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

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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.

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