The Topical Issues of Public Law

SCIENTIFIC-PRACTICAL INFORMATIONAL EDITION
REGISTERED IN THE ROSKOMNADZOR. REGISTRATION NUMBER - EL. NO. FS 77-48634, 20.02.2012.
IS PUBLISHED MONTHLY. THE MAGAZINE HAS BEEN PUBLISHED SINCE JANUARY, 2012.

No. 11 (11) 2012

The issue allowed for posting on the web site
on the 11 of January 2013

Vypusk dopushhen k razmeshheniju na sajte
11.01.2013

•CONTENTS•

Universal Decimal
Classification 342.7

Boskhamdzhieva N. A.

LEGAL GROUNDWORK FOR ENSURING PUBLIC SECURITY

Boskhamdzhieva Natal'ya Antonovna,
c.j.s. (PhD of jurisprudence), Professor of All-Russian Further Training Institute of the MIA RF, Associate professor,
Moscow region, Domodedovo city, 3 Pikhtovaya street, zip code 142022.

Presents the results of the analysis of normative legal acts regulating social relations in the field of ensuring public security in present-day Russia. The author notes the existence of a certain kind of problems: in conceptual and terminological framework, in a multiplicity of variations of public safety depending on the regulated branch of public legal relations, the lack of a systematic approach to rule-making.

Keywords: public safety, legislation, security of personality, identity, security authorities.

The decision of the President of the Russian Federation on the need for modernization of all spheres of the modern Russian state necessarily involves careful analysis of the current legal reality. We need a thorough analysis of the current system of social relations, with a dominant focus on the role of legal norms [4, 76-77].

Consideration of the current legislation on the issues of ensuring public safety indicates a lack of a systematic approach and existence of significant disadvantages in the formation of the normative-legal framework in this field. There is, in particular, the lack of scientific validity of normative and legal acts, their internal controversy, and declarative nature regarding the settlement of various issues, the lack of a systematic approach for determining the nature, structure, content, and the mechanism of development and approval documents on the issues of ensuring public safety.

Russian state policy in the field of public security, as rightly, in our opinion, noted in a special legal literature, is a part of domestic and foreign policy of

modern Russia and is a set of coordinated and united by a single conception political, organizational, social and economic, legal, information, special and other measures [5, 66].

Sharing the given position, it seems appropriate in this case to stop on the analysis of the legal measures of ensuring public safety, above all, its legal basis.

Earlier, the author has already noted that at the present time in the active process of formation of the modern approach to ensure public security of Russia, this issue again raises a great interest. So much so that in recent years has been adopted a number of normative legal acts. The main ones are: the Federal Law No. 390-FL from 28.12.2010 "On Security", the Federal Law No. 256-FL from 21.07.2011 "On the Safety of the Fuel and Energy Complex", RF Presidential Decree No. 537 from 12.05.2009 "On the National Security Strategy of the Russian Federation until 2020", RF Presidential Decree No. 590 from 06.05.2011 "Questions of the Security Council of the Russian Federation (with the "Regulation on the Security Council of the Russian Federation", "Regulation on the Interdepartmental Commission of the Security Council of the Russian Federation for the Public Security"), and others [3, 34].

The mechanism of legal influence on ensuring public security covers a very wide range of relations of social life, the norms of which can be divided into four groups.

The first group is the legal rules governing the system of internal and external conditions that prevent a threat to safety of an individual. Thus, the Constitution of the Russian Federation [1] obliges to obey the state rules public authorities, local self-government bodies, officials, citizens and their associations, determines the range of officials and public authorities to ensure the security of a person (the President of the RF, the Government of the RF, the Constitutional Court of the RF, etc.).

The second group consists of norms defining the powers of public authorities and local self-government bodies and their officials to ensure the safety of a person. It includes the norms governing the rights and duties of the Security Council of the Russian Federation, Armed Forces, Foreign Intelligence Service, Federal Security Service, law enforcement agencies, internal troops, Civil Defense, security authorities, bodies of legislative, executive, and judicial power, etc. Legal norms of the group define the powers of public authorities, the limits and procedure of their implementation and impose on them the obligation to ensure exercising the rights and freedoms of a man and citizen, protection of life and personal integrity.

The third group of rules governing the relations on ensuring security of a person consists of norms defining the powers of local self-government bodies for

the direct ensuring of life safety of a municipality population, regulation and protection of the rights and freedoms of a man and citizen. In recent years have been implemented series of measures for the formation of local self-government in the Russian Federation, the expansion of autonomy in decision by a population of local issues and especially in the protection of the rights and freedoms of a man and citizen, ensuring their safety. In each subject of the Russian Federation adopts normative legal acts defining the powers of local self-government bodies and their officials to exercise the functions of ensuring security of a person.

The fourth group consists of norms defining the rights and duties of citizens, the implementation of which must not violate the rights and freedoms of others, and norms providing for responsibility for their violation.

At the same time stating the fact of abundance of normative acts and certain norms relating to the regulation of various secondary provisions of substantive law, of operational-search and other procedural means to counter attacks on the public security of the Russian Federation, it should be recognized that in the current situation there is a lack of integral system of legislation in the field of ensuring public safety. The existing legal regulation covers only a part of the public relations, as a rule, not always associated with each other and with the immediate tasks of coordinating to counter a variety of threats to public security.

When considering the existing and being developed normative acts strikes the eye an apparent redundancy and multiple duplication of both legal and normatively-technical requirements on the issues of ensuring private "*security*" entered by concerned departments. Especially has increased the number of laws, standards, norms, and rules governing the procedure of parrying by population the threats of techno-industrial and ecologically-natural origin.

Currently, there are the following federal laws in force "On Protection of Population and Territories from Emergency Situations of Natural and Man-made Nature", "On Fire Security", "On Road Traffic Safety", "On Radiation Safety of Population", "On Sanitary and Epidemiological Welfare of Population", "On Transport Safety", "On the Quality and Safety of Food Products", etc. Not exclude the emergence in the near future the laws of security on "road transportation, agriculture, pipeline management and other similar normative legal acts". Have been developed and approved the principles of state policy in the field of ensuring chemical, biological, nuclear and radiation safety of the Russian Federation for the period up to 2010 and beyond, the State Economic Security Strategy of the Russian Federation, the Environmental Doctrine and Information Security Doctrine of the Russian Federation.

Most of these acts are of single-type in many ways or confirm the provisions of already existing laws: standards of work safety, sanitary and building codes, traffic regulations, rules of safe operation. This does not stop concerned departments, which together with the projects of next group of laws suggest creating new federal services and agencies, offices and departments that would manage the types of security needed only for the mentioned departments.

There are virtually no mechanism for implementing the national security policy, detected system-forming components of its regulation and control, classification of specific threats, dangers and challenges along with the derogated by them needs, values and interests, there are very few specific recommendations for performers in the adopted laws and being developed drafts of laws.

Similar structural flaws are inherent to other laws and draft laws. The focus of these is usually given to powers (rights, responsibilities and duties) of the various public authorities, to the requirements for ensuring, supervision over activities, for reducing various costs. Usually repeated everything what is provided for by applicable legal and normatively-technical documents (the Russian Constitution, laws, provisions on specially authorized public authorities, standards, norms and rules). Quantitative indicators of safety, criteria for the assessment of quality and effectiveness of efforts to its maintenance and improvement absent in the known laws and their projects.

Recently, the Federal Migration Service has been actively suggesting introducing as part of the national security of the Russian Federation the issue of combating illegal migration. In this case, the FMS of Russia defines illegal migration and problems associated with it as one of the most dangerous factors, which, along with the international terrorism, threatens the security of not only individual countries and regions, but also on an international scale [7, 123-130]. Moreover, it is argued that in the grand scheme of things illegal immigration long ago ceased to be a chaotic and rudderless process. Meanwhile, it should be noted that the issues of migration cannot in any way be considered only as a source of security threats. These problems should be solved at the level of departments within the approved by the Government of the Russian Federation Concept of regulation migration processes in the Russian Federation. Of course, the illegal (uncontrolled) migration can become a threat to individual and group security of the host population – because of increased competition in the local labor and housing markets, the monopolization of migrants in some sectors of economic activity, conflicts of ethnic and sub-ethnic stereotypes and norms of behavior, social and cultural marginalization of some part of migrants, their criminalization.

In the law on national security there is a clear gap associated with countering threats and challenges of the most vulnerable and valuable object – way of public and social life, which has historically been tested and meets the essential needs of both an individual and society, and the state in general. In this case, it is about protecting public and spiritual values from the so-called anthropogenic-social hazards associated with exposure of different information flows to the consciousness of people, in particular – sometimes deliberately generated by some media.

State-legal securing of public safety and the issues of its improving are organically related to political, economic, social, administrative reforms in the country, what requires their systematic theoretical analysis, determining the place and role of public safety in connection with the implementation of a nation-wide Strategy of National Security of the Russian Federation up to 2020.

It should be noted that in the domestic legislation and scientific literature has not yet been developed a common conceptual apparatus in the field of ensuring public security of the Russian Federation. This circumstance often leads to an ambiguous understanding of the content of different definitions in theory and makes problems in law enforcement practice.

Thus, the Law "On Security" from 1992 considered security as a state of protection of the vital interests of an individual, society and the state. However, since 1997 has become a widely used the term of "national security of the Russian Federation", which is understood as "the security of its multinational people as the bearer of sovereignty and the only source of power in the Russian Federation" [2].

According to N. P. Patrushev, this term, which is borrowed from western countries, initially caused a lot of disputes due to the semantic differences in the definition of "national", and the multinationality of our state, but later the said term has become firmly established in the scientific use, what seems quite grounded in the conditions of community awareness of the role and place of Russia in the present-day world [6, 3-12].

However, it must be recognized that the quality of normative legal documents on safety should be assessed as unsatisfactory. To prove this situation is enough to take a look at the articles 13, 55, 56, 71, 72, 74, 82 and 114 of the Constitution of the Russian Federation, which regulate the issues of ensuring security. In the Constitution of the Russian Federation are used such concepts as "security of the State" (art. 13, 56), "State security" (art. 114), "security" (art. 71), "public security" and "ecological safety" (art. 72).

So, according to the Constitution of the Russian Federation shall be provided:

- the security of the State, moreover ensuring the country integrity and

preservation of the constitutional system are not included in this task (paragraph 5 of article 13 prohibits "the creation and activities of public associations whose aims and actions are aimed at a forced change of the fundamental principles of the constitutional system and at violating the integrity of the Russian Federation, at undermining its security, at setting up armed units, and at instigating social, racial, national and religious strife");

- the security of the Russian Federation, that is, under article 1– of the State" (but not the country), moreover ensuring country defense is not the task of ensuring state security, (art. 55 and 71);
- protection of the constitutional order, but not the State (art. 56);
- security of citizens, that is, not all people (art. 56);
- public security, that is, not the security of the State (art. 72);
- environmental safety, that is, not public security and not security of the State (art. 72);
- human security, which is different from the protection of human life and health (art. 74);
- the security of the State, which does not include its integrity (art. 82);
- public security, that is, the security provided by the State, but not the security of the State, besides the national defense is excluded from ensuring State security (art. 114).
- State security, that is, the security provided by the State, but not the security of the State, moreover the national defense is excluded from ensuring State security (art. 114).

Thus, commensuration of articles of the Constitution of the Russian Federation directly related to the safety shows that the concept of "object whose security is ensured by" is not defined and its estimated volume is divided contradictorily. However, any normative legal acts either embody this ambiguity and contradictions in the practice of social life, with all its consequences, or will be contrary to the Constitution of the Russian Federation.

Reconstruction of the articles of the Constitution of the Russian Federation on the basis of definition the relations of security shows that the threatened party is not defined as a subject of safety relation, is not a legal entity ("man" and "the people") and the interrelations with a protecting entity are not based on the exchange (i.e., are not a social function, but charity).

In connection with consideration the issue of forming a legal framework to ensure public safety, there is a clear need for a federal law on ensuring public

security in the Russian Federation, in which shall be enshrined the main provisions of the Strategy of Public Safety, including the goals and objectives of state policy to ensure public safety, specifying the form of threats to public safety, the formation of mechanisms of overcoming, determining the competence of various departments and mechanisms for the coordination of their activities.

References:

1. Constitution of the Russian Federation (adopted on National Voting, December 12, 1993). *System GARANT* [Electronic resource], Moscow: 2012.
2. Decree of the President of the Russian Federation No. 1300 from December 17, 1997 "On Approval the Concept of National Security of the Russian Federation [Ukaz Prezidenta RF ot 17 dekabrya 1997 g. № 1300 «Ob utverzhdenii Kontseptsii natsional'noi bezopasnosti Rossiiskoi Federatsii»]. *SZ RF – Collection of Laws of the Russian Federation*, 1997, no. 52, article 5909; 2000, no. 2, article 170.
3. Boskhamdzhieva N. A. Public Security as Socio-legal Category [Obshchestvennaya bezopasnost' kak sotsial'no-pravovaya kategoriya]. *Administrativnoe pravo i protsess – Administrative Law and Process*, 2012, no. 11.
4. Dugenets A. S., Boskhamdzhieva N. A. The Role and Place of Police in the System of Ensuring National Security of the Russian Federation [Rol' i mesto politsii v sisteme obespecheniya natsional'noi bezopasnosti Rossiiskoi Federatsii]. *Aktual'nye problemy publichnogo prava v Rossii i za rubezhom – The Topical Issues of Public Law in Russia and Abroad: proceedings of all-Russian scientific-practical conference*, Moscow: Peoples' Friendship University of Russia, 2011.
5. Dugenets A. S., Mel'nikov A. V., Vasil'ev F. P., Dashko M. N. The Issues of Administrative-law Regulation of Ensuring Security in Present-day Russia [Voprosy administrativno-pravovogo regulirovaniya obespecheniya bezopasnosti sovremennoi Rossii]. *Administrativnoe pravo i protsess – Administrative Law and Process*, 2012, no. 3.
6. Patrushev N. P. Peculiarities of Present-day Challenges and Threats to National Security [Osobennosti sovremennykh vyzovov i ugroz natsional'noi bezopasnosti]. *Zhurnal rossiiskogo prava – The Magazine of Russian Law*, 2007, no. 7.
7. Romodanovskii K. O. *About the Measures to Ensure National Security in the Sphere of Migration. Miscellany. Issue No. 4. Scientific Problems of the National Security of the Russian Federation* [O merakh po obespecheniyu natsional'noi bezopasnosti v sfere migratsii. Sbornik. Vypusk 4. Nauchnye problemy natsional'noi bezopasnosti Rossiiskoi Federatsii]. Moscow: 2007.

Universal Decimal
Classification 342.9

Dzhamirze B. Yu.

PROBLEMATIC ISSUES OF DETERMINATION A LEGAL ENTITY'S GUILT OF AN ADMINISTRATIVE OFFENCE

Dzhamirze Bela Yunusovna,
Senior Lecturer of Maikop State Technological University, Maikop.

Clear tendency to increasing the number of public relations protected by measures of administrative responsibility, and to a significant tightening of administrative penalties is noted in the article. Argues that a legal entity is a special social and legal phenomenon (tool of civil turnover), which cannot be mechanically endowed with subjective characteristics of a man. Therefore there is given a justification of bringing to administrative responsibility certain leaders of legal entities or other competent officials with delictual dispositive capacity who are guilty for violations.

Keywords: administrative offence, guilt, guilt of a legal entity, guilt determination, administrative offence of a legal entity, administrative responsibility of a legal entity.

The problem of combining public and private interests in the economic sphere, interrelation the systems of legal centralization and decentralization, formation the mechanism of state regulation of entrepreneurial activity is extremely topical for today›s Russia [9].

Active participants in economic activities are legal entities. The problem of guilt of a legal entity is undoubtedly one of the most topical in the current administrative and tort legislation. Existing problems in determining the guilt of legal persons, cannot but affect matters of punishability (inevitability of punishment) for an intentionally committed wrongful act. The system of punishment for administrative offenses committed by legal persons does not differ a great variety, but in spite of the need to respect the principle of individuation, of the four available types of punishment there is only one most commonly used. Studying administrative responsibility for offenses in the field of entrepreneurial activity A. V. Drozdov reasonably noted that "the system of administrative penalties has a direct or indirect economic orientation of sanctions", while "the system of administrative penalties is characterized by the dominant value of an administrative fine" [4, 20].

As note N. Lukyanov and N. Borisova "growth of crimes was the reason to issue orders, calls for tightening measures taken. This was followed by a surge of fair indignation excessive sanctions and quibbling, which found reflection in the press. In response, the administrative practice softened leading to excessive liberalism and connivance. The number of offences was growing again, and everything started over again. Thus, the sanctions were being reconsidered from time to time – one day towards mitigating, another day towards tightening. But the question, what kind of measure from a wide range of sanctions in each particular case had to be applied, remained unresolved" [7, 43].

In recent years the Federal legislator have been showing a clear tendency to increasing the number of public relations protected by measures of administrative responsibility, and to a significant tightening of administrative penalties, in particular to increasing the size of an administrative penalty for committing certain types of administrative offenses.

As points out in his work P. I. Kononov "law enforcement practice ... clearly does not correlate to the repeatedly expressed by the Constitutional Court of the Russian legal position, according to which the measure of an administrative penalty must be proportionate to the committed offense and not turn from the measure of impact to the tool of suppression of economic independence and initiative, excessive restriction the freedom of entrepreneurship and private property" [6].

The need for effective participation of legislators in resolving the issue of punishability, application of effective measures of responsibility, thorough regulation of legally significant signs of administrative offenses in respect of collective subjects of legal relations requires theoretical understanding.

V. V. Kizilov binds the procedure for determining guilt of legal entities to a particular tendency – "legislator encourages law enforcer to transforming the Code on Administrative Offences of the RF to the tool of generating country's revenue" [5]. Guilt of a legal entity is an evaluation category, criteria of which are established by the legislator and depend on the conducted in the country legal policy. Reluctance to reveal officials of collegial bodies guilty of an offense is connected to the possibility of imposing a penalty in respect of a legal entity in a larger size. Guilt, which, in essence, is a mental attitude of a person to committed by it deed, for legal entities in contrary is determined on the base of harmful effects, damage inflicted. To judge the wrongfulness of misconduct by its punishability as not completely reliable as to determinate the guilt of a person proceeding from the amount of damage inflicted.

We must finally decide, – writes P. I .Kononov, – is CAO RF a legal instrument to replenish the federal budget or still to combat with violation of the current legislation and prevent such violations [6].

Lawmaker's recognition the ability of a legal entity to commit a guilty deed is vulnerable from the position of the general theory of law. After all, the very concept of "legal person" is a peculiar result of an evolution of civil-legal relations, the system of legal and economic characteristics of a collective subject of law, in fact, an abstraction, designed to optimize developed relations of civil turnover. If we take into account the signs of guilt as a theoretical-legal categories, then we are to involuntarily assume mental (i.e., intellectual, volitional, emotional) attitude of enterprises and organizations to the process and the results of their operation. We share the view of E. V. Bogdanova that a legal entity is a special social and legal phenomenon (an instrument of civil turnover), which cannot be mechanically given subjective characteristic of man. The people may be similar only to people, but not to legal constructs [3, 25-26].

As we see it, the subject of an administrative offense (both a crime and a disciplinary offense) should be recognized only a physical sane person who has reached an appropriate age. At detection of signs of an administrative offence in the territories, in the premises (or other objects) or documents of legal persons to administrative responsibility must be brought not "collective entities", but guilty of offenses specific leaders of these organizations and other competent officials with administrative delictual capacity. Legal entities are characterized by civil-legal responsibility, which has a pronounced compensatory nature.

However, some scientists try to prove the possibility of administrative responsibility of legal persons by the recognition of objective imputation [2, 485] or

artificial "splitting" of guilt of a legal entity to the "objective" and "subjective" [1, 348-349]. These concepts, in our view, are debatable. Obviously, that "legal responsibility without guilt" (the so-called objective imputation) is not shared by any theory of law or legislation. Attempt of "dual" interpretation of a legal entity's guilt, which is understood on the one hand as the pertain of its officials to the offense ("subjective guilt"), and on the other hand – as the pertain to the deed of a competent jurisdictional authority ("objective guilt"), in essence, is aimed to the justification of the "objective imputation". In our view, this approach is based on the valuation theory, which interprets guilt as an assessment by court (another subject of jurisdiction) of all the objective and subjective circumstances of an offence [8, 124; 10, 183]. Note, however, that the perception and evaluation by a jurisdictional authority of delinquent behavior are not part of the subjective aspect of an offense, but represent the certain stages of formal qualifications of deed.

References:

1. *Administrative Law: textbook* [Administrativnoe pravo: Uchebnik]. Under edition of L. L. Popov, Moscow: 2000.
2. Bakhrakh D. N. *Administrative Law of Russia* [Administrativnoe pravo Rossii]. Moscow: 2000.
3. Bogdanov E. V. Anthropomorphism as One of the Directions of the Russian Civil Law [Antropomorfizm kak odno iz napravlenii rossiiskoi tsivilistiki]. *Gosudarstvo i pravo – State and Law*, 2004, no. 4.
4. Drozdov A. V. *Administrative Responsibility for Violation in the Field of Entrepreneurial Activity*: thesis abstract of candidate of legal sciences [Administrativnaya otvetstvennost' za pravonarusheniya v sfere predprinimatel'skoi deyatel'nosti: avtoref. dis. … kand. yurid. nauk]. Moscow: 2001.
5. Kizilov V. V. *Administrative Responsibility of Civil Servants of Russia: Prospection* [Administrativnaja otvetstvennost' grazhdanskih sluzhashhih Rossii: vzgljad v buduwee]. Saratov: Saratov University Publishing House, 2011.
6. Kononov P. I. About some Topical Issues of the Administrative Responsibility of Legal Persons (based on the materials of arbitration and litigation practice) [O nekotorykh aktual'nykh problemakh administrativnoi otvetstvennosti yuridicheskikh lits (po materialam arbitrazhno-sudebnoi praktiki)]. *Zakony Rossii: opyt, analiz, praktika – Laws of Russia: Experience, Analysis, and Practice*, 2012, no. 3.

7. Luk'yanov V. The Threat of Harm as a Consequence of an Offense [Ugroza prichineniya vreda kak posledstvie pravonarusheniya]. *Ros. yustitsiya. – Russian Justice*, 2002, no. 8.

8. *Soviet Criminal Law. General Part: textbook* [Sovetskoe ugolovnoe pravo. Obshchaya chast': Uchebnik]. Under edition of G. A. Kriger and others, Moscow: 1981.

9. Subanova N. V. *Licensing of Entrepreneurial Activity: Legal Regulation, Responsibility, and Control: Monograph* [Litsenzirovanie predprinimatel'skoi deyatel'nosti: pravovoe regulirovanie, otvetstvennost', kontrol': monografiya]. Moscow: Statut, 2011.

10. *Criminal Law. General Part: textbook for higher schools* [Ugolovnoe pravo. Obshchaya chast': Uchebnik dlya vuzov]. Under edition of I. Ya. Kozachenko, Z. A. Neznamova, Moscow: 1997.

REVIEW OF THE THESIS
OF GEORGII LEONIDOVICH PUGIEV

"Administrative responsibility for violations in the field of electoral legal relations" defended in the dissertation council DM.203.011.02 at Rostov Law Institute of the Russian Interior Ministry in candidacy for an academic degree of candidate of legal sciences, specialty 12.00.14. – administrative law, financial law, information law

(thesis supervisor – Doctor of law,
Professor Viktor Vasil'evich Denisenko)

Dugenets Aleksandr Sergeevich, Honored Lawyer of the Russian Federation, Doctor of law, Professor, Editor-in-chief of the magazine "Administrative Law and Process",
Dugenets@rambler.ru

Current development of the institute of administrative responsibility to a large extent determined with the cardinal changes in many spheres of public life, including in the area of ensuring and protection of voting rights and the right of citizens of the Russian Federation to participate in a referendum, and, as a consequence, with the dynamic changes in federal legislation on administrative offences.

In this context, there is no doubt on the relevance of the dissertational research of Georgii Leonidovich, as it is dictated by both the interests of academic science and practical needs. In favor of the relevance of the reviewed research in practice takes place insufficient, may be said, fragmented scientific elaboration of the stated problem.

Scientific novelty of the dissertational research of G. L. Pugiev is defined not only by the fact that the integrated consideration of general-theoretical, practical and procedural issues of the institute of administrative responsibility has been achieved by its studying as a part of the administrative and legal mechanism for protection of the voting rights and the right to participate in a referendum, but also by resolved research tasks.

In the dissertation work is clearly formulated the object and subject of study, are set specific goals, and adequate to them theoretical and methodological basis is used. The dissertation aims and objectives are realized in full. Provisions issued

for defense, the findings and recommendations formulated in the thesis are based on a representative empirical data and theoretically argued, reflect an independent creative contribution of the applicant to the development of administrative and legal science, and contribute to the increment of scientific knowledge. Internal logic and structure of the dissertation study also should be recognized. Scientific and practical importance of the reviewed dissertational research is of no doubt.

Structure of the thesis consists of introduction, three chapters, which include nine paragraphs, conclusion, bibliographic list of references, 9 appendixes.

In the first chapter of the dissertation "The electoral legal relations as the object of administrative and legal protection" in a logical sequence discussed a range of issues dealing with the content of the electoral legal relations' concepts and the mechanisms of their administrative and legal protection; the analysis of the system of subjects to protect electoral rights and the right to participate in a referendum; the study of legal basis of ensuring security and the rule of law during the election process and the interaction of internal affairs bodies with election committees; the justification of the role of administrative responsibility as a tool for the protection of electoral rights and the right to participate in a referendum.

Based on the analysis of the general-theoretical provisions and current legislation the defender of the thesis managed to disclose the content of electoral legal relations acting central element in the mechanism of legal regulation of voting, show the genesis of approaches to resolving the issues of protection electoral rights of citizens of the Russian Federation, highlight the features that must be taken into account when determining the entities involved in the protection of electoral rights, and consequently, offer the author's classification of entities for the protection of electoral rights and the right to participate in a referendum within the framework of trials on administrative offences.

The studying by the highly regarded defender of the thesis the practice of interaction police officers and local election commissions is organic in terms of resolving main dissertation tasks.

Not indisputable, but deserve attention author's reasoning on administrative responsibility as a tool for the protection of electoral rights and the right to participate in a referendum.

In the second chapter, "Theoretical foundations and normatively-legal regulation of the administrative responsibility of electoral process participants" from system positions the dissertator evaluates the participants of an electoral process as subjects of administrative and tort relations, there is given a characteristic of objective and subjective features of administrative offences in the field of legislation

on elections and referendums, holds the analysis of the features of administrative responsibility of electoral legal relation subjects.

Deserves attention and support both the author's approach to the study of participants in an electoral process as subjects of administrative and tort relations and his classification of the subjective composition of administrative and tort relations in the field of electoral legislation, which allows to identify the features of the main (mandatory) subjects of administrative and tort relations within an electoral process, which are not only of theoretical interest but also of practical importance and have been used by the author in describing subjective signs of administrative offences in the field of legislation on elections and referendums, in identifying the features of administrative responsibility of specific categories of election legal relation subjects, as well as in the clarification the features of court proceedings on administrative offences in the field of legislation on elections and referendums.

In general can be positively evaluated the contained in the work description of the objective and subjective signs of administrative offences in the field of legislation on elections and referendums. Of particular interest are the provisions on the duality of the administrative and legal status of election commissions and peculiarities of bringing to administrative responsibility a specific group of entities that are unique only to administrative offences in the field of legislation on elections and referendums, namely the candidates, members or authorized representatives of an initiative group on referendums, persons authorized to act on behalf of a candidate, electoral association or attracted by such persons for conducting an election campaign, authorized representatives for financial matters of the candidate.

In the third chapter, "Theoretical and practical aspects of proceedings on cases of administrative offences in the field of legislation on elections and referendums", defender of thesis focused on the review of the stage-to-stage features of proceedings on administrative offences in the field of legislation on elections and referendums, and on the analysis of the application of ensuring measures in proceedings on cases of administrative offences in the field of electoral legislation.

Correctly noting that one of the fundamental issues that ensure the validity of proceedings of cases on administrative offences in general and, in particular, on such cases in the field of the legislation on elections and referendums, is the compliance with the requirement on the choice of subjects authorized to institute cases on administrative offenses, applicant in detail described the applicability of each provided for by part 4 of article 28.1 of the CAO RF variant of institution a case on administrative offence to an administrative offences in the field of legislation on elections and referendums, highlighted the range of entities authorized to institute

proceedings on administrative offences in the field of legislation on elections and referendums, substantiated the main features of consideration cases on administrative offences in the field of legislation elections and referendums.

Consideration the issue of application of ensuring measures in proceedings on cases of administrative offences in the field of electoral legislation complemented the substantiated views of the distinguished author on the crucial role of internal affairs bodies (police) in the system of subjects for the protection of electoral rights and the right to participate in a referendum.

The most significant findings of the dissertation research are formulated in the form of provisions for protection, offers on improving the Code on Administrative offences of the RF.

In view of the above, the work of Georgii Leonidovich represents a topical, complex and, at the same time, interesting scientific study.

The foregoing allows to conclude that the thesis work under review on the topic of "Administrative responsibility for violations in the field of electoral legal relations" fully compliant with the requirements of the Decision of the Government of the Russian Federation No. 74 from January 30, 2002 "On approval of the Unified Register of Scientific Degrees and Academic Titles and the Regulation on the Procedure for the Awarding of Academic Degrees" (with further amendments and additions), which are placed to the master's thesis, and its author – honorable Georgii Leonidovich Pugiev deserves the award of the desired degree of candidate of legal sciences, specialty 12.00.14 – administrative law, financial law, information law.

Universal Decimal
Classification 342.56

Kachmazov O. Kh., Tsorieva E. S.

SOME PROBLEMS RELATED TO THE IMPLEMENTATION BY A JUDGE ANOTHER COMMERCIAL ACTIVITY

Kachmazov Oleg Khazbievich,
c.j.s. (PhD of jurisprudence), Judge of the Supreme Court of the Republic of North Ossetia-Alania, Head of the Criminal Law Department of Vladikavkaz Institute of Management, Associate professor,
koh@inbox.ru

Tsorieva Elena Svyatoslavovna,
c.j.s. (PhD of jurisprudence), Associate professor of Legal Disciplines of North Caucasian Mining and Metallurgy Institute, Associate professor, Vladikavkaz city.

Despite the fact that the duty of administration of justice is a main task of a judge and is of priority in its activity, it is argued that the activities of a judge (execution of its duties) is not in direct relation to its physical location in the courthouse during the whole working day. It is noted that the legislator de facto recognized the right of a judge to carry out teaching activities during working hours. In the article the limits of application the Labor Code of the Russian Federation to the creative activity of judges are analyzed.

Keywords: professional activity of a judge, administrative and legal status of a judge, creative activity of judges, scientific and teaching activity of a judge.

Legal regulation of activities allowed for judges should be considered on the basis of a number of key constitutional provisions. There is a guarantee of the unity of economic space, free movement of goods, services and financial resources, support for competition and freedom of economic activity in the Russian Federation (part 1 of article 8 of the Constitution of the Russian Federation). This constitutional

and legal norm is ensured by the fact that everyone has the right to freely use their abilities and property for entrepreneurial and not prohibited by law economic activities (part 1 of article 34 of the Constitution of the Russian Federation). Meanwhile, for significant purposes of Constitution part 3 of article 55 of the Russian Federation Constitution provides for a federal law limiting the rights and freedoms of man and citizen, including the limitations of the implementation of socio-economic rights of judges.

Constitutional right to freely dispose of their abilities to work, and to choose kind of activity and profession does not preclude the legal enshrining of certain requirements for persons involved in the activity of the bodies of state power and local self-government, including judiciary.

A citizen of the Russian Federation, who wished to exercise the above constitutional right, voluntarily accepts the terms, limitations and advantages, which are bound to the acquired public legal status, and performs appropriate requirements under the statutory procedure. This implies that the prohibitions and limitations arising from the specific status of a person cannot be considered as an unlawful restriction of its constitutional rights. This legal position has been repeatedly expressed by the Constitutional Court of the Russian Federation in its decisions [1].

The limits of the constitutional and legal restrictions applied to judges are enshrined in the Law of the Russian Federation No. 3132-1 from 26.06.1992 "On the Status of Judges in the Russian Federation", which contains fourteen prohibitions, directly or indirectly related to the realization of the rights of judges. However, according to the forms of conduct requirements, five of fourteen prohibitions are optional, i.e., "allowing, under certain conditions to retreat from the main variant of conduct, choosing a secondary (backup) one" [8, 203].

According to one of these norms (paragraph 5 of part 3 of article 3), a judge should not be engaged in other commercial activities, except for teaching, scientific research and creative activity, engagement in which should not interfere with the duties of a judge and cannot be a valid reason for absence at a court proceeding if consent of the chairman of the court is not given.

During making a disclosure on the content of a publication topic, it is necessary to elaborate on the legal analysis of the above limitation. According to part 1 of article 44 of the Constitution of the Russian Federation judges are endowed with the freedom of literary, artistic, scientific, technical and other types of creative activity, and teaching, which is consistent with paragraph 3 of article 15 of the International Covenant on Economic, Social and Cultural Rights (New York, December 16, 1966), however, their implementation in this case is characterized by specific

features related to the administration of justice. They lie in the fact that the right to receive a property benefit in carrying out these freedoms is specifically enshrined in the RF Law "On the Status of Judges in the Russian Federation".

Opportunity for a judge to exercise scientific, teaching, lecturing and other creative activities is allowed in the Code of Judicial Ethics [9], in article 10 of which is said that a judge shall be given the right without prejudice to the interests of justice to combine main activity with the scientific, teaching, lecturing and other creative activities, including of paid (compensatory) nature. This activity is regulated by the Code regardless of its compensatory nature (payment or getting other benefits of the material or other nature), and is considered as such upon existence. The condition for its implementation should not be at the expense of the interests of justice.

Particular attention should be paid to the fact that the provision to judges the right of teaching allows to attract to educational institutions the best trained lawyers in the field of application different types of law, well versed of the judicial system, its tasks and problems, which, in turn, can significantly improve quality of students learning, have a positive impact on subsequent work of graduates with the speciality, including in the judicial system of Russia.

In this regard deserves every support the position of the leadership of the Russian Academy of Justice, which pays great attention to the formation of the higher-education teaching personnel of the Academy: the academic process is carried out by qualified teachers (including 163 doctors of sciences, 729 candidates of sciences, 107 professors and 291 associate professors), acting judges of the Supreme Court, the Supreme Arbitration Court, the Constitutional Court, the Moscow City and the Moscow regional courts and retired judges [2]. In the Institute of State and Law of Russian Academy of Sciences of 67 part-time teachers, 10 are judges [3]. The combination in teaching the knowledge and experience of scientists and practitioners provides a higher level of education, a better compliance with objectives of vocational and special education. Moreover, scientific and teaching activity of a judge has a positive effect on the growth of the professional level of the judge, as it requires him to improve his qualification during the receipt of compulsory state education programs and his self-education for conducting high-quality scientific and teaching activity.

Positive value of teaching activity of judges is confirmed by foreign experience. In particular, the German model of lawyers training is characterized by a strong orientation towards practice. This is expressed, among other circumstances, in a high degree of participation of courts in the practical training of lawyers, and

detailed legal regulation of the organization of practice for future professionals at the federal and territorial levels. Legislation on the judicial system of West Germany serves as the state educational standard of higher legal education. Federal legislation obliges courts to participate in the practical training of lawyers [3]. Moreover, the Law on Administrative Courts of West Germany provides for the appointment of a judge under the instruction, which must be both a judge of an administrative court and lecturer in law in any higher education institution [5].

Special consideration must be given to the issue about the features of exercising teaching activity by a judge. Moreover, we note that, according to paragraph 4 of part 3 of article 3 of the RF Law "On the Status of Judges in the Russian Federation", the judges are forbidden to be engaged in business in person or by proxies, including being involved in the management of a business entity, regardless of its organizational-legal form. In accordance with paragraph 1 of article 2 of the Civil Code of the Russian Federation under the entrepreneurship is understood an independent activity, performed at one's own risk, aimed at systematically deriving a profit from the use of the property, the sale of commodities, the performance of work or the rendering of services by the persons, registered in this capacity in conformity with the law-established procedure. From this definition it is clear that not all activities aimed at generating income are entrepreneurial ones, but only those that are designed to systematic making of profit. In other words, a single getting of profit by a judge (regardless of its size) does not fall under the signs of the definition. Activities of judges leading to obtaining any kind of casual revenue bearing unsystematic nature do not refer to entrepreneurial activities [4].

The concept of teaching activity in the current legislation is not disclosed. However, comparing the norms of the Law of the Russian Federation No. 3266-1 from July 10, 1992 "On education" with the RF Law "On the Status of Judges in the Russian Federation", you can define it as the employment of judges associated with their participation in the teaching of educational programs in state, municipal and private educational institutions of all kinds.

The analysis of the norms of the Russian Federation Law "On Education" shows that educational activity can be performed both individually and through the conclusion of an employment contract for filling the position of academic teacher in an educational institution. Meanwhile, realization by judges of the constitutional freedom to engage in pedagogical activity is carried out with certain peculiarities. Thus, in accordance with article 48 of the Law "On Education" individual educational activity is considered as entrepreneurial one and is subject to state registration. In turn, in accordance with paragraph 4 part 3 of article 3 of the RF Law "On

the Status of Judges in the Russian Federation" a judge's entrepreneurial activity is forbidden. Consequently, a judge does not have the right to be engaged in individual teaching activities.

Thus, the right to engage in paid teaching activity a judge may realize only in the form of cooperation with educational institutions. At this, he is not obliged to verify the existence of a registration certificate, license, and accreditation. An educational institution is responsible for the conduct of illegal (unallowed) activity.

Among the features of performing a judge's teaching activity should be also noted the time of the activity. Judge is accepted for teaching job at the position of Professor, Associate professor, Senior lecturer, Part-time teacher. Teaching activity is also possible on other terms of employment and payment, outside of second job: in the case of exercising pedagogical work on an hourly basis to a maximum of 300 hours per year; performing by judges the management of graduates and doctoral students, as well as management of a department, management of a faculty of an educational institution with additional payment under the agreement between a judge and an employer (in this case, by analogy, the Decree of the RF Ministry of Labor No. 41 from June 30, 2003 "On the Peculiarities of the Part-time Job of Teaching, Medical, Pharmaceutical Workers and Cultural Workers" is applied).

Under the general rule secondary job is done in spare time (article 282 of the Labor Code of the RF). However, this normative provision shall not be applied to judges on the following grounds.

First, spare time for judges is considered the time after 6 p.m. As a rule, educational institutions do not work at this time. Therefore, the application of this general rule actually would mean recognition of the provisions of the Federal Law "On the Status of Judges in the Russian Federation" and the Code of Judicial Ethics on the right of judges to exercise teaching activity "dead" norms. Moreover, the implementation of teaching activity after the main working hours would actually mean depriving judges the right to rest, which would certainly has a negative impact on the quality of administration of justice.

Second, according to article 252 of the Labor Code of the Russian Federation all the peculiarities of legal regulation of labor of certain categories of workers, caused by a variety of reasons, are stipulated by labor legislation and other normative legal acts containing the norms of labor law, collective treaties, agreements, local normative acts (according to article 251 of the Labor Code of the Russian Federation peculiarities of labor regulation are establishment legal norms partially restricting the use of general rules on the same issues or providing additional rules for certain categories of employees). One of such normative acts is the RF Law "On

the Status of Judges in the Russian Federation", article 22 of which states that the legislation of the Russian Federation on labor applies to judges in part that is not regulated by the current Law. This Law regulates matters relating to the teaching activity of judges, allowing this activity in article 3. At this, the Law establishes two conditions for exercising by judges teaching, research and another creative activity: a) it should not interfere with the duties of a judge and cannot be a valid reason for absence at court proceedings, if has not been given a consent of the chairman of the appropriate court (for justice of peace – chairman of the appropriate district court, for court chairmen – the presidiums of the relevant courts, and in the absence of such presidiums – the presidiums of higher courts); b) this activity cannot be financed entirely by foreign states, international and foreign organizations, foreign citizens and stateless persons, unless otherwise is provided for by the legislation of the Russian Federation, international treaties of the Russian Federation or the agreements on a reciprocal basis of the Constitutional Court of the RF, the Supreme Court of the RF, the Supreme Arbitration Court of the RF, the constitutional (statutory) courts of the Russian Federation's subject with the appropriate courts of foreign states, international and foreign organizations. It should be noted that, under paragraph 14 of explanations and recommendations of the Higher Judges' Qualifications Board of the RF from March 17-21, 2003, there are no restrictions on the status of educational institution, in which a judge has the right to teach, in the legislation [10].

The first condition is more definitely set forth in the Code of Judicial Ethics: scientific, teaching, lecturing, and other creative activities should be conducted by a judge *not to the detriment of the interests of justice* (article 10). There is no contradiction, because in accordance with article 2 of the Code of Judicial Ethics exercising duties of the administration of justice is the main objective of a judge and a priority in its activities. Thus, "the duties of a judge" lie in the administration of justice, by which, in turn, is recognized the implemented by court law-enforcement activity on consideration and settlement civil, criminal and other cases. Consequently, infliction of harm to the interests of justice should be evaluated only in terms of performance of judicial duties on administration of justice, and more precisely, the quality of this work. In the literature, quite rightly emphasizes that the lack of reversed judgment, breach of the time terms of cases consideration, complaints from citizens and other entities – are the main indicators of quality of judicial work [7]. This quality of work of a judge, if he is engaged in teaching, research and other creative activities, indicates the possibility of its carrying out in the future.

The foregoing leads to the conclusion that the activities of a judge (execution of its duties) are not in direct relation to its physical location in the courthouse

during the working day – from 9 a.m. to 6 p.m. The condition of exercising part-time teaching (in their spare time), established by the Labor Code, does not apply on the judges, since the issue was settled by a special law that establishes a full list of conditions for exercising teaching activity by a judge.

And, last. All doubts will disappear completely when close examination of the second part of the first condition for exercising teaching activity by a judge: it is "cannot be a valid reason for absence at court proceedings, if has not been given a consent of the chairman of the appropriate court…". Hence, teaching activity of a judge *may be a valid reason* for the absence at court proceedings, if has been given a consent by the chairman of an appropriate court! Since the hearings take place during working hours, the legislator had in fact acknowledged the right of judges to carry out teaching activity during working hours.

Thus, if a judge efficiently performs its duties, it can carry out teaching, scientific and other creative activities during the major working hours.

It should also address the issue of the number of study load judge and part-time work opportunities in several schools.

Due attention should be given to the issue of the amount of academic load and opportunity of part-time work in several educational institutions.

In accordance with part 2 article 282 of the Labor Code of the Russian Federation labor contract about off-hour work may be concluded with unlimited number of employers. In this case, any permission (consent), including one from the employer at the main place of work, is not required. As for the volume of academic load, then, under a general rule, for part time work it is limited to 0.5 rate. The application of this rule leads to a paradoxical situation: a judge can perform academic load in three educational institutions in amount of 0.5 rate in each (total 1.5 rate), but cannot work in one educational institution at one rate.

In our opinion, previously formulated thesis is fully applicable and to the described occasion. RF Law "On the Status of Judges in the Russian Federation" does not limit teaching work of judges in respect of academic load or the number of educational institutions in which they can work part-time. More precisely, such a limitation exists – teaching should not impede the fulfillment of duties to the administration of justice. Judge has the right to perform such a volume of academic load in one or more educational institutions that would not affect the quality of the administration of justice. Norms of labor legislation that limit the amount of academic load, which is exercised at part time jobs, do not apply to judges, since in this case there are relevant provisions of the Law of the Russian Federation "On the Status of Judges in the Russian Federation" (article 22).

The concept of scientific activity is contained in article 2 of the Federal Law of the RF No. 127-FL from August 23, 1996 "On Science and State Scientific-Technical Policy", by which scientific (research) activity is an activity aimed at obtaining and application of new knowledge. Scientist (researcher) is a citizen who has the necessary qualifications and professionally involved in the scientific and (or) scientific-technical activity. However, on the base of part 1 of article 44 of the Constitution of the Russian Federation, which provides for freedom of scientific creativity, we must assume that there is no need for obtaining and confirming the official status of a researcher for implementing scientific activity in any form. The legal framework for the assessment skills of scientists and specialists of scientific organizations, and the evaluation criteria are determined in the manner prescribed by the Government of the RF, and are ensured by the state system of certification.

Among Judges of the Russian Federation works sufficient number of persons with academic degrees and academic titles, and it should be assessed as positive phenomenon, evidence of the high qualifications of the judiciary. Moreover, the legislator materially encourages the presence of degree level, but only by specialty 12.00.00 according to the nomenclature of scientific specialties, or academic title – without defining the discipline, that is, as such. According to article 19 of the Federal Law "On the Status of Judges in the Russian Federation", the judges, who hold the degree of Candidate of legal sciences or academic title of associate professor, receive additional payment in the amount of five percent of the salary, and the judges, who hold the degree of Doctor of law or academic title of professor, – 10 percent of the salary.

As for the concept of "other creative activity" used in article 3 of the RF Law "On the Status of Judges in the Russian Federation", the legislation does not define its types. In the literature under creative activities is defined human activity, aiming for creation of new spiritual and material values [6, 593].

In part 1 of article 44 of the Constitution of the RF the concept of "creativity" covers literary, artistic, scientific, technical and other forms of creativity. Current legislation defines creativity only in the sphere of culture. Under paragraph 5 of article 3 of Fundamental principles of legislation on culture by creative activity in the field of culture is considered creation of cultural values and their interpretation. Under cultural values are implied norms and patterns of behavior, works of culture and art, results of research of cultural activity, etc.

It should be borne in mind that judges can exercise their right to engage in gainful creative activity both on a professional and non-professional basis. This does not require the formal status of a creative worker. Professional and

non-professional creative workers are equal in the field of copyright and related intellectual property rights, protection of secret skills, freedom of disposal the products of their labor, government support, etc.

In relation to judges in practice under scientific and creative activities commonly understand preparation and publication of scientific monographs, papers, articles, reviews; researches (experiments, observations, experience practices, etc.) and creation of developments; participation in scientific conferences, symposia, "round tables", research and practice seminars, etc.; participating in the work of creative teams to analyze different issues and development of recommendations, etc.

References:

1. Ruling of the Constitutional Court of the RF No. 169-O-O from March, 06.2002 "On refusal to accept complaints from citizen Nechaev Vladimir Mikhailovich on a violation of his constitutional rights by provisions of articles 3 and 13 of the Law of the Russian Federation "On the Status of Judges in the Russian Federation", articles 19 and 21 of the Federal law "On Bodies of the Community of Judges in the Russian Federation" [Opredelenie Konstitutsionnogo Suda RF ot 20 marta 2007 g. № 169-O-O «Ob otkaze v prinyatii k rassmotreniyu zhalob grazhdanina Nechaeva Vladimira Mikhailovicha na narushenie ego konstitutsionnykh prav polozheniyami statei 3 i 13 Zakona Rossiiskoi Federatsii «O statuse sudei v Rossiiskoi Federatsii», statei 19 i 21 Federal›nogo zakona «Ob organakh sudeiskogo soobshchestva v Rossiiskoi Federatsii»]. *System GARANT* [Electronic resource], Moscow: 2012.
2. Arhipova L. B. 10 Years of Russian Academy of Justice [Rossijskoj akademii pravosudiya – desyat' let]. *Rossijskaja justicija – Russian Justice*, 2008, no. 5.
3. Volosnikova L. M. On Participation of Courts in Practical Training of Jurists: FRG Experience [Ob uchastii sudov v prakticheskoi podgotovke yuristov: opyt FRG]. *Arbitrazhnyi i grazhdanskii protsess – Arbitration and Civil Procedure*, 2005, no. 5.
4. Guev A. N. *Comments to the Criminal Code of the Russian Federation for Entrepreneurs* [Kommentarii k Ugolovnomu kodeksu Rossiiskoi Federatsii dlya predprinimatelei]. Moscow: 2006.
5. Krivel'skaya O. V. Legal Status of German Judges of Administrative Courts [Pravovoe polozhenie sudei administrativnykh sudov Germanii]. *Yurist-mezhdunarodnik – International Jurist*, 2004, no. 3.
6. Lopatin V. V., Lopatina L. E. *Small Explanatory Dictionary of the Russian Language* [Malyi tolkovyi slovar' russkogo yazyka]. Moscow: 1990.

7. Nekhaev V. V., Nekhaeva T. G. *Requirements for a Judge. Comments to Article 3 of the Russian Federation Law No. 3132-1 from June 26, 1992 "On status of Judges in the Russian Federation"* [Trebovaniya, pred"yavlyaemye k sud'e. Kommentarii k stat'e 3 Zakona Rossiiskoi Federatsii ot 26 iyunya 1992 g. № 3132-1 «O statuse sudei v Rossiiskoi Federatsii»]. Prepared for the system Konsul'tant Plyus, 2006.

8. *General Theory of Law and State: Textbook* [Obshchaya teoriya prava i gosudarstva: Uchebnik]. Under edition of V. V. Lazarev, Moscow: 2003.

9. *Rossijskaja justicija – Russian Justice*, 2005, no. 1-2.

10. *Rossijskaja justicija – Russian Justice*, 2003, no. 7.

Universal Decimal
Classification 343.9

Smirnov A. A.

VICTIMOLOGICAL PREVENTION OF ONLINE CRIMES AGAINST SEXUAL IMMUNITY OF MINORS

Smirnov Aleksandr Aleksandrovich,
c.j.s. (PhD of jurisprudence), Doctoral student of Federal State Owned Institution "All-Russian Research Institute of the MIA of the RF», Associate professor, smirnov_research @ bk.ru

In the article the problem of online sexual abuse of children is analyzed. Especial attention is given to the factor of minor internet users' victim behavior. In the article are introduced the measures of victimological prevention of online sexual abuse of children.

Key words: Internet, minors, crimes against sexual immunity, cyber-grooming, victimization, crime prevention.

The Internet is becoming more and more popular among children and adolescents. There is a growing amount of time spent by minors online, the intensity of internet use. Being online is becoming quite commonplace, everyday way of existence that easily combines with traditional offline reality. According to the research "Children of Russia On-line" conducted by the Internet Development Fund and the Department of Psychology of the Moscow State University in 2010 in 11 regions of Russia [6, 46-55], the average age of first use of the Internet is 10 years, and in Moscow and St. Petersburg – 9 years. Almost 70% of Russian children access the Internet every day or almost every day. A quarter of those surveyed Russian children is online from 7 up to 14 hours per week, one out of six – from 14 to 21 hours. Every fifth child spends online more 21 hours per week that is more 3 per day.

One of the most popular uses of the Internet – is a social network that gives children the opportunity to communicate and share information with their friends.

In our country, more than 75 percent of children have a profile in a social network; with almost a third of them has more than one profile in different networks. The leader of popularity among the networks is a network "vkontakte" – 89%, followed by "odnoklassniki" – 16%, Facebook – 4%, My space – 2% and other social networks. 19% of Russian children have more than 100 friends in social networks.

While in the virtual space of the Internet children are faced with the whole set of cyber threats, among which are malware, Internet fraud, abuse and harassment (cyberbulling) and others. One of the most dangerous among them according to their social consequences is a threat to a child of becoming a victim of crimes against sexual integrity by virtual communication on the Internet. In foreign countries to denote adult's actions aimed at establishing on the Internet a rapport with a child in order to induce him to enter into sexual relations is used the term of cybergrooming or online grooming. They cover both the actions that are intended to getting by a pedophile some sexual satisfaction and actions aimed on involving children in commercial sexual exploitation. On one of the thematic Russian websites on Internet safety in the section "communication risks" describes a typical mechanism of grooming: "an offender often communicates online with a child pretending to be a coeval of the child or a little older. He gets acquainted with a victim in a chat, a forum or a social network trying to establish friendly relations with it and go to face-to-face communication. While communicating in person ("in private"), it gains a confidence of the child, trying to get to know a mobile number and arrange a meeting" [4].

According to European standards cybergrooming is considered as a criminal offense. Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse from October 25, 2007, in the section of substantive criminal law, includes a special corpus delicti of article 23 "Harassment children for sexual purposes". This article describes the named criminal deed as follows: "Any intentional proposal, through information and communication technologies, of an adult to meet a child, who has not reached the legal age of entering sexual relations, for the purpose of committing any of the following offences: sexual activities with a child, which, in accordance with the relevant provisions of national law has not reached the legal age for entering into sexual relations, production of child pornography, where this proposal has been followed by material acts leading to such a meeting. Russian criminal legislation does not contain similar corpus delicti, and the actions described (cybergrooming) can be classified as a preparation for the commission of crimes under articles 131-135 of the Criminal Code, as well as articles 127.1, 240 and 242.2 of the Criminal

Code. We restrict ourselves to the consideration of crimes against sexual immunity of minors committed through the Internet.

Analysis of the Russian crime statistics shows high growth in the number of crimes against sexual immunity of minors. Thus, according to the department "K" of the Bureau of Special Technical Measures of the Russian Interior Ministry in our country in 2011 were committed some 8.8 thousand crimes against sexual immunity of children. In comparison to 2003 the number of registered non-violent sexual harassments against minors under 16 years of age has increased 21.6 times (in 2011, were detected about 4 thousand of such actions), the number of sexual abuse has increased 2.7 times (2.2 thousand) [6]. However, it is currently impossible to set the proportion of crimes committed using the Internet, because the statistics does not allocate them out of the total range of reported crimes.

This category of crime is understudied because of its relative novelty. In this regard, many countries have initiated special studies in this area. Thus, in the European Union under the auspices of the EU program "Safer Internet Programme" several such projects have been implemented. *EU KIDS Online* projects *(Enhancing knowledge regarding European children's use, risk and safety online)* aim at a comprehensive study of the processes of children use the Internet on EU territory, including the issues of online risks and safety on the Internet. The project *ROBERT (Risktaking Online Behaviour - Empowerment through Research and Training)* aims to study deviant behavior in online, vulnerabilities and protection of young people on the Internet. Especially it is necessary to highlight the project *POG (Understanding the process of online grooming: the behaviors of men who target young people online)*, which is the first European specialized study of online grooming.

Strategy for combating crimes against sexual immunity of minors committed through the use of the Internet includes a whole range of aspects. In this article we will focus on such its part as *victimological prevention*. As you know, in criminology it is understood by specific activities of social institutions, aimed at revealing, eliminating or neutralizing factors, circumstances, situations that form victim behavior and causing crimes, revealing risk groups and individuals with a high degree of victimity and exposure to them in order to restore or activate their protective properties, and the development or improvement of the existing special measures to protect citizens from crimes and subsequent victimization [1, 377-378].

Victimity plays an important role in the mechanism of this type of criminal behavior what is caused by a complex of factors. First, by the socio-psychological characteristics of minor victims of such crimes that show trust to information and people, lack of proper critical thinking, limitations of physical resistance

to an offender. Second, the attraction and "trend" of virtual communication on the Internet among children and adolescents, the increasing of virtual circle of "friends" on social networks, which are a source of danger. Third, the anonymity of virtual communication, in which for a potential victim is extremely difficult to immediately recognize the identity and intentions of the counterparty. Fourth, the insufficient social control of parents for their children's behavior in cyberspace. Fifth, the relative novelty of the very considered threat, and low level of awareness among children and their parents about it and protective measures against it.

These abstracts in many respects are confirmed by the results of the study "Children of Russia online". According to it, Russian pupils usually go on-line in their rooms at home (70%) and at friends (50%), where the ability of adults to monitor their actions is minimal. Moreover the older the pupils, the less the control of adults: 70% of pupils of 9-10 years and over 90% of students of age 13 and older use the Internet uncontrollably in the absence of adults. The study confirmed the abstract about an insufficient level of skills in online security. For example, among children aged 11-12 less than half can use the Internet safely (to compare sites to assess the reliability of information, change the settings on a social network profile, block messages from someone, destroy history, etc.). Although with age children better master these skills. For example, there are more than half of such children among ones older than 13 years. And the most important number in the context of the theme of this article: a half of Russian children constantly meet new people on the Internet, and 40% of children said they have met online friends in their real life.

The abstracts are only an introduction to the lighting of the issue. For the full disclosure of victimological aspects of crimes against sexual immunity of minors committed through the Internet, in Russia requires special criminological research, similar to the European project POG. In this case, as the basis can be taken the methodology used in it [7], which includes three groups of methods: 1) an analysis of the literature, the study of the criminal records and interviews with key participants, 2) in-depth interviews with individuals convicted of these crimes, the study of archives of their correspondence on the Net, 3) focus groups with adolescents, public meetings with parents, teachers and professionals.

However, based on the available basic information about the features of online grooming, we can briefly mark the main directions of victimological prevention of crimes against sexual immunity of minors committed through the Internet.

The most obvious and, at the same time, effective measures of victimological prevention this type of crimes should be *public awareness efforts* aimed at raising the awareness of children, parents, teachers and tutors about the threat of online

grooming and protective measures against it. The subjects of such work may be educational institutions, law enforcement agencies, public and non-profit organizations.

Children of a certain age category in an adequate form must gain knowledge of the existence of online grooming threat, ways of preventing and recognition it, actions when confronted with it. It is important to bring the relevant knowledge also to parents and teachers, who must be informed about the characteristics of cybergrooming, ways of protection of their children, signs of "suspicious" behavior of a child, which has begun a virtual or real communication with a pedophile, etc.

The success of public awareness efforts lies in the maximum degree of "coverage" of the population. The most real way to ensure it is the introduction to the general education courses of "Basic Safety" and "Informatics" topics related to the safe use of the Internet. In addition, to this end, we need to use traditional and online media, social outdoor advertising, and public events. Law enforcement agencies based on the analyzing crimes should also inform citizens through appearances in the media, distribution of special reminders online, conducting special classes in schools, etc.

Another important direction of victimological prevention of crimes against sexual immunity of minors committed through the Internet is *to provide Internet users necessary tools and protection technologies.* First of all, it is about the means of managing their profiles in social networks, limiting the amount of posted personal information and access to it by unauthorized persons, blocking unwanted interlocutors, etc. In addition to the technological tools for minor users, also must exist additional protection measures for parents (means of "parental controls").

Appropriate software tools must be provided by both the operators of social networks themselves and third-party software vendors. However, you must understand that in contrast to illegal content, the ability to filter incoming information in the case cybergrooming is very limited. This presents the greatest significance of the means of preventing child meeting with a pedophile in a social network, including appropriate configuration of "privacy".

All of the tools and technologies will be effective only if the minor "users" themselves and their parents are informed about them and know how to use them. Therefore, they need to be paid special attention within the framework of the previous selected areas of work.

One more direction of *victimological prevention* of crimes against sexual immunity of minors committed by means of the Internet is a *consulting assistance to minors, as well as parents and teachers*. It is essential in cases when the above

technological mechanisms to prevent virtual contact of a pedophile with a potential victim-child do not work, and standard knowledge about the needed behavior pattern in a given situation is not enough or when it does not exist.

For this purpose, in foreign countries they organize special kinds of Safer Internet Centers – helplines. In our country already for several years has been working such a helpline entitled "Kids Online" [5]. It is a free all-Russian service of the telephone and online counseling for children and adults on the safe use of the Internet and mobile communications. At the helpline there is a professional psychological and information support that is given by psychologists of psychology department of Moscow State University named after M. V. Lomonosov and the Foundation for the Internet Development.

The significance of these lines among other factors is also caused by the fact that a teenager can be ashamed to tell its parents about the attempts of sexual harassment to it on the web, but on condition of anonymity will seek for support to this line. Is indicative that for two years (2009-2011) of work of Russian helpline "Kids Online", most complaints have been received exactly on the communication risks (45%), with almost one fifth related to cybergrooming problems (19%) [3].

It is also necessary to inform children, parents and teachers about such helplines and conduct their mass popularization. We should strive to put posters with information about them on a bulletin board in every school in our country.

In conclusion let's highlight another direction of victimological prevention of crimes against sexual immunity of minors committed by means of the Internet, which is "at the interface of" with the activity of law enforcement agencies to combat these crimes. It is about *creating a mechanism of notification by the users of social networks on the facts of alleged grooming and response to these messages*.

For the first part, here means that there are in the interface of social networking resources some tools for sending notification of suspicious, from the point of view of the user, behavior. Such tools should be easily detectable by users and easy to use. Accordingly, system administrators of said resources should build a mechanism for verification and response to complaints received. Algorithms of the last require additional elaboration. They can include both the taking of their own measures by social networks' administrators with respect to a user, and the transmission of information to law enforcement agencies for verification through special investigative techniques. These measures will prevent further communication of a child with a pedophile and contact with it in real life. In addition, this may contribute to the identification and arrest by law enforcement agencies of a suspect that may be guilty of other similar crimes.

References:

1. Alekseev A. I. Crime Prevention [Preduprezhdenie prestupnosti]. *Kriminologija. Uchebnik dlja juridicheskih vuzov – Criminology. Textbook for Law Schools*, under general edition of Doctor of law, professor A. I. Dolgovaya, Moscow: NORMA – INFRA-N, 1999.
2. Soldatova G., Zotova E. Risk Zone. Russian and European Schoolchildren: the Problems of Online Socialization [Zona riska. Rossiiskie i evropeiskie shkol'niki: problemy onlain sotsializatsii]. *Deti v informatsionnom obshchestve – Children in the Information Society*, 2011, no. 7, pp. 46-55.
3. Results of the Helpline "Kids Online" for 2 years. *Helpline "Kids Online" ("Deti Onlain" in Russian)*, Available at: http://detionline.com/helpline/news/401 (accessed: 18.10.2012).
4. Communications Risks [Kommunikatsionnye riski]. *Helpline "Kids Online" ("Deti Onlain" in Russian)*. Available at: http://detionline.com/helpline/risks (accessed: 18.10.2012).
5. *Helpline "Kids Online" ("Deti Onlain" in Russian)*. Available at: http://detionline.com (accessed: 18.10.2012).
6. *Working meeting in the department "K"* [Rabochaya vstrecha v Upravlenii «K»]. Commissioner for the President of the Russian Federation on children's rights, 01.06.2012. Available at: http://www.rfdeti.ru/display.php?id=5308 (accessed: 25.07.2012).
7. *European Online Grooming Project*. Available at: http://www.europeanonlinegroomingproject.com/ (accessed: 12.09.2012).

Universal Decimal
Classification 351.82

Tsakoev A. A.

ADMINISTRATIVE-LAW REGULATION OF NOT-GAMBLING GAMES IN SOVIET RUSSIA

Tsakoev Artur Akhsarbekovich,
Deputy Chairman of the Supreme Court of the Republic of North Ossetia-Alania, Associate professor of the Criminal Law Department in Vladikavkaz Institute of Management, Vladikavkaz city.

The article provides the historical and legal analysis of the administrative-law regulation of lotteries in the first decades of Soviet power. It is noted that the presence of the established by union state ban to carry one or another games had no effect on the economic realities of the RSFSR. Stresses the importance of a lottery as a source of income for the State. There is argued that the current legislation provided the right to organize lotteries only for state institutions or ones close to the state.

Keywords: gambling and not-gambling games, lottery, ban on lotteries, voluntary nature of lotteries.

Initially, the Soviet government attempted a total ban of all games, but soon enough it became clear also that human passions could not be regulated by the norms of law, and that it was hard to find sources of income comparable with the income from the games. Certainly, in the first post-revolutionary decades, historical-political situation was not easy – were revealed a lot of social problems to be solved, also, through financial investments.

In the light of the need to replenish state coffer Russia abandoned the idea of the absolute eradication of games and allowed some games through legalizing them. This put the question of the division of games to prohibited and permissible.

Originally criteria of the division were not been defined either in the normative acts or in any official interpretation and clarification of existing law. The criteria were set out for the first by the Supreme Judicial Control Office in recommendations to courts to punish for a gamble card game of what was written above. For enforcement this directive the authority of judicial control required courts to pay attention at the risk level in a game, the purpose of the game (a pastime or profit motive, the desire of gain) [13, 14].

One of the most evident attempts of division games to gambling and not-gambling was made already at the end of the Soviet period by V. D. Legotkin, who wrote: "gambling and legal, not-gambling, games are two types of phenomena... Legal ones include various types of lotteries…, sweepstakes at racetracks, etc. Organizational activities and the legal relations between the parties of legal games are thoroughly regulated by normative acts, as opposed to the not-guaranteed by anybody or anything conditions of gambling" [16, 42]. Not difficult to see that the author flatters legal games: in gambling interests of the participants are guaranteed by a bare word of each other, which is, sometimes, more influential than normatively enshrined rules. V. D. Legotkin introduces six differences between gambling and not-gambling games, paying attention to the fact that gambling is a breeding ground for criminal activity [16, 42-50]. Part of the differences concerns the consequences of the games, but not their internal inherent differences. In any case, such a distinction was given only in 1991, and furthermore doctrinally, but not legally. In the early days of Soviet power in service of law enforcement agencies were only the criteria specified by the Supreme Judicial Control Office, plus revolutionary consciousness and socialist conscience. Based on these mechanisms, not drawing attention to the very classification criteria of games, the first normative acts of Soviet power simply became to name lottery games, billiard games, and sports games as not gambling games, and consequently – not prohibited ones.

Thus, the lottery, including lottery loan, already in the early days of Soviet power without special explanation in normative acts were considered not-gambling games, and therefore legal. And this led to the fact that authorities took on the regulation of public relations for the organization and holding of lotteries, including the distribution of lottery loan tickets among citizens.

Regulation of not-gambling games resulted in the issuing of a large number of normative acts containing rules for the organization and conduct of lotteries, in contrast to the regulation of gambling, which consisted of establishment a ban on participation in them, their organization, and determination of penalties for violation of these regulations. We can say that in the Soviet period gambling games

underwent negative regulation (fixing restrictions), not-gambling ones – positive regulation (fixing the rules of their conduct).

Traditionally for the revolutionary government as a way of regulation was first used exactly ban on lotteries' conduct: December 19, 1918 was issued a decree of the Council of People's Commissars of the RSFSR "On Prohibition of Lotteries' Conduct" [1]. The preamble of the decree indicated that the Council of People's Commissars considered hype, excitement and speculation unacceptable among the citizens of the RSFSR, so the holding of cash and prize lotteries, sales tickets of foreign lottery loans, and cash prizes raffle were prohibited. To violators of these prohibitions were imposed a detention for up to two years or a fine at the discretion of court [1].

The ban was in force worked for three and a half years till May 26, 1922, when the need to mobilize citizens' funds to address social problems made the Council of People's Commissars of the RSFSR to adopt a decree "On the Organization of Lotteries by State Institutions" [3]. The normative act focused attention on its temporary nature, as the subjects of conducting lotteries were called only state institutions that were supposed to get a permit of the Council of People's Commissars of the RSFSR if the lottery was national or went beyond a single province, or of a provincial executive committee if the lottery was of provincial or smaller scale. Continuation of the ban on conducting lotteries by individuals was considered as a new social nature of lotteries, designed to achieve "substantially changed after the October Revolution lottery purposes: they were hold and are being hold not in anyone's private interests, but pursue the goal of common, nationwide benefit" [19, 16].

August 11, 1922 the Soviet government went to expanding the range of allowable games through providing within the emerging new economic policy the right of private individuals to open, with the permission of local authorities, institutions with paid not-gambling games, such as billiards, bowling, etc., as well as for physical entertainment (carousels, swings, etc.), what was laid down in the Decision of the Council of People's Commissars of the RSFSR "On the Allowing Private Institutions with Not-gambling Games" [4]. Note No. 1 of the Resolution emphasizes the impossibility of opening institutions for playing cards and bingo. There is a point of view that "namely in most of such clubs conducts gambling that gives main income to their organizers" [15, 91].

In 1923 the government specified who issues permits for the organization of local lotteries in an appropriate decree of the Council of People's Commissars "On the Procedure of Issuing Permits for the Organization Local Lotteries" [2]. It was

pointed out that the permission of conducting local lotteries with ticket sales in advance was given by the People's Commissariat of Finance, and the permission of conducting instant lotteries (lotteries "Allergy") was given by the provincial executive committees. Conducting lotteries without permission and issuance of permits by unauthorized bodies under Decree of 1923 was punished under article 106 of the Criminal Code of the RSFSR from 1922 on the abuse of power, the sanction provided for deprivation of liberty for a term not less than one year [20, 124].

Suddenly, in July 1923 the Union authorities fundamentally changed the state's attitude to lotteries and published the resolution of the Council of People's Commissars "On Prohibiting Lotteries' Holding" [5]. This act, pointing out that it was adopted to amend the Decision of the Council of People's Commissars of the USSR from May 26, 1922 and from May 31, 1923, prohibited both central and local authorities to hold lotteries up to January 01, 1924. Subsequently, the Council of People's Commissars of the USSR extended the ban indefinitely, "until special order of the CPC" [6]. E. V. Kovtun indicates that local lotteries, despite the ban, "during this time were hold in a huge amount" [15, 95], and he is only wrong saying that there were carried only local lotteries: the Soviet press of a later period gives detailed description what lotteries were hold in 1920-s, that is, when there was the ban on such activities. «The First All-union Lottery was issued by Detkomissiya (commission on children problems) of the All-Russian Central Executive Committee in 1925, in the amount of 250 thousand rubles. … Prizes value was 8-15% of the amount", "since 1926 widely developed lotteries organized by various voluntary societies" [14, 71-72]. "In the following years (means the years after 1926) the motto of lotteries became the slogan – "Down with Illiteracy". The proceeds were used for publishing books, building schools ...; "in the period of collectivization (that is, in 1920-s) many lotteries were hold by workers' societies of patronage over a village" [18]. Worth paying attention to fact that the Soviet press reported on lotteries of 1920-s with pride, as about the achievement of the new government, which allowed ordinary people to satisfy an excitement, and to receive the coveted prizes. The fact that the lotteries were banned in these articles was not mentioned.

One more visible evidence of the violation of the all-union prohibition was the adopting in 1928, that is, during the period of the ban, the Decision of the CPC of the RSFSR "On Prohibiting Raffling of Alcoholic Drinks" [7]. The document prohibited the raffling in lotteries of alcoholic drinks: bread wine, vodka, liqueurs, brandies, grape-fruit and raisin wine, beer and alcoholic honey, and to the persons who hold such lotteries it imposed bringing to responsibility as for selling alcoholic drinks without permission. This normative act was full of humanity and concern

for the health of Soviet people, but at the time of its adoption in the Soviet Union, which included the RSFSR, it was impossible to conduct lotteries at all, but not just raffle any certain kinds of prizes! Thus, in the 1920-s completely repeated the pre-revolutionary situation, in which the presence of a state ban to conduct certain games did not have any effect.

Only in December 1928, the RSFSR, obeying the legal force of the Union Act, issued an order that prohibited the holding of lotteries on the territory of the RSFSR [8].

In special legal literature do not appear the explanations of why the USSR established the relatively short-term ban on holding lotteries against the backdrop of existing permits of republican authorities. Perhaps this is due to the greater remoteness of the Union authorities from the real needs of the population, including the lack of awareness of the lack of funds to address the social problems faced by local authorities both republican authorities and at lower levels – provincial ones. Trying to solve the global social problem of getting rid of gambling harm, the leaders of the USSR, not fulfilling the functions of everyday life-support of society, as it was the task for the republican authorities, could afford to ban lotteries as harmful phenomenon. Republican authorities that in general treated the lotteries in the same way also understood their obvious financial benefits.

Union authorities lifted the ban on holding lotteries after six years through publishing January 01, 1930 the Resolution of the CPC of the USSR "On the Procedure of Issuing Permits for Holding Lotteries" [9] added in 1932 [10] and in 1933 [11]. Procedures for issuing permits for holding lotteries, approved in 1930, assumed receiving a joint permission for each lottery from People's Commissariat of Finance of the USSR and the People's Commissariat of Workers' and Peasants' Inspection of the USSR. When among these bodies an agreement cannot be reached, the matter should be considered by the Council of People's Commissars of the USSR. Perhaps there were too much cases of disagreement between the People's Commissariat of Finance of the USSR and the People's Commissariat of Workers' and Peasants' Inspection of the USSR regarding the issue of permission / not-permission of holding lotteries, what caused in 1933 amending to the procedure of issuing permits for holding lotteries, expressed in the fact that permission of holding lotteries was assigned to the CPC, without the involvement of individual commissars. Disagreements of the above two commissariats rooted precisely in the fact that they proceeded from different criteria for assessing the need for lotteries in Soviet society. The People's Commissariat of Finance, of course, was on guard of budget and fought for new sources of replenishment. The People's Commissariat of

the Workers 'and Peasants' Inspection, without being burdened with obligations of financing any state tasks, stood guard moral portrait of Soviet man, so in every way tried to prevent holding lotteries.

The mentioned decree of the CPC of the USSR from 1932 established strict rules regarding the distribution of lotteries. The main prescribed by normative act principle of distribution is a principle of voluntariness, the violation of which could lead to the prohibition of lotteries. The document clearly prohibited to distribute lottery tickets through trade organizations, box office, house management at the time of collecting rents, etc. This rule is fully aimed at protecting the interests of citizens. But as is often the case, the practice of application has a strong distorting effect. And the principle of "strict voluntariness in distribution of lottery tickets among the population", which was thoroughly described in the thesis of G. I. Strelnikova [19, 19-20], is such only on paper. Proof of this is a famous episode of the Soviet comedy "The Diamond Arm", where the head of the house management (in the performance of actress N. Mordyukova) gives instructions to distribute lottery tickets, and those who will not take the tickets will be cut off from gas line, and even strict Soviet censorship did not required to delete the moment of the movie, which, in our opinion, indicates a routine, the prevalence of such situations.

E. V. Kovtun indicates that lottery tickets "are given as change at a store, or as part of wages, and in the event of rejection takes place the threatening by infringement of the rights and interests of a worker. Such measures are very effective: ... people ... play, brings considerable income to the budget of the State" [15, 113].

More consistently implemented in practice the principle of the prohibition of private lotteries [19, 19]. If the first normative act of the RSFSR, authorizing lotteries, directly pointed to the possibility of the organization lottery by government agencies [3], then the Decree of the CPC of the USSR from 1930, which lifted the ban on holding lotteries, said nothing about the subjects who after receiving permission could engage in lottery business. But we should remember that 1930 is the year of closing up the NEP, and therefore exclusion of private entrepreneurial activity from the economy, therefore there already were not subjects of private entrepreneurship to this year. But on the basis of the procedure of authorization lotteries established in 1930, with later additions, in lottery business were actively engaged so-called "voluntary societies", the organizational and legal form of which in modern language should be called as non-profit legal entities – public organizations. Not all of them sent profits from the lottery activity for charitable purposes specified in their charters. This could not but draw attention to itself. The State considering lottery as an evil that had to be bowed for purposes of funding social projects, reacted by

the issuance of the Decree of the CEC and CPC of the USSR "On the industrial and commercial activities and lottery work of voluntary companies" from September 27, 1933 [12]. The Decree called attention to the negative aspects in the work of voluntary companies, and therefore the CEC and CPC decided to ban all voluntary societies to engage in commercial activities that do not arise directly from their tasks and designed only to receive funds. In fact, it was the latest blow to non-state companies, as those voluntary organizations that successfully engaged in lottery work were only formally independent of the State: "after receiving state's permissions voluntary companies were, as they say now, affiliated with the state". Indeed, a company that gave funds to build 35 warplanes and 30 tanks hardly can be considered a public organization. It is about Osoaviahim and the funds received from the sale of lottery tickets. It is not worth to talk about the independence of other Soviet lottery holders – Detkomissiya at the All-Union Central Executive Committee, Avtodor, Osvod, and the Red Cross and Red Crescent Societies" [17, 82].

Having achieved such legislation that allows organizing lotteries only by public institutions and institutions close to government the Soviet Government for a long time provided the correct functioning of the lottery source of income.

References:

1. Decree of the Council of People's Commissars of the RSFSR "On Lottery Ban" from December 19, 1918 [«O zapreshchenii ustroistva loterei» ot 19 dekabrya 1918 g.], the text of the decree was included in the article of Malakhov A. "Life of Nice Lotteries" ["Zhizn› zamechatel›nykh loterei"]. Kommersant-Den'gi – Businessman-Money, 2003, no. 50 (455).
2. Decree of the Council of People›s Commissars of the RSFSR from May 31, 1923 "On the Procedure of Granting Permission to Conduct Local Lotteries" [Dekret Soveta Narodnykh Komissarov RSFSR «O pryadke vydachi razresheniya na ustroistvo mestnykh loterei» ot 31 maya 1923 g.]. *Sobranie uzakonenii i rasporyazhenii pravitel'stva RSFSR – Collection of Laws and Orders of the Government of the RSFSR*, 1923, no. 51, article 512.
3. Decree of the Council of People's Commissars of the RSFSR from May 26, 1922 "On organization Lotteries by State Institutions" [Postanovlenie Soveta Narodnykh Komissarov RSFSR «Ob ustroistve loterei gosudarstvennymi uchrezhdeniyami» ot 26 maya 1922 g.]. *Sobranie uzakonenii i rasporyazhenii pravitel'stva RSFSR – Collection of Laws and Orders of the Government of the RSFSR*, 1922, no. 35, article 414.

4. Decree of the Council of People's Commissars of the RSFSR from August 11, 1922 "On the Permitting Private Establishments with Not-gambling Games" [Postanovlenie Soveta Narodnykh Komissarov RSFSR «O razreshenii chastnykh zavedenii s neazartnymi igrami» ot 11 avgusta 1922 g.]. *Sobranie uzakonenii i rasporyazhenii pravitel'stva RSFSR – Collection of Laws and Orders of the Government of the RSFSR*, 1922, no. 51, article 651.

5. Decree of the Council of People's Commissars of the USSR from July 24, 1923 "On Prohibiting Lotteries Organization" [Postanovlenie Soveta Narodnykh Komissarov SSSR «O vospreshchenii ustroistva loterei» ot 24 iyulya 1923 g.]. *Vestnik TsIK, SNK i STO SSSR – Newsletter of the Central Executive Committee, Council of People's Commissars and Council of Labor and Defense of the USSR*, 1923, no. 1, article 39.

6. Decree of the Council of People's Commissars of the USSR from January 17, 1924 "On the Extension of the Decree of the Council of People's Commissars of the USSR from July 24, 1923 "On Prohibiting Lotteries Organization" [Postanovlenie Soveta Narodnykh Komissarov SSSR «O prodlenii deistviya postanovleniya SNK SSSR ot 24.07.1923 g. o vospreshchenii ustroistva loterei» ot 17 yanvarya 1924 g.]. *Vestnik TsIK, SNK i STO SSSR – Newsletter of the Central Executive Committee, Council of People's Commissars and Council of Labor and Defense of the USSR*, 1924, no. 1, article 11.

7. Decree of the Council of People's Commissars of the USSR from June 06, 1928 "On Prohibiting Alcoholic Prizes in Lotteries" [Postanovlenie Soveta Narodnykh Komissarov RSFSR «O vospreshchenii rozygrysha v lotereyakh spirtnykh napitkov» ot 6 iyunya 1928 g.]. *Sobranie uzakonenii i rasporyazhenii pravitel'stva RSFSR – Collection of Laws and Orders of the Government of the RSFSR*, 1928, no. 63, article 459.

8. Decree of the Council of People's Commissars of the USSR from December 27, 1928 "On the Prohibition of Commission Resale of Theatrical Performances and Other Shows and Concerts, as well as Organization of Raffles, Lottery Auctions and Games" [Postanovlenie Soveta Narodnykh Komissarov RSFSR «O vospreshchenii komissionnoi pereprodazhi teatral'nykh spektaklei i inykh zrelishch i kontsertov, a takzhe ustroistva veshchevykh loterei, lotereinykh attraktsionov i igr» ot 27 dekabrya 1928 g.]. *Chronological collection of laws, decrees of the Presidium of the Supreme Soviet and the decisions of the Government of the RSFSR: 1917-1928 years*, Moscow: 1959, vol. 1.

9. Decree of the Council of People's Commissars of the USSR from

January 01, 1930 "On the Procedure of Granting Permission to Conduct Lotteries" [Postanovlenie Soveta Narodnykh Komissarov SSSR «O poryadke vydachi razreshenii na ustroistvo loterei» ot 01 yanvarya 1930 g.]. *Sobranie zakonodatel'stva SSSR – Collection of Laws of the USSR*, 1930, no. 2, article 20.

10. Decree of the Council of People's Commissars of the USSR from August 31, 1932 "On Addition the Decree of the Council of People's Commissars of the USSR from January 01, 1930 "On the Procedure of Granting Permission to Conduct Lotteries" [Postanovlenie Soveta Narodnykh Komissarov SSSR «O dopolnenii postanovleniya SNK SSSR ot 01.01.1930 g. o poryadke vydachi razreshenii na ustroistvo loterei» ot 31 avgusta 1932 g.]. *Sobranie zakonodatel'stva SSSR – Collection of Laws of the USSR*, 1932, no. 66, article 396.

11. Decree of the Council of People's Commissars of the USSR from July 23, 1933 "On the Procedure of Granting Permission to Conduct Lotteries" [Postanovlenie Soveta Narodnykh Komissarov SSSR «O poryadke vydachi razreshenii na ustroistvo loterei» ot 23 iyulya 1933 g.]. *Sobranie zakonodatel'stva SSSR – Collection of Laws of the USSR*, 1933, no. 49, article 290.

12. Decree of the Central Executive Committee and Council of People's Commissars of the USSR from September 27, 1933 "On the Production and Commercial Activities and Lottery Work of Voluntary Companies" [Postanovlenie Tsentral'nogo ispolnitel'nogo komiteta i Soveta Narodnykh Komissarov SSSR «O proizvodstvennoi i kommercheskoi deyatel'nosti i lotereinoi rabote dobrovol'nykh obshchestv» ot 27 sentyabrya 1933 g.]. *Sobranie zakonodatel'stva SSSR – Collection of Laws of the USSR*, 1933, no. 61, article 362.

13. Gambling Card Game is Punishable [Azartnaya kartezhnaya igra nakazuema]. *Ezhenedel'nik sovetskoi yustitsii – Weekly Newspaper of Soviet Justice*, 1922, no. 9.

14. Bulkin V. I. Lotteries in the USSR [Loterei v SSSR]. *Finansy SSSR – USSR Finances*, 1979, no. 8.

15. Kovtun E. V. *The History of the Legal Regulation of Gambling in Russia* [Istoriya pravovogo regulirovaniya azartnykh igr v Rossii]. Moscow: 2009.

16. *Criminal Responsibility for Organizing Gambling and Prevention of these Crimes*: thesis of a candidate of legal sciences [Ugolovnaya otvetstvennost' za organizatsiyu azartnykh igr i preduprezhdenie etikh prestuplenii: Dis. … k. yu. n.]. Sverdlovsk: 1991.

17. Malakhov A. Life of Nice Lotteries [Zhizn' zamechatel'nykh loterei]. *Kommersant-Den'gi – Businessman-Money*, 2003, no. 50, December 22-28.

18. Pol'nyakov A. B. Gain is Everything! [V vyigryshe – vse!]. *Sotsialisticheskaya Osetiya – Socialistic Ossetia*, May 25, 1979, no. 119.

19. Strel'nikova G. I. *Civil-law Regulation of the Organization and Holding of Lotteries in the USSR*: thesis of a candidate of legal sciences [Grazhdansko-pravovoe regulirovanie organizatsii i provedeniya loterei v SSSR: Dis. … k. yu. n.] Sverdlovsk: 1983.

20. The Criminal Code of the RSFSR from 1922 [Ugolovnyi kodeks RSFSR 1922 g.]. *Otechestvennoe zakonodatel'stvo XI–XX vekov: Posobie dlya seminarov Ch. II (XX vek) – Domestic Legislation of XI-XX Centuries: seminar textbook. Part II (XX century)*, under edition of O. I. Chistyakov, Moscow: 2002.