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PECULIARITIES OF FOREIGN CITIZENS' ENTRY INTO THE RUSSIAN FEDERATION

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The author of the article has analyzed the possibility of obtaining Russian visa, which is the basic document for the entry and stay in the territory of the Russian Federation. The list of objectives of the receipt and registration of the visa is given in the article. Highlighted the reasons of refusing foreign citizens to get the visa to stay in the Russian Federation. Systematized visa types and reasons for receiving them.

In the article is identified the need for the development of social institutes to extend the presence of Russia in the global humanitarian, informational, and cultural space.

Keywords: visa, migration, foreign national, Russian Federation consulate, Ministry of Foreign Affairs of Russia, Federal Migration Service of Russia.

As in many countries there is a visa regime for entry of foreign citizens in the Russian Federation, which is a kind of "barrier" to overcome the customs border. But there are also a number of countries, which due to established international treaties, intergovernmental agreements and other norms of international law possess "facilitated" conditions of entry to Russia. So citizens of Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Uzbekistan, Ukraine and some other countries may stay in the territory of the Russian Federation 90 days without a visa, and some of them even without an international passport – under the ordinary civilian passport

(Ukraine, Uzbekistan, Tajikistan, etc.). A complete list of countries possessing such "privileges" can always be made clear at the Embassy and the Consulate of your country.

Citizens arriving to Russia on the basis of such treaties or agreements must depart from it within 90 days, but under the Federal law "On the Legal Status of Foreign Citizens in the Russian Federation" No. 115-FL dated July 25, 2002 they are entitled to enter back for the next 90 days as soon as possible (in the same day they can leave Russia and enter back). Meanwhile, they can extend their stay for more than a specified period, if getting a job, having issued at this an appropriate permission and employment contract, or will be engaged in individual entrepreneurship, after having received a permission and registration for this type of activity. In addition, there are other possibilities of visa-free entry, not just for one person, but also for its family – a request from an employer of highly skilled specialist, at this is possible the extension of stay in the country for the duration of the specialist's work permit.

However, most foreign nationals are required to obtain a Russian visa, which is a basic document to enter and stay in the territory of the Russian Federation. Accordingly, the time of possible stay of a foreigner in Russia is determined by a visa.

Most often used an ordinary tourist visa for one month and ordinary private one for three months (see paragraphs 18, 27 of the Resolution of the Government of the Russian Federation No. 335 from 27 June 09, 2003 [3]). Not so often foreign nationals use an ordinary business, humanitarian or educational visa for one year, as there are far more difficulties to obtain it. All other types of visas, such as for example, a visa to enter the Russian Federation for the purpose of obtaining asylum, are extremely rare to get after a long process of verifying and identifying grounds for obtaining the visa.

Intending to come to Russia, a foreigner must know that he cannot simply come with a passport and having paid a visa fee, to obtain an appropriate visa he is required to submit an invitation from a Russian citizen or organization that will be the host party, but if a tourist visa is needed, here is required the participation of a travel company, which in this situation would be act as a host party.

As noted above, an ordinary tourist visa is the most common type of document confirming the possibility of entry into the territory of the Russian Federation. Its obtaining requires the participation of a travel organization, which, together with the foreign citizen must enter into a contract for the provision of tourism services, and then confirm reception of the foreigner by an organization involved in tour operator activities. This type of visas can be single entry or double

entry (see paragraph 30 of the Decree of the Government of the RF No. 335 from June 09, 2003 [3]).

Not less seldom used an ordinary private visa obtained by an invitation from a Russian citizen or organization, as well as a foreign national who is a resident of Russia and has a residence permit. In addition, in 2010 appeared the opportunity of crossing the border without an invitation by one of the family members, who are foreign nationals, of a person, who has Russian citizenship, there is only a need of the person's statement and the decision of the head of a Russian overseas agency.

Also many foreigners use the latter type of visa when entering Russia for emergency treatment or if their loved one has died.

Such visas are more convenient and accessible for foreign nationals wishing to enter the territory of the Russian Federation.

Other kinds of visas require invitations or petition of an inviting party, such as working visas are issued only after an appropriate invitation from a prospective employer, if a person is going to study in Russia it is required an invitation from educational institution ready to take this student.

In addition to working visas there is a business visa, which allows for a certain period specified in an invitation to stay on the territory of Russia. It can be both single-entry and multiple-entry, but the total period of stay in the country must not exceed 90 days in each half-year. For registration of business visa a foreigner having received the business invitation for foreigners should contact the Russian consulate. Time terms of registration of such visa depend on the purpose of trip, visa type, as well as the completeness of the information presented by a foreign citizen in its invitation for foreigners.

Humanitarian visa is issued in the case of a foreign national's visit to Russia for humanitarian or charitable mission, religious pilgrimage, scientific and creative activity. Such visa may also get people engaged in strengthening, building and renewal of cultural, religious or sports contacts between states. Invitation for a foreigner, received in Consulate of the Russian Federation at the place of residence of a foreign national, is also required when registration a humanitarian visa. But there are also exceptions. So, a humanitarian visa to Russia can be issued on the basis of a written statement of a foreign citizen, backed by personal authorization of the head of a diplomatic institution of the Russian Federation to issue an entry visa to Russia.

One of the few visas, which do not require an invitation, is a transit visa valid for 10 days. It is issued to a foreign citizen for transit through the territory of the Russian Federation or for the purposes of the evacuation of a foreign citizen who has arrived to Russia in order not requiring a visa (cruise ship passengers, citizens

of countries with which Russia has agreements on visa-free entry, and passengers who commit visa-free transit up to 24 hours).

But if a person can get visas only through receiving an invitation, then while registering it is necessary to indicate the purpose of entry, it can be both tourism and medical treatment or training. List of purposes is pretty extensive [5] and, accordingly, the choice will not be difficult. But this goal must be true; otherwise it may lead to bringing of a foreign citizen to administrative responsibility in the form of imposing a fine of two thousand to five thousand RUR or a more severe penalty – deportation from the Russian Federation [1].

As a host party Russian citizens and organizations face great difficulties when registering visa invitations for obtaining by foreign citizens entry visas to Russia. Thus, long queues at receptions of the passport and visa services, waiting, errors in applications, absence of assistance in filling out applications from employees of passport and visa departments, collecting a considerable number of documents required for issuing sometimes drags on for many months, what is an obvious obstacle to entry into the territory of the Russian Federation. But their problems do not end at this stage, they have to comply with the obligation to provide a foreign national material, medical and housing guarantees (see part 5, article 16 of the Federal Law "On the Legal Status of Foreign Citizens in the Russian Federation" [2]). If the host party is an individual, it must also submit a certificate of income that would guarantee meeting its commitment [4].

Providing such guarantees does not mean that a person should be fully supported at the expense of inviting party if it can afford it itself.

If a foreigner has committed actions, which led to an administrative violation, it would be the host party to answer for consequences, for example, to compensate the cost of deport of the citizen out of the country.

Many countries are seeking to simplify visa regime between them in order to create more favorable conditions of travels for their citizens, the development of economic, cultural, scientific and humanitarian relations between countries.

September 09, 2012 agreement of the Russian Federation and the United States to simplify visa formalities for citizens entered into force [6]. Under the agreement, the Russian Federation will issue business, private, humanitarian and tourist visas by direct invitation of a host country.

Agreement provides for the possibility of registration of two visa types – valid for up to 36 months from the date of issue and the maximum period of continuous stay of 6 months, as well as short-term visas for official travel for up to 12 months with maximum stay of 3 months from the date of each entry.

A significant step in the simplification of procedures for obtaining a long-term visa is liberation from the need to provide other documents, except statement. However, visa authorities retain the power to request additional information about the purpose of the trip and the availability of sufficient funds for stay on the territory of a foreign state.

Agreement stipulates that a decision on a visa is usually taken within 15 days, there is also the possibility to reduce this period to three days (in cases of emergency), or extension at the need of additional consideration of the statement.

Meanwhile, the agreement allows the citizens of both countries to apply for these visas through consular and diplomatic authorities of these states located in the territory of third countries.

But not only the United States have gone towards visa facilitation with Russia but also some EU countries, such as Germany.

Many large German associations demand their government to abolish the visa regime with Russia. This practice has already been introduced in Germany in relations with Mexico, Venezuela, Nicaragua and Honduras. There are no such agreements with Russia, Ukraine and Moldova and no formal confirmation that such would ever be concluded.

In particular, the German association of tourism requires the abolition of the visa regime with Russia motivating this with the small influx of tourists to their country, and therefore not getting the profits that would have been possible under the visa-free regime. But not only this fact was the "momentum" to such a proposal, but also the fact that the country is losing huge opportunities for export and business. At this, the Ministry of Foreign Affairs and the Ministry of Economics of West Germany have long advocated the introduction of a visa-free regime, but in contrast to them go politicians, which oversee the internal political sphere in the country [8]. Do not forget that applying for visa doesn't always lead to its obtaining. There are quite a lot of grounds for refusal to issue this type of document.

Failure to confirm the availability of funds for stay in the territory of the Russian Federation is one of the reasons to refuse the issuance of a visa. Refusal takes place, if while applying for a Russian visa the foreign national is unable to confirm the availability of funds for the stay and departure from the Russian Federation or represent guaranties of such funds in accordance with the procedure established by the Government of the Russian Federation.

Submitting false information about yourself or about the purpose of your stay also leads to inability to stay on the territory of Russia.

Also, violation of crossing rules, customs regulations, sanitary norms at the border crossing point of the Russian Federation preclude getting visa until rectifying the violation.

Sometimes visa rejection is connected with the ensuring security of the country.

For example, if a person at the time of a previous stay in Russia has been convicted under the legislation of the Russian Federation for a serious or especially serious crime, or at the time of a previous stay has been deported from Russia by force, then it implies the refusal of a visa within a certain period of time.

Equally closely reasoned reason is failure to submit documents required for getting visa to Russia in accordance with the legislation of the Russian Federation and the failure to submit the certificate about absence of HIV infection.

Meanwhile, refusal of a Russian visa by business invitation – is a very rare case, due to the fact that they are directly made out in the FMS of Russia and the Russian Foreign Ministry. Getting business invitations almost 100% guarantee to avoid refusal of visa to Russia. Denial of a tourist visa is most often due to incorrect filling of documents, but that, too, happens rather rarely.

However, in his annual address to the Federal Assembly of the Russian Federation President Vladimir Putin on 12 of December, 2012 stated that "Russia needs an influx of new forces. That much is clear. It needs smart, educated, hard-working people who do not just want to make some money here and leave, but want to move to Russia, settle down here and consider this country their homeland. Rather, the opposite. The process of obtaining citizenship for our compatriots, for those who are culturally and spiritually close to Russia, is difficult and outrageously bureaucratic. At the same time it is very simple to import unskilled labor, including illegally.

I ask you to develop a simplified procedure for granting Russian citizenship to our compatriots, the bearers of the Russian language and Russian culture, the direct descendants of those who were born in the Russian Empire and the Soviet Union. For those who want to take up permanent residence in our country and, therefore, to give up their current citizenship.

At the same time I consider it reasonable and necessary to toughen penalties against illegal immigration and violations of registration rules. The relevant amendments have already been submitted to the State Duma. I ask the deputies to pass these laws.

I would like to make another proposal. We still allow citizens of CIS states to enter the Russian Federation using their national passports. Enough time has

passed and all CIS states have become firmly established. It is almost impossible to ensure effective immigration control when foreign citizens can enter the country using their national passports. I believe that beginning from no later than 2015 entry into Russia should only be possible for bearers of international passports.

I ask the relevant agencies to work on this matter together with our colleagues in the Commonwealth. We do not want to create problems for anyone. If necessary, we can provide them with assistance and support, including financial and technical. It is a simple matter of issuing documents. We must adopt the practice of many of our neighbours and strategic partners around the world. We can provide technical and financial assistance, if needed, – and even simply give money.

At the same time, the current regulations will remain in force for citizens of the Customs Union and Common Economic Space, who will enjoy the simplified rules for crossing the border and stay within the territory of the Customs Union and the Common Economic Space.

The role of public institutions is extremely important in immigration policy matters. In this regard, I consider it correct to broaden the powers of national and cultural autonomies, to provide them with federal grants for the implementation of programmes for the legal, social and cultural adaptation of immigrants. This experience has shown to be effective in many countries" [7].

In the light of the foregoing, it must be assumed that an ordinary tourist visa is more comfortable and less obliging both for the foreigner and the country where he intends to remain a certain period of time.

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MATERIAL RESPONSIBILITY OF ARBITRATION COURT

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In the article the problematic issues of bringing to material responsibility judicial bodies of arbitration court, which caused harm to legal entities by unlawful actions (or inaction) while administration of justice, are explored. The position of the Constitutional Court of the Russian Federation concerning the referring of judicial act of the Higher Arbitration Court of the RF – ruling on refuse to transfer the case in the Presidium of the Higher Arbitration Court of the RF to the ordinary procedural acts of arbitration court, which do not resolve a dispute on the merit, is criticized. The author suggests normative regulation of proceedings in the Arbitration Court supervisory instance, which will exclude illegal rejection the giver of a supervisory complaint to consider its case at the Presidium of the HAC of the RF.

Keywords: illegal action (inaction) of arbitration court, the material responsibility of arbitration court, tort responsibility, compensation for the violation of right on court proceedings.

Despite the fact that article 1069 of the Civil Code of the RF [2] enshrines the norm on responsibility of state authorities, local self-government bodies and their officials for the damage caused to an individual or a legal entity as a result of illegal actions (inaction) of state bodies, local self-government bodies or their officials, including as a result of adoption an act of state body or local self-government body which does not meet the law or another legal act, the issues of responsibility of the judiciary is still unresolved.

Came into force on the 4th of May, 2010 the Law "On Compensation for the Violation of the Right to a Trial within a Reasonable Time or the Right to Execution a Judicial Act within a Reasonable Term" [3] (hereinafter referred to as the Compensation Act), in our opinion, is not very effective because of its reservation clauses, such as "a violation of the stipulated by the laws of the Russian Federation terms for court proceedings or execution of a judicial act by itself does not mean violation of the right to trial within a reasonable term or the right to execution a judicial act within a reasonable term" (see part 2 of article 1 of the Act) and enshrined in it procedural rules for getting compensation.

We believe that the Compensation Act enshrines the norms that implement the provisions of article 1069 of the Civil Code of the RF regarding material responsibility of courts for inaction, and thus, is a special, one can say the procedural, law in relation to the Civil Code of the RF.

Also, special norms of material responsibility for damage caused to legal entities are the provisions of article 1070 of the Civil Code of the RF, which cover only a particular case of inflicting harm by the judiciary – as a result of unlawful bringing to administrative responsibility in the form of an administrative suspension of activity. Besides, the obligatory condition of compensation for damage, caused in the administration of justice, is a determination of a judge's guilt in the court verdict, which came into effect.

Such special condition of responsibility for damage caused at the administration of justice, as stated in the Resolution of the Constitutional Court of the RF No. 1-P from January 25, 2001, "is related to the features of the judiciary functioning enshrined by the Constitution of the Russian Federation (chapter 7) and specified by procedural legislation (adversary character of a judicial process, considerable freedom of judicial discretion, and etc.), as well as to the special order of revision the acts of the judiciary. Proceedings for review judicial acts, and, consequently, the assessment of their legality and validity, are implemented through special procedures established by the procedural legislation – through the examination of a case in appeal, cassation and supervisory instances. Review of a court decision through

court proceedings on the claim of a citizen for damages caused during the administration of justice, in fact, would be reduced to the assessment of legality of court (judge) actions in connection with the adopted act, that is, would mean one more procedure of legality and validity check of already taken court decision, and, moreover, would create the possibility of replacing by the choice of a person concerned the established procedures for inspection of judicial decisions to their contesting through filing tort claims" [4].

Thus, the legislation of the Russian Federation has only two grounds for tort revision of held court decisions – the presence in actions of a judge of criminally punishable offenses:

- knowingly giving an unjust judgment, decision, or any other juridical act (article 305 of the Criminal Code of the RF),

- non-performance or improper performance by judges (in the context of article 293 of the Criminal Code – by an official) their duties as a result of careless or negligent attitude to the service, if it causes a fundamental breach of the rights and legitimate interests of citizens.

Bringing a judge to responsibility under the said articles of the Criminal Code of the RF gives the go-ahead for filling and satisfaction of a claim for damages.

However it seems problematic to prove the guilt of a collegiate judicial body, especially when questioned the legitimacy of taken judicial acts of appeal, cassation or supervisory instances.

If we consider article 1070 of the Civil Code of the RF as containing provisions on responsibility of special subjects (out of state bodies and their officials stand out the police, prosecutors and courts), it is possible to come to an unreasonable, as we believe, conclusion on the non-application of article 1069 of the Civil Code of the RF to the court bodies, and therefore, the absence of material responsibility of judicial bodies without guilt determination.

The harm caused by the judiciary (judges) is not hypothetical, and, as practice shows, ways of infliction damage (harm) to legal entities by the judiciary are not limited to the suspension of the activity of the legal entity or omission in the administration of justice.

Considering the above issues of the committing judicial errors in tax disputes [10], we noted the possibility of adoption judicial act that does not match the facts of the case, and contrary to the rule of law, but, nevertheless, allowed in the higher court instances. In such cases, we believe, there is no question of the damage caused by illegal actions (inaction) of the court (but who does qualify this illegality?).

Only in rare cases where a judicial error of arbitration court is recognized by the Constitutional Court of the Russian Federation (comes of the legal position of the Constitutional Court of the RF) or international courts, it is possible, we believe, to exercise the provisions of article 1069 of the Civil Code of the RF on the material responsibility of arbitral court for the harm inflicted to a legal entity.

In the case when the Constitutional Court of the Russian Federation detects the fact of application by an arbitration court a normative act in a particular case with an interpretation that is incompatible with the constitutional and legal sense, identified by the Constitutional Court of the RF, judicial acts of the arbitration court shall be reviewed in accordance with the law. Otherwise would mean that the arbitration court may make the interpretation of an act, giving it a meaning different from one revealed as a result of check in constitutional proceedings, and thus replace the Constitutional Court, what it does not have rights to do under articles 118, 125, 126, 127 and 128 of the Constitution of the Russian Federation [4].

It is no secret that, in practice, there is a great dependence of the result of administration of justice from the judicial discretion, and therefore it is difficult to implement separation of unlawful decisions taken with or without fault of a judge. But that should not leave unpunished, in fact, poor administration of justice.

By the administration of justice is understood not all court proceedings, but only that part of it, "which is the adoption of acts of the judiciary to resolve the cases subordinate to court, i.e., court acts resolving a case on the merits. The trial ends with the adoption of just such acts, which express the will of the state to resolve the matter referred to the jurisdiction of court" [4]. Consequently, the resolution of the arbitration court a case results in: elimination of the dispute, ensuring the possibility to unimpeded implementation of rights and legitimate interests, protection of violated or challenged substantive rights and legitimate interests. Resolving a case and taking a decision in accordance with the law, the arbitration court administrates justice properly, which is the purpose of arbitration proceedings. In acts, resolving a case on the merits, the arbitration court determines the actual material and the legal status of the parties.

Judicial acts, which do not resolve cases on the merits and do not determine substantive status of parties, we believe, are not covered by the concept of "carrying out (administration) of justice" in the sense in which it is used in part 2 of article 1070 of the Civil Code of the RF. The Constitutional Court of the RF considers these acts as those in which "are solved mainly procedural legal issues arising in the course of a process – from accepting application and up to the execution of a court judgment, including at the ending consideration of case (termination of

proceedings and abandonment of the application without consideration)" [4]. We also would add here the definition of the supervisory instance of arbitration court on refusing to transfer a case to the Presidium of the HAC of the RF.

The Constitutional Court of the Russian Federation has determined that the provision on a judge guilt established by a court verdict "cannot be an obstacle to compensation for damage caused by actions (or inaction) of a judge in the course of civil proceedings, if he takes an illegal act (or shows a wrongful omission) on the issues defining not the substantive (resolving of a dispute on the merits), but procedural and legal status of parties. In such cases, including the case of an illicit deed of a judge, not expressed in a judicial act (violation of a reasonable time of a trial, another gross violation of the procedure), its guilt can be established not only by a court's verdict, but also by another court's decision. At this, the provision on the presumption of guilt of a tortfeasor, provided for by paragraph 2 of article 1064 of the Civil Code of the Russian Federation, has no effect" [4].

However, we should note that the very Constitutional Court of the RF and international courts, whose decisions are executed in Russia, do not ascertain the guilt of judges, who have taken the contested in the Constitutional Court of the Russian Federation or the international court judicial act, and this judicial act must be repealed. In fact, in this case, an impugned illegal court's action (enshrined by a judicial act), and, as a rule, damage subject to compensation in accordance with the provisions of the Civil Code of the RF takes place. Criminally unpunishable, but illegal guilty actions (or inaction) of a judge in arbitration proceedings must be considered as a violation of the right to a fair trial under the provisions of part 2 of article 1070 of the Civil Code of the RF, which implies compensation for the harm caused by the violation of this right.

Position of Constitutional Court of the RF set out in the Ruling No. 160-O from April 21, 2005 [5], and adopted by lawyers, who comment on chapter 36 of the APC RF, in respect to the refusal of supervisory instance to transfer a case to the Presidium of the HAC RF for reviewing judicial acts of lower arbitration courts, we believe, requires clarification. We agree with B. J. Polonsky, who repeats the legal position of the Constitutional Court of the RF that "the applying to the HAC RF is carried out, as a rule, after a case has been heard in appellate and cassational procedure, i.e., when, at the discretion of the person concerned have been used other opportunity to review, refusal at this stage cannot be regarded as infringement of the right to judicial protection. This right is exercised within the framework of the procedural law: a case is considered on the merits by the court of first instance, checked in full in appeals instance, and finally, the legitimacy of taken

judicial decisions is checked in cassation instance" [11]. However, the reasons for the refusal to transfer the case to the Presidium, which are obligatory elements of a ruling's content (paragraph 6 of article 301 of the APC RF), may contain a flaw – to ignore the existence of grounds for supervisory review of judicial decisions that have entered into force, which are provided for by article 304 of the APC RF. Such rulings of the HAC of the RF, in our view, are tort. If the judicial board of the HAC of the RF, having established (having specified in a definition) the reasons for supervisory review of judicial decisions of lower court instances, makes a resolution on their absence, in this case, there is an abuse of power [9, 51-52].

We fully admit the possibility of abuse of the right by a party of arbitration process, explained by the desire to win the dispute. However, this abuse is limited by procedural rights to appeal court decisions of the arbitration court and less dangerous for the being protected rule of law than the abuse of the right by judicial bodies of the arbitration court.

Check of arbitration court judgments, adopted at first instance, mainly carried out in the appellate and cassation procedure. Meanwhile the appeal instance takes the final decision on a case. However, the law provides for the possibility of check and review of taken judicial acts in supervisory instance, which is the final for disputes considered in arbitration courts. Thus, a possible mistake of the arbitration court in the resolution of a case may be corrected both before the supervisory instance and within it.

Given that the review of a judicial act, which has come into legal force, by way of supervision is of exceptional nature and occurs only in the case where the disputed legal act violates the uniformity in the interpretation and application the rule of law by arbitration courts, violates the rights and freedoms of man and citizen according to the universally recognized principles and norms of international law and international treaties of the Russian Federation, violates the rights and legitimate interests of indefinite range of persons or other public interests, it can be argued that it is the supervisory instance is responsible for preventing tort harm to legal persons in the administration of justice.

We cannot agree with the legal position of the Constitutional Court of the RF about that "in itself refusal of supervisory review of court decisions entered into legal force cannot be regarded as a violation of the right to judicial protection enshrined in article 46 of the Constitution of the RF" [5].The Constitutional Court of the RF justifies its position by the procedure provided for in article 299 of the APC RF [1] in which "there is only a preliminary review of an application or production on the revision of a judicial act by way of supervision by collegial panel of judges of

the Higher Arbitration Court of the Russian Federation, which, without considering a case on the merits, addresses only the issue of the grounds for the review of the judicial act by way of supervision in Presidium of the Higher Arbitration Court of the Russian Federation" and "herein, any new decision differently defining the rights and responsibilities of persons involved in the case must not be taken by the panel of judges" [5]. However, the highest judicial body in the country does not consider that resolving of the issue on the grounds for the review of a judicial act by way of supervision in Presidium of the Higher Arbitration Court of the Russian Federation can be vicious, for example, to ensure the "triumph of public interest" to the detriment of the rule of law, if there is an interest and etc.

A good demonstration of the above, in our view, is the ruling of the HAC RF No. VAS-11732/10 from August 03, 2012 on refusal the transfer the case (No. A57-3530/2008) to the Presidium of the HAC RF [7]. Considering this ruling in relation to:

- ruling of the HAC RF No. VAS-11732/10 [12] from May 12, 2012 on suspension of proceedings on the case,
- ruling of the Presidium of the HAC RF No. 14140/11 from April 17, 2012 [6],
- ruling of the Seventh arbitration appellate court from August 31, 2012 on the case No. A27-17017/2009 [8] (in the part of legal succession of the party declaring the distribution of judicial costs),

becomes visible tort nature of the ruling on refusal to transfer the case to the Presidium of the HAC RF.

In the mentioned judicial acts was being resolved the issue of change (legal succession) of person seeking the exaction of court costs, which enter into arbitration proceedings at its different stages (in first and second instances). The essence of supervisory complaints consists in disagreement of the successor with the refusal of appeals and cassation courts to accept the legal succession of judicial costs, accompanied by the termination of the proceedings.

Tort nature of the ruling No. VAS-11732/10 from August 03, 2012 on refusal to transfer the case (№ A57-3530/2008) to the Presidium of the HAC RF consists in the fact that the panel of judges of the HAC RF exactly violated the uniformity in the interpretation and application by arbitration courts the rules of law – in the case No. A27-17017/2009, having decided the complaint on the merits, they admitted illegal the refusal of succession of court costs taken by previous arbitration court instances, and in the case No. A57-3530/2008 did not found it necessary to transfer the case for consideration to the Presidium of the HAC RF. Diametrically opposite

attitude of the judicial panel at resolution of one and the same issue – the issue of the succession of the party claiming to recover court costs, we believe, is due to the fact that in the case No. A57-3530/2008 court costs to be recovered have been presented to the public entity – the tax authority, which has lost the dispute.

Contrived motive of the refusal – "because the legal position on this issue has been formed by the Presidium of the Higher Arbitration Court of the Russian Federation in its decision No. VAS-14140/11 from 17.04.2012, that is, after the adoption of the disputed court judgments, there are no basis to satisfy the statement of company "Elton" on the transfer the case to the Presidium" [7] is not merely unjustified, but also does not comply with the constitution, as it allows the Higher Arbitration Court to evade administration of justice in supervisory instance with reference to the absence of a formed position (and indeed ignorance). The mentioned motive may lead to such an absurd when in the absence of practice of resolving any cases (that is, a single case, constituting a precedent) in the courts of arbitration, any supervisory complaint by any formal ground can be left without the permission of its issues.

We believe that in this case, the panel of judges of the HAC RF abused the right, realizing finality of its verdict in the appeal process, in the hope that the successor has exhausted legal options for fair resolution of the dispute.

Summarizing the discussed in the article problem of the implementation of provisions on the material responsibility of arbitration courts for illegal actions (inaction), leading to violation of legal rights and property interests of legal entities, it should be noted that there are gaps in the legal regulation of compensation for harm illegally caused by court, but in the absence of judge's guilt (or lack of evidence).

In our opinion, seems to be questionable the position of the Constitutional Court of the RF on the issue of qualification of the HAC RF ruling on the refusal to transfer the case to the Presidium of the HAC RF, according to which it does not apply to judicial decisions that resolve the dispute on the merits. In contrast to the procedural judicial decisions of other arbitration court instances, which can be appealed, the ruling of the HAC RF is the last judicial act for many applicants for supervisory review. In fact, this ruling serves as an approval (leaving in force) of complained court judgments of earlier arbitration court instances, and not the function of an ordinary service document. Therefore, the ruling on refusal to transfer the case to the Presidium of the HAC RF should be considered as a judicial act that resolve a case on the merits in supervisory instance with a negative result for the complainant.

Hence it is needed to introduce a normative regulation of issuing this ruling of the HAC RF that prevents other motives except provided for under article 304 of Arbitration and Procedural Code of the RF, and, therefore, provides for material responsibility for unlawful refusal the applicant of supervisory appeal to transfer a case to the Presidium of the HAC RF.

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PROCEDURAL LEGAL SUCCESSION IN ARBITRATION. IS IT AN ABSOLUTE OR RELATIVE RIGHT?

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This article discusses the main shortcomings of the legal regulation of the legal succession institute and related difficulties in judicial practice. The author introduces the analysis of the cases of settlement by arbitration courts procedural legal succession in cases arising from public legal relations, notes law enforcer errors.

Keywords: procedural legal succession, material legal succession, arbitration proceedings, grounds of a legal succession.

Analysis the norms of procedural legal succession institute in the APC of the RF [1] (article 48, paragraph 3 of part 1 of article 143, paragraph 2 of article 144, paragraph 6 of part 1 of article 150 APC RF) shows a lack of uniformity in the legal regulation and its imperfection.

Despite the fact that part 1 of article 48 of the Code provides for succession at any stage of an arbitration process, the right to join in the process of a new entity to replace a leaving party, in our opinion, is not absolute. That is why the second part of the article of the APC of the RF, which has been changed and in the new edition came into force on October 19, 2009, provides for the possibility of refusal of the court to replace a party by a successor (in the context of the article – the possibility to appeal court decision on the refusal of the court to replace a party by a successor).

We believe that there are two main reasons for the rejection of absolute right and realization of relative one at resolving issues of legal succession in the arbitration. The first is the possibility to carry out faulty transactions themselves, on the basis of which implements a legal succession in substantive law. The second – by

virtue of direct bans on the application the norms of the Civil Code of the RF, which provide for a substitution of parties in obligations, to the taking place legal relations of parties.

Open list of grounds of legal succession in material legal relations – an reorganization of a legal entity, assignment of a claim, assumption of debt, death of a citizen and other cases of change of persons in obligations (see part 1, article 48 APC RF) should not mislead in respect of indisputability the right of the person concerned in legal succession of a leaving litigant. For example, relations regulated by legislation on taxes and fees provide for a limited amount of legal succession compared with the norms of the Civil Code of the RF [2], because tax obligations must be executed personally by a taxpayer or a tax agent (by a debtor in the context of the obligation law under the Civil Code of the RF). This provision is consistent with part 1 of article 129 of the Civil Code of the RF, which stipulates that the objects of civil rights may be freely alienated or transferred from one person to another by way of universal legal succession (for example, reorganization of a legal entity) or otherwise, if they are not withdrawn from turnover or restricted in turnover by law (for example, the rules on the transfer of creditor rights to a third party are not applied to recourses (see article 382 of CC RF). Norm of article 383 of the Civil Code of the RF exactly sets legal restrictions on legal succession – "the transfer to the other person of the rights, inseparably linked with the creditor's personality, in particular, with the claims for the alimony and for the compensation of the harm, caused to the life or to the health, shall not be admitted".

Commenting on article 48 of the APC of the RF, A. P. Ryzhakov pointed out that "elimination of a legal entity shall entail its termination without the transfer of rights and obligations in the order of legal succession to the other persons, except as provided by federal law (part 1 of article 61 CC RF)" [12].

Without calling into question the procedural legal succession arising out of material one D. B. Abushenko notes the issues of singular succession. In his view, as a result, we may find that there have never been any material legal relations, for example, between the plaintiff and the defendant [11]. D. B. Abushenko wonders "should an arbitration court, allowing procedural legal succession, assess the juridical reality of the very cession (agreement on the transfer of debt) and the main obligation – the obligations of which is assigned a claim right (transferred debt)? If yes, what should be such check? What to do in cases where only part of the claim is assigned (transferred a part of debt)?" [11]. We support the legal position of D. B. Abushenko taken by him in response to the above questions, in terms of the fact that the base of procedural legal succession at assignment of claim and transfer

of debt is very these transactions (assignment of claim and transfer of debt) without regard to the validity of a principal obligation (for a procedural legal succession availability (reality) of the principal obligation generally should not be matter) [11]. Otherwise, if we assume the contrary, then the arbitration court, replacing the successor will prejudge resolution of a case on the merits, what is clearly not within the procedural regulations of the consideration of a case in the arbitration court of first instance [11].

In the course of solving the issue of legal succession in transactions of cession and transfer of debt, the arbitration court must, in our opinion, check the fulfillment of imperative statutory norms concerning the cession and transfer of debt. In the case of non-compliance with the requirements on inadmissibility of assignment and transfer of debt (paragraph 2 of article 382, art. 383, art. 388, paragraph 1 of article 391 CC RF), on the form of assignment and transfer of debt (article 389, paragraph 2 of article 391 CC RF) the arbitral court certainly precludes procedural legal succession.

We should agree that "the assignment of a part of claim creates an interesting legal situation" because "at cession of the right of claim from one plaintiff's claim an initial claimant cannot drop out of procedural legal relation, since due to the cession the amount of its alleged substantive rights have been reduced, but it continues to be a creditor in a material legal relation. At the same time, it would be illogical to deny the acquirer of a part of claim the intervention to the process: claims transferred to him have already been stated in the process, on the base of them has already been instituted a court proceeding and there are no any procedural reasons not to consider them on the merits" [11].

Whether can under this approach an acquirer of a part of claim be considered as a successor of procedural rights and obligations of the initial plaintiff or will it be an entry into the plaintiff's side of a third person who asserts independent claims?

It is no secret that the procedural practice is dominated by the position that procedural rights and obligations are always transferred to an assignee in full. However, in our view, regardless of the legal qualification of an action for entry into succession process (third person who asserts independent claims), the acquirer of a part of claim should, in the order of procedural succession, get from the initial plaintiff those procedural rights and duties relating to the assigned claim.

As follows from the interpretation of article 48 of Administrative Procedural Code of the RF, procedural succession takes place when material succession appeared already after the institution of an arbitration case. Furthermore procedural succession excludes simultaneous participation in a case (within a particular

plaintiff's claim) both predecessor and successor with the same claims. Thus, regardless of the grounds of material legal succession procedural succession is permitted only after replacing in material legal relations.

The legislator has not defined a particular judicial act, which should resolve the question of succession, that leads, we believe, to errors when using the discretionary powers of the Court to resolve the matter. This legal regulation is criticized by legal scholars. For example, D. B. Abushenko believes that "it is totally unacceptable when arbitration court postpones resolving of petition on replacement till the decision (final court decision for a particular instance): this approach violates the right to a court protection, since it prevents the entry into the process of a proper entity" [11], and complicates the implementation of the rights of a successor.

A good example of this situation is the violation of successor's rights in case A57-3530/2008, when after the tax dispute and the statement of judicial costs by the taxpayer (who won in the tax dispute), the right to collect judicial costs from the tax authority was transferred to a third party under assignment agreement. The Arbitration Court of Saratov region had been resolving the petition on replacement of a party until the final decision – determination and distribution of judicial costs, which was overturned on appeal. Consideration of successor's complaint in cassation instance did not result in cancellation of the judicial act of appeal instance, since the full consent of the Judicial Board of the Federal Arbitration Court of the Volga region with motifs of the appeal instance. Judicial board of the Higher Arbitration Court of the RF, considering a supervisory complaint of the successor, although had recognized the violation of the party's right, decided not to transfer the case to the Presidium of the Higher Arbitration Court of the Russian Federation, explaining its decision as follows: "as the legal position on this issue has been formed by the Presidium of the Higher Arbitration Court of the Russian Federation in the decision No. VAS-14140/11 from 17.04.2012, that is, after the adoption of the disputed judicial acts, there are no basis for satisfaction the statement of enterprise "Elton" on transfer the case to the Presidium" [5].

As we see it, in the case A57-3530/2008 arbitration courts since appellate instance have made a mistake in determining the moment of emerging the party's right to recover court costs because of carrying identity between the emerged right and determination by court instance of the right's size (setting a specific amount, to be recovered from a party). We believe that the right to recover court costs from a losing party arises for a winner in a dispute from the entry into force of a court decision that resolves the dispute. However, the right's possession of a winning party does not lead to the automatic exercising of the obligation of a losing party, which

corresponds with the specified right of the winner, because the loser of the dispute seeks to minimize its material losses to compensation court costs of its procedural opponent, as well as to distance in time "the day of reckoning".

Courts instances that have abolished in the case A57-3530/2008 the judicial act of the Arbitration Court of Saratov region on recovery court costs from the tax authorities, as well as supporting the position that the right to court costs of the taxpayer relates to the future, we believe, allowed the identification of the emergence of the very right and the moment of its procedural implementation. In the judicial act is stated that "the transferred under the controversial contract Company's right to claim for judicial costs from the inspection on the moment of its conclusion has not yet occurred and not confirmed by court decision of the arbitral court, that is the subject of the contract is a future right" (this is not true, because the assignment was made after commencement of proceedings on the statement for the recovery of court costs by a legal predecessor), which, in our opinion, is a legal mistake made by judicial panel that considered the case. If a party would transfer its successor the right to recover court costs from the tax authority after a judicial act, it would be not a substitution of parties in the process, but replacement of recoverer within execution proceeding.

The result is that the material successor recognized by judicial panel of the HAC RF in the case A57-3530/2008 as a result of implementation discretionary powers of the courts of appeal and cassation was deprived of the procedural status of a party in the case – satisfaction of statement for change the party by its successor was refused, proceedings on the statement of the party to recover legal costs was terminated.

Motive of judicial panel of the HAC RF, which denied successor to transfer the case to the Presidium of the Higher Arbitration Court of the Russian Federation, deserves separate assessment – "since the legal position on this issue was formed by the Presidium of the Higher Arbitration Court of the Russian Federation in its decision No. VAS-14140/11 from 17.04.2012, that is, after the adoption of impugned acts, there are no basis for the satisfaction the statement of LLC "Elton" on transfer the case to the Presidium" [5]. This motive, we believe, serves in greater for the protection of "esprit de corps" than for administration of justice on a case. As we see it, there is a supervisory instance to correct errors of justice committed by the previous court's instances. Moreover, the case A57-3530/2008 was in proceeding in supervisory instance when the legal position of the court was forming. Even more, the proceedings on the case A57-3530/2008 was suspended up to the resolution of the issues raised in another case.

Unjustified refusal in the case A57-3530/2008 to replace a party by successor prevented the proper entity from meet its material claims and consequently relieved the tax body from material responsibility in the form of court costs.

Everything is not so simple with the succession in Arbitration courts; many authors have been noting problems in law enforcement, specifying the sources of these problems.

As rightly believes Professor L. Gros', "procedural succession is based on succession in material legal relation, acceptable and coming, confirmed by a court decision on the court proceeding's audit of the admissibility of succession in the material legal relation and reality of its grounds" [9]. Indeed, having received a statement to replace a party, arbitration court, generally, establishes substantive grounds of such replacement, and justifies its conclusion on its validity (invalidity) in the ruling of approval or denial of statement satisfaction. However, when the Court is not interested in proceedings, it makes "mistakes", providing benefits to any of the parties in a process.

One has to agree with Professor L. Gros' that courts make mistakes in deciding on the admissibility of succession in material rights and obligations, and, therefore, in a process. Analysis of judicial practice by Professor indicates a "lack of uniformity in the resolution of specific situations of the procedural succession, because of ***the errors in substantive regulation of its grounds***. Evidence of violations the norms of succession in material, and then in procedural law is a significant amount of judicial practice, including the European Court of Human Rights" [9]. Conclusion of Professor L. A. Gros' about the mistakes of substantive regulation of succession grounds is not unfounded and supported by real examples of life.

For example, there are some problems in disputes with the participation of JSC "Russian Railways", associated with the state established procedure to create JSC "Russian Railways", which, as L. Gros rightly points, does not correspond either to the norms of the Civil Code or the provisions of the Federal Law No. 178-FL from 21.12 .2001 "On Privatization of State and Municipal Property" [3].

The said scholar notes the problems of succession relating to the legal status of peasant (farmer) enterprises (for example, "the issues of substantive and procedural succession arise in situations where a peasant (farmer) enterprise established as a legal entity under the Law of the RSFSR from 22.11.1990, brings its status into line with the Federal Law from 11.06.2003" [9]).

Another problem noted by scholars in law enforcement is linked to the succession in substantive and procedural legal relations at the reorganization of municipal formations in accordance with the Federal Law No. 131-FL from 06.10.2003

"On General Principles of Local Self-Government Management in the Russian Federation" [9].

Practitioners also address to the issues of legal succession. For example, the assistant judge V. Archinova from Vladikavkaz, considering the unadjusted by law cases of succession, draws attention to the potential possibility for re-examination of the application on procedural succession under article 48 of the APC RF on the same grounds. "The APC RF has no prohibition on re-application for establishing procedural succession with submission of appropriate evidences. And there is also no consensus on the posed question about re-examination of the application on the procedural succession in the practice of arbitration courts" [7]. The law does not stipulate a ban on re-filing an application with the submission of appropriate evidences for establishment procedural succession [4]. The following example deals with the transfer of the rights and obligations of a party in the dispute from an individual entrepreneur to a physical person in connection with the assignment of rights (claims), where the author describes the procedure for resolution the issue of succession, depending on the stage of arbitration process.

Regrettable the fact of delaying by arbitration courts timing of consideration an application on procedural succession. V. Archinova mentions cases where an application for procedural succession is considered within 7 months. We must agree with and support the proposal of the author on the introduction of a norm in Arbitration Procedural Code, limiting the duration of consideration an application on procedural succession

Head of the department of analysis and generalization of judicial practice, legislation and statistics of fourth Arbitration Court of Appeal O. Gertsenshtein believes that flaws in the regulation of procedural succession take place [8]. However, the question of qualification procedural succession as a right or obligation, in our view, does not have such an impact on law enforcement, as qualification of judges. Noteworthy the statement of O. Hertsenshtein on the order of resolution the issue of succession in cases of bankruptcy – "replacing a creditor on demand for inclusion in the register of creditors' claims in a bankruptcy case should be conducted in two stages: first, the replacement is made by the court, which has established the amount of claim, and then – by the arbitration court, which has included the creditor-predecessor to the register of creditors' claims" [8].

In summary, can be summarized as follows:

- Russian legislation does not establish an absolute procedural right of a party to join the process as a result of obtaining the rights and duties of a participant in arbitration process on a material legal relation;

-arbitration court shall be also responsible for official red tape in the issues of resolving statements for legal succession;

- assignment of a right (claim) by a party to any person should not lead to termination of proceedings in case in view of the jurisdiction of a dispute with a new person (successor) to another court;

- assignment of right (claim) by a party to any person shall implicate procedural legal succession, with the exception of cases stipulated by law, when there is a legal ban on an assignment;

- invalidity of the transaction involving the assignment of rights (claims) implies the denial of procedural succession for the party, which has committed the transaction. Due to the fact that the legislation does not contain provisions on the possibility of violation the rights and interests of a debtor by an assignment of the right (claim) to a compensation for harm, the right (claim) to a compensation for harm [6] (including court costs, as a special kind of loss [10, 76]) can be assigned to any third party.

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TO THE QUESTION OF ELABORATION THE CONCEPT OF STATE-CONFESSIONAL RELATIONS IN RUSSIA: ADMINISTRATIVE-LAW ANALYSIS

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This article analyzes the drafts of the concepts of state-confessional relations. The author proves the need for the introduction of such a document in the legal environment of Russia.

Keywords: concept, state-confessional relations, legislation on freedom of conscience and on religious associations, state and religious organizations, religious policy.

The scientific and public debate around the issue of formation the conceptual foundations of state-confessional relations, identifying models and types of relations between the state and religious associations, criteria for their interaction, has not been subsiding for the last twenty years.

Resolving of this issue has being highlighted in recent years, accompanied by a dual process, which is expressed, on the one hand, in the becoming common practice of conclusion agreements on cooperation between public authorities, the authorities of the Russian Federation subject, local self-government and etc. and religious organizations, [1; 2, 3], on the other hand, in the development by Russian religious organization documents, which reflect the most pressing issues of their relations with the state and society as a whole ("Foundations of the social concept of the Russian Orthodox Church" and «Foundations of the social program of the Russian Muslims" adopted by the Council of Muftis of Russia).

Moreover, if the second point which is highlighted above is purely intra-confessional, then conclusion of cooperation agreements should be based on strong theoretical and legal basis. This is due to the fact that the participation of religion in the development of the socio-cultural foundations of society is implemented as

through religious institutions objectively included in the social system, and through the formation of a certain way of thinking and behavioral norms of the wide sections of the population united by a religious identity. In this respect, the State must comply with a very fine line. First, be selective in selection of partnership in social programs in order to exclude the possibility of concluding agreements on cooperation with religious organizations of destructive nature, as it was at the dawn of such relations. Second, not to give reason for emerging oppositional position of some non-traditional religions, which is often conditioned either by religious policy of the Russian state that encroaches the right to freedom of conscience (when religious associations are forced to choose the oppositional position in relation to the state and society) or artificially created confrontation of the very religious associations with the surrounding society to achieve certain goals.

As for the practice of concluding agreements between the state and confessions, the idea itself is not new. The most widespread in Russia should be recognized the so called Concordats of 1818 and 1847 – agreements between the Holy See and the Russian Government, which regulated the legal status of the Catholic Church in the Russian Empire.

Thus, the awareness of the need to develop the mentioned social relations caused scientific interest in the making several projects of the concept of church-state relations, two of which were created in 2001. They are:

1. Draft from 10.06.2001, the "Conceptual foundations for church-state relations in the Russian Federation", developed by the Department of Religious Studies of the Russian Academy of Public Service under the President of the Russian Federation (authors: N. A. Trofimchuk, R. A. Lopatkin, Yu. P. Zuev and etc.). – Project 1.

2. Draft from 27.07.2001, the "Concept of state policy in the sphere of relations with religious associations in the Russian Federation", developed jointly by the employees of the General Directorate of the RF Ministry of Justice for the city of Moscow and the Institute of Church-state Relations and Law (authors: V. N. Zhbankov , I. V. Ponkin, A. V. Sitnikov, V. G. Elizarov). – Project 2.

It should be noted that the attitude towards the both projects on the part of social and religious organizations, as well as public authorities was ambiguous. Project #1 was positively accepted mainly by foreign human rights organizations and public associations of atheistic orientation. Project #2 met more wide support both from the public authorities, and in the ranks of the Russian Orthodox Church and the Muslims Religious Boards. Altogether, the projects have remained on the level of scientific research, not having received any formal enshrining. Most likely

it was caused by the fact that the strong public debate on this issue, which has shown a wide range of opinions from very positive to very negative, seriously threatened to aggravate the very church-state relations, which had to be settled, and to create more negative consequences than positive ones after adoption the concept in whatever its form. There were a variety of arguments.

For example, well-known researchers of the problem S. Bur'yanov and S. Mozgovoy in October 2001 expressed doubts about the need for such a concept: "First of all, gives rise to doubt the correctness of the very problem statement of formation the concept of state-confessional relations with regard to the tasks of implementing the constitutional principles in the sphere of freedom of conscience. The fact is that neither the Constitution of the RF nor norms of international law, which is a priority for the Russian legal system, mention anything about state-confessional relations and state religious policy as a self-sufficient phenomenon" [4].

According to these authors, "the relations of a democratic legal state, which has set as a goal the construction of an open civil society, with religious associations should be built on the legal basis common to other public non-profit organizations... Analysis of the actual situation shows that the "official" science and the law-making process, with the interested consent of "traditional" confessions and silent one of others, are under government control, bringing some scientific basis to its anti-constitutional policy in the field of freedom of conscience" [4].

It seems that the above sayings at that time, that is, 12 years ago, certainly contained a rather good sense. So, the relations between the state and religious organizations were quite underdeveloped, lacked the experience and professionals in this matter. A serious shortcoming of the proposed projects was some not taking into account the increased pseudo-religiosity of the population, largely due to a period of "religious hunger", its carelessness in selecting the ideological path (including following of frankly criminal sects), as well as lobbying by politicians, researchers, government officials their own or corporate religious interests. The concepts really were theoretical models and poorly suited to their practical implementation. In particular, draft #1, even in the style of its presentation loosely reminded a legal instrument to regulate the legal relations in so "delicate" sphere. Many provisions of the draft #1 did not comply with either existing legislation on freedom of conscience and religious associations, or the Constitution of the Russian Federation (in particular it contradicted part 2 of article 6; parts 1, 2, 5 of article 13; article 14; article 17; article 18; parts 1, 2 of article 19; part 1 of article 21; article 29; parts 2, 3 of article 44 of the Constitution of the Russian Federation).

However, since that time, much has changed. Currently develops spontaneous, regulated by nothing practice of participation of religious associations in socio-political life, state social projects, dealing with state authorities, including law enforcement ones, in various issues ranging from health to law enforcement, which is in need of legal regulation. Now religious organizations are actively involved in specific areas of the state activity as a counteraction religious extremism and terrorism, especially in the Russian regions, and since the practice of this activity is not regulated, in many cases, such activity does not fully consistent with the current legislation. In fact, a situation occurs, when in the constituent entities of the Russian Federation a religious resource is widely used to address political and law enforcement tasks. And this, in our view, is a very unpredictable form of political technologies that may have hidden negative result, because a kind of "tool" is used without any methodological framework. In various subjects of the Russian Federation it is based on different principles, to a greater extent on the political will of individual leaders.

As for the opinion supported by some researchers that relations of the state "with religious associations should be built on the legal basis common to other public non-profit organizations", then let ourselves to disagree. This is due to the fact that being aware of the scale, status, and most important the influence of religious associations on the world outlook of the great number of people, the state, in our opinion, must be aware that in any statute, in any legal document is not possible to register all the specific aspects of religious identity and its manifestations. In this case, agree with the opinion of the Doctor of Philosophy A. N. Krylov, who points out that the religious identity "is a enshrining of the identity of a subject in the sense of acquiring through religion its own existential experience with a subjective awareness of belonging to a particular religious community" [6, 223-224]. It is one of the first forms of human self-consciousness, and therefore is at the origins of the other types of identity, that is why its value is not comparable to any other person's awareness of belonging to a particular community. The State should be able to use this moment in achieving its important social objectives, by acting, of course, within the framework of the rule of law. Uniform and consistent development of public relations in this direction, in our view, could be promoted by the concept of Church-State relations.

In November 2003, in the Internet was informally posted the Draft #3, created in November 2003 – "The concept of state religious policy of the Russian Federation", redeveloped by the Department of Religious Studies of the Russian Academy of Public Service under the President of the Russian Federation (authors:

A. Vasil'eva, A. Zhuravskii, A. Kyrlezhev). The project suffered the same fate as the previous two, i.e. it did not receive formalization, but led to subsequent public and intra confessional disputes.

In general, it should be noted that a comparative analysis of the projects under consideration has revealed that none of the concepts is able to fully articulate the general conception of development state-confessional relations in the Russian Federation in the light of the implementation of constitutional principles and other legislative enactments on freedom of conscience and freedom of religion. The most important issue of both theoretical and practical importance about what legal relations should be governed by the concept is still unresolved, because all the proposed drafts have different names, reflecting the different fundamental orientation of a document.

So, in the name of the Project #1 was included the notion of "state-church relations" that had fundamental importance to the definition of a concept's object. The phrase is often used in everyday life, to refer relations between the State and religious organizations, as well as in some scientific-theoretical works [7]. However, the use of such wording in a legal document is not entirely correct; since it is linked to the notion of Church, which is from the Greek – Κυριακη (κυρικόν, ἐκκλησία, οικια) – the House of the Lord. Later, after the emergence and spread of the Christian faith, the words κυρικόν and ἐκκλησία became used to denote the concepts of the founded by J. Christ for the sake of saving people institution and community of believers in him. Thus, in the truest sense the phrase "state-church relations" denotes the relations of the State with the association (s) of people who believe in Christ, and that is with Christians. Thus, it does not cover the associations of Muslims, Buddhists, Jews, followers of other religions that do not have a concept of "Church".

The names of Projects #2 and #3, which use the concepts of "State policy in the sphere of relations with religious associations" and "State religious policy" respectively, raise even more difficult theoretical problem. And if the first variant is acceptable in principle, although the mixing of categories of "policy-religion" is not the best option in a secular State, the second phrase should be elaborated.

Outstanding Russian philosopher I. A. Ilyin defined relations between the state and the church as follows: "The church and the state are mutually alien matters – by establishment, by spirit, dignity, the purpose and way of action. State seeking to arrogate to itself the power and dignity of the Church does blasphemy, sin and vulgarity. Church trying to usurp the power and sword of State loses its dignity and changes its destination... Church should not take the sword – either to

impose its faith or punish a heretic or villain, or for war... In this sense, Church is "not political", policy task is not its task, the means of policy are not the essence of its means; policy rank is not its rank" [5, 169].

However, ensuring freedom of conscience and freedom of religion is an important aspect of the internal policy of the Russian state, which is in line with its secular nature, including the ideological and religious diversity of society, the real degree of secularization. Herewith the mentioned aspect of internal policy has nothing to do with religious policy that would have the right to exist in the State, where the Church is an integral part of it, i.e. there is a state religion in the State. Using the Project #3 as an example of inappropriate use of this term, it should be noted that authors try to include to "religious policy" even the proclaimed by the Constitution of the Russian Federation freedom of conscience, as a category of lower degree. This is illustrated by the following extract: "religious policy is a system of secular State actions in the area of the state-confessional relations, freedom of conscience and religion with taking into account the diversity of forms of religion in society". At this, if you trace the constitutional approach to this problem, it becomes obvious that the right to freedom of conscience directly acting on the territory of the Russian Federation, which is one of the highest democratic achievements of mankind, cannot depend on a "religious policy" in a State of law. Moreover, in the implementation of religious policy, it is not possible to implement either freedom of conscience, or the freedom of religion of a separate individual in the State, as the society and the State is unable to adjust to all the diversity of its manifestations and "make everybody happy". The main danger of this approach is that "religious policy" implies the use of religion for political purposes, which is inevitably accompanied by increasing of the social status (and sometimes an administrative and legal status if, for example, to consolidate a normative list of "traditional" religions) of specific religious associations. Thus, the "religious policy" clearly does not promote to the realization of inalienable rights and freedoms of man and citizen, and its use in the titles of legal documents, in our view, is not permissible.

In this case, let's agree with the opinion of the E. N. Pluzhnikov that "for building effective policy, the exact explication of concepts, not allowing different interpretations and the possibility of variable implementation, would seem appropriate as a starting point" [8, 12]. Noting the need to streamline the regulatory framework in the field of policy to counter manifestations of religious extremism, E. N. Pluzhnikov justified the necessity of preparing and adopting the Concept of state-confessional relations.

Recognizing that the term of "state-confessional relations" has problems in the context of determining its essence, let's briefly explain its interpretation. The first problem is that words like "confession", "confessional" often have different meanings. Under "confession" may be understood both a feature of religion within a certain religious teaching and association of believers adhering to a certain religion that has its own dogma, a certain organizational structure and distinctiveness in worship, as well as all enumerated. The second problem is, who the subject of state-confessional relations is? The most common is recognizing of only two subjects: state bodies and religious association. However, in recent time, scientists have greatly expanded the range of subjects of such legal relations, in our view, this allows efficient use of this definition, both in theoretical studies and in normative legal documents.

Thus, the study of a large amount of scientific materials on this subject has allowed us to conclude that at the present time, the development and adoption of the Concept of state-confessional relations would be a timely and necessary measure to settle this aspect of social life, to transfer certain elements of the interaction into legal sphere. At this by *state-confessional relations* in a secular state of law should be understood objectively existing legal relations between different levels of public authorities, local self-government bodies and religious associations of citizens, which occur on the basis of mutual agreements, as well as in the process and on the occasion of implementation the constitutional right to freedom of religion, exercised on the basis of the standards of international law, domestic legislation and canonical norms.

Ideological paradigm of state-confessional relations in Russia today, in our view, should be the realization by parties the fact that state and religious associations are products of society development, they cannot exclude or replace each other, as they are different social institutions and conflicts in relations only prevent them from realizing their goals and objectives. Loyal relations are beneficial to both parties, the striving of the State and religious associations for respect each other requires not the abandoning their philosophical and ideological positions, but only respect for the principles of relations between the State and religious confessions in a secular State. The loyalty of religious associations and their members lies in the recognition of State sovereignty, faithful observance of existing laws, moderation and balance of positions, constructive dialogue with public authorities. In turn, the State creates the necessary legal conditions for satisfaction of religious needs, protects the freedom of religious belief of citizens, and ensures law and order.

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ON THE NEED OF ADMINISTRATIVE-LAW REGULATION OF MISSIONARY ACTIVITIES IN THE RUSSIAN FEDERATION

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The need for the earliest solution of the question on the legal regulation of missionary activities in Russia is argued in the article. The author makes some suggestions on the development of this law.

Keywords: state-confessional relations, religious sects, missionary activities, offences, the law.

Despite the legal mechanisms established in Russia by the current legislation in the field of freedom of conscience, religious associations and countering extremism, in Russia continue the activities of destructive religious associations of foreign origin. Their leaders use methods of psychological pressure and intimidation, deny universal human values, and limit their followers in civil and personal rights. Many of them have revealed their involvement in incitement of international and interconfessional hatred, committing actions, which undermine the foundations of civil consciousness and tolerance. Based on numerous facts of proven illegal activity, invasion and existence of such organizations should be regarded as a serious geopolitical destabilizing factor for our country.

One of the most effective mechanisms to restrict the activities of new religious formations of destructive and occult nature would be, in our view, the elaboration and adoption of the legal basis for the implementation of missionary activity in territory of the Russian Federation. Indirect confirmation of the need for such

innovations was contained in the previous Decree of the President of the Russian Federation No. 24 from January 10, 2000 "On the concept of national security of the Russian Federation" [2], which stated that "have been activated the efforts of some States to weaken Russia's positions in the political, economic, military and other fields", develop political and religious extremism, ethnoegoism, ethnocentrism, chauvinism, nationalism, on the territory of the Russian Federation work foreign special services and used by them organization. According to the Ministry of Internal Affairs of Russia at the time of the adoption of the document more than 1300 missionaries from the United States, Germany, South Korea, France, Poland, Turkey, Saudi Arabia, Ghana, and Canada were working in 40 constituent entities of the Russian Federation. The representatives of the Russian Orthodox Church saw their activities as aggressive proselytism that was, and still is, the basis of religious controversies.

The current national security strategy of the Russian Federation up to the year 2020, approved by Presidential Decree No. 537 [3] from May 12, 2009 also indicates that "to prevent threats to the national security we need to ensure social stability, ethnic and confessional harmony".

Another reason to develop such a legal act is the fact that in some subjects of the Russian Federation regional laws with the same name are in effect. For example, the law of Belgorod region No. 132 from 19.03.2001 "On Missionary Activity in the Territory of Belgorod Region"; the law of Smolensk region 25-z from June 10, 2003 "On Missionary Activity in the Territory of Smolensk Region"; the law of Kursk region No. 23-ZKO from June 18, 2004 "On Missionary Activity in the Territory of Kursk Region", etc. Even greater numbers of such laws had been in force in other regions of Russia, but were canceled.

Unfortunately, the legal realities are such that in the absence of federal regulation of these legal relations and without appropriate amendments to the Federal law "On Freedom of Conscience and on Religious Associations" [1], without exception, all regional laws in this area poorly fit together, or, to put it simply, conflict with federal law. This is consistent with the provision of article 2.2 of the Federal law, which states that "laws and other normative legal acts adopted in the Russian Federation and affecting the realization of the right to freedom of conscience and freedom of religion, as well as the activities of religious associations must comply with the present Federal law. In case of contradiction between the present Federal law and normative legal acts of the constituent entities of the Russian Federation concerning the activities of religious associations the current Federal law should act".

Example of an apparent contradiction with federal law, inter alia, the basic provisions of these and other similar regional laws, according to which not all members of religious associations have the right to disseminate beliefs, but only "missionaries" with relevant standard documents which help to determine the affiliation to a certain religious association. According to laws religious groups should fully lose such a right because they do not exist in the form of organization and, naturally, cannot issue documents. The definition of "missionary activity", offered in different degree of variability in each of the regional laws, also raises questions. In fact, all these definitions include normal activities to disseminate beliefs, which are compulsory and characteristic feature of any religious association.

It should be noted that there is a long-standing polemic regarding the need to introduce into the legal field of the Russian Federation the concepts of "missionary" and "missionary activity".

In particular, one of the interesting discussions about missionary activity, organized by "Russkii Zhurnal" together with magazine "Religiovedcheskie issledovaniya", took place at the Roundtable, December 11, 2009 in Russian Institute.

During the discussion, various views had been expressed, including the diametrically opposite ones. Among them, we close to the position of P. Kostyleva [4] (Religiovedcheskie issledovaniya – Journal of Religious Studies) who has underlined that "religious sermon from the standpoint of absolute truth" seems to him an aggression and "information violence", and the journalist Mikhail Sitnikov who pointed out that "the state should watch the abuse on this basis, as there is a risk for a secular society, which lies in manipulating the religious principles in human consciousness, and in propaganda a particular ideology under the guise of missionary work" [5].

Way out of this situation would be implementation of the long-overdue and much-discussed in society need to develop and adopt the Federal law "On Missionary Activity in the Territory of the Russian Federation". For the effective implementation of the goals and objectives on the regulation of legal field faced by this law, it is appropriate to introduce to it the following main elements:

1) definition of used in Law concepts and terms, first of all "missionary", "missionary activity";

2) limiting of missionary activity:

2.1) in space:

within the territory of religious buildings and structures – without limitations;

in the accommodation – with the consent of the persons residing therein;

when carrying out the mass activities of religious nature, in accordance with the legislation on the order of holding mass public and non-public events;

in the territories and sites under the jurisdiction of the Federal Service for the Execution of Sentences, territories of military units and formations – upon written agreement with the leadership of the respective institutions;

at the sites, facilities, buildings and territories of bodies of State power of the Russian Federation, constituent entities of the Russian Federation, local self-government, territorial bodies of the Executive power – this activity should be banned.

2.2) by range of persons:

for adults wishing to voluntarily attend the missionaries events – without restriction;

in respect of minors – upon the written consent of both parents or lawful representatives;

3) ban on missionary activities in state higher, secondary special, secondary educational institutions, children's pre-school institutions;

4) ban on missionary activity by foreign nationals who arrived with tourist, commercial and other purposes, except for missionary ones, confirmed in official travel documents;

5) regulation of the procedure for carrying out a denominational examination and issuing of expert opinions on the implementation of missionary activity;

6) introduction of measures of administrative responsibility for violation the procedure of carrying out a missionary activity in the form of an administrative fine in an amount, and in case of repeated violations of the procedure, in the form of administrative arrest for a specified period.

At the same time with the adoption of the Law it is necessary to make amendments to the legislation on freedom of conscience and religious associations, as well as to the Code on Administrative Offences of the Russian Federation.

In addition to further improving the legislation in this area there is no doubt concerning the need for development an adequate and effective public and legal policy on the regulation of religious processes that would ensure effective monitoring over the activities of various religious associations and would include a range of measures to combat religious extremism and to ensure national security of the country with participation in these activities of representatives of religious organizations, without contradicting the constitutionally enshrined principles of a secular State, freedom of conscience and freedom of religion.

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