ИНСТИТУТ ГОСУДАРСТВА И ПРАВА
РОССИЙСКОЙ АКАДЕМИИ НАУК

THE INSTITUTE OF STATE AND LAW
RUSSIAN ACADEMY OF SCIENCES

ТРУДЫ ИНСТИТУТА ГОСУДАРСТВА И ПРАВА РАН

2017. Том 12. № 2

PROCEEDINGS OF THE INSTITUTE OF STATE AND LAW OF THE RAS

2017. Volume 12. No. 2

Москва

Журнал зарегистрирован в Федеральной службе по надзору в сфере связи, информационных технологий и массовых коммуникаций.

Свидетельство о регистрации средства массовой информации
ПИ № ФС 77-62131 от 19 июня 2015 г.

Входит в перечень рецензируемых научных изданий, в которых должны быть опубликованы основные научные результаты диссертаций на соискание ученой степени кандидата наук, на соискание ученой степени доктора наук.

Адрес редакции:

119019, Российская Федерация, Москва, ул. Знаменка, д. 10.
Адрес в Интернете: http://igpran.ru/trudy.
Тел.: +7 (495) 691-87-81.
E-mail: trudy@igpran.ru.

The Journal is registered by the Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications.

Registration certificate ПИ No. ФС 77-6213 dated June 19, 2015.

The Journal is recommended by the Russian Ministry of Education and Science for publication of scientific results of doctorate thesis.

Editorial Board's Address:

10, Znamenka str., Moscow, 119019
Russian Federation
Phone: +7 (495) 691-87-81
http://igpran.ru/trudy
e-mail: trudy@igpran.ru

TABLE OF CONTENTS

PERSPECTIVES OF THE KYRGYZ PARLIAMENTARY EXPERIMENT IN THE LIGHT OF TWO ELECTIONS (2010–2015)

Pál Gyene

Faculty of International Managment and Business, Budapest Business School, 22–24, Diósy L. str., Budapest H-1165, Hungary.
E-mail:gyene.palistvan@uni-bge.hu.

Following Juan Linz's 1990 paper about "The Perils of Presidentialism", which launched a debate in the literature of political science, a fruitful discussion has emerged about the effects parliamentarian and presidential forms of government may have on democratic transition and the consolidation of democracy. The present paper uses the "neoinstitutional debate" theoretical framework to analyze the experience so far of the Kyrgyz "parliamentary experiment" following the 2010 revolution. The Kyrgyz political system is characterised by a low level of political institutionalization and party formation, strong person-centred political culture and the informal dominance of regional clans. In the long run, switching to the parliamentary form of government might have a lasting effect on these features: it may catalyse the process of party formation and lessen the person-centred character of Kyrgyz internal politics, while boosting cooperation between regional elite groups. Overall, it could make a considerable contribution to the success of the democratic transition in Kyrgyzstan. At the same time, under the political Kyrgyz conditions, parliamentary government may pose serious threats: if the role of program-based political parties cannot be strengthened at the expense of informal clans, then because there are no genuine political parties, mainly those effects of parliamentary government will be manifested that add to government instability, and consequently might destabilize the whole Kyrgyz political system.

⚷ Kyrgyzstan, constitution, parliamentarism, election, electorate systems, political party, party system, informal clans

REFERENCES

Anderson, J. (1999). *Kyrgyzstan, Central Asia's Island of Democracy?* Amsterdam: Harwood Academic Publishers. DOI: https://doi.org/10.4324/9781315079325.

Collins, K. (2006). *Clan Politics and Regime Transition in Central Asia.* Cambridge: Cambridge University Press. DOI: https://doi.org/10.1017/cbo9780511510014.005.

Dobrovits, M. (2011). *Közép-Ázsia a XXI. Század elején* [Central Asia in the Middle of the XXI Century]. Budapest: Magyar Külügyi Intézet. (In Hung.).

Engvall, J. (2011). *Flirting with State Failure. Power and Politics in Kyrgyzstan since Independence.* [online] Central Asia-Caucasus Institute and Silk Road Studies Program. Available at: http://www.silkroadstudies.org/new/docs/silkroadpapers/1107Engvall.pdf [Accessed 12 November 2012].

Heathershaw, J. (2009). *Post-Conflict Tajikistan. The Politics of Peacebuilding and the Emergence of Legitimate Order.* London; New York: Routledge. DOI: https://doi.org/10.4324/9780203879214.

Horowitz, D. L. (1990). Comparing Democratic Systems. *Journal of Democracy,* 1(4), pp.73–79. DOI: https://doi.org/10.1353/jod.1990.0056.

Huntington, S. P. (1991). *The Third Wave. Democratization in the Late Twentieth Century*. Norman; London: University of Oklahoma Press.

Huskey, E. (1997). Kyrgyzstan: the Fate of Political Liberalization. In: K. Dawisha and B. Parrott, eds. *Conflict,Cleavage and Change in Central Asia and the Caucasus*. Cambridge:

Cambridge University Press. pp. 242–276. DOI: https://doi.org/10.1017/CBO9780511559204.008.

Huskey, E. and David H.(2013). Regionalism, Personalism, Ethnicity and Violence: Parties and Voter Preference in the 2010 Parliamentary Election in Kyrgyzstan. *Post-soviet Affairs*, 29(3), pp. 237–267.

Khalid, A. (2007). *Islam After Communism. Religion and Politics in Central Asia.* Los Angeles; Berkeley: University of California Press.

Lijphardt, A. (1971). Comparative Politics and the Comparative Method. *American Political Science Review*, 65 (3), pp. 682–693. DOI: https://doi.org/10.2307/1955513.

Lijphardt, A.(1999). *Patterns of Democracy.* New Haven; London: Yale University Press.

Linz, J.J. and Valenzuela, F. eds. (1994). *The Failure of Presidential Democracy.* Baltimore: John Hopkins University Press.

Linz, J.J. (1990). The Perils of Presidentialism. *Journal of Democracy*, 1(1), pp. 51–69. DOI: https://doi.org/10.1353/jod.1990.0011.

Mainwaring, S. and Shugart, M. (1993). *Juan Linz, Presidentialism and Democracy. A Critical Appraisal.* [online] Kellogg Institute Working Paper. Available at: http://nd.edu/~kellogg/publications/workingpapers/WPS/200.pdf [Accessed 31 October 2012].

Nohlen D., Grotz, F. and Hartmann, C. eds. (2001) *Elections in Asia and the Pacific: A Data Handbook. Volume I, II.* Oxford: Oxford University Press. DOI: https://doi.org/10.1093/0199249598.003.0001.

Zurcher, Ch. (2009). *The Post-Soviet Wars*. New York: New York University Press.

AUTHOR'S INFO:

Pál Gyene – Ph.D., Assistant Professor of the Faculty of International Managment and Business, Budapest Business School.

FOR CITATION:

Gyene, P. (2017). Perspectives of the Kyrgyz Parliamentary Experiment in the Light of Two Elections (2010 – 2015). *Proceedings of the Institute of State and Law of the RAS*, 12(2), pp. 9-31.

ANALYZING THE ISSUES OF PARLIAMENTARISM IN SOVIET RUSSIA

YURY L. SHUL'ZHENKO

Institute of State and Law, Russian Academy of Sciences, 10, Znamenka str., Moscow 119019, Russian Federation.

E-mail: constitution@igpran.ru.

The article deals with the ideas of Parliamentarism in theoretical studies and their practical application in the period of Soviet history in Russia. The author indicates that by the beginning of the Soviet period there were certain practical achievements in this field, namely, the foundation and the work of the State Council and State Duma as an analog of the bicameral parliament (1905 – February 2017); establishment of the Provisional Council of the Republic (September, 20 – October, 25 2017); preparatory activities and opening (convocation) of the Constituent Assembly. In theoretical terms we can speak about creation of national concept of Parliamentarism on the basis of foreign experience and thoughts of scholars from Britain, Germany, USA, France and other countries. However, since the beginning the state power in the Soviet Russia demonstrated its divorce with the parliamentarian principles. The first in this line was the principle of separation of powers underlying the development of Parliamentarian system,

which was decisively rejected by the Soviet power. Instead, the idea of popular representation was redeveloped on the base of K. Marks's and V. Lenin's works. "Soviets" were considered the most appropriate form of governance by the working class, called a dictatorship of proletariat, where legislative and executive powers were not separated.

Any study on the issue of parliamentarism was hardly carried out during the Soviet period of Russian history. Actually at that time, the Soviet scholars in the field of legal studies of state focused on critique of the parliamentary system, arguing the thesis of its decline in the capitalist countries both with the idea of the increasing role of the executive branch. It is emphasized in the article that the alike trends which were criticized in connection with the representative bodies of bourgeois countries, took place in the Soviet state. So, the execution of the Lenin's project of governance with no separation of the legislative and the executive powers resulted in the fact that the representative bodies were not actually the highest and the government acted beyond any accountability and control. In the years of socialism the real power belonged to the bodies of the Communist party; the program of the Communist Party of the Soviet Union turned into the real Constitution and the law was superseded by documents of the Communist party congresses, conferences, plenary meetings and by the statements of the party leaders. The situation began to change only in the years of Perestroika. Separation of powers once again began to prove as a fundamental principle of the state government. The new approaches to understanding the place of the representative bodies in the system of the separation of powers were reflected in the amendments to the Soviet Union Constitution as well as the constitutions of the federal and autonomous republics of 1988-1991.

🗝 Parliamentarism, popular representation, separation of powers, executive power, political party, soviet power, the Soviet Union, Communist party.

REFERENCES

Avak'yan, S.A. (1999). *Federal'noe Sobranie – Parlament Rossii* [Federal Assembly – Russian Parliament] Moscow: Rossiiskii yuridicheskii izdatel'skii dom. (in Russ.).

Baeclque, de F. (1973). *L'administration Centrale la France* [The Central Administration of France]. Paris: Armand Colin. (in French).

Baglai, M.V. (1998). *Konstitutsionnoe pravo Rossiiskoi Federatsii: Uchebnik dlya yuridicheskikh vuzov i fakul'tetov* [Constitutional Law of the Russian Federation: a Textbook for Law Universities and Faculties] Moscow: NORMA-INFRA M Publ. (in Russ.).

Bel'son, Ya.M. (1957). *Problemy sovremennogo angliiskogo parlamentarizma v burzhuaznoi pravovoi nauke* [Problems of Modern English Parliamentarism in Bourgeois Legal Science]. *Sovetskoe gosudarstvo i pravo* [Soviet State and Law], (12), pp. 122–128. (in Russ.).

Dicey, A.V. (1897). *Introduction to the Study of the Law of the Constitution*. London: Macmillan. [Russ. ed.: Dicey, A. (1905). *Osnovy gosudarstvennogo prava Angli*i. Translated from English by O.V. Poltoratskaya. Moscow: Tipografiya tovarishchestva I.D. Sytina].

Duguit, L. (1907). *Manuel de Droit Constitutionnel: Théorie Générale de L'état*. Paris: A. Fontemoing. (in French). [Russ. ed.: Duguit, L. (1908). *Konstitutsionnoe pravo. Obshchaya teoriya gosudarstva* [Constitutional Law. General Theory of the State]. Translated from French by V. Krasnokutskii, B. Syromyatnikov & A. Yashchenko. Moscow: Tipografiya tovarishchestva I.D. Sytina].

Esmein, A. (1896). *Éléments de Droit Constitutionnel* [Elements of Constitutional Law]. Paris: Librairie de la société du recueil Sirey général des lois et des arrêts et du Journal du Palais. (in French).

Topornin, B.N. ed. (1994). *Gosudarstvennoe pravo Germanii* [Constitutional Law of Germany]. V 2 t. Vol. 1. Translated from German by Ju.P. Ur'jas, L.D. Judina, L.V. Golovina, N.V. Korosteleva and A.A. Popova. Moscow: Institut gosudarstva i prava RAN. (in Russ.).

Hewitt, D.J. (1953). *The Control of Delegated Legislation*. Sydney: Butterworth and Company Ltd.

Ivanovskii, V.V. (1913). *Uchebnik gosudarstvennogo prava* [Tutorial of State Law]. 4th ed. Kazan': Tipolitografiya Imperatorskogo universiteta. (in Russ.).

Jellinek, G. (1905). *Allgemeine Staatslehre*. Berlin: Verlag von O. Häring. (In Germ.). [Russ. ed.: Jellinek, G. (1903). *Obshhee uchenie o gosudarstve* [General Theory of State]. Translated from German by V.M. Gessen & L.V. Shalland. St. Petersburg: Tovarishhestvo "Obshhestvennaja Pol'za" Publ.].

Kerimov, A.D. (1998). *Parlamentskoe pravo Frantsii* [The Parliamentary Law of France]. Moscow: Norma. (in Russ.).

Khabrieva, T.Ya. and Chirkin, V.E. (2005). *Teoriya sovremennoi konstitutsii* [Theory of the Modern Constitution]. Moscow: Norma (in Russ.).

Kokoshkin, F.F. (1908). *Russkoe gosudarstvennoe pravo. V svyazi s osnovnymi nachalami obshchego gosudarstvennogo prava* [Russian State Law. In Connection with the Basic Principles of Common State Law]. Issue 2. Moscow: Obshchestvo vzaimopomoshchi studentov-yuristov Moskovskogo universiteta Publ. (in Russ.).

Korf, S.A. (1915). *Russkoe gosudarstvennoe pravo* [Russian State Law]. Part 1. Moscow: Skoropechatnya A. A. Levenson. (in Russ.).

Kotlyarevskii, S.A. (2004). *Konstitutsionnoe gosudarstvo. Yuridicheskie predposylki russkikh osnovnykh zakonov* [The Constitutional State. Legal Background of the Russian Fundamental Laws.]. Moscow: Zertsalo. (in Russ.).

Krylov, B.S. (1963). *Parlament burzhuaznogo gosudarstva. Politicheskaya sushchnost' i formy parlamenta i parlamentarizma na sovremennom etape* [The Parliament of the Bourgeois State. The Political Essence and Forms of the Parliament and Parliamentarism at the Present Stage.] Moscow: IMO Publ. (in Russ.).

Shchetinin, B.V. and Gorshenev, A.N. eds. (1971). *Kurs sovetskogo gosudarstvennogo prava* [The Course of Soviet State Law]. Moscow: Vysshaya shkola. (in Russ.).

Lazarev, L.V. and Sliva, A.Ya. (1989). *Konstitutsionnaya reforma: pervyi etap. Posobie dlya slushatelei narodnykh universitetov* [Constitutional Reform: the First Stage. Guide for Students of Public Universities]. Moscow: Znanie. (in Russ.).

Lazarevskii, N.I. (1913). *Russkoe gosudarstvennoe pravo*. T. 1. Konstitutsionnoe pravo [Russian State Law. Vol. 1. The Constitutional Law]. 3d ed. St. Petersburg: Tipografiya aktsionernogo obshchestva "Slovo". (in Russ.).

Lepeshkin, A.I. (1961). *Kurs sovetskogo gosudarstvennogo prava* [The Course of Soviet State Law]. Vol.1. Moscow: Gosyurizdat. (in Russ.).

Locke, J. (1988). *Sochineniya* v trekh tomakh: T. 3. [The Works of John Locke Esq., in Three Volumes]. V. 3. Translated from English and Latin by Yu.M. Davidson, E.S. Lagutin, Yu.V. Semenov, N.A. Fedorov and others. Moscow: Mysl'. (in Russ.).

Marchenko, M.N. (2004). *Teoriya gosudarstva i prava* [Theory of State and Law.] 2nd ed. Moscow: Prospekt. (in Russ.).

Montesquieu, C.L. (1955). *Izbrannye proizvedeniya*. [Selected Works]. Moscow: Gospolitizdat. (in Russ.).

Murychev, K.V. (2011). *Sistema predstavitel'nykh organov vlasti v Rossiiskoi Federatsii* [The System of Representative Bodies in the Russian Federation]. Moscow: Norma (in Russ.).

Muir, R. (1932). *How Britain is Governed: a Critical Analysis of Modern Developments in the British System of Government*. London: Constable. [Russ. ed.: Muir, R. (1936). Kak upravlyaetsya Britaniya. Translated from English by R. Stolper. Moscow: Sotsekgiz].

Safarova, M.P. (1992) Razdelenie vlastei i konstitutsionnoe reformirovanie vysshikh zakonodatel'nykh i ispolnitel'nykh organov vlasti Rossii i drugikh suverennykh respublik SNG [The Separation of Powers and the Constitutional Reforming of the Supreme Legislative and Executive Authorities of Russia and other Sovereign Republics of the CIS]. In: A.V. Mnukevich,

ed. *Aktual'nye problemy konstitutsionnogo zakonodatel'stva* [Actual Problems of Constitutional Law]. Moscow, No. 51. pp. 78–87(in Russ.).

Schoenbrod, D. (1989). How the Reagan Administration Trivialized Separation of Powers. *The George Washington Law Review*, 57(3), pp. 459–473.

Sokolov, K.P. (1912). *Parlamentarizm. Opyt pravovoi teorii parlamentskogo stroya.* [The Parliamentary System. The Experience of the Legal Theory of Parliamentary Government.]. St. Petersburg: Tipografiya "Pechatnyi trud". (in Russ.).

Nersesyants, V.S. ed. (1990). *Sotsialisticheskoe pravovoe gosudarstvo: kontseptsiya i puti realizatsii* [The Socialist State Governed by the Rule of Law: the Concept and the Ways of Realization] Moscow: Yuridicheskaya literature. (in Russ.).

Tumanov, VA. ed. (1987). *Sovremennoe burzhuaznoe gosudarstvennoe pravo.* Kriticheskie ocherki. V 2 tomakh. Tom 2. Osnovnye instituty. [Modern Bourgeois State Law. Critical Essays. In 2 vol. Vol. 2. Basic Institutions]. Moscow: Nauka. (in Russ.).

Strauss, K. (1987). Formal and Functional Approaches to Separation of Powers Questions – a Foolish Inconsistency? *Comell Law Review*. 1987, 72, pp. 488–526.

Wade, E.C.S. and Fillips, G.G. (1947). Constitutional Law. 3rd ed. London; New York; Toronto: Longmans, Green and Co. [Russ. ed.: Wade, E. & Fillips, G. Konstitutsionnoe pravo. [Constitutional Law]. Translated from English by A.S. Nikiforov. Moscow: Inostrinnaya literatura].

Zhilin, A.A. (1916). *Zapiska ob otvetstvennosti ministrov. Spravka.* [A Note on Responsibility of Ministers. Reference]. Petrograd: Tipografiya Glavnogo upravleniya udelov, tsenzov. (in Russ.).

Zivs, S.L. (1958) *Krizis burzhuaznoi zakonnosti v sovremennykh imperialisticheskikh gosudarstvakh* [The Crisis of Bourgeois Legality in the Modern Imperialist States]. Moscow: AN SSSR Publ. (in Russ.).

AUTHOR'S INFO:

Yury L. Shul'zhenko – Doctor of Legal Sciences, Professor, Honored Lawyer of the Russian Federation, Chair of the Theory of Constitutional Law Department, Institute of State and Law, Russian Academy of Sciences.

FOR CITATION:

Shul'zhenko, Yu.L. (2017). Analyzing the Issues of Parliamentarism in Soviet Russia. *Proceedings of the Institute of State and Law of the RAS*, 12(2), pp. 32-56.

THE IDEAS OF PARLIAMENTARISM IN THE WORKS OF N.I. LAZAREVSKII

Inna L. Danilevskaya

Institute of State and Law, Russian Academy of Sciences, 10, Znamenka str., Moscow 119019, Russian Federation.

E-mail: constitution@igpran.ru.

Nikolay Ivanovich Lazarevskii (1868—1921) — a famous Russian scholar and a notable public figure, author of works on constitutional law. In his theoretical works he defended the idea of separation of powers, public representation and constitutionalism. He always stressed importance of civil freedom and considered the public opinion as a moving force in the development of society. His approaches toward the authority of the parliament, multiparty system, party discipline, advantages of proportional electoral system are still actual. He tried to

realize his ideas in practice, presided over the Juridical Council of the Temporary Government, participated in the work of the Special Council for drafting Statute on elections to the Constituent Assembly and in the work of the Special commission on preparation of the Basic laws of the State (February — October 1917).

After October 1917 Lazarevskii worked in the Institute of economic research and in the Institute of national economy, was a deputy rector of Petrograd university. However he had not forsaken his ideas. He drafted projects of laws on administrative governance and on elections to the Constituent Assembly. These drafts were prepared for an organization (led by V.N. Tagantzev) that had as its purposes restoration of civil rights, multiparty system and abolition of Bolshevik's RKP dictatorship. He paid his life for this activity with others convicted for *Tagantzev* case.

⊶ N.I. Lazarevskii, people's representation, parliament, parliamentarism, multiparty system, proportional electoral system, State Duma, monarchy.

REFERENCES

Chernyaev, V.Yu. (1998). O N.S. Tagantseve i ego dnevnike [On N.S. Tagantsev and his Diary]. *Zvezda* [Star], (9), pp. 126—129. (in Russ.).

Chernyaev, V.Yu. (1999). Uchreditel'noe sobranie ili vlast' sovetov? (Neizvestnyi Epizod "Dela Tagantseva") [Constituent Assembly or Soviet Power? (Unknown Episode of the "Tagantsev Case")]. In: *Istorik i revolyutsiya. Sbornik statei k 70-letiyu so dnya rozhdeniya O.N. Znamenskogo* [The Historian and the Revolution. A Collection of Articles to the 70th Anniversary of O.N. Znamenskiy]. Saint Petersburg: Dmitrii Bulanin Publ., pp. 215—233. (in Russ.).

Chicherin, B.N. (1866). *O narodnom predstavitel'stve* [On People's Representation]. Moscow: Tipografiya Gracheva i Komp. (in Russ.).

Gambarov, Yu.S. (1905). *Politicheskie partii v ikh proshlom i nastoyashchem* [Political Parties in their Past and Present]. Saint Petersburg: Tipografiya Al'tshulera. (in Russ.).

Gessen, V.M. (1917). *Russkoe Uchreditel'noe sobranie i vybory v nego* [Russian Constituent Assembly and It's Elections]. Petrograd: Slovo. (in Russ.).

Lazarevskii, N.I. (1906). Konstitutsiya 20-go fevralya [The Constitution of 20th of February]. *Pravo* [Law], (8), pp. 653—662. (in Russ.).

Lazarevskii, N.I. (1908). *Lektsii po russkomu gosudarstvennomu pravu* [Lectures on Russian State Law]. In 2 vol. Volume 1. Saint Petersburg: Tipografiya aktsionernogo obshchestva "Slovo". (in Russ.).

Lazarevskii, N.I. (1906). Vtoroe Uchrezhdenie Gosudarstvennoi dumy [The Second Institution of the State Duma]. *Pravo* [Law], (8), pp. 662 — 670. (in Russ.).

Mel'gunov, S.P.(1990). *Krasnyi terror v Rossii* [The Red Terror in Russia]. Moscow: SP "PUICO". (in Russ.).

Mironov, G.E. (1993). "Delo" professora Tagantseva [The Professor Tagantsev's "Case"]. *Chelovek & Zakon*, (8), pp. 51—67. (in Russ.).

Skripilev, E.A. (1982). *Vserossiiskoe Uchreditel'noe sobranie* [The All-Russian Constituent Assembly]. Moscow: Nauka. (in Russ.).

Starodubova, A.L. (1999). Yuridicheskoe soveshchanie 1917 goda i liberal'naya model' reformirovaniya Rossii [Juridical Council of 1917 and the Liberal Model of the Reforming of Russia]. In: *Ekho: Sbornik statei po novoi i noveishei istorii Otechestva*. [Echo: Collection of Works on the New and the Newest History of the Fatherland], Issue 2. Moscow: Signal, pp. 44—58. (in Russ.).

Stepanov, I.M. (1995). Parlamentskaya demokratiya i vybor formy pravleniya [Parliamentary Democracy and the Choice of the Form of Government]. In: *Konstitutsionnyi stroi Rossii: Sbornik statei. Vyp. 2. Voprosy parlamentskogo prava* [The Constitutional System

of Russia: Collection of Articles. Issue 2. Matters of Parliamentary Law]. Moscow: IGiP RAN Publ. pp. 16—24. (in Russ.).

Znamenskii, O.N. (1976). *Vserossiiskoe Uchreditel'noe sobranie* [The All-Russian Constituent Assembly]. Leningrad: Nauka. (in Russ.).

AUTHOR'S INFO:

Inna L. Danilevskaya — Candidate of Legal Sciences, Senior Research Fellow of the Theory of Constitutional Law Department, Institute of State and Law, Russian Academy of Sciences.

FOR CITATION:

Danilevskaya, I.L. (2017). The Ideas of Parliamentarism in the Works of N.I. Lazarevskii. *Proceedings of the Institute of State and Law of the RAS,* 12(2), pp. 57–73.

NOMADIC KYRGYZ SOCIETY: EMERGENCE OF CUSTOMARY LABOUR AGREEMENTS AND DEVELOPMENT OF ECONOMIC AND LABOUR RELATIONS

K.S. Ramankulov

Faculty of Law, Zhusup Balasagyn Kyrgyz National University, 547 Frunze str., Bishkek 720033, Kyrgyz Republic.

E-mail: ramaks65knu@mail.ru.

Legal basis for economic mechanism of nomadic Kyrgyz society were mainly customary norms. These norms reflected special features of feudal relations, economic structure of the society and methods of employment. The main customary legal instrument for employment in nomadic Kyrgyz society were "discharge agreements". In customary law such agreements would encompass rules that were characterized by formality, definitiveness, obligatory nature, would establish rights and obligations of the parties, thus forming customary agreements. Discharge agreements had a relatively complex nature. They would allow for formal freedom of an employee and indeed an employment agreement existed. At the same time that person became subjected to the power of the owner, though this power extended to the function performed and not the person himself. Despite some features resembling contractual employment in market economy, discharge agreements remained typical customary legal device that permitted to use labour in the conditions of feudal nomadic Kyrgyz society.

🗝 Nomadic society, customary law, feudal relations, customary agreement, employment relations, employment, Kyrgyzstan.

REFERENCES

Asankanov, A.A. (2003). Osobennosti formirovaniya i razvitiya gosudarstv Tsentral'noi Azii (na primere gosudarstv kyrgyzov) [Specifics of Formation and Development of the Central Asian States (on Example of the States of Kyrgyz)]. In: D. Dzhunushaliev, A. Kakeev and V. Ploskikh, eds. *Problemy politogeneza Kyrgyzskoi gosudarstvennosti* [Problems of Politogenesis of the Kyrgyz Statehood]. Bishkek: ARKHI, 2003, pp. 161—176. (in Russ.).

Baktygulov, D.S. (1990). *Istoriya kochevogo krest'yanstva SSSR* [History of a Nomadic Peasantry of the USSR]. Bishkek: Kantskaya tipografiya. (in Russ.).

Bartol'd, V.V. (1927). *Kirgizy (istoricheskii ocherk)* [Kyrgyz (historical review)]. Frunze:

Kirgizgosizdat.(in Russ.).

Berman, H.J. (1983). *Law and Revolution: The Formation of the Western Legal Tradition*. Cambridge, Massachusetts and London, England: Harvard University Press, 1983. [Russ. ed.: Berman, H.J. (1994). *Zapadnaya traditsiya prava: epokha formirovaniya.* Moscow: MGU Publ.].

David, R. (1964). *Les grands systemes de droit contemporains*. Paris: Dalloz. (In French). [Russ. ed.: David, R. (1967). *Osnovnye pravovye sistemy sovremennosti* [The Main Legal Systems of Modern Period]. Translated from French by M.A. Krutogolov and V.A.Tumanov. Moscow: Progress].

Dumanov, Kh.M. and Pershits A.I. (2001). Mononormatika i nachal'noe parvo. Stat'ya vtoraya [Mononormative System and Elementary Law. Second Article]. *Gosudarstvo i pravo* [State and Law], (9), pp. 85—91. (in Russ.).

Dzhamgerchinov, B. (1966). *Ocherk politicheskoi istorii Kirgizii XIX veka* [Review of the Political History of Kyrgyzstan of the XIX century]. Frunze: Kyrgyzstan. (in Russ.).

Dzhamgerchinov, B. (1959). *Prisoedinenie Kirgizii k Rossii* [Kyrgyzstan's Accession to Russia]. Moscow: Sotsekgiz. (in Russ.).

Dzhunushev, K. (1962). *Ekonomicheskie predposylki vozniknoveniya tovarnogo khozyaistva v dorevolyutsionnoi Kirgizii* [Economic Preconditions of Commodity Production in the Pre-revolutionary Kyrgyzstan]. Frunze: AN Kirgizskoi SSR Publ. (in Russ.).

Dzhunushev, K. (1965). *Razvitie tovarno-denezhnykh otnoshenii v dorevolyutsionnoi Kirgizii* [The Development of Commodity-Money Relations in Pre-revolutionary Kyrgyzstan]. Frunze: Ilim. (in Russ.).

Grodekov, N.I. (1989). *Kirgizy i karakirgizy Syr-Dar'inskoi oblasti* [Kyrgyz and Karakyrgyz of the Syr-Darya Region]. Vol. 1. Tashkent: Tipolitografiya S.I. Lakhtina. (in Russ.).

Kashanina, T.V. (1999). *Proiskhozhdenie gosudarstva i prava. Sovremennye traktovki i novye podkhody* [The Origin of State and Law. Modern Interpretations and New Approaches]. Moscow: Yurist. (in Russ.).

Khokhlov, E.B. (2013). *Istoriya truda i trudovoe pravo V 3 t.* [The Labour History and Labour Law. In 3 vol.] (I.Yu. Kozlikhin, ed.). Vol. 1. Saint Petersburg: Izdatel'skii dom Sankt-Peterburgskogo gosudarstvennogo universiteta. (in Russ.).

Khokhlov, E.B. ed. (1996). *Kurs rossiiskogo trudovogo prava. V 3 t. T. 1. Obshchaya chast'* [The Course of Russian Labour Law. In 3 vol., Volume 1. The General Part]. Saint Petersburg: Sankt-Peterburgskii gosudarstvennyi universitet Publ. (in Russ.).

Kubanov, A.A. and Starkov, V.N. (2004). *Kul'tura vlasti* [The Culture of Power]. Novosibirsk: Nika. (in Russ.).

Manov, G.N. ed. (1995). *Teoriya prava i gosudarstva* [Theory of State and Law]. Moscow: BEK. (in Russ.).

Markov, G.E. (1976). *Kochevniki Azii. Struktura khozyaistva i obshchestvennoi organizatsii* [The Nomads of Asia. The Structure of the Economy and Public Organizations]. Moscow: Moskovskii universitet Publ. (in Russ.).

Masson, V.M. (2003). Politogenez stepnykh obshchestv i kochevye imperii [The Politogenesis of the Steppe Societies and Nomadic Empires] In: D. Dzhunushaliev, A. Kakeev and V. Ploskikh, eds. *Problemy politogeneza Kyrgyzskoi gosudarstvennosti* [Problems of Politogenesis of the Kyrgyz Statehood]. Bishkek: ARKHI. pp. 101—114. (in Russ.).

Mukambaeva, G.A. (1998). *Gosudarstvo i pravo Kyrgyzstana* [State and Law of Kyrgyzstan]. Bishkek: OsOO surot-Basma — Salonu. (in Russ.).

Myakutin, A.I. (1910). Yuridicheskii byt kirgizov: I. Veshchnoe pravo. II. Obyazatel'stvennoe parvo [The Legal Life of the Kyrgyz People: I. Property Law. II. Law of Obligations] In: *Trudy Orenburgskoi uchenoi arkhivnoi komissii* [Works of Orenburg Scientific Archival Commission], Issue 25. Orenburg: Tipografiya Turgaiskogo oblastnogo pravleniya. (in Russ.).

Pashkov, A.P. (1993). Dogovory o trude v usloviyakh mnogoukladnoi ekonomiki [Labour Agreements in a Pluristructural Economy]. *Gosudarstvo i pravo* [State and Law], (6), pp. 57—65. (in Russ.).

Ploskikh, V.M. (1972). Obshchina i patriarkhal'no-rodovoi uklad u kirgizov XIX veka [The Community and the Patriarchal Tribal Structure of the Kyrgyz in XIX Century]. In: V.P. Sherstobitov, ed. *K istorii sotsial'no-ekonomicheskikh ukladov Kirgizstana* [The History of the Socioeconomic Structure of Kyrgyzstan]. Frunze: Ilim. pp. 24—52 (in Russ.).

Pogorel'skii, P. and Batrakov, V. (1930). *Ekonomika kochevogo aula Kirgizstana* [The Economy of the Kyrgyzstan Nomadic Village]. Moscow: Izdanie Sovnarkoma KASSR. (in Russ.).

Potapov, L.P. (1954). O sushchnosti patriarkhal'no-feodal'nykh otnoshenii u kochevykh narodov Srednei Azii i Kazakhstana [On the Nature of Patriarchal Feudal Relations Among the Nomadic Peoples of Central Asia and Kazakhstan]. *Voprosy Istorii*, (6), pp. 73—89. (in Russ.).

Ramankulov, K.P. (2006). Vlast' i pravo v ekonomicheskom mekhanizme: sootnoshenie i funktsional'nye svyazi [Power and Law in the Economic Mechanism: Correlation and Functional Relationships]. *Pravovedenie*, (5), pp. 35—40. (in Russ.).

Strumilin, P.G. (1954). *Istoriya chernoi metallurgii v SSSR. T. 1. Feodal'nyi period, 1500—1860 gg.* [History of Ferrous Metallurgy in the USSR, Volume 1: The Feudal Period 1500— 1860]. Moscow: AN SSSR. (in Russ.).

Strumilin, P.G. (1966). *Ocherki ekonomicheskoi istorii Rossii i SSSR* [Essays on the Economic History of Russia and the Soviet Union]. Moscow: Nauka. (in Russ.).

Tal', L.S. (1908). Novyi opyt zakonodatel'noi normirovki rabochego dogovora (okonchanie) [New Experience of Legislative Normalization of the Employment Contract (The Last Part)]. *Pravo* [Law], (34), pp. 1829—1835. (in Russ.).

Tal', L.S. (1913). *Trudovoi dogovor. Tsivilisticheskoe issledovanie. Ch.1.: Obshchie ucheniya* [Employment Contract. Civil Study. Part 1: General Concepts]. Yaroslavl: Tipografiya Gubernskogo pravleniya. (in Russ.).

Tolstov, P.P., ed. (1962). *Narody Srednei Azii i Kazakhstana* [The Peoples of Central Asia and Kazakhstan]. In 2 vol., Volume 1. Moscow: Akademiya nauk SSSR Publ.. (in Russ.).

Valeev, D.Zh. (1974). Obychnoe pravo i nachal'nye etapy ego genezisa [Customary Law and the Initial Stages of its Genesis]. *Pravovedenie*, (6), pp. 71—78. (in Russ.).

Vasil'ev, L.S. (1982). Fenomen vlasti-sobstvennosti. K probleme tipologii dokapitalisticheskih struktur [The Phenomenon of Power-Property. On the Problem of Typology of Pre-capitalist Structures]. In: L.B. Alaev, ed. *Tipy obshchestvennykh otnoshenii na Vostoke v Srednie veka* [The Types of Social Relations in the East in the Middle Ages]. Moscow: Nauka. (in Russ.).

AUTHOR'S INFO:

Kubanychbek S. Ramankulov — Candidate of Legal Sciences, Professor, Head of the Civil Law and Procedure Department, Faculty of Law, Zhusup Balasagyn Kyrgyz National University.

FOR CITATION:

Ramankulov, K.S. (2017). Nomadic Kyrgyz Society: Emergence of Customary Labour Agreements and Development of Economic and Labour Relations. *Proceedings of the Institute of State and Law of the RAS*, 12(2), pp. 74–92.

DRUG COURTS: AMERICAN EXPERIENCE

Svetlana V. Polubinskaya

Institute of State and Law, Russian Academy of Sciences, 10, Znamenka str., Moscow 119019, Russian Federation.
E-mail: svepol@yandex.ru.

Drug courts have appeared in the US in the late 80's as an alternative to traditional criminal justice in response to the growing number of drug trafficking crimes, strengthening of criminal legislation and overburdening of the criminal justice system. The tasks of drug courts, apart from general reduction of drug related crimes are: reduction of illicit use of drugs (and other psychoactive substances), the application of a multidisciplinary approach when considering individual cases, to provision of court-supervised drug treatment for individuals, whose cases are heard by a court, solution of social problems of these persons, as well as decrease of the burden laying upon criminal courts, police and prisons.

American drug courts are specialized bodies within the ordinary criminal jurisdiction courts, implementing treatment and rehabilitation programs for persons who have committed drug trafficking and other drug-related crimes and who are dependent on drugs or other psychoactive substances. The judge acts as the leader of a multidisciplinary team of professionals, usually consisting of a prosecutor, defense attorney, probation officer, representatives of the health services and the police, as well as program coordinator.

As a general rule, drug courts jurisdiction covers cases of non-violent drug trafficking crimes, as well as other acts committed in connection with drug use if the accused suffers severe or moderate substance abuse. Such courts operate either at the pre-trial stage, while the trial is adjourned, or after the trial, while sentencing is adjourned or while sentence itself is suspended.

In addition to imposing the duty to undergo drug treatment under the supervision of the court, the defendants can be sent to social services for family counseling, vocational training, provision of psychiatric and other medical care, education, housing and other social assistance. Most drug courts' programes vary in duration from 12 to 24 months. Its successful completion may result in court's dismissing the criminal charge, reducing or setting aside the sentence, reducing of the term of probation.

The majority of scientific drug courts' evaluations provide evidence on the effectiveness of such courts in comparison with other forms of state response to drug trafficking and other drug-related crimes. Such studies are commonly based on number of new arrests, both for any crime, and only for offences related to drugs, number of new convictions and custodial sentences, as well as cases of illegal use of drugs and other psychoactive substances and positive drug tests.

In the US the success of drug courts has led to appearance of the same kind of specialized courts for various categories of persons with substance abuse problems, in particular for minors. Such courts are organized within general juvenile courts.

The American experience of drug courts as an alternative to traditional criminal justice has become an example for other countries, where specialized courts also have been established. UN Office on Drugs and Crime supports provision of appropriate treatment instead of criminal punishment, *inter alia* when such treatment is ordered via drug courts verdicts, especially for persons who use drugs and have not committed serious drug trafficking crimes.

🗝 Drug-related crimes, drug trafficking, criminal justice, drug courts, drug treatment, juvenile drug courts, effectiveness of drug courts.

REFERENCES

Belenko, S. (2000). The Challenges of Integrating Drug Treatment into the Criminal Justice Process. *Albany Law Review*, 63(3), pp. 833—876.

Blair, L., Sullivan, C., Latessa, E. and Sullivan C.J. (2015). Juvenile Drug Courts: A

Process, Outcome, and Impact Evaluation. *Juvenile Justice Bulletin* [online]. Available at: https://www.ojjdp.gov/pubs/248406.pdf [Accessed 22 December 2016].

Burke, K.S. (2010). Just What Made Drug Courts Successful? *New England Journal of Criminal and Civil Confinement*, 36(1), pp. 39—58.

Burnham, W. (2002). Introduction to the Law and Legal System of the United States. 3rd ed. Eagan: West Group Publishing. [Russ. ed.: Burnham, W. (2006). Pravovaya sistema SSHA. Moscow: Novaya yustitsiya Publ.]

Franco, C. (2016). *Drug Courts: Background, Effectiveness, and Policy*. [online] Issues for Congress. Available at: http://fpc.state.gov/documents/organization/150203.pdf [Accessed 12 August 2016].

Goldkamp, J.S. (2000). The Drug Court Response: Issues and Implications for Justice Change. *Albany Law Review*, 63(30), pp. 939—945.

Fulkerson, A., Keena L. and Longman, A. (2016). In or Out: The Drug Court Dilemma. *Criminology, Criminal Justice, Law and Society*, 17(2), pp. 34–45.

Gottfredson, D.C., Najaka, S.S. and Kearley B. (2003). Effectiveness of Drug Treatment Courts: Evidence from a Randomized Trial. *Criminology and Public Policy*, 2 (2), pp. 171—196. DOI: https://doi.org/10.1111/j.1745-9133. 2003.tb00117.x

Hora, P.F., Schma, W.G. and Rosental, J.T.A. (1999). Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America. *Notre Dame Law Review*, 74(2), pp. 439—538.

Hora, F.P. and Stalcup, T. (2008). Drug Treatment Courts in the Twenty-first Century: The Evolution of the Revolution in Problem-solving Courts. *Georgia Law Review*, 42(3), pp. 717–812.

Hora, P.F. (2011). Courting New Solutions Using Problem-Solving Justice: Key Components, Guiding Principles, Strategies, Responses, Models, Approaches, Blueprints and Tool Kits. *Chapman Journal of Criminal Justice*, 2(1), pp. 7–52.

Huddleston III, C.W., Marlowe, D.B. and Casebolt, R. (2008). *Painting the Current Picture: A National Report Card on Drug Courts and Other Problem-Solving Court Programs in the United States. Volume II. No. 1*. [online] National Drug Court Institute. Available at: http://www.ndcrc.org/sites/default/files/painting_ the_current_picture_2008.pdf [Accessed 12 December 2016].

Indermaur, D. and Roberts, L. (2003). Drug Courts in Australia: The First Generation. *Current Issue in Criminal Justice*, 15(2), pp. 136–154.

Jensen, E.L. and Mosher, C. (2006). Adult Drug Courts: Emergence, Growth, Outcome Evaluations, and the Need for a Continuum of Care. *Idaho Law Review*, 42(2), pp. 443—470.

MacCoun, R.J. and Reuter, P. (2001). Drug War Heresies: Learning from Other Vices, Times, and Places. New York: Cambridge University Press. DOI: https://doi.org/10.1017/CBO9780511754272.

Marlowe, D.B., DeMatteo, D.S. and Festinger, D.S. (2003). A Sober Assessment of Drug Courts. *Federal Sentencing Reporter*, 16(2), pp. 153–157.

Marlowe, D.B., Hardin, C.D. and Fox, C.L. (2016). *Painting the Current Picture: A National Report on Drug Courts and Other Problem-Solving Courts in the United States*. [online] National Drug Court Institute. Available at: http://www. ndcrc.org/sites/default/files/pcp_final_version.pdf [Accessed 23 December 2016].

Moore, L. (2014). International Best Practice in Drug Courts. *Arizona Summit Law Review*, 7(3), pp. 481—505. DOI: https://doi.org/10.2139/ssrn.2315921.

Rossman, S.B. and Zweig, J.M. What Have We Learned from the Multisite Adult Drug Court Evaluation? Implications for Practice and Policy. [online] National Association of Drug Court Professionals. Available at: http://www.nadcp. org/sites/default/files/nadcp/ Multisite% 20Adult%20Drug%20Court%20 Eva luation%20-%20NADCP.pdf [Accessed 05 January 2017].

Zimring, F.E. (1993). Drug Treatment as a Criminal Sanction. *Colorado University Law Review*, 64(3), pp. 809—826.

AUTHOR'S INFO:

Svetlana V. Polubinskaya — Candidate of Legal Sciences, Associate Professor, Leading Research Fellow of the Criminal Law, Criminology and Problems of Justice Department, Institute of State and Law, Russian Academy of Sciences.

FOR CITATION:

Polubinskaya, S.V. (2017). Drag Courts: American Experience. *Proceedings of the Institute of State and Law of the RAS*, 12(2), pp. 93–108.

LEGAL ENTITY IN THE INTERNATIONAL PRIVATE LAW: RUSSIA AND EUROPEAN UNION

Ninel' N. Voznesenskaya

Institute of State and Law, Russian Academy of Sciences, 10, Znamenka str., Moscow 119019, Russian Federation.
E-mail: ipl@igpran.ru.

The times of globalization are characterized by unification in the sphere of international private law, which is supposed to facilitate legal ordering of economic activity and prevent unnecessarily complicated legal disputes. As known, in international trade unification is particularly successful. However unification of laws pertaining to legal entities turned to be impossible even within the EU where since 1957 free movement of goods, persons, services and capital has to be provided. Different approaches of EU countries to this issue still present a problem for this purpose. Both in the EU and in Russia professional legal community is concerned with too liberal methods of definition of nationality of a legal entity, which permit foreign companies to profit from legal advantages designed for national corporations. The doctrine of control over nationality definition is being reviewed both in Russia and in the EU. The doctrine of recognition of legal entities is more relevant for the EU. Generally, the article shows significant similarities between international status of companies in Russian and in EU law.

🗝 European Union, legal entity, status of a legal entity, nationality of a legal entity, criteria for definition of nationality of legal entity, recognition of legal entities.

REFERENCES

Asoskov, A.V. (2003). *Pravovye formy uchastiya yuridicheskikh lits v mezhdunarodnom kommercheskom oborote* [Legal Forms of Participation of Legal Entities in the International Commercial Turnover]. Moscow: Statut. (in Russ.).

Bazedov, Yu. (2003). Unifikatsiya mezhdunarodnogo chastnogo prava v Evropeiskom soyuze [Unification of International Private Law in the European Union]. In: *Rossiiskii ezhegodnik mezhdunarodnogo prava* [Russian Yearbook of International Law]. Saint Petersburg: Rossiya-Neva, pp. 143—162. (in Russ.).

Brun, M.I. (1915). *Yuridicheskie litsa v mezhdunarodnom chastnom prave. Kn. 1. O lichnom statuse yuridicheskogo litsa* [Legal Entities in Private International Law. Book 1. The Personal Status of a Legal Entity.]. Petrograd: Tipografiya tovarishchestva "Obshchestvennaya pol'za". (in Russ.).

Erpyleva, N.Yu. and Batler, U.E. (2006). Kollizionnoe regulirovanie v mezhdunarodnom chastnom prave Rossii i Ukrainy [Conflict of Laws Regulation in the International Private Law of Russia and Ukraine]. *Zakonodatel'stvo i ekonomika* [Law and Economics], (9), pp. 36—48. (in Russ.).

Goldman, B. and Lyon-Caen, A. (1983). *Droit commercial europe€en* [European Commercial Law]. Paris: Dalloz. (in French).

Kalashnikov, G.O. (2007). *Sliyanie i pogloshchenie kompanii po pravu Evropeiskogo soyuza* [Mergers and Acquisitions of Companies according to the European Union Law]. Moscow: Mezhdunarodnye otnosheniya. (in Russ.).

Koch, H., Magnus, U. and Winkler von Morenfel, P. (2004). *IPR und Rechtsvergleichung*. 3.Aufl., Munchen: Beck. (in Germ.). [Russ. ed.: Koch, H., Magnus, U. and Winkler von Morenfel, P. (2003) *Mezhdunarodnoe chastnoe pravo i sravnitel'noe pravovedenie* [Private International Law and Comparative Law]. Translated from German by Yu.M. Yumashev. Moscow: Mezhdunarodnye otnosheniya].

Makovskoy, A.L. and Sukhanov, E.A. eds. (2003). *Kommentarii k chasti tret'ei Grazhdanskogo kodeksa Rossiiskoi Federatsii* [Commentary to the Third Part of the Civil Code of the Russian Federation]. Moscow: Yurist. (in Russ.).

Koretskii, V.M. (1989). Problemy chastnogo mezhdunarodnogo prava v dogovorakh, zaklyuchennykh sovetskimi respublikami s inostrannymi gosudarstvami [Problems of Private International Law in the Treaties Concluded by the Soviet Republics with Foreign States]. In: Koretskii, V.M. *Izbrannye trudy* [Selected works]. In 2 Books. Book 1. Kiev: Naukova dumka. (in Russ.).

Loussouarn, Y. and Bourel, P. (1980). *Droit International Prive€*. [Private International Law]. 2nd ed. Paris: Dalloz. (in French.).

Lunts, L.A. (1975). *Kurs mezhdunarodnogo chastnogo prava: Mezhdunarodnoe chastnoe pravo: Osobennaya chast'* [The Course of Private International Law: Private International Law: Special Part]. In 3 vol. 2nd ed. Moscow: Yuridicheskaya literatura. (in Russ.).

Yumashev, Yu.M. (1988). *Pravovoe regulirovanie pryamykh inostrannykh kapitalovlozhenii v EES* [Legal Regulation of Foreign Direct Investments in the EEC]. Moscow: Nauka. (in Russ.).

Yumashev, Yu.M. and Postnikova, E.V. (2014). *Ekonomicheskoe pravo Evropeiskogo Soyuza* [Economic Law of the European Union]. Moscow: Norma, Infra-M. (in Russ.).

Zvekov, V.P. and Marysheva, N.I. (2006). Zakon Ukrainy 2005 goda "O mezhdunarodnom chastnom prave" [The Ukraine Law of 2005 "On the International Private Law"]. *Khozyaistvo i pravo* [Business and Law], (5), pp. 118—129. (in Russ.).

AUTHOR'S INFO:

Ninel' N. Voznesenskaya — Doctor of Legal Sciences, Leading Research Fellow of the Legal Problems of International Economic Relations Department, Institute of State and Law, Russian Academy of Sciences.

FOR CITATION:

Voznesenskaya, N.N. (2017). Legal Entity in the International Private Law: Russia and European Union. *Proceedings of the Institute of State and Law of the RAS*, 12(2), pp. 109–144.

A CONTRACT OF EMPLOYMENT IN RUSSIA: FROM LABOUR CODE 1918 TO LABOUR CODE 2001.

Galina S. Skachkova

Institute of State and Law, Russian Academy of Sciences, 10, Znamenka str., Moscow 119019, Russian Federation.
E-mail: gskachkova@mail.ru.

The freedom of labour is a constitutional principle enshrined in Art.37 of the Constitution of the Russian Federation that suggests free choice of forms of work. One of these forms is a wage work. In most cases wage work implies a contractual employment. A contract of employment as a legal way to establish employment relations has passed through a period of formation and development in our country. Therefore the concept of agreement as a result of offer and acceptance in employment relations was not recognized and implemented in labour legislation immediately.

The RSFSR Labour Code 1918 did not apply a notion of a contract of employment as well as the term «hired labour». However, the Code indicated the presence of some signs of agreement in employment relations of that time. It happened for the first time in national legislation when the right to work was secured under the Labour Code 1918.

The RSFSR Labour Code 1922 regulated the contract of employment in more detail as «an agreement between two or more persons under which one party (an employee) agrees to provide its manpower to another party (an employer) in return for a specified remuneration» (Art. 27(1)).

A new concept of an employment contract was suggested by the Labour Code of the Russian Federation (RF) 1971 where a contract consisted of mutual rights and obligations of the parties which should be considered the content of a contract. Contract of employment contained provisions, agreed by the parties as well as rules, specified in regulations (Art.15).

A new stage of development of the employment contract is associated with the Labour Code of RF, adopted 30 December 2001. The Code regulates quite extensively the material content and procedural requirements related to conclusion of contracts (Art.56). The Labour Code also provides special safeguards for the right to dispose freely human abilities to work and to choose activity and profession. Although a number of articles in the Code reproduce former Labour Code provisions, their modern content should be considered in view of social development in process.

Employment law, history of employment law, freedom of labour, employment, hired work, contract of employment, hiring process.

REFERENCES

Akopova, E.M. (1997). *Sovremennyi trudovoi dogovor (kontrakt)* [Modern Labor Agreement (Contract)]. Moscow: Ekspertnoe byuro. (in Russ.).

Aleksandrov, N.G. (1948). Otlichitel'nye priznaki trudovogo pravootnosheniya [The Distinctive Characteristics of Labour Legal Relations]. In: V.M. Dogadov, ed.*Voprosy trudovogo prava. Sbornik I* [Labor Law Issues. Collection I]. Moscow—Leningrad: Akademiya nauk SSSR Publ. (in Russ.).

Andreev, V.S. and Medvedev, O.M. (1988). *Organizovannyi nabor rabochikh: Prakticheskoe posobie* [Organized Recruitment of Workers: a Practical Guide]. Moscow: Yuridicheskaya literatura. (in Russ.).

Andrianovskaya, I.I. (2012). *Trudovoi dogovor: Uchebnoe posobie* [Employment Contract: a Training Manual]. Yuzhno-Sakhalinsk: SakhGU. (in Russ.).

Bugrov, L.Yu. (2013). *Trudovoi dogovor v Rossii i za rubezhom* [An Employment Contract in Russia and Abroad]. Perm': PGNIU. (in Russ.).

Gorshenin, K.P. (1958). Sorokaletie pervogo sovetskogo Kodeksa zakonov o trude [The Fortieth Anniversary of the First Soviet Code of Labour Laws]. *Sovetskoe gosudarstvo i pravo* [Soviet State and Law], 1958, (12), pp. 16—25. (in Russ.).

Ivanov, S.A. and Livshits, R.Z. (1982). *Lichnost' v sovetskom trudovom prave* [Person in

Russian Labour Law]. Moscow: Nauka. (in Russ.).

Kiselev, I.Ya. (2001). *Trudovoe pravo Rossii. Istoriko-pravovoe issledovanie: Uchebnoe posobie* [Labour Law of Russia. Historical and Legal Research: a Training Manual]. Moscow: NORMA Publ. (in Russ.).

Livshits, R.Z. and Chubais, B.M. (1986). *Trudovoi dogovor* [Employment Contract]. Moscow: Nauka. (in Russ.).

Lukinova, S.A. (2016). *Pravovoe regulirovanie truda v sub»ektakh Rossiiskoi Federatsii: Uchebnoe posobie* [Legal Regulation of Labour in the Constituent Entities of the Russian Federation: a Training Manual]. Moscow: Prospekt. (in Russ.).

Lushnikov, A.M. (2016). Razrabotka i prinyatie KZoT RSFSR 1918 g. Struktura i period deistviya KZoT RSFSR 1918 g. [The Drafting and Adoption of the RSFSR Labour Code in 1918, the Structure and the Validity Period of the RSFSR Labor Code 1918]. In: R.L. Khachaturova and A.M. Lushnikova, eds. *Pamyatniki rossiiskogo prava. V 35 t. T. 26. Kodeksy zakonov o trude RSFSR* [Russian Law Inheretance. In 35 vol. Volume 26. The RSFSR Codes of Labour Laws]. Moscow: Yurlitinform. (in Russ.).

Lushnikov, A.M., Lushnikova, M.V. and Tarusina, N.N. (2015). *Dogovory v sfere sem'i, truda i sotsial'nogo obespecheniya: Uchebnoe posobie* [Treaties in the Field of Family, Labour and Social Security: a Training Manual]. 2nd ed. Moscow: Prospekt. (in Russ.).

Orlovsky, Yu.P. ed. (2014). *Osobennosti pravovogo regulirovaniya truda otdel'nykh kategorii rabotnikov: Uchebnoe posobie* [The Specifics of Legal Regulation of Labour of Certain Categories of Workers: a Training Manual]. Moscow: Kontrakt. (in Russ.).

Rogachevskaya, L.S. (1973). *Likvidatsiya bezrabotitsy v SSSR* [The Elimination of Unemployment in the USSR]. Moscow: Nauka. (in Russ.).

Tal', L.S. (2006). Trudovoi dogovor: tsivilisticheskoe issledovanie [Employment Contract: Civil Law Study]. Moscow: Statut. (in Russ.).

Yakimova, I.S. (2010). *Pravovaya priroda i sushchnost' trudovogo dogovora* [The Legal Nature and Essence of the Employment Contract]. The Candidate of Legal Sciences Thesis' Abstract. Moscow: Academy of Labour and Social Relations (in Russ.).

AUTHOR'S INFO:

Galina S. Skachkova — Doctor of Legal Sciences, Professor, Chair of the Labour Law and Social Security Law Department, Institute of State and Law, Russian Academy of Sciences.

FOR CITATION:

Skachkova G.S. (2017). A Contract of Employment in Russia: from Labor Code 1918 to Labor Code 2001. *Proceedings of the Institute of State and Law of the RAS*, 12(2), pp. 145–173.

EMPLOYMENT CONTRACT ACCORDING TO THE AZERBAIJAN REPUBLIC AND THE RUSSIAN FEDERATION LEGISLATION: COMPARATIVE ANALYSIS

Alysh M. Kasumov

Faculty of Law, Baku State University, 23, Ac. Zahid-Xalilov str., Baku AZ 1148, The Republic of Azerbaijan.

E-mail: kasumov-bsu@rambler.ru.

Labour law studies in the Republic of Azerbaijan have started to develop after the adoption of the Fundamentals of legislation of the USSR and Union republics on labour on July 15, 1970.

Although the Azerbaijan SSR Labour Code from December 10, 1971 generally accumulated almost all provisions of that Fundamentals of legislation, its structure was more detailed and specific, and in some cases it took into account special traits of national historical development of Azerbaijan. The Azerbaijan Republic Labour Code currently in force was adopted on February 1, 1999 and has many similarities with the Russian Federation Labour Code. However Azerbaijan labour law has its distinctive traits e.g. in the notion of employment contract. The parties to the employment contract are the employee and employer — a feature common to the Russian Federation and the Azerbaijan Republic Labour Codes. However the Azerbaijan Republic Labour Code also gives definition of an enterprise, omitted in the Russian Federation Labour Code. The latter, in contrast with the Azerbaijan Republic Labour Code, provides for the conclusion of employment contracts with persons under 14 years of age. Special features of the Azerbaijan Republic Labour Code are permission (by consent of the parties) to use standard employment agreement annexed to the Code; possibility to collectively execute an employment contract; compulsory registration of a notification about labour contract in electronic information system. The Russian Federation and the Azerbaijan Republic Labour Codes have other significant differences. Analysis of such differences permits to understand better modern evolution of the institute of employment contract in FSE.

🗝 Labour law, employment contract, conclusion of employment contract, termination of employment contract, comparative labour law, the Russian Federation, the Republic of Azerbaijan.

REFERENCES

Baburin, S.N. and Kurbanov, R.A. eds. (2013). *Trudovoe pravo Rossii: Uchebnik dlya studentov vuzov, obuchayushchikhsya po spetsial'nosti "Yurisprudentsiya"* [Labour Law of Russia: Textbook for University Students Enrolled in the Specialty «Jurisprudence»]. Moscow: YuNITI-DANA. (in Russ.).

Boldyrev, V.A. and Sysoev, V.A. (2006). *Trudovoe pravo Rossii: Uchebnik dlya vuzov* [Labour Law of Russia: Textbook for Universities]. Moscow: NORMA. (in Russ.).

Faradzhev, A.A. (2013). Ponyatie i pravovoi status sovremennogo rabotodatelya po normam deistvuyushchego Trudovogo kodeksa Azerbaidzhanskoi Respubliki [The Concept and the Legal Status of the Employer according to the Norms of Modern Labour Code of Azerbaijan Republic]. *Probely v rossiiskom zakonodatel'stve* [Gaps in Russian Legislation], (4), pp. 119–125. (in Russ.).

Kurennoy, A.M. ed. (2008). *Trudovoe pravo: Uchebnik* [Labor Law: Textbook]. Moscow.: Yurist. (in Russ.).

Mamedov, E.N. (2012). Sovremennye pravovye konstruktsii ponyatiya trudovogo dogovora o sovmestitel'stve [Modern Legal Designs of the Notion of the Labor Agreement on Combine Jobs]. *Probely v rossiiskom zakonodatel'stve* [Gaps in Russian Legislation], (4), pp. 105–108. (in Russ.).

Naumov, M.F., Kasumov, A.M. and Rasulov, M.B. (1999). *Trudovoi dogovor (kontrakt): balans sil i balans interesov* [Labour Agreement (Contract): Balance of Forces and Balance of Interests]. Moscow: Yuridicheskie vesti. (in Russ.).

Shchur-Trukhanovich, L.V. and Shchur, D.L. (2005). *Uvol'nenie po vsem stat'yam. Prakticheskoe posobie* [Dismissal on All Counts. A Practical Guide]. Moscow: Finpress. (in Russ.).

AUTHOR'S INFO:

Alysh M. Kasumov — Doctor of Legal Sciences, Professor, Chair of the Labour and

Environmental Law Department, Faculty of Law, Baku State University.

FOR CITATION:

Kasumov, A.V. (2017). Employment Contract according to the Azerbaijan Republic and the Russian Federation Legislation: Comparative Analysis. *Proceedings of the Institute of State and Law of the RAS*, 12(2), pp. 174–191.

TERMINATION OF THE EMPLOYMENT CONTRACT AS A RESULT OF CORRUPTION OFFENSE BY LEGISLATION OF THE REPUBLIC OF KAZAKHSTAN

Botagos A. Ospanova

Akmolinsk Regional Court, 39, M. Gor'kogo str., Kokshetau 020000, Republic of Kazakhstan.

E-mail: ospanova_botagoz67mail.ru.

Corruption offense is a fairly new legal basis to terminate the employment contract on the initiative of the employer which implies inability to continue working. This was introduced by the "Anti-Corruption Act" dated July 2, 1998 and is currently enshrined in Art. 52.1(21) of the Labour Code of the Republic of Kazakhstan of November 23, 2015.

Considering that dismissal from work is an extreme measure in relation to the employee, having committed corruption offense, the legislator has determined a number of conditions under which it might be recognized lawful. So, an employee could be dismissed on the ground of corruption offense just in case his guilt is established in court. Besides, Art. 52.1(21) of the Labour Code of the Republic of Kazakhstan is applicable only to those who are considered the subjects of the corruption offence under the "Anti-Corruption Act".

Legal basis in question which allows the employer to terminate employment contract calls ambivalent comments by legal scholars. There are also various problems which arise from the practice of law. Literal interpretation of the Labour Code provision assumes that the employment contract could be terminated only if the court ruled to the effect excluding further working. However the legislator did not clearly indicate what type of judicial decision is required to make a dismissal on that ground. In criminal proceedings the court should reach a verdict, while in administrative proceedings the court should issue an order. Moreover, there is deficiency in the application of the legislation due to the fact that the employers used to rely on special regulations in case of dismissal from work on the ground of corruption offense instead of Art. 52.1(21) of the Labour Code. It appears that the employers must necessarily refer to provisions of the Labour Code of the Republic of Kazakhstan in addition to reference to the special regulations.

🗝 Labour legislation, termination of employment contract, fight against corruption, corruption offense, administrative responsibility, criminal responsibility, Republic of Kazakhstan.

REFERENCES

Dorokhina, Zh.Yu. (2009). *Trudovoi dogovor po zakonodatel'stvu Rossiiskoi Federatsii i otdel'nykh gosudarstv — uchastnikov SNG (na primere Respubliki Belarus' i Respubliki Kazakhstan)* [Employment Contract according to the Legislation of the Russian Federation and Several States — Participants of the CIS (Republic of Belarus and the Republic of Kazakhstan as an Examples)]. The Candidate of Legal Sciences Thesis' Abstract. Moscow: Russian Legal

Academy of the Ministry of Justice of the Russian Federation. (in Russ.).

Lobkov, A.Kh. (2007). *Prakticheskoe primenenie Trudovogo kodeksa Respubliki Kazakhstan* [Practical Application of the Labour Code of the Republic Kazakhstan]. Almaty: Lem. (in Russ.).

Nurgalieva, E.N. (2009). *Kommentarii k Trudovomu kodeksu Respubliki Kazakhstan* [The Commentary to the Labour Code of the Republic of Kazakhstan]. Almaty: Zhety zhargy. (in Russ.).

Saparbaeva, B.M. ed. (2008). *Postateinyi prakticheskii kommentarii k Trudovomu kodeksu Respubliki Kazakhstan* [Article-by-article Practical Commentary to the Labour Code of the Republic of Kazakhstan]). Astana: TOO "MTSFER-Kazakhstan". (in Russ.).

Uvarov, V.N. (2008). Trudovoe pravo Respubliki Kazakhstan [Labour Law of the Republic of Kazakhstan]. Almaty: Raritet. (in Russ.).

AUTHOR'S INFO:

Botagos A. Ospanova — Judge of the Akmolinsk Regional Court, Republic of Kazakhstan.

FOR CITATION:

Ospanova, B.A. (2017). Termination of the Employment Contract as a Result of Corruption Offense by Legislation of the Republic of Kazakhstan. *Proceedings of the Institute of State and Law of the RAS,* 12(2), pp. 192–198.

THE EUROPEAN UNION'S MIGRATION SECURITY CHALLENGES: FINANCIAL AND LEGAL ASPECTS

Evgenii O. Pazyna

Saratov State Law Academy, 1Vol'skaya str., Saratov 410056, Russian Federation.
E-mail: epazyna5@yandex.ru.

Significantly increased intensity of the migration flows, due to a number of military conflicts in the Middle East caused a whole range of problems for the EU Member States in recent years: from the lack of housing and the problems of health care and social welfare, as well as the difficulties of intercultural interaction to increased levels of crime and terrorist threats. The author examines the main areas of funding of the immediate action to overcome the migration crisis allocated by the European Agenda on Migration 2015. Appropriate resources are sent, firstly, to solve the migration problems within the European Union, and secondly — beyond it. In particular, the legal bases of functioning, main goals, objectives and funding levels of the Asylum, Migration and Integration Fund, the Internal Security Fund, EU Regional Trust Fund in Response to the Syrian Crisis, the «Madad Fund», as well as European Agency for the Management of Operational Cooperation at the External Borders (Frontex) and its joint-operations «Triton» and «Poseidon» are investigated. It is noted that, despite some assistance provided by the European Union, the main financial and economic burden of the migration crisis lies on its Member States. The author believes, that the migration crisis which broke out in Europe, has led to an increase in the ideas of nationalism in the EU countries and is able to jeopardize its future existence. At the same time consideration of the European experience, as well as a coherent migration policy within the framework of the Eurasian Economic Union can help our country and its partners to avoid or cope more effectively with the challenges mentioned above faced by the European Union.

🗝 European Union, migration crisis, migration security, European Agenda on Migration, Asylum, Migration and Integration Fund, Internal Security Fund, «Madad Fund», Europen Agency for the Management of Operational Cooperation at the External Borders (Fronte).

REFERENCES

Bonin, H. (2016). *Gewinne der Integration, Berufliche Qualifikation und Integrationstempo entscheiden ьber die langfristigen fiskalischen Kosten der Aufnahme Geflьchteter*. [Gains of Integration, Professional Qualification and the Pace of Integration to Decide on the Long-term Fiscal Recording Fugitive Cost]. Berlin: Heinrich Bцll Stiftung. (In Germ.).

Carrera, S. and Guild, E. (2016). *Rethinking Asylum Distribution in the EU: Shall We Start with the Facts?* [online] Thinking Ahead for Europe. Available at: https://www.ceps.eu/publications/rethinking-asylum-distribution-eu-shall-we-start-facts [Accessed 25 Sept. 2016].

Hausemer, P., Todaro, L., Kamphuis, B., Williams, R., Thielemann, E. and Talani, S. (2015). *EU Funds for Migration Policies: Analysis of Efficiency and Best Practice for the Future. Study*. Brussels: European Parliament. DOI: http:dx.doi.org/10.2861/245733.

Kalicka-Mikoiajczyk, A. (2016). The Madad Fund — the European Union Trust Fund in Response to the Syrian Crisis. *Silesian Journal of Legal Studies*, (8), pp. 121—131.

Kamara€s, E., Saunier, M. and Todaro, L. (2016). *Overview on the Use of EU Funds for Migration Policies. In Depth Analysis*. Brussels: European Parliament. DOI: http:dx.doi.org/10.2861/918455.

AUTHOR'S INFO:

Evgenii O. Pazyna — Candidate of Legal Sciences, Associate Professor of the European and Comparative Law Department, Saratov State Law Academy.

FOR CITATION:

Pazyna E.O. (2017). The European Union's Migration Security Challenges: Financial and Legal Aspects. *Proceedings of the Institute of State and Law of the RAS*, 12(2), pp. 199–210.

REVIEW

Giocas, A. (2016) *Le bien justifié: une lecture contemporaine de la synthèse philosophico-juridique de Vladimir S. Soloviev* [Justification of Good: a Contemporary Reading of the Philosophic-Juridical Synthesis by Vladimir S. Soloviev]. Québec: Presse de l'Université Laval (in French).

Mikhail V. Antonov

School of Law, Higher School of Economics National Research University, Campus in Saint Petersburg. 17, Promyshlennaya str., Saint Petersburg 198099, Russian Federation (e-mail: mantonov@hse.ru).

The review was prepared within the framework of the Academic Fund Program at the National Research University Higher School of Economics (HSE) in 2016–2017 (grant No 16-01-0119) and supported within the framework of a subsidy granted to the HSE by the

Government of the Russian Federation for the implementation of the Global Competitiveness Program.

The book by the Canadian researcher Athanase Giocas is devoted to the intellectual heritage of Vladimir S. Soloviev and the pertinence of this heritage for the contemporary philosophical discussions about the law. The review underscores the originality of Giocas' approach to the philosophical ideas of Soloviev on the law and politics, and especially the examination of these ideas in the light of the traditions of the Orthodox patristic and iconography. This book is evaluated as to its relevance in the trove of the previous research works about Soloviev and his conceptions both in the Russian and Western scholarship. One of the important theses of this book is the examination of the theoretical foundations of the conception of human rights in the context of the Christian dogma of human dignity. Giocas justifies these foundations in the aspect of the philosophical conception of God-Humanity elaborated by Soloviev. Another important inspiration of the reviewed book is the project of an inter-disciplinary approach that would integrate religious, scientific and metaphysical perspectives of the legal reality. The author affirms the possibility of such an approach basing on the examples taken from our days and points out at the relevance of Soloviev's critic against the abstract principles. As well, Giocas argues about the potential of Soloviev's insights about an integral knowledge and about his conception of the all-inclusiveness that reflects the integrality of human knowledge. As one of the remarkable qualities of the reviewed book can be mentioned the fact that this monograph is not simply one more commentary on Soloviev's ideas. The author formulates a more comprehensive task of intertwining these ideas into a broader perspective of the constitutional, theological and anthropological questions that since the ages have been discussed in the Orthodox theology and philosophy.

🗝 Vladimir S. Soloviev, philosophy of law, religion, morality, theology, secularism, human rights, human dignity.

REFERENCES

Giocas, A. (2016). *Le bien justifié: une lecture contemporaine de la synthèse philosophico-juridique de Vladimir S. Soloviev* [Justification of Good: a Contemporary Reading of the Philosophico-Juridical Synthesis by Vladimir S. Soloviev]. Québec: Presse de l'Université Laval (in French).

Losev, A.F. (1983). *Vladimir Soloviev*. Moscow: Mysl' (in Russ.).

Losev, A.F. (1990). *Vladimir Soloviev i ego vremya* [Vladimir Solovyov and His Time]. Moscow: Progress (in Russ.).

Osipov, I.D. (2003). Sotsial'naya filosofiya V.S. Solovieva [VS Solovyov's Social Philosophy]. In: *Minuvshee i neprekhodyashchee v zhizni i tvorchestve V.S. Solovieva. Materialy mezhdunarodnoi konferentsii 14–15 fevralya 2003 g. Sankt-Peterburg* [By-gone and Everlasting in the Life and Creative Work of V.S. Solovyov. Proceedings of the International Conference, St. Petersburg, 14–15 February 2003,]. St. Petersburg: Sankt-Peterburgskoe filosofskoe obshchestvo, pp. 216–232 (in Russ.).

Pribytkova, E.A. (2010). *Nesvoevremennyi sovremennik: filosofiya prava V.S. Solovieva* [Inopportune Contemporary: V.S. Solovyov's Philosophy of Law]. Moscow: Modest Kolerov (in Russ.).

Vysheslavtsev, B.P. (1914). *Etika Fichte. Osnovy prava i nravstvennosti v sisteme transtsendentalnoi filosofii* [Fichte's Ethics. Foundations of Law and Morality in the System of Transcendental Philosophy]. Moscow: Pechatnia A.I. Snegirevoi (in Russ.).

AUTHOR'S INFO:

Mikhail V. Antonov – Candidate of Legal Sciences, Associate Professor of the

Department of Theory and History of Law and State, School of Law, Higher School of Economics National Research University, Campus in Saint Petersburg.

FOR CITATION:

Antonov, M.V. (2017). Review: Giocas, A. (2016). Le bien justifié: une lecture contemporaine de la synthèse philosophico-juridique de Vladimir S. Soloviev. Québec: Presse de l'Université Laval. *Proceedings of the Institute of State and Law of the RAS,* 12(2), pp. 211-222.