Ecological Information Centre there remain deposited National Environmental Reports that present the state of environment in the RK from 2004 to 2008, reports on research in the area of environmental safety over a period of 2004 – 2008, and normative legal documents. The ecological information is stored in hard copy and in electronic format. Experts of the institution perform continuous monitoring with regard to publication of republican and international instructive, normative-methodological and legislative documents in the area of environmental safety, use of natural resources, labour protection, health, ecological and industrial safety, emergency conditions.

By Law dated 23 October, 2000 No 92-II the Republic of Kazakhstan ratified the Aarhus Convention. The RSE «Environmental Safety Information Analysis Center» is assigned as the executive organ in charge of implementing the Aarhus Convention. For that matter, on the basis of the RSE «Environmental Safety Information Analysis Centre» there was established the Aarhus Centre. Main objectives of the Centre are as follows:

- to secure the right of the public to the timely receiving of trustworthy and complete information about the state of environment, and about such an activity being planned and performed that can significantly influence the environment;
- to establish interconnections between public and state agencies;
- to render practical assistance to government agencies and civil servants in their activity aimed at fulfilling obligations concerning implementation of provisions of the Convention;
- to provide the general public for environmental education, awareness-building with regard to environmental issues;
- to render assistance in what concerns enabling the general public to participate in decision making and to gain access to justice on the environment-related matters;
- to analyse international experience and develop international cooperation aimed at implementing provisions of the Aarhus Convention.

Other subordinate organisations of the ME are as follows:

The Joint-Stock Company (hereafter JSC) «Kazaeroservice», the only specialised enterprise in the Republic of Kazakhstan providing for meteorological

support for civil aviation.

The JSC «Jhasyl Damu», formerly the RSE «Kazakh Research Institute of Ecology and Climate», which underwent reorganisation in July 2012. The enterprise is responsible for dealing with unpossessed hazardous waste that was transferred into republican ownership upon court orders. It also maintains the Register of Carbonic Quotas, which is part of the national trading system engaged in trading in carbonic quotas according to the Ecological Code of Laws of the RK.

JSC Scientific-Production Association «Eurasian Centre of Water». In its work the Association takes an umbrella approach to the matters of research and conservation with regard to water resources, which includes:

- ecological justification of feasibility for large break-through projects in the area of water resources;
- academic justification and support for creating trans-border zones of sustainable development;
- scientific research on regular patterns in formation and predictive modeling tendencies with regard to changes of cubature and quality of water resources due to intensification of economic activity in water basins of the Republic of Kazakhstan and Eurasian Continent in the context of the global climate change;
- analysis of the development of the water economic sector in countries located on the Continent;
- organisation and implementation of scientific research in the area of physics, chemistry and physiology of water;
- development of up-to-date standards of drinking water quality that would correspond to physiological needs of the human organism;
- academic justification and introduction of the rehabilitation system for population of the Republic of Kazakhstan on the basis of using clinico-preventive properties of water, including construction of the chain of recreational objects.

The RSE «Kazgiromet» conducts environmental quality monitoring along the following lines:

- monitoring of the atmosphere air;
- condition monitoring of atmospheric rainfall and snow cover;
- monitoring of the qualitative condition of surface waters;
- condition monitoring of soils;
- radiation monitoring;
- monitoring of international watercourses;
- baseline monitoring.

State agencies of special competence exercising sectorial management functions with regard to environment conservancy and rational use of nature, also include state administration bodies that work in the area of land relations, protection of subsoil use, water resources and agriculture.

Sectorial management in the area of environment conservancy and, primarily, use of natural resources is generally structured according to the object under supervision. Rights and obligations of state agencies engaged in managing natural resources are specified by legislative acts and by ratified government provisions that regulate activity of such agencies. In their activity these agencies must obey the normative acts issued by the ME of the RK, since they are binding

on all environmental authorities and users of natural resources.

The group of functional agencies comprises the Ministry of Internal Affairs (hereafter MIA of the RK), Customs Committee, the Emergency Situations Ministry (hereafter ESM of the RK), Ministry of Public Health of the Republic of Kazakhstan, and the Committee on Geology and Subsoil Use. These agencies fulfill one or more contiguous functions with regard to all natural objects. For example, the MIA of the RK occupies a special place among ecological control and monitoring state agencies: it secures protection of the atmosphere air from adverse effects of pollution produced by vehicles, its extradepartmental militia guards natural objects, fights to ensure observance of sanitary rules, and renders assistance in matters connected with environmental protection.

Administration of Environmental and Veterinary Police serves as the MIA of the RK's major source of information on questions concerning environmental activities. The sphere of activities of the Administration covers the following matters:

- fighting against environmental offences;
- conserving biological diversity in the vegetable and animal worlds, solving problems in the fight against poaching;
- arranging and carrying out anti-epizootic measures in case there appears a threat or actual contraction of acute infectious diseases of the farm livestock.

Fundamental statistical factors of the MIA of the RK in the area of environmental safety are as follows:

- number of detected infringements of the environmental legislation;
- number of initiated criminal cases;
- number of administrative protocols;
- records of exempt material evidences;
- assessment of damage caused by poaching and illegal deforestation.

The Customs Committee executes environmental functions by taking measures aimed at fighting against illegal export of raw materials, animals and plants, enlisted in the Red Book (the endangered-species list), as well as against illegal import of such goods that present ecological hazard for human beings and the natural habitat.

The ESM of the RK operates in the following areas of ecological control:

- state control over emergency conditions and industrial safety;
- accidents and accidental occurrences connected with motor-vehicle transport;
- accidents and accidental occurrences connected with railway transport;
- accidents and incidents connected with air transport and launching space vehicles;
- fires;
- blasts of gas;
- explosions and detecting weapons, technogenic accidents;
- industrial accidents;
- accidents with release of superpotent poisonous and radioactive substances;
- accidents in life-support and survival systems;
- hydrometeorological and geological dangerous phenomena (freshets, floods, landslides, windstorms, natural fires);
- dangerous infectious diseases of people and animals;
- earthquakes;

- carrying out rescue operations.

The Committee on Geology and Subsoil Use, among other tasks that are assigned to it according to its status, organises and carries out state mines inspection in order to check compliance with directions for use of subsurface resources, safety conduct of operations, prevention and elimination of their adverse effects on the population, environment, national economy. The scope of work of the Committee on Geology and Subsoil Use operating under the Ministry of Industry and Innovative Technologies of the RK also includes:

- providing for automated collecting, keeping, processing and offering for use numerical information on operative conditions of subsurface resources and subsoil use;
- maintaining the data bank necessary to forecast details of deposits, carry out geological analysis of subsurface resources, justify state and investment programmes connected with geological analysis and field development;
- ensuring the data base necessary for state agencies to make decisions in the area of subsurface use;
- monitoring of subsoil use;
- ensuring functioning of the noosphere, i.e. the integrated information space that unites subsoil users and the state administration agencies operating in the area of subsurface use.

Questions concerning environment pollution in the course of exploration and production of natural fossil minerals are transferred into the ME of the RK.

Ministry of Public Health of the Republic of Kazakhstan is engaged in collecting and processing the statistical information that reflects different factors of the medico-demographic situation in the RK, grouped by regions.

Within the competence of local governments called maslikhats there lays dealing with serious matters that affect ecological situation in the region, district, and town. Local representative bodies of the Republic of Kazakhstan have a right to adopt obligatory rules, for breaching which the guilty party bears administrative responsibility. The rules concern protection and maintenance of the land, forests, water resources, unique objects of nature; sanitary purification of territories, maintenance and protection of the green belt; building development of settlements. Such rules belong to a category of ecological rules, and according to the legislation in force, if they are violated, it carries administrative responsibility. The rules adopted by maslikhats must not contradict the legislation in force.

Thus, only assessment of the condition of the natural habitat and environmental subdivision into districts in the Republic of Kazakhstan allows to understand the level of efficiency of the state environmental control under the existing system of distributing powers and responsibilities.

Besides, we can draw a conclusion that environment protection in Republic of Kazakhstan involves a considerable number of state special authorised agencies that curate separate questions in the given area. The ME of RK, being the central organ, fails to coordinate activities of other ministries and has the same subordination status. Presumably, the issue in question can be settled by creating the Ecological Council under the President of the Republic of Kazakhstan, and in this case the work performed by the state in the area of environment protection will be more effective.

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## JURISPRUDENCE: PRESENTATION OF A TEXTBOOK

### MEANS AND METHODS OF LEGAL REGULATION

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#### **Abstract.**

The article discusses a method of legal regulation as a set of ways to influence the subjects of public relations. The article considers circumstances, predetermining the method of legal regulation of: the goals and objectives set by the state, uttering certain legal rules; features of the subjects of legal relations; the nature and the relationship of rights and duties of subjects of legal relations; provisions of subjects of legal relations to each other, mediated by their rights and responsibilities; various means of securing and protecting the rule of law; bases of occurrence of legal relationship (state act, agreement). The author gives a classification of methods and techniques of legal regulation. Imperative method is disclosed through obliging and prohibition. The article discusses ways of dispositive legal regulation: encouragement, recommendation. The author formulates the definition of indifferent dispositive norms. Their main technique of influence on subjects of public relations is informing on possible legal behavior without encouragement and recommendation.

#### **Keywords:**

method of legal regulation, ways of legal regulation, entitlement, bind, prohibition, dispositive method of legal regulation, imperative method of legal regulation, indifferent dispositive regulation, encouragement, positive responsibility, recommendation, in excess of the activity, competence.

#### **1. The concept of the method of legal regulation**

Law is called upon to actively influence on people's behavior. It is for this purpose that it is created, and it is for its achievement its effectiveness is assessed.

Law may affect the participants of public relations through diverse techniques that depend on the type of relationship, features of its participants and a number of other circumstances.

Method of legal regulation is a set of methods and ways of influence on the subjects of social relations.

Method of legal regulation depends on:

- the goals and objectives set by the state, uttering certain legal rules;
- the features of the subjects of legal relations;
- the nature and the relationship of the rights and responsibilities of subjects of legal relations;
- positions of subjects of legal relationship to each other, mediated by their rights and responsibilities;
- a variety of means of ensuring and securing the protection of the rule of law;
- justification of the legal relationship (state act, agreement).

**Method of legal regulation depends on the goals and objectives set by the state**, uttering certain legal standards. Activity of the state for a long period of time is defined by its functions. Goals can be achieved by active actions for the achievement of which the state «forces» by methods available to it to perform necessary actions for it. The goal can be the same, and methods of legal impact on people vary. A significant factor influencing the choice of methods in particular circumstances is a political regime, the power and authority of the state, the dominant ideology. Thus, the need to carry out large-scale construction could bring to life a variety of different legal solutions by a state: 1) make it an ideological construction, the national idea, and subjects of law under the influence of emotional condition of involvement into the high state affairs, will make the necessary (constructions of the 20th century); 2) get interested participants of public relations by attractive incentives to them - material or ideal - under the influence of which the subject of the law reaches the necessary state goals and shall be given a corresponding encouragement; 3) prohibit the alternative ways of achieving the objectives of a subject of law. It must achieve its objectives only if there is a match (or at least non-contradiction) of personal and governmental goals; 4) oblige (force) to make the necessary for the state action under the influence of punishment or action is carried out as a sanction for the offense committed earlier (forced labor).

**The features of subjects of legal relations make influence on methods of legal effect of the state.** Subjects of law may be made public. Then they are immediately empowered with the rights and duties of the state for the implementation of its functions that predetermines the characteristics of the impact on it by the supreme bodies of state power. Public entities have a dual origin, as on the one hand, in relation to some subjects (citizens), they are powerful and provide them with guidance as to their lawful conduct, and on the other hand – receive guidance on the vertical of state authorities. Citizens are only in horizontal relationships. Exerting influence on the participants of the public relations, a state uses the desired and undesired effects for specific subjects that matter to them. For example, citizens may be subject to imprisonment, and public authorities – to disband. Citizens are free to select the model of lawful behavior, and public authorities can only act within the limits of their competence.

Legal relations, as a general rule, are bilateral, respectively, two sides of



the relationship are in a certain position relative to each other. The nature and relationship of rights and duties of subjects of legal relations, reflecting their legal nature, has the position of the subjects with respect to one another as a result. Subjects of law always have reciprocal rights and obligations, but they can share them on an equal footing and in a position of dependence of one from the other. They can share the rights and responsibilities of their own free will or by force. And this is their position may vary in different legal relations with the same participants. Thus, the state and legal entity may meet in civil-legal relations. By the nature, civil relations are relations of equality, the relationship of rights and duties of subjects occurs at the request of the participants. These participants may enter into interaction to bring to legal liability. In such administrative relations, the parties are not equal to each other, and a public authority imposes requirements to a subordinate entity. Thus, **the position of the subjects of legal relations to each other, mediated by their rights and responsibilities**, characterizes the method of legal regulation. Coordination (equality) and subordination (obedience of one to another) are two main positions of the subjects with respect to one another.

In the enjoyment of rights and responsibilities, **various means of ensuring and protection of the rule of law** can be used. A set of these legal means is enough defined, it has been developed and is practically unchanged: punishment, reward. The formation of specific instruments within legal means is rather changeable, responds to changes in the social environment, the form of the state, legal ideology and other factors. So, it can be applied the death penalty, fine, deprivation of special rights and a broad range of sanctions, which are just determined by a form of a state. For example, a democratic state of law proclaims the principles of individualization and proportionality of punishment, humanism, which significantly affect the range of the means that the state can apply to controlled subjects. Thus, it is hardly possible today to enforce law by burning at the stake violators of traffic rules.

**Basis of occurrence of legal relationship** defines a set of means of legal interaction on subjects of law. Parties enter into a civil legal agreement of their own will, at their own risk. Legal rules provide them with the freedom to choose when entering into these relationships, they have the ability by themselves to determine their mutual rights and obligations in the agreement, provided that they comply with legislation. Contractual relationship is equal; the sanctions are intended to ensure the interests of parties to the contract.

Legal relations arising out of acts of public authorities, have powerful nature. State documents impose responsibilities on the participants of relations unilaterally without the participation of the subjects of legal relations. It is this relationship to be a primary protection of the public authorities by virtue of their public origin.

Public relations can be regulated by government orders, for example, management of state property, the payment of taxes. These relationships are not equal, one party possessing the power to have an impact on the other side, i.e., relationship is built on the principles of subordination. Relationships can also be built on the basis of equality and autonomy. A contract is often a basis for them. Civil legal relations, for example, are built so.

The separation of private and public relations, the admissible and binding, imperative and dispositive is of great importance. This distinction is most clearly

seen when comparing the civil and administrative relations. In civil relations, the parties act as legal entities and individuals. Public authorities act as legal entities and are unable to use their power. However, in legal relations, where the public body exercises the authority, norms of administrative law or other public law will be their regulator. In the Civil Code of the Russian Federation (p. 3 article 2) the issue is resolved as follows: «To the property relations based on administrative or other powerful subordination of one party to another, including tax, and other financial, and administrative relations, civil legislation is not applicable, unless otherwise provided by law».

There are imperative (mandatory) and dispositive (discretionary) methods of legal regulation.

## **2. Imperative method of legal regulation**

**Imperative method of legal regulation** represents a set of methods and techniques, built on the principle of subordination of participants of legal relationships. With the effect of imperative, the subject has no choice, it must obey to a binding or restraining orders.

**Ban** is the obligation imposed on the subject of law to refrain from certain conduct. Implementation of the ban is carried out through omission of a subject of law. This method is imperative, as it does not provide alternatives to a single model of lawful behavior, i.e. inaction. Prohibitory rules may contain appropriate words: «prohibited», «not allowed», «no». Often verbs are not included in the text directly, but from the structure of a regulatory legal act, it follows that it describes precisely the prohibited conduct. As such, provisions of the Criminal Code of the Russian Federation are formulated. The prohibition on the execution of acts described in articles follows from the section title (crimes against a person) and the title of the chapter (crimes against life and health). Also, a ban can be inferred from the use of the word «punished» after the description of the offence itself. Committing the prohibited act is an offense and punished by appropriate legal sanctions. Sometimes the ban is closely fused with bind. In such situation, one and the same rule in content may be outlined with the use of the ban, and using bind as well. For example, article 125 of the Criminal Code of the Russian Federation «Abandonment in peril» stipulates the offence: deliberate abandonment without the help of a person who is in a life-threatening or health condition and deprived of opportunities to take steps for self-preservation on early childhood, old age, illness, or because of his powerlessness, in cases where the perpetrator was able to assist the person and was obliged to have the care or put him in a life-threatening or health status.

Article of the Criminal Code of RF formulates a legal requirement: not to leave a person without help. In fact, this is a ban on inactivity. And the same article states binding: to help that person. Prohibition to remain indifferent has been interpreted through requirement of action.

**Binding** is also an imperative method. Its influence is evident in the requirement for a subject to take a certain action. At the same time, there is the entitled party in a legal relationship, which is granted the right to demand fulfillment of the relevant obligations. Responsibilities can be established in various ways. In labor legal relations, the duty to come to work at a certain time corresponds to the employer's right to require to get started at a certain time. Obligation to pay taxes corresponds to the right of the tax authority to demand payment of taxes.

Alimentary duty of some members of the family corresponds to authority of others. Thus, parents pay child support, and their recipients are children, who have a right to claim. Failure to perform duty is the basis for the legal liability.

And prohibiting, and binding effect as forms of mandatory method of legal regulation have in common that they arise without the desire of the subject of legal relations. The legal relationship arises on the grounds of legislation regardless of the interests of the obligated person. Authorized person (or a person acting on its behalf) its intention to use coercion embodies in the act (claim for alimony, a resolution to bring the tax liability, the court's decision, and the like).

Bind and prohibition are provisioned by sanctions of rules of law.

### 3. Dispositive method of legal regulation

**Dispositive method** is built on the principles of co-ordination and equality of parties and represents the impact of using what is permitted. The subject of law has the option of selecting a model of legitimate behavior within the limits established by legal norms. Optionality means that the parties have the right to enter into this relationship, but may not do so. Legislation can establish a ban on the establishment of responsibilities to engage in discretionary relations by its legal nature. Thus, labor relations are dispositive and, accordingly, forced labor is not allowed. However, in other branches of law – criminal law – there are exceptions in the regulation of relations in the sphere of labor. For example, Article 53.1 of the Criminal Code of RF establishes forced labor as a sanction. Forced labor is used as an alternative to imprisonment in cases stipulated by the relevant articles of the Special Chapter of the Criminal Code of the Russian Federation, for committing a crime of a minor or moderately serious offence or for committing a serious crime for the first time.

If, having imposed a sentence of imprisonment, the court will come to conclusion on the possibility of correcting the convicted person without actually serving the sentence in prison it decides to replace a punishment in the form of imprisonment to the convicted prisoner by forced labor. When a court sentencing deprivation of liberty for more than five years forced labor does not apply. No one shall be forced to conclude a civil-legal contract, marriage, which is predetermined by the dispositive legal nature of these relationships.

**Dispositive method of legal regulation** can have multiple manifestations, which are revealed by some of its rules.

Dispositive rules in general are **informative**. They report to the subject of law about the possibility of its lawful activity. In private legal relations (for example, civilian) citizens generally are free, including that they can perform actions that are not specified in the law. The subject of law determines by itself the need for the implementation of dispositive rules and begins to implement them.

But a certain vector of intentions from authorities may take place. Thus, the state in some cases may be interested in a particular behavior of subjects of law, but for some reason is not able to apply obliging or ban. Preserving the intention to influence participants of public relations, public authorities apply recommendations and encouragement. Unlike other dispositive rules (conditionally call them indifferent), the state has an interest to stimulate certain legal activity and uses for this motivation of subjects of law.

**The recommendation method** is used similar to incentive one, but does not provide for a specific award. Rules of law implementing this method may

contain words «desirable», «recommend», «offer», etc. The real impact of recommendation method depends on the credibility of their source, the author.

**Recommendation** is the proposal to perform a certain activity that has no specific encouragement. The subject of law will perform a recommendation based on the intention to be obedient, loyal, stands out from among other subjects of law with a desire to use it later on to its advantage. Encouragement can lay not on a surface, but to be a part of a legal status and at the right time to get a positive assessment from the part of interested state bodies.

The state, formulating a recommendation, in fact is waiting for execution, which corresponds to compel. This method of legal influence can be understood through the adage, i.e. «an offer you cannot refuse». And, indeed, if to eliminate this wait of state, then the norm will become redundant. It complements with recommendation that that already could be done in legal form. For example, make recommendation to legislative bodies to bring their acts in accordance to the parent document.

Important for the understanding of the legal nature of encouragement and recommendations is – a state of the feat, in excess of the activity. That is, the subject of the law voluntarily takes on additional responsibilities for the positive evaluation of its behavior from the part of the state. The recommendation is a proposal to accomplish anything without specific awards, and encouragement has a clearly established award.

**The encouragement method** assumes freedom of behavior of the subjects of law, on which it has a stimulating effect. For the desired type of behavior it is established an incentive (award, benefit, remuneration, etc.). This kind of effect is intended to guide the active behavior of subjects to achieve a certain goal.

Encouragement should represent to a subject of law the coveted award in the moral or material form. The choice of a particular award is cultural and historical features, and changes significantly due to the development of social relations. The predominance of financial incentives is a sign of our times. Combination of moral and material incentives is effective. Reducing liability or its removal may also serve as encouragement. So, art. 76.1 of the Criminal Code of RF stipulates that in a number of corpus delicti, the offender is released from criminal liability if it has compensated the damage caused to an individual, organization or a state in the result of the commission of a crime, and transferred to the federal budget monetary compensation in the amount of five times the amount of the damage caused, or contributed to the federal budget income received as a result of a crime, and the monetary compensation in the amount of five times the amount of income received as a result of a crime.

Norms has great social importance that act as stimulus of in excess of activity over a long period of time – 20, 30 and more years. Subject of law performs a number of proactive actions, knowing about the possible future reward. Such rules require responsible behavior from a lawmaker, since it does not have to change the conditions for the duration of the action for those who comply with conditions imposed. So awarding for a long-term activity with the Order will be impossible if the legislator cancels it. But it will be a punishment for those who consciously strive to achieve established targets for the awards.

«Honoring a hero» gives the maximum result. Lack of rewards deprives the act of heroism and, in fact, negates all actions of the active lawful subject.

Providing rewards unfairly reduces the overall positive potential of a reward, and may even generally deny it. Thus, it is known histories of mass awards to some dates, for example, the 850th anniversary of Moscow. As part of the company awards are distributed according to the list, requirements for candidates are reduced and as a result, completely different subjects receive awards, and the meaning of the award disappears.

Dispositive rules that do not motivate for a certain behavior by recommendations and promotions may be called **indifferent**. Their main method of influence on subjects of public relations is **information on possible lawful behavior**. Offer to a subject of law to exercise certain rights inherently in private law is redundant, as a subject of law is allowed everything that is not forbidden. In fact, the legislator shall inform the subjects of law on rational models. So, citizens can prepare any civil-legal contract, but they are offered contracts of purchase-sale, exchange, donation and others to make their choice easier. In fact dispositive legal regulation cannot be. In fact, it is dispositive only at the entrance to relationship. Optionality consists in the right to choose: to enter into this relationship or not. If the choice is made, the subject of the law immediately gets in action of imperative norms. Thus, subject of law, within the framework of the imperative method independently has decided to conclude a transaction in the amount of 100,000 rubles. And then, he has the legal duty to make a deal in writing that imperatively is stipulated in Art. 161 of the Russian Civil Code.

**Competence**, which consists in giving the subject the right to require another subject to perform certain actions in its favor, refers to dispositive method of regulation. Competence belongs to the person having the right, and it will be exercised only if the person under obligation performs certain actions. The legislation stipulates huge number of guarantees that can realistically be implemented only under condition of actions of other subjects. Thus, for the exercise of a constitutional right to education, there should be educational institutions that transform competence into informative process by its actions.

**The permission** is realized without participation of other subjects of law; it differs from competence by this. The permission consists in granting to the subject of law a possibility to act in a certain way and to consolidate results of this activity. Thus, the legislation enshrines the right to be the author of work and guarantees it. Permission provides the activity of citizens, as seeing the legal guarantees they develop. The person within the limits of permissions operates, satisfying its interests by its actions: the person has creative capacities to be the author and it becomes it (creates work). The legislation guarantees its rights and notifies other participants of public relations on existence of the law and its protection.

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