ISSN 2227-6920

Research Bulletin SWorld

Modern scientific research and their practical application

Published by:

Kupriyenko SV *on* ***Project SWorld***

With the support of:

Odessa National Maritime University

Ukrainian National Academy of Railway Transport

Institute for Entrepreneurship and morehozyaystva

Lugansk State Medical University

Kharkiv Medical Academy of Postgraduate Education

Volume J11418

May 2014

Please use the following format to cite material from this book (*italics indicate the fields to change to your data*):

Author(s), 'Title of Paper," in Modern scientific research and their practical application, edited by Alexandr G. Shibaev, Alexandra D. Markova.Vol.J11418 (Kupriyenko SV, Odessa, 2014) – URL: http://www.sworld.com.ua/e-journal/j11418.pdf (date:...) - *Article CID Number*.

This volume contains research papers of scientists in the field of Legal and political science.

Published by:

Kupriyenko SV
on ***Project SWorld***
P.O. Box 38, Odessa, 65001Ukraine
Telephone: +380667901205
e-mail: orgcom@sworld.com.ua
site: www.sworld.com.ua

Paper Numbering: Papers are published as they are submitted and meet publication criteria. A unique, consistent, permanent citation identifier (CID) number is assigned to each article at the time of the first publication.

CONTENTS

J11418-001

Minnibaev B.I.

SPECIFICS OF GOVERNANCE OF CHINA

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To date, China is one of the leading countries in the production of most types of industrial products. One of the leading space powers of the world, which has the largest army in the world by number of troops nuclear potential.

Keywords: Constitution, form of government, administrative division, the highest organ of state power, administrative and legal acts.

In its form of government, China is a unitary state with autonomous entities. According to the Constitution of the PRC in 1982, Art. 30. "China has the following administrative divisions:

1) The whole country is divided into provinces, autonomous regions and cities under central authority;

2) provinces, autonomous regions are divided into autonomous prefectures, counties, autonomous counties and cities;

3) counties, autonomous counties are divided into townships, ethnic townships and towns.

Municipalities, and a relatively large cities are divided into districts and counties. Autonomous prefectures are divided into counties, autonomous counties and cities" [1].

Autonomous regions, autonomous prefectures and autonomous counties are national autonomous areas. According to the administrative division of China consists of 23 provinces, 5 autonomous regions and 4 municipalities under the central government, such as Beijing, Shanghai, Chongqing and Tianjin. "However, the de - facto standard in mainland China, there are five levels of local government (not including Hong Kong, Macao and Taiwan).

Provincial level (34): 23 provinces, 5 autonomous regions, 4 municipalities, and 2 special administrative regions;

- District level (333): 15 districts (prefectures), 286 urban districts, 30 autonomous districts, 3 aimag;

- County level (2853) 1455 county, urban county 370, 117 autonomous counties, 49 khoshuns, 857 districts, 3 autonomous khoshun, 4 special districts;

- The rural municipality level (46466): 19683 village, 13,587 townships, ethnic townships in 1085, 106 soum, 1 national somon, 7194 street committee and two areas of the county jurisdiction;

- Village level: villages and local communities, or districts (in the cities) "[2].

Highest organ of state power in China is the National People's Congress. K. Article 57 of the PRC "National People's Congress is the supreme organ of state power. Its permanent body is the Standing Committee of the National People's Congress " [1].

Under the Constitution, the National People's Congress exercises the following powers. Here are some of them.

- To amend the Constitution;

- Oversees the conduct of life in the Constitution;

- Adopt and amend criminal and civil laws, the laws of the state structure and other basic laws;

- Elect a Chairman and Vice-Chairman of the Chinese People's Republic;

- By the Chairman of the People's Republic of China claims candidacy Premier of the State Council, on the proposal of the State Council approves the premiere of the Deputy Premier of the State Council, the State Council members, ministers, chairmen of committees , the Chief Auditor, Chief of the Secretariat;

- Elect the Chairman of the Central Military Council, by the Chairman of the Central Military Commission approves nominations of other members of the Central Military Commission;

- Elect the President of the Supreme People's Court, etc [1].

Head of state is the President of China, who is elected by National People's

Congress, the timing, the powers of which correspond to one term. The peculiarity lies in the fact that Chinese President exercises his powers before taking office. Position of Chairman of the PRC can take no more than two consecutive terms of 5 years. On the basis of Article 81 of the Constitution of the PRC, China's President shall exercise the following powers:

- Is the People's Republic;

- Receives foreign diplomatic representatives;

- Based on the decisions of the Standing Committee of National People's Congress directs and recalls plenipotentiary representatives abroad;

- Ratify and denounce treaties and important agreements concluded with foreign states". [1]

Central executive authority is the Council of State. Article 89, Constitution of the PRC, the following powers:

- On the basis of the Constitution and laws defines administrative measures taken by the administrative - legal acts, issue decisions and orders;

- Makes proposals to the National People's Congress or its Standing Committee of National People's Congress;

- Defines the tasks and responsibilities of ministries and committees, exercise unified leadership over the work of ministries, committees, and also directs the administrative work of national importance, not related to the management of ministries and committees;

- Exercise unified leadership over the work of local public administrations across the country, identifies the specific scope of authority of the central state administrative bodies and public administrations of provinces, autonomous regions and cities under central authority;

- Develops and implements plans for economic and social development, the state budget;

- Directs and manages the economic, urban and rural development;

- Directs and controls the operation in education, science, culture, public health, physical culture and sports, Planned Parenthood, etc [1].

Thus, the system of government of the People's Republic, has its own specific management features, a " socialist state of the people 's democratic dictatorship led by the working class and based on the alliance of workers and peasants" [1].

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J11418-002

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STANDARDIZATION IN THE MECHANISM OF LEGAL REGULATION OF BUSINESS ACTIVITY

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Abstract. The this paper examines the relationship between the private and public in the regulation of relations on consumer protection with the help standardizing separately analyzed the place and role of standardization and its

consequences in the mechanism of regulation of business activity, emphasizes the special role of standardization requirements in the process of conclusion and implementation (use) the business contract.

Keywords: standardization, the legal regulation, elements of legal regulation business contract, the essential terms of the contract, regulatory and technical documents and the requirements

Foreword. At present, the issue of regulatory policy for using public rights and private interests is the basis of the economic foundation business activity and state as a whole [1, p. 28-29; 2, p. 10]. Particularly active discusses the regulatory impact of the state to protect consumers from fraud, to provide poor service and so on. According to some scientific research on consumer protection from the point of implementation standardization in the primary stage in the exercise of economic activities avoids most of the problems [3, p. 55]. In such circumstances, standardization designed to combine the interests of the community, society and the state with the interests of businesses. Standardization as a manifestation of the socio-economic structure influences on the development and condition of businesses. Community development, high rates of scientific and technical progress, large-scale economic and social tasks causing increasing role of standardization.

The nature and content of social relations that forming the subject of legal regulation, independent features, character, ways and means of regulation. Is apparent that the relationship of equivalent exchange of value, such as property relations needs other legal ways and means regulation than those used for regulation management relations. The nature, kind social relationships that forming the subject of of legal regulation, determine the degree of intensity of regulation, ie, breadth of legal enforcement, the degree mandatory legal requirements, forms and methods of of legal coercion, the degree of detail requirements, tensions legal impact on social relations and so on [4, p. 178; 5, p. 235].

Generally recognized that the method a decentralized regulation is based on the coordination of goals and interests of the parties in the social relations of civil society subjects of that correspond primarily to private interests, ie in the areas of private

character. Similarly jurisprudence applies to centralized method (imperative) regulation, based on a relationship of subordination between members of social relations. This method regulates relationships where priority is usually common societal interests. In the state-organized society expressing societal interests first state which runs centralized management of social processes, endowed with legal authority Therefore a centralized imperative methods used in the sectors of public law, including the regulation of entrepreneurial relations [2, p. 12-13; 6, p. 191; 7, p. 43; 8, p. 8-9].

In the legal literature, the problem of legal regulation and legal enforcement is not new. Usually talking about the state regulatory policy as a fundamental principle of stable and competitive market [9, p. 5]. Active development of the private sector promotes the growth of the economy that begins to provide new services or producing new goods which in turn will requires special attention to the standardization of products and services by the state. Some scientists have expressed the view the possibility of self-regulation for business activity [10, p. 49, 53].

Because in the theory of economic law on the actually mechanism of legal regulation of business activity almost no say we, based on the opinions of scientists in the field of general legal theory [11, p. 18] and some thoughts in business law, we can define this term as: «Mechanism of regulation business activity - a combination of legal means organized in certain sequence by which the the activity of business entities in the field of social production, aimed at the production and sale of goods, works or services of value character in line to the requirements and authorizations contained in the law». Characterization of the mechanism of legal regulation allows you to set its components, to ensure their unity and mutual consistency. The need for various legal elements is determined by the need to satisfy the interests of various entities. Should be noted that these tools as certain legal instruments of influence should be diverse and interrelated, constitute a system in their totality be focused on achieving efficiency legal regulation of subjective rights and interests. In determining the elements of the mechanism of regulation business activity we consider it necessary listen to the opinion S. S. Alekseev [12, p. 34-36] and concentrate on the

following elements: norm of law, normative acts legal relationships, acts of law, legal consciousness and culture, and a contractual basis (contract) in economic relations.

Analyze the role and place of standardization among these elements of legal regulation of economic activity. Standardization as a result of the creation of new norms (legal or technical), which is inextricably associated with the standardization of norms (the first element of the legal regulation of economic activity in Ukraine). Practical importance are local acts business entity (e.g., standards or other normative and technical documents of business entities as a consequence of standardization), as they specify and explain the task of organizing of the same entity. Relationships in the mechanism of regulation is a means of transferring the general regulations of legal norms to the level of subjective rights and duties which may take the form of economic or other type of contract in which the essential condition is specifying of the application of norms, regulations and requirements in the field of standardization. Acts of the direct use of the forms provided by the law capabilities, performance binding legal orders, execution of legal prohibitions relations standardization occupy particular place in the mechanism of regulation because, typically, is its ultimate goal.

Legal awareness is considered as a form (shape) of social consciousness, which consists of a set of points of view, feelings, emotions, ideas, theories and competencies, as well as perceptions and guidelines that characterize a person's attitude, social groups and society as a whole to the current or desired law the forms and methods of regulation. With legal consciousness is inextricably linked to the phenomenon of legal culture, which is part of the spiritual wealth of society. Legal culture - in-depth knowledge and understanding of the law, careful implementation of its requirements as perceived need and inner conviction. When laying the foundations of legal culture is the main principle of justice which characterizes the moral content of normative rules behavior of people in society, established and secured by the state. The use rules, regulations and requirements of standardization is one of the factors of social consciousness that the state cares for its citizens, provides quality of service or production of goods, and thus brings up society, enlighten it increases the level of legal culture.

Conclusion. Standardization in the mechanism of legal regulation of business activity occupies a prominent place not as a separate element of the of legal regulation, and as a prerequisite that ensures the existence of such elements, and therefore the availability of legal regulation of business activities as a whole.

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Дата отправки: 08.11.2013

J11418-003

Baranov V.A., Prizhennikova A.A.

SPECIALIZED COURTS IN MODERN RUSSIA: ACTUAL ISSUES

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The object of research was the issue concerning prospects of creation of specialized courts in Russia. The court reform, carried out in Russia, is oriented to the creation of the quality court defense of constitutional rights and freedoms of individuals and legal entities. The judicial and legal reform favors further progress, development, and perfection of the statutory legal base. The right to judicial

protection announced in Article 46 of the Constitution of the Russian Federation is basic as related to all other rights and freedoms of a person and a citizen. The European Convention of November 4, 1950 "On Protection of Human Rights and Basic Freedoms" vests the title of each person and citizen for just court proceedings performed by an independent and unprejudiced court in its Article 6. In this juncture the court should be independent, professional, objective and fair.

There is an opinion that specialization of courts can be explained with the following number of reasons: firstly, their creation will favor strengthening of the judicial system; secondly, review and resolution of a certain category of cases secures a higher professionalism of judges; thirdly, courts of special jurisdiction will secure the appropriate rate of the trial. According to the President of the Russian Federation, creation of specialized courts, improvement of qualification of judges as well as introduction of additional guarantees of their independence is necessary [1].

Authors have came to the conclusion, that the creation of such courts is stipulated not only because this is provided by the Constitution of the RF, the Federal Constitutional Law dated 31.12.1996 № 1-FKZ «On the Court System of the Russian Federation » (art. 26), but this is necessary as answer to the dynamic change of economic relations, transformation in the field of state administration, for the practical efficiency of the legislative base, establishment of special procedures of consideration of different categories of cases.

Key words: judicial reform, specialized courts, court of general jurisdiction, judicial system, justice, specialization of judges, administrative court proceedings, administrative procedures, administrative justice, administrative dispute.

Court in Russia may have either general or special jurisdiction. The term of «courts of general jurisdiction» appeared in the Russian legislation for the first time after adoption of the Constitution of the Russian Federation on December 12, 1993. Article 126 of the RF Constitution describes the cases «to be reviewed in courts of general jurisdiction» in course of determination of the powers of the Supreme Court of the Russian Federation.

In accordance with Article 1 of Federal Constitutional Law No. 1-FKZ of 07.02.2011 «On the Courts of General Jurisdiction in the Russian Federation», the system of courts of general jurisdiction in the Russian Federation comprises of federal courts of general jurisdiction and courts of general jurisdiction of subjects of the Russian Federation. The following courts have been attributed by the legislative bodies to the federal courts of general jurisdiction: The Supreme Court of the Russian Federation, supreme courts of its republics, regional courts, courts of the cities of federal significance, courts of autonomous regions, district courts, municipal courts, inter-district courts, magistrate courts. Besides, in accordance with the law, the system of courts of general jurisdiction also includes military and specialized courts, the powers and procedure of formation of which is determined with federal constitutional laws. In Russia, Arbitration Courts, Constitutional Courts, Military Courts, and the Court for Protection of Intellectual Rights are attributed to the courts of special jurisdiction.

The actual issue is to create the juvenal justice in Russia [2]. Different discussions are held on the matter of reasons and conditions for arising labor disputes [3].

Unfortunately, there is no definition of a specialized court in the applicable law.

In our opinion, a specialized court is a federal state body of judicial power formed for the purpose to perform justice regarding the cases that have their own specific object, subject (particular components of the trial) and the procedure of trial, departmental belonging of such cases.

The following may be attributed to the criteria of specialization of courts: object, subject, and procedural form.

The purpose of specialized courts is in timely, economically efficient trials with consideration of peculiarities of particular categories of cases that can be distinguished for their object and subject components.

In our research we were considering the issue of the creation of administrative courts abroad [4]. Foreign experience demonstrates that the specialized courts which it is planned to establish in Russian have acted in a number of European countries for

a long time. Thus, two independent judicial systems are acting in France: the system of courts of general jurisdiction and the system of administrative courts. The system of administrative courts includes administrative courts of general law, specialized administrative courts, court of appeal, and the State Council that performs the functions of the supreme administrative court.

The system of administrative tribunals in being unified in Great Britain. Tribunals in England are the bodies of administrative or disciplinary (internal) justice.

Administrative tribunals are perceived in Australia as an irreplaceable instrument of good governance which is continuously updated and changed depending on the actual needs of the Australian society. A distinctive feature of these bodies as compared to similar institutions of other countries is their power to take a new administrative resolution as a result of actual review of the initial decision [5].

Thus, administrative court proceedings are stipulated with the Constitution of the Russian Federation (see Article 118) as an independent form of implementation of the judicial power. It has the purpose of securing the protection of subjective public rights and legal interests of citizens in course of settlement of administrative and legal disputes that arise in connection with unlawful actions and decisions of public governance bodies. A significance is gained by the procedure of review of administrative disputes that arise from public and legal relationships as rapidly developing modern administrative law and changes in management practices emphasize the evident necessity of the appropriate specialization of courts. Administrative courts are required for strengthening of positions of our state at the international arena, as securing unified standards of human rights in the whole territory of the Russian Federation with observation of the standard of human rights established by the international community may guarantee full-scale involvement of Russia into the world community as a civilized constitutional state. Ratifying of the European Convention of Protection of Human Rights and Basic Freedoms, acknowledging of the jurisdiction of the European Court for Human Rights require

perfection (specification) of the Russian law regarding judicial protection of citizens' rights in the sphere of public governance.

However, in 2000, draft federal constitutional law «On Federal Administrative Courts in the Russian Federation» was developed in the Supreme Court of the Russian Federation with involvement of representatives of law science. On November 22, 2000, this law was adopted by the State Duma of the Federal Assembly of the Russian Federation in the first reading. Nevertheless, further work for creation of the administrative justice system was retarded.

In 2004, draft Code of Administrative Court Proceedings of the Russian Federation developed under the guidance of First Deputy Chairman of the Supreme Court of the Russian Federation V.I.Radchenko was published in the «Russian Justice» magazine [6]. On pages of law literature, scientists paid a lot of attention to the provisions of the Draft Code in development of administrative and procedural institutions that must be set in this law, in their opinions. However, the law was imperfect.

At present, within the scope of performance of the judicial reform, on March 28, 2013, the State Duma received Draft Federal Law No. 2469606 «Code of Administrative Court Proceedings of the Russian Federation», which has the purpose of legal regulation of administrative court proceedings in the court of general jurisdiction. The Code does not cover the whole subject of administrative court proceedings as the proceedings regarding the cases of administrative violations is beyond it.

We believe that the following actions are required to establish the full-scale administrative proceedings in the Russian Federation:

a) systematizing of the measures that regulate the procedure of administrative court proceedings,

b) creation of the system of bodies that perform administrative court proceedings,

c) specifying and scientific grounding of the notions that may be further used in practice as well as implemented in proposals for perfection of legislation,

d) extremely clear determination of the subject matter and legal components of the disputes arising from public legal relations,

e) strengthening of the procedural guarantees that secure efficient judicial protection of the rights and legal interests of the participants of the trial which favors increasing of trust in justice,

f) at present, one of the major tasks is reforming of administrative procedures. They must be regulated.

In Russia, there is no Federal Law «On Administrative Procedures» that must regulate the relations between private persons and bodies of public administration, as the practice of exercising right is quite complicated without this Law. In connection with this, there is the need for regulating of certain procedural principles in the Code of Administrative Court Proceedings of the Russian Federation, like it is displayed in the Code of Administrative Court Proceedings of Ukraine. Thus, in Article 2, there are criteria of assessment of the activities of the administrative body with which the court be guided in the course of review of the cases that regard appealing against the decisions, actions or inactivity of subjects of authority. The court is to verify the following aspects in accordance with these criteria:

- if the body has acted on the basis and within the powers as well as with the method stipulated with the law,

- if the power has been used in compliance with the purpose for which it has been granted,

- if the decision has been taken/action has been performed timely, within the reasonable term, with consideration of the right of the person to participation in the decision-taking process, as well as with observance of the principle of equality before the law that prevents unjust discrimination,

- if the decision taken/action performed is grounded (i.e., if all the circumstances significant for taking the decision/performing the actions have been taken into consideration), unprejudiced, taken in good faith, thoroughly thought over, proportional (i.e., if the required balance is kept between any unfavorable

consequences for the rights, freedoms, and interests of the person and the objectives which such decision/action is aimed at).

Improvement of administrative procedures requires corresponding development of the judicial branch of power.

To our mind, these steps will favor perfection of the procedural law.

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Статья отправлена: 06.12.2013

J11418-004

Ospanova Zh.

PROFESSIONAL EDUCATION AND PROFESSIONAL PREPARATION OF CONVICTS TO IMPRISONMENT: REALITIES AND PROSPECTS OF DEVELOPMENT

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Abstract. The labor of convicts is educational, productive, should be protected in our days, while it connects with general education and vocational technical training. In this article, the author analyzes Russian legislation by the organization of education and professional preparation of convicts of imprisonment and defined the perspective ways of development in this system.

Key words: penal law, labor, prison, professional education, professional preparation, convict, imprisonment.

The major constituent of process of labor adaptation of convicts is the system of primary professional education and professional preparation (retraining) in the places of imprisonment. Conception of development of the criminally-executive system of Russian Federation before 2020 year [1] - to determine basic directions of the vocational training and professional preparation of convicts, in particular:

- realization of the vocational training and professional preparation of convicts taking into account the results of monitoring of prognosis requirements in the working shots of establishments of the criminally-executive system and regional labor-markets, including on scarce workers to specialties, for creation of high guarantees of employment and return the citizens that observe laws into society;

- participating of establishments and organs of the criminally-executive system in the regional having a special purpose programs of employment of population and development of the system of social partnership in the field of training of working personals from a number convict;

- program of professional preparation of development taking into account requests from executive of subjects of Russian Federation and organizations.

In accordance with the article 108 of Criminally-executive code of Russian Federation [2], the obligatory primary professional education or the professional preparation of convicts gets in attendance centers organized, not having a profession by specialty, that they can work both in the period of serving of punishment and after liberation from the places of imprisonment.

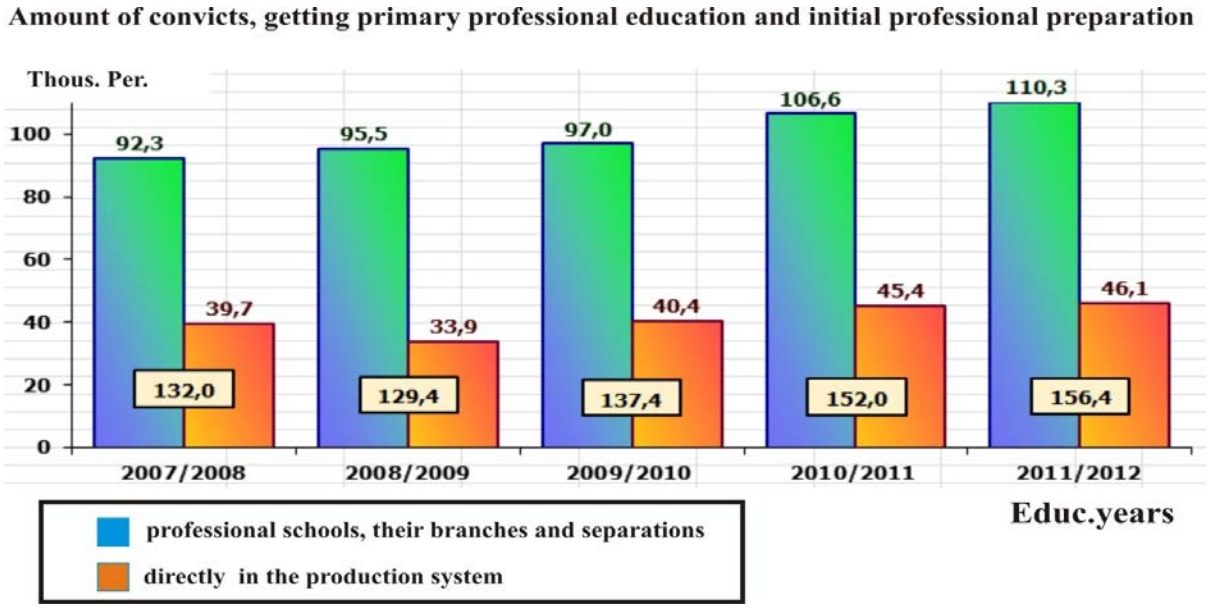
In regard to convict, being the invalids of I and II group, patients, suffering chronic diseases, and also convict men older 60 and convict women older 55 a getting the primary professional education and the professional preparation is not obligatory and conducted on their desire. Absence of medical contra-indications convict is thus taken into account (p.2 art. 108 CEC of RF).

Educating of the convict leaving life imprisonment conducted directly on the production of attendance centers.

Presently 333 professional schools and 302 their isolated structural subdivisions function and create in the criminally-executive system of Russian Federation. These schools are equipped by educational-productive workshops, the material base of that can be used for bringing in convicts to labor.

For period 2011-2012 school year from 222964 convicts had education 156432 convicts, 110332 convicts were trained in professional schools and their subdivisions, directly in the production sphere - 46100 convicts (Diagram № 1) [3].

Diagram № 1



By educate point of view, this process is effective, because the convicts widen an outlook, fill up luggage of knowledge and afterwards can take advantage to get specialty after liberation.

In May, 2013 by the order of Ministry of justice of Russian Federation, Order of realization of primary professional education and professional preparation was ratified convicts to imprisonment. According to this document in attendance centers two types of trade education are used and of professional preparation of convicts:

- in educational establishment of primary professional education of Federal service of execution of punishments, realizing the main professional educational programs of initial professional preparation and educational programs of professional preparation;

- in the center of labor adaptation of the convicts or educational-productive(labor) workshop of establishment, realizing the programs of professional preparation, including in order of individual preparation for specialists, possessing corresponding qualification [4].

The necessity of one of types of the vocational training is conditioned by the terms of imprisonment, productive necessity and row of other circumstances.

According to the order of establishment about organization of professional preparation convicts educating comes true in educational groups, and also in order of individual preparation with specialists, possessing corresponding qualification in the period of productive activity of student.

Getting by convicts educational establishments come true in accordance with the legislation of Russian Federation and taking into account the features of functioning of attendance centre.

Taking into account the volume of obligatory lessons and the following forms of receipt of education distinguish organization of educational process:

- An internal form;
- An internal- distance (evening) form;
- Form of extern on separate professions.

Combination of different forms of receipt of education is thus assumed. Types of lessons, duration of lessons and vacations, volume of the educational-productive loading set in accordance with the legislation of Russian Federation in education area.

Teaching of theoretical disciplines is conducted in educational cabinets, laboratories equipped by necessary educational - methodical materials, visual aids and equipment having the complex methodical providing on objects and professions.

Thus the theoretical educating in educational establishment is conducted in close connection with practical employments.

The productive educating and productive practice is conducted by educational establishment together with an attendance centre depending on the present productive terms and professions, got convicts, on the basis of the agreements concluded between educational establishment and attendance centre.

In the cases of pre-schedule liberation of the convicts from leaving of punishment or removing to other establishments, the educational establishment has a right to produce the pre-schedule producing of student; an attestation commission estimates graduating students by the actually attained level of qualification.

The student has a right for removing and completion of educating by the educational program of primary professional education or program of professional preparation in another educational establishment in case of his removing to the establishment with the new place of distribution.

Convict mood to the receipt of primary professional education and professional preparation taken into account at the decision of degree of their correction.

In obedience to p. 4 art. 108 Criminally-executive code of Russian Federation, taking into account present possibilities, administration of attendance centre have a duty to render assistance to the convicts in the getting of higher professional education is laid.

So, the conditions of serving of imprisonment in colonies-settlements are envisaging distant education in educational establishments of higher and middle professional education. The last must be located within the limits of municipal

education; on territory of that colony - settlement is situated (p.4 art. 129 CEC of RF).

Getting specialties by the convicts or increase of professional labor qualification examined as effective means of prevention of feasance new crimes by convicts.

It is needed to mark, present or purchased professional labor skills do not yet give an opportunity to draw conclusion about that the convicts broke off with the criminal past life , but can become a base for organization of moral perfection of the convict personality. Especially, a great role they can play, if complication of the offered work answers professional knowledge and abilities convicts or will help at liberation to go back to normal life in the society.

However, possibility and desire of convict to work qualitatively, to get a corresponding material reward, in a great deal depend on specialty the convict works on that, and from character of executable work.

Today in the criminally-executive system of Russia the specialized production capacities on producing are created:

- products of motor industry, agricultural technique;
- equipment for preparation and transporting of food;
- metal products, including building collapsible, metal packs, instrument;
- a vent, lifting-transport, the rescue, fire equipment;
- pipeline armature, pumps and reducing gears;
- building materials, electrical engineering products;
- wares of woodworking, cabinet-type and soft furniture;
- service and special dress and shoe, metal accessories.

At the same time, there is a wear of technological equipment - more than 60%, the level of services makes 20-23%, that on the whole, growth of technological backwardness of own production, absence of upgradability are determined [5].

Taking into account the features of organization of labor and profile of the production the attendance centers, the terms of choice of new profession answering the requirements of labor-market and wishes of convict practically do not exist. Thus, the knowledge and abilities got in professional schools not always answer to the

requirements of labor-market oriented, mainly, for needs enterprises of attendance centers in one or other specialists.

Thus, educational establishments of primary professional education of Federal service of execution of punishments, centers of labor adaptation of convicts or educational-productive(labor) workshops are called to carry out preparation of specialists of corresponding profile, in-plant training by certain specialization, come forward as a methodical center, giving help to convicts, student in the places of imprisonment.

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Article sent 09.12.2013

J11418-005

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NEW PROSECUTION PROCEDURES OF CRIMINAL PROCEEDINGS

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Annotation: This article refers to the issues the development of the institution of criminal offences in the Ukrainian national legislation. This article pays attention to the history of the development of legislation and the requirements of an alteration in the Criminal Code of the Ukraine.

Keywords: Criminal Procedure, Criminal Law, Criminal Offences

Since 1960 the Criminal Judicial Code of the Ukraine has experienced significant changes in humanitarian aspects and also in some procedures of inquest, prejudicial inquiry and assize. It appeared to be due to the proclamation of independence and ratification of some international legislation acts, which are reoriented political, social and criminal legislation vectors of the development of Ukrainian society. Actually, it testified that the first step was done in changing some procedures in legislation.

The Criminal Judicial Code of the Ukraine has kept its inquisition nature, despite of many changes that have been made to it during independence. In previous editions the Criminal Judicial Code of the Ukraine has had exclusively punishment or prosecution forms of work of investigation departments and present form of action of prejudicial inquiry in criminal offences. The modern amendment in economic, social or political aspects of life our young state required further reformation of criminal law legislations.

Criminal Judicial Code Sections are under permanent control of jurists, legal experts, lawyers and attorneys. Analysis and discussion of the Criminal Judicial Code takes place in different situations: round tables, seminars, conferences, in different publications and discussions, and in mass media and social media. Theoretical jurists and legal experts who are working on textbooks and annotations to the new Criminal Judicial Code of the Ukraine, are creating special courses for the better understanding

of innovation in the new Criminal Judicial Code for those who have started working with it since 2012.

One of the main innovations of the new Criminal Judicial Code of the Ukraine is procedural investigation regulation of criminal offenses with regards to legal proceedings.

The necessity of implementing special procedures of criminal offence in the Ukrainian legislation is raised in professional articles, and is a subject for discussion among the professional society. Criminal Judicial Code of the Ukraine 2012 allocated status of speciality in prejudicial inquiry in Section 25. It is a very important section in the present time.

Section 3 of the Ukrainian Constitution speaks to the protection of human rights and freedoms: “The human being, his or her life and health, honor and dignity, inviolability and security are recognized in the Ukraine as the highest social value” [1]. The main goal of Section 2 in the Criminal Judicial Code of the Ukraine is: to protect individuals, society and state from criminal offences, as well as protection rights, freedoms and legal interests of legal procedure’s participants. Also Section 2 makes sure that investigation and trial are quick, full and impartial; that anybody, who has committed a criminal offence, has a fair sentence; that nobody, who has not committed a criminal offence, could be sentenced or suspected; that nobody could be forced into illegal procedural coercion; that everybody has an equal and lawful legal procedure [2].

The separation of criminal offences on the offences and the minor offences was well-known in legislation of the Russian Empire since 1845, when the Code of Criminal and Correctional Punishments was passed. According to this Code, all punishments were grouped into criminal and correctional. The separation of criminal offences and minor offences was saved in the Criminal Code in 1903. According to this Code, minor offences were charged by some fines or a jail sentence [3, p. 114]. The Criminal Code of the Ukrainian Soviet Republic, as Criminal Codes of other Soviet Republics, did not follow the same direction and didn’t determine minor offences as an independent branch of the Criminal Law.

Now a day in Europe, Italy, Hungary, Austria, Germany, Spain and some other countries have separation for criminal offences and minor offences in their Criminal Codes. There is a jail sentence up to 1 year for minor offences in Germany. Some countries, such as France, Belgium and Switzerland, divide such criminal acts into three categories: criminal offence, minor criminal offences and lesser violations. But not all European countries have minor offences and lesser violations in their national legislations as an independent institution of criminal offences. But there is a tendency to separate criminal offences and lesser violations, for example in Criminal Codes of Latvia, Lithuania and Estonia [4, p.217].

The opinion of possibilities of the renewal of minor criminal offence in the Criminal Code of the Soviet Republic's legislation was pronounced at the beginning of 1960th. A. Piontkovsky and M. Shargorosky had an opinion about appropriateness of the segregation of minor criminal offences within the category of antisocial minor offence [5 , p.93]. Hereafter the term "antisocial" began its usage with the term "minor criminal offence". For the opinion of advocates of this institution, it is more precise and more accurately describes specifics of the certain offences. There could be other charges or punishments for these sorts of offences [6, p.76].

But not all scientists and legal professionals and experts in the USSR supported an idea of minor criminal offence segregation in the soviet criminal legislation. There were many serious and solid objections about this system, firstly based on the judicial nature of these offences.

Concerns about the judicial responsibility for some acts, which do not lead to a significant danger to the public, demand new decisions in conditions of present reformation of the social and political systems of the Ukraine, with respect to further democratization of the Ukrainian society, protection rights and freedoms of an individual and citizen, essential development of local self-government, formation of a humanitarian society, Criminal Code humanization and reforming law enforcement services.

The requirement of including minor criminal offences in the Ukrainian legislation on the official level was brought to attention for the first time in the

Decrees of President of the Ukraine “About the decision of the Council of National Security and Defence” 15/02/2008 and “About a process of reformation of the Criminal Justice system and Law Enforcement services” 08/04/2008. There was a big discussion about the ways of realization of these Decrees. A new Criminal Code of the Ukraine proposition was created by the National Commission workgroup, which is responsible for democratization and consolidation of the supremacy of law. This proposition was presented for discussion by the judicial community according to the possibilities of implementing the institution of minor criminal offences. According to this project the Special Part of the Criminal Code consists of two books:

Book 1 – Criminal offence

Book 2 – Minor criminal offence [8, p .105].

The order of creation of the law of substantive law was delivered in quite an unusual way - s. 7 ss. 1 s. 3 of Criminal Judicial Code and etc. It was done by mention in sections of procedural laws, such as the Criminal Code. In that case from now on crimes and minor criminal offences should be a lesser offence of a criminal violation. It is not necessary to confuse them with higher criminal acts.

The President of the Ukraine has created a workgroup for reformation of legislation in administration offences and implementation of minor criminal offences on 30/05/2012. Mr. A. Portnov was appointed as a group leader for this project. He is a President’s Councillor and the Chief of Central Administration for the reorganization of the judicial system.

The judicial society celebrated the first anniversary of the new Criminal Judicial Code of Ukraine in November 2013.

This date is very important because hopefully lawmakers will pay attention to finding the ways of establishing responsibilities for minor criminal offences.

Establishing responsibility for minor criminal offences will set the stage for humanization of the Criminal Law because some administration offences and minor criminal crimes will turn into minor criminal offences.

We need to pass the law about making some changes to the Criminal Code of the Ukraine for better results for the institution of minor criminal offence institution

in the near future. Specifically, to change Section 11 of the Criminal Code of the Ukraine to include definitions for minor criminal offences and the lesser criminal violations.

Criminal acts with a maximum charge of no more than 6 months of arrest or sentence up to 2 years should be categorized as minor criminal offences.

A criminal offence should be a more dangerous act to the public, which was committed by the offender and which there would be a more serious charge for.

It's necessary to mention that there is some opposition of the idea of implementing a minor criminal offence institution in the Ukrainian legislation system due to their opinion that "Criminal offence" is mentioned in the Constitution of the Ukraine, but not "minor criminal offence". The most valuable argument for the defence of their position is that s. 92 ss.22 p.1 of Constitution regarding a list of answerability and presumption of innocence are stated in article 62 of the Constitution. Therefore, we are discussing the guarantee of human and civil rights and liberty in all situations connected to crime.

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Статья отправлена: 09.12.2013г.

J11418-006

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VALUE OF ENFORCEMENT AND ACTIVITIES OF THE PENAL ENFORCEMENT SISTEM

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Abstract. In this article, understanding of enforcement is considered, as well as the ratio of the concept of "activity of the Penal Enforcement System on execution of punishment under criminal law "and" enforcement."

Keywords: Penal Enforcement System, punishment, correctional facilities, enforcement.

During the research, carried out in the framework of this article, it seems necessary to solve at least two interrelated problems of methodological order. The first involves understanding of enforcement, specifying attributes in terms of which its definition is formed, inasmuch as I assume that the concepts of " activity of the

Penal Enforcement System (hereinafter: PES) on execution of punishment under criminal law " and "enforcement " are correlated in a certain way. Accordingly, the second task is to identify the features which are common to the noted types of activities and specific for PES.

Despite the external terminological similarities, the concerned concepts are not identical, though, in a certain way, similar in content. In the beginning it should be determined what content in the notion of "enforcement" under domestic law theory.

The concept of "enforcement" appeared in the terminological turnover of legal science in the 50-60-ies of XX century in connection with the research of forms of implementation of the functions of the state and is subsequently used for the analysis of legal forms of state activity.

Form of realization of functions corresponds to the category of "legal activities" and the three-component structure of the latter is used to characterize it. So, NG Aleksandrov, MI Baytin, IS Samoshchenko, NV Chernogolovkin point out three main types of legal activity: lawmaking, enforcement (operational-executive) and law enforcement.

MI Baytin has a similar point of view. Characterizing enforcement, he says that " operational-executive activity is imperious creative executive and administrative work of state authorities to implement the functions of the socialist state by issuing acts of law uses ,which is associated with daily resolution of various management issues, being the foundation of origin, changes and stop of legal relations . "

Thus, initially "enforcement",associated with the application of the law, is considered as a kind of law enforcement, one of its forms .

"Enforcement" is one of the activities of state authorities to ensure implementation of the law enforcement functions of the state, which is the cumulative result of the activities of various government agencies, which are united to promote the interests of individuals, society and the state. Among the government agencies that implement the law enforcement functions, it is accepted to classify the court, prosecutors, police, and a number of Federal Service (FSB, FSIN, and others [1]). Each of these authorities performs its own function within a framework of the

allocated powers to perform the functions of the state. Law-enforcement function, in turn, breaks down into a series of fractional activities - state law enforcement functions. Each of the authorities is designed to solve certain tasks for which it is authorized with the appropriate expertise.

According to its function, PES is a state authority, designed to ensure the implementation of practical enforcement decisions on the appointment of the parties of criminal sanctions that can be considered as a basis for actions of PES. It should be also considered that criminal executive activity is a kind of self- enforcement connected with the implementation of the most stringent austerity measures of state coercion.

It should also be noted that in addition to the execution of enforcement decisions on the appointment PES provides criminal penalties and other activities related to the execution of the legislation providing for the prevention of crimes and its special contingent protection, participation in solving crimes (including those committed outside agencies and bodies PES), determination of other tasks entrusted to it by law.

Thus, it is necessary to distinguish two fields of PES activity: external (formed in the activities related to the execution of criminal penalties), and the inner associated with the organization of the authorities and institutions executing criminal punishment . In each field activity is carried out in certain forms. Analysis of these two events suggests that the ratio enforcement activities and PES is reflected in the following:

1. As enforcement, activities of PES on execution of criminal penalties act as a form of realization of the law enforcement of the state functions.

2. Activities of the penal system is also characterized by the presence of a relatively independence of the legal framework , which is made up primarily Penal Code of the Russian Federation , federal laws "On Enforcement Proceedings " dated October 2, 2007 № 229 -FZ " On Bailiffs "dated June 21, 1997 № 118 -FZ of the Russian Federation Law " On institutions and bodies enforcing criminal penalties of imprisonment " on July 21, 1993 № 5473-1, Presidential Decree defining the legal status of the Federal Penitentiary Service .

3. The objectives of PES are clearly marked in the criminal-executive legislation, they are: the correction of convicts, prevention of new crimes, made as by convicts, as by others [2]. Whereas the purpose of enforcement is the practical realization of rights and lawful interests of citizens and legal responsibilities of citizens.

4. The members of PES activities on execution of criminal penalties are some of the Criminal Executive Code of institutions and authorities executing criminal penalties, as well as their officials.

5. As enforcement activities PES associated with the execution of criminal penalties: is derived from law enforcement, but is not limited to the last, and includes it as a means necessary to achieve its goals, is a specific form of a special legal status of the industry and its subjects, carried out in within law enforcement and enforcement relations.

6. Activities on execution of criminal penalties are direct professional activities of agencies and authorities enforcing criminal penalties; the main content of its active steps to make the application of measures to convicted state coercion; practically provides almost immediate realization of the rights and lawful interests of citizens and legal responsibilities.

Thus, the essence of PES activity consists in achieving the goals of criminal punishment by applying measures to convicted state coercion. Convicted in this case as direct recipients of legal norms .

UIS activities on execution of criminal penalties are established rules of criminal enforcement law the agencies and bodies of the correctional system, aimed at achieving the goals of criminal punishment by applying measures to convicted state coercion. [3]

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The article is submitted by: 10.12.2013

J11418-007

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PROBLEMS OF PARTICIPATION OF WITNESSES IN INVESTIGATIVE ACTIONS

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Abstract. This article analyzes the recent developments in criminal procedure law in narrowing the range of the investigation, in which the participation of witnesses is required, identifies problems of participation of witnesses during the investigation.

Keywords: criminal procedure law, investigative action, a witness.

On March 4, 2013 criminal procedure law was amended after long discussions. In accordance with the amendments the institute of witnesses during the investigation has been replaced by fixing these actions using technical means that, according to lawmakers, will allow a greater degree of autonomy of investigators and efficiency of a criminal investigation. Moreover, the authors secured the list of proceedings in which witnesses participation is mandatory: search of the home and other premises; recess; personal search, line-up. The position has been left in accordance to which the participants in criminal proceedings or on his own initiative, the investigator may call the presence of witnesses during those investigations in which their participation is not mandatory.

The legislative changes about the institute of witnesses in criminal proceedings considerably narrowed the field of investigative actions, in which the participation of witnesses is mandatory, but did not solve the urgent problems in this area. Among such urgent problems are as following.

First, the legislature, on the one hand, has obliged the person conducting the investigation to ensure the participation of witnesses in the investigative action, thereby imposed the duty of witnesses to come in the case of necessity. Therefore, the investigator faces the problem to convince at least two adult individuals who are not interested in the outcome of the criminal case, which are not involved in criminal proceedings, are not relatives of the participants in proceedings, are not employees of the executive power bodies vested in accordance with the Federal law the authority to implement operational and investigative activities or preliminary investigation, to take part in the investigative action. As practice shows, sometimes it is not easy to find such persons; besides the selection of witnesses often requires a lot of time, that adversely affects the timeliness of investigative action.

Is particularly difficult to find witnesses for the inspection of households in rural areas: as you know, the population density is much lower there than in cities with apartments, enterprises, institutions and organizations. Most households in the Russian Federation consist of 1-3 people (73.7%). Of these, about 50% are households consisting of 1-2 persons [1, p. 77].

Secondly, there is often a problem of protecting the rights and legitimate interests of victims in the case of leakage the information about their property status, because the considerable amount of property of citizens is typically concentrated in their households. At the same time in the investigative practice there have been no cases of bringing witnesses to criminal liability for disclosure of information from a preliminary investigation on the basis of Art. 310 of the RF Criminal Code.

Third, as witnesses usually are not experts in the field of law, they are often unable to perform his duties effectively - to confirm the correctness of investigative actions, especially of such a complex, that is the examination of the scene of crime. Only a person conversant in the criminal law (in particular, knowing a remedial order

of the investigative inspection) and forensics can certify that the inspection has been carried out correctly.

Fourth, there are situations when potential witnesses refuse to participate in the action. Such behavior can be explained by such factors as low legal culture of society, lack of respect and confidence in the judicial system, as well as the imperfection of domestic criminal proceedings. In criminal proceedings a citizen who participates in it as a witness, is repeatedly called for questioning at the preliminary investigation and in court, where he is forced to sit for hours in the corridor waiting for a call, to answer questions about the event that took place six months ago, and which he has forgotten, witnesses are often faced with disrespect and prejudice from the participants. In addition, modern citizens are not willing to spend their own time on the needs of law enforcement agencies; besides many witnesses suffer significant losses that they will never get back [2, p. 24-25].

Art. 131 of the RF Criminal Procedure Code provides for the compensation of legal costs by the statement of the investigator, prosecutor or judge, including payments to witnesses:

- to cover the costs of arriving to the place of legal proceedings and residence;

- compensation of the lost wages for the time spent in connection with the call to the investigator, the prosecutor and the court (for witnesses who work and have a constant wage);

- For a diversion from the usual business (for witnesses who do not work and do not have a constant wage);

However, in practice, none of the officers explain the terms of their rights to compensation for litigation costs, and the vast majority of citizens are not aware of them. In cases when witnesses or other participants in the process try to get compensation for litigation costs, they are often faced with a direct opposition from law enforcement agencies, who claim that they have no money for compensation. The vast majority of citizens prefer not to contact with it at all, and do not waste time, nerves and money on getting a small compensation.

Fifth, some months and sometimes years pass since the investigative actions involving witnesses till the trial takes place. As a result, the witnesses can not always remember the order and contents of the investigative action.

A significant increase of time in the investigation with the presence of witnesses occurs for several reasons:

- the organization of the selection of witnesses and their involvement;

- the presence of witnesses during the investigation;

- investigative actions (for example, examination of the corpse) in inaccessible or life-threatening places;

- Providing assistance to the suspect from witnesses during the escape or destroying traces of the crime;

- attracting witnesses to large-scale special operations when inspections and searches of a large group of suspects in a large number of premises located in different areas are conducted, when there are many different types of objects (items) for detecting and fixing;

- the refusal of citizens to participate as witnesses and other reasons [3, p. 102-103].

It is clear that the presence of witnesses is designed for honesty of investigative actions, but in practice witnesses often do not watch and see what and how the investigators do, that is they do not control the actions of those responsible for the investigation.

There were cases when the suspects were tried to become witnesses during inspection of the scene to determine the degree of awareness of the investigation about the circumstances of the crime.

The largest set of problems are the problem of detecting violations of the existing legislation in bringing witnesses to participate in investigative actions and activities. This problem is related to the following circumstances.

Currently, investigators are forced to operate in a new, constantly changing environment, so old, proven methods and techniques are ineffective, but the development of new ones requires considerable efforts, money and time. Some

investigators who turned out to be in this situation, found an "easier" way out that is the violation of existing provisions of criminal law, criminal procedure, administrative and investigative legislation. The list of violations is vast - from bringing in acquaintances as witnesses from violations during seizures, packaging and storage of evidence, to direct forcing of participants to give false testimony. The distinction between procedural and other violations of law and crimes against justice is rather blurred, and often investigators by any means trying to attract "the guilty" to criminal liability cross the line and become criminals themselves. Some law enforcement officers violate legal standards for a more "down to earth", for example, mercenary motives. The vast majority of offenses and crimes committed by law enforcement personnel against justice, remain latent and do not receive proper judicial assessment [4, p. 15].

In accordance with Art. 75 the RF Code of Criminal Procedure, evidence obtained in breach of the Code, should be recognized invalid and can not be the basis for prosecution. In some cases, courts ignore the requirements of Art. 75 the RF Code of Criminal Procedure, believing that essential violation of law is necessary to recognize the evidence as inadmissible, and "insignificant deviation" from the requirements of the Criminal Procedure Code do not affect on the admissibility and reliability of the evidence.

The most common violations committed by the investigators and investigative bodies, include improper fulfillment of the requirements of participation of witnesses in investigation and search operations. The Federal Law "On operative-investigative activity" does not provide the participation of witnesses in the production of search operations (SO). However, in practice in the production of such SO as screening or purchase online experiment operatives attract disinterested citizens who assist in the production of SO and actually act as witnesses. The existing legal practice applies to these unintelligible figures requirements that are specific for witnesses in criminal proceedings.

In dealing with violations of the mandatory participation of witnesses, it is necessary to divide these violations into two parts:

1. Violations committed by operational staff at operational search and investigations (conducted on behalf of the investigator)

- Involvement of their acquaintances and trainees as "disinterested citizens" who sympathize to the operational employee or who is dependent on him, including interest payments to witnesses from the funds allocated for covert operative work, and the production of search operations with their direct participation;

- making of search operations without actual participation of "disinterested citizens", but the involvement of these categories of persons to draw up papers.

2. Violations committed by the investigators in investigative activities:

- Production of investigative action with the actual presence of witnesses who are acquaintances, civilian law enforcement officers, trainees and interns, occupying a subordinate position or otherwise dependent on the investigator – so called "regular witnesses";

- Production of investigative action in the absence of witnesses, with the subsequent registration as such above-mentioned persons;

- Production of a formal investigative action with involvement of random persons as witnesses who, as a rule, do not follow the course of the investigative action, and only sign the protocol and packages with seized objects [5, p. 12-13].

Thus, it can be a disappointing conclusion that the operational-search bodies carrying out an inquiry and preliminary investigation, currently allow systematic violations of the criminal procedure law, the vast majority of which are not detected under judicial investigation and is not taken into account by courts in sentencing. Now there is a need of comprehensive and objective investigation of the state of legality in the law enforcement and judicial system, with a detailed analysis of the causes and circumstances of violations of law, making recommendations for their detection and neutralization. List of references:

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The article is submitted by: 11.12.2013

J11418-008

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FOREIGN EXPERIENCE OF ARBITRATION

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Annotation. This article is devoted to studying of foreign experience of arbitration in the most dynamically progressing in this direction countries, to detection of prerequisites which led to development and arbitration distribution, the analysis of reforming arbitration institute, application of positive foreign experience of arbitration in modern Russia.

Keywords: arbitration court, arbitration examination, arbitration, international commercial arbitration, international arbitration.

Speaking about modern realities of legal proceedings, it is necessary to emphasize especially the fact that today our society has encountered in the most serious crisis of judicial system’s confidence. The trust to courts is based on many indicators: existence of lawful, reasonable and motivated decisions, openness and availability of legal proceedings, observance of reasonable terms of hearing cases and execution of decisions.

Problem for judicial system there is that the modern Russian judicial system works with constantly increasing overloads. During certain periods some decrease in number of affairs is observed, however, it does not lead to optimum load of judges (that admits unconfirmed scientifically reasonable standard in 16 cases a month). Such loading inevitably affects on court decisions quality. Thus, existence of a big conflictness in society cannot be solved only by forces of judicial system.

The specified problems also are incentive to development of alternative methods of disputes settlement, including within institute of arbitration which is urged to lower load of judicial authority and state mechanism as a whole. It is possible to note that at the present stage of society development, this form of disputes settlement is the effective mechanism of protection human rights and legitimate interests.

Arbitration is a process of dispute settlement in the arbitration court and decision-making by the arbitration court [1]. Such definition is given by the legislator. The main legal acts regulating arbitration in Russia are the Act of the Russian Federation of July 7, 1993 No. 5338-I "About the international commercial arbitration" and the Federal law of the Russian Federation of July 24, 2002 No. 102-FZ "About the arbitration courts in the Russian Federation".

Considering arbitration in the ratio with the state judicial process, it is possible to allocate some advantages: 1) the smaller term of judicial proceedings because there is no multilink judicial system; 2) independent choice of arbitrators (arbitration judges); 3) guarantees execution of the passed decision because the state court can forcibly oblige to execute the decision of the arbitration court; 4) confidentiality of arbitration; 5) possibility of carrying out meeting on departure in stipulated by the parties and the arbitrator a place. The positive moment is that there are no accurately established rules of production dispute's consideration as, for example, in the state courts [5, page 17]. In "not helds" framework it is much easier for arguing parties to solve the task set for them or to come to a certain consensus.

Practice of arbitration courts activity in Russia has positive dynamics, however the circle of pressing problems was accurately designated today.

To eliminate development obstacles of arbitration institute in the Russian Federation, every problem issues have to be resolved, and the system as a whole has to be reformed.

In world practice the number of disputes solved in arbitration courts is increasing. It is generally connected with integrating processes in the world and world globalization. Therefore considerable and interesting the analysis of foreign experience of arbitration here is submitted.

So, for example, India now "is leading arbitration and the supplier of alternative procedures of the settlement of disputes, supporting the highest standards on the internal and international arbitration scene" [3, page 45]. The necessity of creation of alternative system disputes settlement in country was caused by considerable changes in connection with imperfection existing system of justice, discrepancy to a modern situation in the country and in the world.

Distinctive feature of India's commercial arbitration is that it exists in the form of the uniform autonomous organization – the International center of the alternative settlement of disputes (ICADR), working under the auspices of the Ministry of Justice and justice, the Government and High court of the country and completely financed by the relevant governments of states.

Thus, the commercial arbitration in India is under control and protection of the state and out of a separation from the state system of justice that does not create substitution of their powers, and opposite, promotes fast and effective settlement of disputes, reducing loading from courts.

Development of system alternative ways of disputes settlement as served in Brazil as recovery from the crisis of judicial system. "The chairman of the Supreme Court of Brazil in the report noted on May 23, 2010 that alternative settlement of civil and trade disputes has to be put in the forefront as the state courts cannot consult about all increasing loading" [2, page 40]. The appeal of Brazil to new, alternative forms of disputes settlement is accompanied till nowadays by considerable state support at their creation and realization. It is shown in adoption of the regulations, the

highest court decrees allowing ordinary judges to give help and support to the centers of arbitration.

In Germany is also important factor is the role of the state court in arbitration. The legislation of this country considerably differs from Russian towards strengthening of the state influence on arbitration and increase in competence of the state courts. So, in § 1062 paragraphs 1 of GPK Germany [2], Land Tribunal in which subordinated territory there takes place trial in the arbitration court, can: to appoint, to do branch, to stop powers of the arbitrator (in cases when the parties under the mutual agreement and in some other cases cannot make it); to establish an admissibility of arbitration proceeding or an admissibility of pronouncement decision arbitration tribunal of rather own competence; to make execution, to cancel or alter instructions concerning commission of security actions of arbitration tribunal; to cancel the arbitral decision or to declare it to execution.

Examples demonstrate positivity of experience of the state support in all its manifestations and organizational and functional cooperation with courts of the state system.

The analysis of foreign experience allows to draw a conclusion that existing in the certain countries state control and assistance do not substitute the purpose of formation of the favorable environment for arbitration institute for total state control. Besides, it allows to fight effectively against abuse of arbitration and existence of the arbitration courts created and financed by one of the parties, the person affiliated with it, or actually staying idle and existing only formally.

In this part the specified methods of a solution like statement of the arbitration courts under state’s control and monitoring of their activity, are admissible and expedient and for Russia.

The general for the considered countries is that crisis of judicial system and impossibility of the state courts to cope with loading assigned to them became an important factor of development some alternative ways of disputes settlement in them. Despite imperfection of arbitration in Russia is clearly visible that fact that requirements of this institute will increase every year only and it will reveal new

problems which will arise before our judicial system. The state support of arbitration courts institute with the instruction on prospect of their development is necessary. Successful experience in area of arbitration can be some base for improvement of the Russian legislation about arbitration. In the long term, in the course of further filling of a niche for the arbitration courts and the organizations similar to them in the Russian Federation, is reasonable to do it by means of the analysis some experience of effectively functioning abroad arbitration systems.

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Article is sent: 21.01.2014г.