

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. № 3



**PROCEEDINGS
OF THE INSTITUTE OF STATE
AND LAW OF THE RAS**

2017. Volume 12. No. 3

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

EDITORIAL BOARD:

ANDREY G. LISITSYN-SVETLANOV (Editor-in-Chief), Academician of Russian Academy of Sciences, Doctor of Legal Sciences, Professor;

TATIANA A. VASILIEVA (Deputy Editor-in-Chief), Doctor of Legal Sciences, Associate Professor, Acting Director of the Institute of State and Law, Russian Academy of Sciences;

ILLARIYA L. BACHILO, Doctor of Legal Sciences, Professor, Honored Lawyer of the Russian Federation, Chief Research Fellow of the Information Law Department, Institute of State and Law, Russian Academy of Sciences;

VENIAMIN E. CHIRKIN, Doctor of Legal Sciences, Professor, Honored Lawyer of the Russian Federation, Honored Science Worker of the Russian Federation, Chief Research Fellow of the Comparative Law Department, Institute of State and Law, Russian Academy of Sciences;

ELENA A. LUKASHEVA, Member-Correspondent of Russian Academy of Sciences, Doctor of Legal Sciences, Honored Lawyer of the Russian Federation, Chief Research Fellow of the Human Rights Department, Institute of State and Law, Russian Academy of Sciences;

SERGEY V. MAKSIMOV, Doctor of Legal Sciences, Professor, Chair of the Criminal Law, Criminology and Problems of Justice Department, Institute of State and Law, Russian Academy of Sciences;

NIKOLAY I. MIKHAYLOV, Doctor of Legal Sciences, Professor, First Deputy Director of the Institute of State and Law, Russian Academy of Sciences;

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;

GAREGIN A. TOSUNYAN, Member-Correspondent of Russian Academy of Sciences, Doctor of Legal Sciences, Professor, Honored Science Worker of the Russian Federation, Chair of the Financial and Banking Law Department, Institute of State and Law, Russian Academy of Sciences.

TABLE OF CONTENTS

HISTORY OF LEGAL CONCEPTS AND INSTITUTIONS

Vladimir A. Slyshchenkov

Sale as Obligation in the Light of the History and Philosophy of Civil Law	9
---	---

Anton A. Kanevskiy

Legal Pluralism in the Russian Empire: Jewish Divorce Proceedings	38
--	----

INTERNATIONAL RELATIONS AND FOREIGN EXPERIENCE

Marco Ricceri

The Challenges of Immigration to Nation-States: To Be Open or Closed? Contradictions in the European System. The Italian Case	69
---	----

HUMAN RIGHTS AND FREEDOMS

Maxim A. Kudryavtsev

Institution of the Parliamentary Commissioner for Human Rights in the Russian Federation: Issues of Its Growth and Further Development	101
--	-----

Natalia S. Kolesova

Ensure the Right to Health: Demographic and Institutional Indicators	124
---	-----

STATE AND ECONOMY

Larisa I. Bulgakova

Developing Business Self-Regulation as a Condition for Economic Renewal	144
--	-----

Nina I. Solovyanenko

Modernization of the Legal Environment for the Innovative (Digital) Economy: the Electronic Document Law	162
---	-----

URGENT PRIVATE LAW PROBLEMS

Nikolay N. Mel'nikov, Sergey A. Sklyaruk

Lease of Public Lands: Relations between Civil Law and Land Law	176
--	-----

Evgeny M. Belugin

Legal Mechanisms of Interest Calculation in Trade Loan Agreement	193
---	-----

REVIEWS AND BIBLIOGRAPHY

Illariya L. Bachilo

Review: Fukuyama, F. (2014). Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy. New York: Farrar, Strauss and Giroux. [Russ. ed.: Fukuyama, F. (2017). Ugasanie gosudarstvennogo poryadka. Translated from English by Levin K.M. Korolev. Moscow: AST Publ.]	204
--	-----

SALE AS OBLIGATION IN THE LIGHT OF THE HISTORY AND PHYLOSOPHY OF CIVIL LAW

Vladimir A. Slyshchenkov

Law Department, Moscow School of Social and Economic Sciences
82, building 2, prospect Vernadskogo, Moscow 119571, Russian Federation
E-mail: vslyshchenkov@universitas.ru

There is a deep distinction between cash sale, i.e. exchange of goods for ready money without formation of obligation, and obligational or contractual sale which consists in rights and duties aimed at performance of a contract. Like a primitive non-monetary exchange a cash sale functions as two reciprocal donations. Any relationship of this kind falls into an established routine without being tested for reasonableness or correctness, each party expresses its own arbitrariness hence serves only as a means for the other. A transition from cash sale to obligational sale is a transition from duty to freedom as a basis of the relationship. Non-monetary exchange of goods for goods does not imply comparison of value of things but cash sale as exchange of goods for money equalizes the thing sold with the purchase price hence equalizes the seller and the purchaser. Obligational sale realizes this equality as equality in freedom by way of determining contractual rights and duties. Freedom has a form of rights and duties: a contract of sale created by Roman jurisprudence for the first time subordinated relationships between private persons to idea of freedom. Development of obligational sale generally corresponds to development of social freedom.

The first part of the article published in this issue outlines main features of sale under ancient Greek law and demonstrates establishment of obligational sale in Roman law, history of old Russian sale on the material of Russkaya Pravda and Novgorod birch manuscripts is also reviewed. In old Russian legal order a cash sale under which right of ownership passes to a purchaser in the moment of price payment dominated. It is examined a separation between duty and liability in archaic non-obligational transactions; it is also emphasized significance of a reasoned will as a basis of contractual obligation which unites duty and liability in one relationship and opposes a creditor's right to a duty of the debtor.

➔ Cash sale, contract of sale, history of sale, donation, exchange, obligation, duty and liability, freedom, Russkaya Pravda, birch manuscripts.

REFERENCES

- Artsikhovskii, A.V. and Borkovskii, V.I. (1963). *Novgorodskie gramoty na bereste (iz raskopok 1956—1957 gg.)* [Novgorod Gramoty on Birch Bark (from the Excavations of 1956—1957)]. Moscow: Akademiya nauk SSSR (in Russ.).
- Artsikhovskii, A.V. and Yanin V.L. (1978). *Novgorodskie gramoty na bereste (iz raskopok 1962—1976 gg.)* [Novgorod Gramoty on Birch Bark (from the Excavations of 1963-1976)]. Moscow: Nauka (in Russ.).
- Carawan, E. (2006). The Athenian Law of Agreement, *Greek, Roman and Byzantine Studies*, 46(4), pp. 339—374.
- Cherepnin, L.V. (1969). *Novgorodskie berestyanye gramoty kak istoricheskii istochnik* [Novgorod Birchbark Documents as a Historical Source]. Moscow: Nauka (in Russ.).
- Daube, D. (1979). Money and Justiciability. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung* [Journal of the Savigny Foundation for Legal History. Romanistic Department], 96, pp. 1—16.
- Dozhdev, D.V. (1996). *Rimskoe chastnoe pravo* [Roman Private Law]. Moscow: NORMA (in Russ.).
- Gierke, von O. (1917). *Deutsches Privatrecht. Band 3: Schuldrecht* [German Private Law. Band 3: Law of Obligations]. Leipzig: Duncker and Humblo (in Germ.).
- Glanville, de R. (1812). *A Treatise on the Laws and Customs of the Kingdom of England. Composed in the Time of King Henry the Second*. London.
- Gordley, J. (2010). The Origins of Sale: Some Lessons from the Romans. *Tulane Law Review*, 84 (6), pp. 1437—1470.
- Gordley, J. (2011). *The Philosophical Origins of Modern Contract Doctrine*. Oxford: Clarendon Press.
- Gurevich, A.Ya. (1968). Bogatstvo i darenie u skandinavov v rannem srednevekov'e (nekotorye nereshennye problemy sotsial'noi struktury dofeodal'nogo obshchestva) [Wealth and Giving of the Scandinavians in the Early Middle Ages (Some Unsolved Problems of the Social Structure of Pre-Feudal Society)]. In: *Srednie veka* [The Middle Ages]. Issue. 31, pp. 180—198 (in Russ.).
- Güterbock, C. (1866). *Bracton and His Relation to the Roman Law*. Translated from German by B. Coxe. Philadelphia: J.B. Lippincott and Co [Germ. ed.: Güterbock, C. (1862). *Henricus de Bracton und sein Verhältnis zum Römischen Rechte*. Berlin].
- Harke, J.D. (2005). Kauf und Vorvertrag im westgotischen Recht [Purchasing and Pre-Contract in the West Gothic Law]. *Anuario de historia del derecho español* [Yearbook of History of Spanish Law], (75), pp. 703—719 (in

Germ.).

Hübner, R. (1918). *A History of Germanic Private Law*. Translated from German by F.S. Philbrick. Boston: Little, Brown and Company [Germ. ed.: Hübner R. (1908). *Grundzüge des deutschen Privatrechts*, 2. Aufl., Leipzig].

Kantorovich, Ya.A. (1928). *Osnovnye idei grazhdanskogo prava* [Main Ideas of Civil Law]. Kharkov: NKYu USSR (in Russ.).

Kasso, L.A. (1999). *Ponyatie o zaloge v sovremennom prave* [The Concept of Pledge in Modern Law]. Moscow: Statut (in Russ.).

Marcus Porcius Cato. (2008). *Zemledelie* [Agriculture]. Translated from Latin by M.E. Sergeenko. St. Petersburg: Nauka (in Russ.).

Momotov, V.V. (2003). *Formirovanie russkogo srednevekovogo prava v IX–XIV vv.* [The Formation of Russian Medieval Law in the IX–XIV centuries]. Moscow: Zertsalo-M (in Russ.).

Nersesyants, V.S. (2006). *Filosofiya prava* [The Philosophy of Law]. 2nd ed. Moscow: Norma (in Russ.).

Novitskaya, A.A. (2013). Uchenie o sinallagmaticheskom dogovore v rimskom prave. Kontrakt Labeona [The Doctrine of Synallagmatic Contract in Roman Law. Labuon's Contract]. *Vestnik grazhdanskogo prava* [Civil Law Review], 13(2), pp. 20–59 (in Russ.).

Pokrovskii, I.A. (1998). *Osnovnye problemy grazhdanskogo prava* [Basic Problems of Civil Law]. Moscow: Statut (in Russ.).

Pringsheim, F. (1950). *The Greek Law of Sale*. Weimar: H. Böhlaus Nachfolger.

Sherstenevich, G.F. (1995). *Uchebnik russkogo grazhdanskogo prava* [The Textbook of Russian Civil Law]. Moscow: Spark (in Russ.).

Sklovskii, K.I. (2008). *Sobstvennost' v grazhdanskom prave* [Property in Civil Law]. Moscow: Statut (in Russ.).

Veselovskii, S.B. (1947). *Feodal'noe zemlevladienie v Severo-Vostochnoi Rusi* [Feudal Land Tenure in North-Eastern Russia]. Volume 1. Moscow; Leningrad: Akademiya nauk SSSR (in Russ.).

Vladimirskii-Budanov, M.F. (2005). *Obzor istorii russkogo prava* [An Overview of the History of Russian Law]. Moscow: Territoriya budushchego (in Russ.).

Yanin, V.L. and Zaliznyak, A.A. (1993). *Novgorodskie gramoty na bereste (iz raskopok 1984–1989 gg.)* [Novgorod Gramoty on Birch Bark (from the 1984–1989 Excavations)]. Moscow: Nauka (in Russ.).

Yanin, V.L., Zaliznyak, A.A. and Gippius, A.A. (2004). *Novgorodskie gramoty na bereste (iz raskopok 1997–2000 gg.)* [Novgorod Gramoty on Birch Bark (from the of 1997–2000 Excavations)]. Volume XI. Moscow: Russkie slovari (in Russ.).

Zaliznyak, A.A. (2004). *Drevnenovgorodskii dialect* [Old Novgorod Dialect]. Moscow: Yazyki slavyanskoi kul'tury (in Russ.).

Zimmermann, R. (1992). *The Law of Obligations: Roman Foundations of the Civilian Tradition*. Cape Town: Juta.

AUTHOR'S INFO:

Vladimir A. Slyshchenkov — Candidate of Legal Sciences, Ph. D. in Law, Chair of the Comparative Law Department, Moscow School of Social and Economic Sciences.

FOR CITATION:

Slyshchenkov, V.A. (2017). Sale as Obligation in the Light of the History and Philosophy of Civil Law. *Proceedings of the Institute of State and Law of the RAS*, 12(3), pp. 9–37.

LEGAL PLURALISM IN THE RUSSIAN EMPIRE: JEWISH DIVORCE PROCEEDINGS

Anton A. Kanevskiy

Institute of State and Law, Russian Academy of Sciences
10, Znamenska st., Moscow 119019, Russian Federation
E-mail: anton.kanevskiy@gmail.com

Simultaneous existence of two legal systems with the same subjects is often described as “legal pluralism”. Jewish life in the Russian Empire was ordered by halacha and at the same time by Russian laws. In order to co-ordinate the normative effect of these legal systems, Ministry of Interior established the Rabbinic Commission. Materials left by the Commission permit to clarify the status of rabbinic courts in the Russian Empire. Rabbinic court not only preserved its role of arbitrator disregarding of the state policy, but this role was only an addition to the function of a Jewish divorce court somehow integrated into the official legal system.

Kingdom of Poland exemplifies attempt to enact laws that would create weak legal pluralism situation while in fact strong legal pluralism continued to exist. At the same time in the main part of the Russian Empire, interactions of the Rabbinic Commission with government authorities present a full-fledged dialogue of two legal orders where each side understands that the other's side potential for compromise is limited and tries not to infringe these limits.

This situation can be called "flexible legal pluralism". Each legal system acknowledged its dependence on norms of the other despite obvious autonomy of the two different grundnorms, each serving the basis of the respective legal system. Each of the systems displayed certain degree of flexibility: the state adapted the legislation to the religious needs of Jewish population, while the rabbis were ready to adapt to state imperatives as far as this was permitted by religious law.

→ Legal pluralism, Russian Empire, Family law, Jewish law, Rabbinical Commission, rabbinical court, *halacha*, *beth din*.

REFERENCES

Abakumova, E.V. (2014). *Pravovoe polozhenie evreev v Rossiiskoi imperii v kontse XVIII — nachale XIX v.* [Legal Status of Jews in the Russian Empire in the End of XVIII — Early XIX C.] The Candidate of Legal Sciences Thesis. Moscow: Lomonosov Moscow State University (in Russ.).

Davies, G.T. (2012). Constitutional Disagreement in Europe and the Search for Pluralism. In: J. Komarek and M. Avbelj, eds. *Constitutional Pluralism in the European Union and beyond*. Oxford: Hart Publishing, pp. 269–283. DOI: 10.5040/9781472561121.ch-012.

Elon, M. (1988). *Mishpat ivri*. [Jewish law]. In 3 vol. Volume 1. Jerusalem: Magnes Press (in Hebrew).

Griffiths, J. (1986). What is "Legal Pluralism". *Journal of Legal Pluralism*, 18(24), pp. 1–55. DOI: 10.1080/07329113.1986.10756387.

Hilkiyahu A. (2004) *Bemaagley tzedeq* [On the Ways of Justice]. Part I. New York (In Hebrew).

Kanevskiy, A.A. (2016). *Mesto galakhi (iudeiskogo prava) v natsional'nykh pravovykh sistemakh* [The Place of Halacha (Jewish Law) in National Legal Systems]. Moscow: Yurlitinform (in Russ.).

Kodan, S.V. and Fevrale, S.A. (2013). *Mestnoe pravo Tsarstva Pol'skogo: formirovanie, istochniki, transformatsii (1815–1917 gg.)* [Law of the Kingdom of Poland between 1815 and 1917: Formation, Sources, and Changes]. *NB: Problemy politiki i obshchestva*. [NB: Problems of Politics and Society], (3), pp. 246–295 (in Russ.). DOI: 10.7256/2306-0158.2013.3. 468.

Krashennnikova, N.A. (2009). *Pravovaya kul'tura sovremennoi Indii* [Legal Culture of Modern India]. Moscow: NORMA: INFRA-M (in Russ.).

Lapteva, L.E., Medvedev, V.V. and Pakhalov, M.Yu. *Istoriya otechestvennogo gosudarstva i prava* [History of Fatherland's State and Law]. In 2 vol. Volume 1. Moscow: Yurait (in Russ.).

Moskalenko, L.N. (2015). *Izmeneniya v obshchestvenno-pravovom statuse ravvina Rossiiskoi imperii (nach. XIX — nach. XX st.)* [Changes in the Social and Legal Status of a Rabbi in Russian Empire (Beginning of the 19th — Beginning of the 20th Centuries)]. *Praktichna filosofiya* [Practifilosophy], (2), pp. 158–164 (in Russ.).

Nol'de, A.E. (1906). *Ocherki po istorii kodifikatsii mestnykh grazhdanskikh zakonov pri grafe Speranskom. Popytka kodifikatsii litovsko-pol'skago prava*. [Essays on History of Codification of Local Civil Laws under Count Speranskiy. Attempt of Codification of Polish-Lithuanian Law] Saint-Petersburg: Senatskaya tipografiya (in Russ.).

Oshri, E. (1989). *Responsa from the Holocaust*. Translated from Hebrew by Y. Leiman. New York: Judaica Press.

Pakhman, S.V. (1876). *Istoriya kodifikatsii grazhdanskogo prava*. [History of Codification of Civil Law]. In 2 vol. Volume 1. Saint-Petersburg: Tipografiya 2-go Otdeleniya Sobstvennoi Ego Imperatorskogo Velichestva kantselyarii (in Russ.).

Polyanskii, P.L. (2016). *Pravovoe regulirovanie brachno-semeinykh otnoshenii v rossiiskom obshchestve* [Legal Regulation of Marital and Family Relations in the Russian Society]. Moscow: Zertsalo-M (in Russ.).

Schereshevsky, B. (2015). Corinaldi, M. *Dinei mishpaha* [Family Law]. Volume 1. Tel-Aviv: Israel Bar Publ (in Hebrew).

Shneerson, M.M. (1993). *Torat Menahem 5752*. [Teaching of Menachem 5752] Volume 1. Brooklyn: Kehot (in Hebrew).

Supataev, M.A. (2012). *K problematike tsivilizatsionnogo podkhoda k pravu: ocherki obshchei teorii i praktiki* [The Problem of Civilizational Approach to Law: Essays on General Theory and Practice]. Moscow: Yurlitinform (in Russ.).

Zalmanovich M.M. (1902) *Zichron Hillel*. [To the Memory of Hillel]. Vilna (in Hebrew).

AUTHOR'S INFO:

Anton A. Kanevskiy — Candidate of Legal Sciences, Junior Research Fellow of the History of State, Law and Political Studies Department, Institute of State and Law, Russian Academy of Sciences.

FOR CITATION:

Kanevskiy, A.A. (2017). Legal Pluralism in the Russian Empire: Jewish Divorce Proceedings. *Proceedings of the Institute of State and Law of the RAS*, 12(3), pp. 38—68.

THE CHALLENGES OF IMMIGRATION TO NATION-STATES: TO BE OPEN OR CLOSED?

Contradictions in the European System.

The Italian Case

Marco Ricceri

Institute of Political, Economic and Social Studies (EURISPES)

14, Cagliari str., Rome 14 — 00198, Italy

E-mail: istituto@eurispes.eu

Migration is considered by the United Nations and other international institutions, as a structural phenomenon bound to grow over time being closely linked to the profound changes generated by the current global development process as well as by the scientific and technological progress and their impact on the living conditions of people and the environment

The nation states should make the political choices for a better management of migration flows to ensure that these new challenges can be transformed into new opportunities, with the aim to ensure the peaceful development of the communities involved.

The analysis, evaluation, management of migration flows first require a multidisciplinary and systemic approach, to understand and cope with the complex effects that such structural phenomenon has on politics and institutions, economy, social conditions, the system of religious, ethical, cultural values of a society. In particular nation-states are required to avoid taking contradictory positions but to make a clear choice of orientation on the following fundamental questions: to act as an open system or a closed system? Is it possible to act as a closed system in the current global development condition? What are the costs and benefits of choices aimed at closing or opening its own system?

The analysis of the contradictions emerged in the European system, as well as of the specificities of the Italian case — that is the main front of the migratory flows in the Mediterranean — aims to provide knowledge elements useful to improve the studies, analyses and intervention policies.

→ Globalization, migration, migration flows, demographic trends, migrants, integration models, inclusion of immigrants, human rights, EU, Italy

“We cannot solve our problems with the same thinking we used when we created them”.

Albert Einstein

I. Introduction. Migration flows are a structural phenomenon, and not a cyclical one. This phenomenon is expected to grow over time because it is connected with the processes of economic globalization, advancement of scientific and technological progress, climate and demographic changes. All these phenomena, will inevitably cause profound transformations to our economic and social systems, income levels and types of consumption, the reference values and the culture, the way of life of the individuals, their life plans, trust in institutions, the terms of political consensus.

Surely, when structural changes happen, one can have a proper interpretation of their causes. It is the case of the correlation between the acceleration of the economic global process occurred in the 90s of last century and the parallel acceleration of migration flows all over the world. But it is not clear at all, indeed it is nearly impossible, to get an idea of the way out; and this is so because when the changes are structural, the various systems reply in an unpredictable way, influenced by many imponderables and heterogeneous variables, of the most different nature. Consequently, it is also very difficult to make sound and valid forecasts about the future; it is virtually impossible to imagine what will be the final outcome of this new situation.

One thing is certain: history teaches us that all systems undergoing this type of changes come out deeply transformed in comparison to the initial conditions. Always, structural changes led to the emergence of completely new and unexpected situations, indeed very different from the starting conditions. Structural changes, in short, are always characterized by discontinuity that deeply changes the previous order as well as the balance of a society.

In this situation, only interdisciplinary and systemic approaches with coordinated contribution of different scientific disciplines may help us to get at least a proper understanding and assessment of such evolutionary processes; in fact, even if this kind of changes are caused first by purely economic factors, the contribution of the great economic science is no longer sufficient to indicate the possible solutions because the re-regulation of a system involves the reconstruction of the order of relationships between factors, interests, subjects who express complex needs, old and new, and especially of a very different nature. Only politics can acknowledge, represent and try to

reassemble into a new balance all these elements, on the basis of a different and more appropriate interpretation of the values and rules that govern the civil coexistence of a society.

The choice of the type of approach to be taken to address the problems created by structural changes affecting contemporary society is, therefore, in favour of scientific, cultural and political approaches in order to achieve an adequate understanding of the nature and implications of these changes on the lives of individuals and their communities; therefore, to better organize the management of these change processes, preventing to take uncertain and contradictory positions, and to ensure that these epochal challenges can be transformed into new opportunities, able to guarantee the peaceful progress of people and states. On this fundamental issue, as we shall see later, the United Nations offer to the scientific world and to the decision-makers a very original and innovative contribution, a useful tool of guidance and support: the 2030 Agenda for Sustainable Development, adopted in 2015, by the General Assembly¹.

II. The migration phenomenon according to the United Nations. Data on the migration phenomenon in the world provided in 2015 by the United Nations Department for Economic and Social Affairs (UN-DESA)² show a continuous growth, from 154 million migrants in 1990 to 232 million in 2013, which corresponds to 3.2% of the world population.

The areas with the largest number of migrants present in their territories are currently first Europe, with Russia included, (72 million) and Asia (71 million), which together reach $\frac{2}{3}$ of the total, followed by North America (53 million), Africa (19million), Latin America (9 million) and Oceania (8 million). States that record the highest shares of foreign immigrants are USA, Germany, France, Britain and Spain with percentages around 12.5% of their respective populations, while Italy, with 5 million foreigners, has 8%.

According to the UN, the main mobilization factors of current migration flows in the world are the wars, the political-religious-racial persecution, poverty and hunger, inequalities in living conditions, demographic and birth gaps between different areas of the world, the new information and communications technologies, climate changes. Experts agree in pointing out also the influence of other factors, such as, for example, the widespread growth of educational level in emerging countries, the greater ease of transportation, by air or train or ship. As seen, in part it deals with contingent factors, i.e. those relating to regional conflicts, but in part it deals with structural factors, related to the economic development model and to scientific and technological advances that have driven global growth in the last decades. All this leads to assume that the growth of the migration phenomenon — a phenomenon that is not new in the history of mankind — is an epochal process, long lasting, not temporary, and therefore likely to have a profound effect on the world situation we used to know and have experienced so far. Important insights emerge, for example, by the valuation of some of these structural factors, such as the rates of population growth and the disparities in the social conditions of the world's population.

Demographic trends: the latest reports of the United Nations on the long-term forecasts of world's population growth to the year 2100 reveal that the earth had 7.3 billion inhabitants in 2015; will have 8.5 billion inhabitants in 2030 and 9, 5 in 2050, a growth that is less than that of the past years because of an overall reduced birth rate. If today 60% of the population lives in Asia, 16% in Africa, 10% in Europe, 9% in Latin America and the Caribbean and the remaining 5% in North America and Oceania, these percentages will change rapidly in favor of Africa and against Europe (including Russia) which has the lowest birth rate. More than half of the global population growth will be in Africa, while Europe is the continent that will reduce more its people in absolute and in relative weight. The UN predicts that 82 percent of the (small) growth of the European population will be due to migration. This phenomenon, for example, has already been registered in Italy, where in the period between the years 2000 and 2010 the population grew by 4 million — from 56 million to 60 million — a growth coming entirely from migration, given the negative demographic balance between births and deaths of Italians (together with Japan, Italy has the lowest birth level in the world).

In this respect it must be remembered that the point of equilibrium for the maintenance of the population level of a state is calculated by the experts in the number of 2 children per woman. Compared to this reference, in the 2010—2015 period the world situation recorded an average rate of 2.5 children per woman; an average, precisely, between very different situations. The most developed areas, for example, recorded a rate of 1.68 children per woman, the less developed a rate of 2.63; Africa recorded a rate of 4.68 points.

A specific aspect of such changes concerns the forecasts of the world's population in working age (20—65 years) in the period 2015—2050. Again, the variations among the most developed areas and the less developed ones, highlight very accentuated divisive trends with a major impact on migration flows. For example, the working age population of the most developed countries is expected to fall from 753 million to 602 million (–20.1 percent), while that of the less developed countries is expected to rise from 3.474 to 4.765 million (+37,2 percent). With reference to neighboring areas and states, for example, the following trends emerge: people of working age in the United States are expected to decrease from 190 million to 183 million (–3.7 percent) while in neighboring Mexico the corresponding number is expected to increase from 71 to 96 million (+ 38.2 percent). A similar trend between Italy and neighboring African continent: Italy with a decline from 36 to 24 million (–33.3 percent), neighboring African

¹United Nations. Transforming Our World: the 2030 Agenda for Sustainable Development. A/RES/70/01. URL: <https://sustainabledevelopment.un.org/post2015/transformingourworld/publication> [Accessed 13 March 2017].

²United Nations. Department of Economic and Social Affairs. International Migration Report. Highlights. N.Y, 2016. URL: [http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport 2015_Highlights.pdf](http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport%202015_Highlights.pdf) [Accessed 11 March 2017].

countries with an increase from 120 to 192 million (+60.0 percent). As well as between Japan and the Philippines: Japan with a decrease from 71 to 49 million (−31.0 percent), the Philippines with an increase from 54 to 96 million (+77.8 percent).

Based on these forecasts, and having in mind the situation of greatest divergence between trends of rise and fall of the world population, the United Nations concluded that the enlarged Europe will be the continent intended to receive “the strongest immigration waves”. Specifically, between 2015 and 2050 among the countries that receive more than 100 thousand migrants a year — the UN states — there are USA, Canada, Australia, Italy, Great Britain, Germany and Russia. “The countries with the highest emigration rate, with more than 100 thousand departures a year, will be China, India, Bangladesh, Pakistan and Mexico”.

The UN reports, in summary, clearly highlight that the effects of the sharp fall in birth rate, as well as the decrease of the working age population in the more developed areas of the world, manifest a powerful attraction for the migration flows.

The great inequalities that are registered in the social conditions of the populations form another factor that affects world migratory movements in a decisive way. According to the International Labor Organization — ILO, the first specialized agency of the United Nations that has been operating since 1946 on a tripartite basis and is attended by representatives of governments, labour unions and manager associations from 187 countries in the world, 73 percent of the world’s population, that is 5.2 billion people, is without any social protection. This data is presented in the World Social Protection Report 2014/15³, and is a very important indicator of the dramatic level of social injustice in the world.

About 800 million people, the ILO continues, are working poor, many of whom operate in the black economy. Under these conditions, the right to social protection that is recognized and treated as a fundamental right by the international institutions and the states of all the world (see, for example, the Universal Declaration of Human Rights — UDHR, 1948, and the International Convention on Economic, Social and Cultural rights — ICESCR, 1966) according to the ILO is actually still “a frustrated and incomplete right”. This because “while the need for social protection is widely recognized, the basic human right to social security remains inoperative for the vast majority of the world population. Only 27 percent of the global population enjoys access to general social security systems”.

In addition, and this is another important point that the ILO points out with particular clarity, “the lack of access to social protection is one of the biggest obstacles to economic and social development. The inadequacy or absence of a social protection coverage is associated with persistently high and lasting levels of poverty and economic insecurity in many parts of the world, high and rising levels of inequality, inadequate investment in human capital and its capacity, weakness of the automatic stabilizers of aggregate demand during the economic crisis”.

To these ILO considerations about the widespread social injustice in the world, we may add the numerous analyzes and assessments, always carried out by authoritative international bodies, on the economic inequalities that have increased especially in recent times between the different areas of the world, between states and peoples, as well as, within the states, between different social groups. It deals with an issue that has now entered strongly on the global agenda. On the severity of this phenomenon agree, for example, the United Nations, the World Bank, the OECD, and many other authoritative bodies. According to the International Monetary Fund — IMF the problem of economic inequality is “the ultimate challenge of our time” (2015).

In order to correct these structural imbalances that create tensions spread worldwide and limit the possibility of a real, proper progress of the whole humanity, in September 25, 2015, the United Nations General Assembly approved the development agenda post-2015, the strategic development document that commits all states to make a great effort to “transform the world”. It deals with the 2030 Agenda for Sustainable Development, structured in 17 general objectives (goals) and 169 specific targets, aiming at tackling key systemic barriers to sustainable development such as inequality, unsustainable consumption and production patterns, inadequate infrastructure and lack of decent jobs. The guiding principle referred to at the beginning of the document is “leave no one behind”.

According to the UN, the new sustainable development agenda highlights poverty eradication as the overarching goal of the new agenda and has at its core the integration of the economic, social and environmental dimensions of sustainable development. The emerging agenda is unique in that it calls for action all countries, poor, rich and middle-income. Member States pledge that as they embark on this collective journey, no one will be left behind. The “five Ps” — people, planet, prosperity, peace and partnership — capture the broad scope of the agenda. Member States stressed that the desired transformations will require a departure from “business as usual” and that intensified international cooperation on many fronts will be needed. The agenda calls for a revitalized, global partnership for sustainable development, including multi-stakeholder partnerships. It also calls for increased capacity-building and better data and statistics to measure sustainable development.

The Political Declaration adopted by the states that accompanies the Agenda 2030 presents 59 points of commitment. One of these, namely the point of commitment n. 29, relates to the phenomenon of migration, on which the Heads of States and Governments have delivered an important and very clear statement: “We recognize — the text says — the positive contribution of migrants for inclusive growth and sustainable

³World Social Protection Report 2014/15. Building Economic Recovery, Inclusive Development and Social Justice. Geneva, 2014.

development". The full text related to this point of commitment is as follows: "We recognize the positive contribution of migrants for inclusive growth and sustainable development. We also recognize that international migration is a multi-dimensional reality of major relevance for the development of countries of origin, transit and destination, which requires coherent and comprehensive responses. We will cooperate internationally to ensure safe, orderly and regular migration involving full respect for human rights and the humane treatment of migrants regardless of migration status, of refugees and of displaced persons. Such cooperation should also strengthen the resilience of communities hosting refugees, particularly in developing countries. We underline the right of migrants to return to their country of citizenship, and recall that States must ensure that their returning nationals are duly received".

In the list of 17 goals to be pursued for truly sustainable development, and its specific commitments to be realized, the UN also identifies and intervenes on the main underlying causes of the big migration flows of our age. The first cause is the great widespread poverty in the world that should be eliminated from the roots: it is the commitment—goal. n.1: "End poverty in all its forms everywhere". Other indications include, for example, the fight against hunger in the world ("End hunger, achieve food security and improved nutrition and promote sustainable agriculture"), the protection of health and the general well-being ("Ensure healthy lives and promote well-being for all at all ages"), the availability of water and energy, employment and decent work for all, the urban organization based on the principles of access to housing, social inclusion, the guarantee of efficient services, the elimination of slums, a planning at national and local level able to build positive relationships between urban, peri-urban and rural areas. Finally it should be added that all the Agenda 2030 approach, guided by the principle of sustainable development, has the general objective — structured into numerous specific targets — to protect the environment, address significantly the problems of climate change, widespread pollution, the destruction of natural resources; in short, the protection of the common goods belonging to all humanity, to the present but also to future generations. It is precisely in these elements, in some respects also new, linked with the environmental degradation, that we find the pulse factors for the migratory movements of our time, as in the case of the gradual desertification of vast land areas previously used for agricultural activities, or areas repeatedly affected by natural unprecedented disasters. In the list of 169 targets, seven of them explicitly refer to migrants and the management of migration processes (Targets. n. 5.2, 8.7, 8.8, 10.7, 10c, 16.2, 17.18).

The value of Agenda 2030, the principles and guidelines defined and adopted to promote policies and actions necessary to radically change the current development lines, have received numerous acknowledgments by international bodies, including that of the authoritative G20 Summit, held in Hangzhou (China), on 4—5 September 2016. In the final document approved at the end of the summit, the Heads of states and governments recognized that "the global economic recovery is progressing, resilience is improved in some economies and new sources for growth are emerging. But growth is still weaker than desirable", and then specified: "We...met at a time of continued shifts and profound transformations in the configuration of the global economic landscape and dynamics for growth. With these transformations come challenges and uncertainties as well as opportunities. The choices we make together will determine the effectiveness of our response to the challenges of today and help to shape the world economy of the future". Explicit is the recognition of the commitments of Agenda 2030: "We are determined to foster an innovative, invigorated, interconnected and inclusive world economy to usher in a new era of global growth and sustainable development, taking into account the 2030 Agenda for Sustainable Development, the Addis Ababa Action Agenda and the Paris Agreement". Among the commitments made by the G20 summit and the package of policies and actions called Hangzhou Consensus, a specific commitment deals with the problem of forced massive displacement of people all over the world, which is unprecedented since World War II. The document refers in particular to the refugees for causes of armed conflicts and urges all states to work to find common, shared solutions agreed to the reception and care problems. The G20 has undertaken a commitment to deal with concrete actions with the complex issue of migration flows; the proposals will be presented and discussed at the 2017 summit in Germany.

The reports, the assessments, the choices of the United Nations in essence confirm two things: a) that the new migration flows of our time are essentially related with the economic global processes; b) in order to analyze, to understand, to better manage this structural phenomenon is necessary to adopt a multidisciplinary and systemic approach, that would permit to put both scholars and decision-makers in a position to clarify and act on the complex implications the migration produces on politics and institutions, economy, social conditions, the system of religious, ethical, cultural values of the society.

Specifically, taking into account the complex nature of the migration phenomenon and especially its correlation with the globalization processes taking place in the world, the nation states are required to make a clear choice concerning a fundamental question: to act as an open system or as a closed system? In addition to this, other consequential questions arise: facing the current globalization processes in which everyone is involved — international community, nation-states and peoples — is it really possible to act as a closed system? And again: what are the costs that a state is doomed to bear in case of a political choice opting for possible closures?

III. A reflection on the nature of the globalization process. Globalization's impact is all over the world, and this process is very different from the previous one of the internationalization, which was identified with the increasing dimension of the international trade.

The global era generates costs and benefits. The costs are that human beings are suffering as well as the damages caused by a structural change. The benefits are represented by the extraordinary growth of some economies (the countries of the Pacific area, China and India, some countries of South America), their increasing role in the

world arena, the spread of wealth (still far from being distributed equally to all), the spread of modernization' processes.

As an ongoing process, globalization is continuously changing its own structure, its points of balance, the role of the driving forces and the influence of the most important players. In any case it deals with a process under a further evolution and it is currently difficult to forecast what kind of new structures and points of balance it will be able to build; and this because both the effects of an increasing number of innovative factors (i.e. new technological revolution, demographic changes, migration flows) as well as the influence of the forces of resistance (i.e. the emergence of new forms of protectionism).

Faced with these characteristics of the globalization process, one of the basic questions is the following: this process reflects an "order" or a "disorder"? The fact that even at the international summits of Heads of states and governments constantly emerges the need to give an order to the development — the issue of the new governance — means that what we are experiencing is rather a period at least of great disorder. Globalization, in short, reflects a chaos — a chaos that can be also creative, not just destructive — because in this process it is difficult to predict and control the consequences of plans, programs, actions.

To this first consideration, a second may be added: usually, it is just the weakness or, worst, the lack of order that let emerge what might be described as the struggle for power, that is, the attempt by some subjects to abolish the existing order and to organize a new order, a new system of rules to impose on others. This attempt always produces winners and losers.

Whoever is trying to assert its own order, starts always by the devaluation of the existing order, weakening its rules, taking advantage of its contradictions and limitations, enhancing its contrast elements; and all this with the aim to impose his own rules. One of the main factors on which he acts is that of change. A change bound to a mobility pushed to the extreme of the nomadism, to overcome any possible tie and relationship system, for example, with a community or a territory. "Enough with the long term! — says Richard Sennett in *The flexible man* — the occasional relations of association are more useful than long-term bonds"⁴. In this new space-time dimension, relationships become occasional and ephemeral, the constraints and long-term bonds lose any value, the benefits are meaningless if they are caught immediately, the ideas have worth only if they produce income, everything is transient, fragmented, "liquid". In other words, in the globalized world, the global elite, the global market players spread continuously in the society and in an ever more intense way a culture and practice of unlimited mobility that weakens the traditional idea of the border as well as a culture of the present that tends to erase the idea of the past and the future; they spread an idea of space and time that is very different from that, for example, of the policy makers, public administrators, social and trade union operators, the majority of citizens who are bound, instead, to the values, customs, the needs of a given territory.

Herein lies the source of the uncertainty prevalent in contemporary society; in the large asymmetry between the capital, that is increasingly global, and, for instance, the labor forces and the political players which remain bounded to the local scale. The break with the previous order is just in this unprecedented and unexpected situation. For these reasons it becomes urgent to find proper solutions in terms of governance of such processes; to avoid the risks of rupture, already experienced, for example, with the serious financial and economic crisis of the last years. To this aim, it would be relevant — it is a suggestion — to reflect about this quotation by one of the European founding father, the German chancellor Konrad Adenauer: "We all live under the same sky, but we all do not have the same horizon"⁵. In our societies, what is today the horizon of the main public and private development actors?

This brief reflection on some essential aspects of the current globalization processes enables us to provide some advices for a possible answer to the questions posed above: a) in the current conditions of development the possible policy option of a state in favor of a choice aimed to operate as a "closed system" is objectively very difficult, not much realistic and feasible, certainly very costly for those who commit such a choice. Only the careful use of appropriate analysis and assessment tools, such as a development matrix projected in the medium and long term, that is, tools capable of providing precise information on the cost — benefits of such option, can put public decisions makers in the conditions to make smart and really useful choices to their communities. Certainly the alternative to operate as "open system", requires states — none of which is oriented to give up its own national sovereignty — a great ability of adjustment as well as management of the structural change processes, which refer also to the close correlation between global development and migratory flows, well highlighted in the assessments of the United Nations; b) changes in traditional cultural and value references that the players of global development are promoting in our societies make migration options more attractive. Take, for example, the idea of mobility as a rule of our time; or to the idea of an area without borders, which undermines the traditional concept of state border. Who pursues today's economic profit is increasingly oriented to overcome any limits and barriers, territorial and state barrier; but this approach is also most suitable for the people looking for a decent job, a source of income sufficient to ensure a dignified life, for those who are in despair and must choose between life and death from starvation, wars, desertification of the territories. For all these very different social groups, the idea of the border of a state, as it has been and still is traditionally conceived, has lost any sense. It is an example of the effects of the deep changes in the value system of our societies induced, in fact, just by the globalization processes.

IV. Theories and interpretative models of the migration phenomena. The analysis and evaluation of the

⁴Sennet R. *The Flexible Man*. Milan, 2009.

⁵The Atlantic Community Quarterly. 1976—1978. Vol. 14—15. P. 200.

migratory phenomenon of our time, the related processes and policies, represents a major scientific and cultural challenge, precisely because of its correlation with the broader process of global development. Certainly migrations are as old as humanity, but in recent times the phenomenon has grown rapidly due to political, economical and social reasons and all analyses confirm that we are only at the beginning of a process intended to expand further over time. In public comments this phenomenon is generally referred to as an emergency, but this definition does not give reason nor of its complex nature, nor of its future projections. The analyses and assessments as well as the solutions for its management, to be appropriate and valid, must refer the long-term dimension. It is just in relation to this temporal dimension that the most authoritative scholars come to identify and select different types and major trends inside the complexity of the migration phenomenon. In the scientific literature, for example, the most attention is on the following processes: globalization of migration, acceleration of migration, differentiation of migration, feminization of migration, growing politicization of migration and proliferation of migration transition⁶. In correspondence, different kinds of migrants have been identified: labor migrants, seasonal workers, skilled migrants, family reunion migrants, refugees, irregular migrants, second generation migrants and return migrants⁷. Due to this huge variety of experiences and situations, often intertwined, social research is really valuable and can make a vital contribution to the decision-makers only if is able to address analysis and insights in order to grasp the complexity of these multiple aspects of the phenomenon.

Essential, for this purpose, is the definition of the theoretical framework and interpretative models that are used in the global immigration reading. Social research, but also the historical and economic research, offer several options in this regard.

Some authors, for example, have worked in recent years to revise the theories of migration for working reasons and have come to identify different types of integration models based on research conducted on the origins, the stabilization, the immigrant settlement⁸. Other authors have studied and first checked the value of the principal economic theories in relation to the migration phenomenon, as the classical economic theory and its explanation both of emigration for working reasons as a functional element to general economic development (macroeconomic classic theory), both of emigration connected to different types of individual choices (microeconomic classic approach); then, later, have developed and/or expanded with new theories of immigration: for example, the theory focused on the importance of the choices of family groups; the theory on the dual labor market; the theory of the world economic system; the theory of networks; institutional theory; the cumulative causation theory, the theory of the migration system⁹. Some theories on the relationship between migration and global inequalities have highlighted the size and conditions of the exploitation of foreign workers; other theories have highlighted the consequences of regime change as, for example, it happened with the dissolution of the USSR and other socialist systems; or they have focused their attention on the migration caused by conflicts, with particular reference to the refugees problem¹⁰. Other theoretical approaches to immigration and its possible future developments highlight some specific aspects such as the contribution of immigration to the modernization of economic systems, the effects of different immigration forms. This has also been reached by analyzing specific situations experienced by immigrants in relation to the host communities, gender, to the belonging family, culture, ideology, the networks organized by the immigrants¹¹. Also important are the studies on the negative effects caused by the stereotypes that exist in host communities towards foreigners¹².

A last call involves the identification of the political and cultural patterns historically adopted by the states for the management of migration and integration processes in the host communities. On this issue, for example, the sociologist Stephen Castles distinguishes three main different types of patterns of relationships and integration: a) the differential exclusion model, based on ethnic belonging with the examples of Germany and Japan, but also typical of Central and Eastern European countries such as Austria, Switzerland and Belgium; b) the assimilationist model, based on being a member in the political community and sharing a common culture; important examples are France, the UK and the Netherlands; c) finally the pluralist model which applies to classical immigration countries as the US, Australia, Canada and Sweden¹³.

V. The contradictions of the European Union to migratory flows. «The immediate imperative is the duty to protect people in need»: this statement is contained in the introduction of the basic document of the European policy on immigration, the European Agenda on Migration¹⁴ presented May 13, 2015 by Commission to major EU institutions: Parliament, the Council, the Economic and Social Committee, the Committee of the Regions.

⁶Castles S., Miller M.J. The Age of Migration: International Population Movements in the Modern World. 4th ed. Basingstoke, 2009.

⁷Ambrosini M. Sociologia delle migrazioni. Bologna, 2005.

⁸Portes A., Borocz J. Contemporary Immigration: Theoretical Perspectives on its Determinants and Modes of Incorporation // International Migration Review. 1989. Vol. 23. No. 3. P. 606—630.

⁹Massey D.S., Arango J., Hugo G., Kouaouci A., Pellegrino A., Taylor J.E. Theories of International Migration: a Review and Appraisal // Population and Development Review. 1993. Vol. 19. No. 3. P. 431—466; Castles S., Miller M.J. The Age of Migration. International Population Movements in the Modern World. 4th ed. Basingstoke, 2009; Ambrosini M. Sociologia delle migrazioni. Bologna, 2005.

¹⁰Zolberg A. R. The Next Waves: Migration Theory for a Changing World // International Migration Review. 1989. Vol. 23. No. 3. P. 403—430.

¹¹Kearney M. Borders and Boundaries of State and Self at the End of the Empire // Journal of Historical Sociology. 1991. Vol. 4. No.1. P. 52—74; Kearney M. The Local and the Global: the Anthropology of Globalization and Transnationalism // Annual Review of Anthropology. 1995. Vol. 24. P. 547—565.

¹²Vicinanza e lontananza. Modelli e figure dello straniero come categoria sociologica / A cura di S. Tabboni. Milano, 1993

¹³Castles S. How Nation-states Respond to Immigration and Ethnic Diversity // New Community. 1995. Vol. 21. No. 3. P. 293—308; Castles S., Miller M.J. The Age of Migration. International Population Movements in the Modern World. 4th ed. Basingstoke, 2009.

¹⁴European Commission. Communication from the Commission to the European Parliament, the Council. The European Economic and Social Committee and the Committee of the Regions. A European Agenda on Migration. Brussels, 13. 5. 2015. COM (2015) 240 final.

In the same introduction, the Commission recognizes explicitly that “the common European policy has not been up to the task” In any case, “Europe must continue to be a haven for those who fear persecution and an attractive destination for talent and initiative of workers, students and researchers”. If we think for a moment to the many walls, blocks, rejections that many European countries have organized in front of the recent wave of migration flows (1.3 million asylum applications in 2015), in a situation of impotence, or silence of the Union, it is easy to detect as these statements by the Commission put well in evidence all the contradictions of the European system in relation to this phenomenon.

In the Speech on the state of the Union 2016¹⁵, pronounced by Commission President Jean-Claude Juncker to the European Parliament, (Strasbourg, September 14 2016), the word “refugees” was nominated only two times, the word “migration” only once. Commentators have read it as another sign, of the Union’s difficulties and inability to tackle the problem of migration flows, in contrast with its fundamental principles that define the European system as open and based on solidarity. Yet it is a problem that has come to greatly disrupt the Union and its cohesion mechanisms, up to be one of the concomitant causes of the release by one of its member states, the UK, with the “Brexit” referendum (June 26, 2016), as well as the adoption by individual states of strong self-protection measures, closing provisions, until the erection of walls and barriers to block migration. It is the page of a great collective shame that made rethink the divisions that followed the World War II with practices and experiences that were almost deemed to belong to a definitively closed past.

The whole approach given by Commission’ President Juncker to solving the problem of migratory flows has been limited to three major initiatives: a) organize a corps of young volunteers, called “European solidarity body”, to offer help and assistance in situations of severe crises, such as those determined by the concentration of refugees or by natural disasters. Established in 2016, this body should involve 100,000 young people by 2020, at least that’s the hope of the President; b) the organization of a “new European coastal and border guard” as well as of a new agency to “defend ... with tighter controls” European borders. As an immediate step, the announcement of sending “200 border guards and 50 extra vehicles” at the external borders of Bulgaria; c) finally, the launch of “an ambitious investment plan for Africa and the European neighborhood”, (External Investment Plan) intended to supplement the traditional development aid as a contribution to address one of the root causes of migratory movements. This new investment plan, estimated 44 billion euro that could double with a possible parallel contributions of the Member States, should represent “a sheet-anchor for those who otherwise would be forced to embark on a dangerous journey to find a better life”. Comments on these proposals have emphasized above all, on the one hand, the lack of adequate attention to the integration processes of the many immigrants who have already arrived in Europe and those who continue to arrive every day, and, on the other, the inconsistency in the action’s times of the EU facing the humanitarian emergency and the daily tragedies of those who die, for example, in an attempt to cross the Mediterranean. How many deaths must be registered before the investment plan in Africa will bear positive fruits? The most widespread and prevalent opinion is that the true orientation of the EU will address above all the border control, that is, will act on the opposite of the principles of openness and solidarity.

The following European summit of Heads of states and governments, held in Bratislava on 16 September 2016, confirmed the correctness of this interpretation because in fact, as it is clear from the Roadmap¹⁶ adopted at the end of the meeting, the most attention has been paid to the problems of the control as well as to the threats related to migration, terrorism, economic and social uncertainty, rather than to the problems of integration, for example, in the European labour market. No reference, in other words, neither to the “utilitarian migration” nor the “humanitarian migration”, as defined by the famous Italian scholar Livi Bacci. The general objectives contained in the document are very explicit in this regard: 1) “Never to allow return to uncontrolled flows of the last year and further bring down number of irregular migrants”; 2) “Ensure full control of our external borders and get back to Schengen”; 3) “Broaden EU consensus on long-term migration policies and apply the principles of responsibility and solidarity”. As for “concrete measures”, the summit decided the full realization of the agreement with Turkey, a country of first destination for refugees fleeing the Syrian war, support for the Balkan states, strengthening the protection of the border between Bulgaria and Turkey and other states to the Union’s borders, the rapid effectiveness of the coast and border guard, the start of a long-term co-operation policy with third countries to resolve the migration problems. “Bratislava is the start of a process”, the document states. The next meetings of the European Council will define the specific aspects of individual actions. And the appointments indicated are: the summit in Valletta (Malta) at the beginning of 2017 and the celebrations of the sixtieth anniversary of European treaties in Rome in March 2017. Also in this case, therefore, the EU immediately decided principally to strengthen defenses and controls and see over time the measures that should address the migration problem in a more useful and systemic way. The humanitarian emergency of immigrants who daily risk their lives and die trying to reach Europe, is not entered at all in the Bratislava summit.

This attitude contrasts, objectively, not only with the needs of the present time, but even with all the recent European history. For decades, for example, in an indicative period 1945—1970, Northern Europe did not have trouble absorbing the demographic surplus of the Mediterranean Europe and to welcome hundreds of thousands

¹⁵State of the Union Address 2016: Towards a better Europe — a Europe that protects, empowers and defends. URL: http://europa.eu/rapid/press-release_SPEECH-16-3043_en.htm [Accessed 2 April 2017].

¹⁶Bratislava Declaration and Roadmap. URL: <http://www.consilium.europa.eu/en/press/press-releases/2016/09/16-bratislava-declaration-and-roadmap/> [Accessed 2 April 2017].

immigrants coming from Italy, Spain, Portugal, Greece, Turkey to the point that Berlin has been called the second largest city of Turkey due to the large number of citizens of that country. It is in the seventies of the last century that migration flows coming from extra-European countries have started to intensify, a process that has taken a strong acceleration in correspondence, as we said, to the globalization processes.

In addition to these underlying trends, we may also remind the dramatic experiences of the continent in relation to specific political events. For example, immediately after the war, in 1945—1947, Europe has witnessed massive migration flows and the fact that millions of refugees were hosted and integrated by countries destroyed by war's events. In this respect, it should be remembered, that 630,000 Germans were expelled from Hungary, 700,000 from Romania, 2.5 million from Czechoslovakia; that 1.4 million Germans arrived in the area of Germany occupied by the Anglo Americans at that time, while 786,000 arrived in the area occupied by the Russians, after having left Silesia, Pomerania, East Prussia, i.e. the areas assigned to Poland by the allies. To similar mass displacements were forced the Hungarians (60,000 deported from Slovakia, 100,000 from Yugoslavia) the Ukrainians expelled from Poland, the Poles expelled from Ukraine, 200 thousand Italians from Yugoslavia. Large migratory movements were recorded in the following decades, for example, following the fall down of the Berlin wall and the dissolution of the USSR when, for example, hundreds of thousands of Poles, Romanians, Albanians have moved in to other European countries (since that time, for example, Romanians have become the largest foreign community in Italy with over a million of stable residents); and, again, after the Yugoslav crisis when the phenomenon was repeated with really impressive numbers: on that occasion the European states welcomed 700,000 refugees from Bosnia, 800,000 fled from the small Kosovo.

The question to ask facing with these phenomena is the following: what makes so different the situation of yesterday from that of today? Why in the past decades Europe has demonstrated its ability to welcome and integrate millions of immigrants and, on the contrary, in recent years sets up walls and barriers, takes restrictive and selective measures, accentuates the controls and defenses? The most immediate and even emotional responses, however well-spread in public opinion, say that European citizens have to safeguard and protect their standard of living, jobs, the identity of their heritage of cultural, ethical, religious values. But further reflection shows that while economic reasons for the closure in themselves are objectively weak, contradictory and do not hold up in the long run to a correct analysis, however the reasons related to the defense of identity have their validity. The fact is that in the past decades Europe has absorbed millions of immigrants because for the most part they were citizens of the continent, or came from former colonial reality, while today what Europeans are facing with is an encounter with diversity, with migrants coming from worlds outside Europe and who are bearers of other values, cultures, mentalities. It is the encounter with the diversity that undermines the consciousness of European citizens, provokes indistinct xenophobic reactions, transforms cities in new multiethnic and multicultural realities. But this fact is perhaps the reflection, not only of the current migration processes, but especially of the globalization processes in the world? The encounter with the diversity is, in fact, one of the essential aspects of the global development process and it is difficult to imagine that we can escape to it. It is an unavoidable challenge and in front of it is almost impossible to close ourselves within the increasingly narrow limits of our traditional material and immaterial borders.

Much weaker, as we have said, are the economic reasons put forward by Europeans to justify their attitude of closure and rejection of immigrants. This is because an in-depth analysis of costs and benefits that a community bears for their integration generally reveals a positive result, measured by the great contribution that immigration makes ultimately to the economic development of the host community. The main widespread opinion is that foreigners take away jobs to the national labor force; that is the main charge of populist propaganda and has ancient roots. In this regard it is worth remembering the episode, which was evoked by commentators, of the real scream with which the chancellor Helmut Kohl denounced in the German parliament in November 1992, when the neo-Nazis who had organized an attack at a residence of Turkish immigrants: "Germany enough! — cried the chancellor to the Bundestag — foreigners make you rich", and added: "These obtuse xenophobes who cry "foreigners out !", they should know that without the work of six million foreigners is highly unlikely that the German citizens could continue to enjoy their well being ... every year the immigrants contribute to 9% of GDP and pay the state coffers 25 billion marks ... without them we shall face with the closure of fields, hospitals, factories, essential services for families and cities would lack of cleaning and security services". It is a situation similar to that which occurred in Italy in the period 2000—2010, where the financial contribution for social security services paid by the working population of 4 million immigrants in the country has been crucial in ensuring the balance of the budget of INPS, the National Social Security Institute.

VI. The contribution of immigrants to the labour market and the business system. All analysis and studies on the subject, primarily those conducted by the European Commission Directorate General for Employment and Work, emphasize a fundamental fact: the progressive aging of the population and labour force has considerable negative effects on labour productivity and thus on the overall competitiveness of the European system. Only entering the young labour forces might correct this trend, by now well-established and verified. From here, the concluding remark that Europe has a growing need for immigrants to enter the labour market. But also a second remark: that labour markets' policies and services are the key elements for the best management of the migration flows, if and when well integrated with economic, social and culture policies. Only well integrated active policies based on work inclusion and consequently oriented to create a "common horizon" for all, migrants and not, can build up the condition for sound inclusion processes, avoiding or at least reducing the risks of

increasing exclusion and isolation.

In general terms, an effective and positive management of the pressure that the new situation produce on states, regions and local communities requires governments, regional authorities and managers of public services, on the one hand, the acquisition of sufficient knowledge both of the economic system (the real values the production factors) and of the territorial system (the real values of the area of reference), as element on which to build proper, consistent, clear development strategies; and, on the other hand, this situation requires public decision-makers a remarkable capability to adapt laws, rules, procedures, industrial relations (the quality of the regulatory systems); to modernize the facilities (in terms of efficiency); to strengthen the promotion and incentive actions (in terms of effectiveness).

Specifically, public decision-makers are required to have a remarkable capability to manage such change processes by improving and innovating profoundly the services' performance as well as by identifying points of effective, constantly practiced cooperation between public and private actors, in the common interest. A proper management of the migration flows and the related integration processes requires ultimately the extension of the traditional functions and intervention's areas of the labour market's services; from the set up of an adequate system of economic, social and territorial intelligence (*"l'intelligence du territoire"*, in the French experience) to the active participation in the planning policies: in other words, their mission.

Many international surveys confirm that, in general, labor markets have failed to keep pace with the modernization processes affecting the production system as a whole. Shortcomings are recorded throughout the set of activities that are part of a labour market and that should qualify the processes of working flexibility and adaptation to such processes: labour recruitment, training, education systems. (Particularly serious, throughout Europe, it is the high level of mismatch between supply and job vacancies, i.e. jobs offered by companies that remain uncovered).

Concerning Europe, the general conditions of labour markets show at present an high degree of fragmentation, characterized by great diversity of experiences, organizational and institutional solutions, theoretical approaches, operational methods. This is mainly due to a generalized approach that aimed to meet the needs of local communities, through the strong decentralization of state services, and/or through an enhanced decision-making autonomy of the regions and local authorities. An effective coordination — as well as a political will — lacks for building a real single European labour market.

According to the OECD "only with an appropriate horizontal and vertical coordination of regional labour markets, it will be possible to find a solution facing some of the major obstacles and shortcomings which still reduce their positive impact". But this coordination, highlights, "must involve all the main development actors and" — is the key-point — "should be connected to a shared vision of economic processes and their actual interconnections, to a real capacity to promote planning strategies in the medium and long term, especially in local level"¹⁷. This is the new scope of action of the labour market structures: to be active participants in building an economic environment as much as possible favorable to employment and development. This requires a change of orientation, as highlighted Angel Gurría, secretary general of the OECD, to evaluate, certainly, "what needs to be done" but also to pay special attention to "how it can be done": "what governance mechanism are needed; how responses can be tailored to local conditions; and how the various stakeholders can be brought together".

Another important element emerging from the analysis and studies concerns the contribution given by immigrants in recent years to strengthen the European entrepreneurial system, becoming protagonists of the start up of many new production and trade activities, especially micro and small enterprises. In this regard, the numbers are truly remarkable.

In fact, one of the most interesting and positive phenomena, related to the inclusion of immigrants in the development process, is related to their participation in entrepreneurial activities as real entrepreneurs or entrepreneurs of themselves, that is, as self-employed. In 2013, in the EU28, almost 2 million immigrant entrepreneurs were recorded, more than half consist of intra-EU migrants and 923,000 of non-EU citizens. Among these two million, one quarter have been recorded as employers, the rest as self-employed workers. Leading the ranking is Germany (461,000 immigrant entrepreneurs) followed by the United Kingdom (423,000), Spain (292,000), Italy (284,000). Incidentally it should be said that in the Italian case, a different statistical classification formula, brings this issue to a much greater share, amounting to 498,080 immigrant entrepreneurs. The OECD statistics have highlighted another interesting fact: that in recent times the most of immigrant businesses no longer operate in activities related to the community of reference (the ethnic business) but in the same productive sectors of the other native companies. In the EU, for example, the primary sector is construction (18 per cent of the total), followed by the professional scientific-technical sector (8 percent) and manufacturing (6 percent).

The Action Plan of the European Commission Entrepreneurship 2020¹⁸, aimed to boost entrepreneurship in Europe, for the first time included the entrepreneurial dimension of immigrants between the "new horizons" to open. According to the Commission' document, immigrants constitute an important pool of potential entrepreneurs. In order to support the immigrant entrepreneurship, the Commission is committed to foster entrepreneurship and to

¹⁷OECD: Job Creation and Local Economic Development. Paris, 2014.

¹⁸European Commission. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Entrepreneurship 2020 Action Plan. Reigniting the entrepreneurial spirit in Europe, Brussels, 9.1.2013. COM (2012) 795 final.

remove obstacles that may prevent its spread (registration practices, licenses, residence permits, etc.). Among the measures taken, one concerns the organization of a pan-European information portal dedicated to immigrant business community¹⁹; the other is the organization of a specific Erasmus program for young entrepreneurs, in order to facilitate their mobility within the European system.

VII. A case study: Italy. The fundamental principles of Italian regulations on immigration are enshrined in the Charter of values, citizenship and integration, the general directive of the Ministry of interior published in the Official Journal of 15 June 2007²⁰. Translated into the main foreign languages it was widespread among the different communities. The document summarizes clearly the principles of coexistence and integration in the Italian community, according to the laws and rules in force, and provides in a simple and clear way the most important information on the proper procedures to follow for entry and stay in Italy. The principles contained in the documents reflect the Italian government policy and are summarized in the following policy guidelines: ensuring the safety and legality and at the same time, pursuing the commitment to compose and harmonize the many various identities present in the territory in an articulated and complex reality, avoid marginalization, integrate, strengthen social cohesion of the entire system. They are, in practice, the guidelines and objectives contained in the three-year program of the European Fund for Integration (2009—2013) that the Italian government has adopted, enshrined in the Charter of Values and aimed to achieve with its own action.

Historically Italy has been a country of mass emigration to other countries which is no less true today: in addition to a resident population of about 60 million inhabitants, there are as many 60 million Italian citizens or citizens with Italian origin living in other European countries or in other continents, especially in North and South America, and Australia. Only in the mid-70s of the last century the trend reversed and Italy, at first slowly and then in a more and more intense and accelerated way, has become the destination of major immigration flows in the 80s (in fact the first organic law on immigration dates back to 1986) and massively in the 90s, with the great immigration from Eastern Europe, whose inhabitants still constitute the most represented communities.

Some statistical data on foreigners residing in Italy (2015)²¹ — data that consider those regularly registered but not the great mass of irregular and illegal immigrants — offer a precise idea of their origins as well as the consistency of their respective communities: the largest group of foreigners is from Romania (1,151,395 residents or 22.9 percent of the entire foreign community), followed by Albania community (467,687 residents amounted to 9.3 percent), Morocco (437,485 residents equal to 8.7 percent), the Republic of China (271,330, accounting for 5.40 per cent).

Other relevant communities, from European countries, are made up of citizens of Ukraine (230,728 residents) the Republic of Moldova (142,266 residents) Poland (97,986 residents). Note that Polish citizens have represented for years one of the largest resident foreign communities in Italy, and then mark a turnaround at the beginning of this century, with return home connected to the new situation of considerable economic development in Poland. From the African continent, the substantial immigration is coming from Egypt (109,871 residents), Senegal (98,176 residents) Tunisia (95,645) Nigeria (77,264). From Asia, the second largest group of immigrants, after China, comes from the Philippines (165,900); from South America, in the order we have residents from Peru (103,714) and Ecuador (87 427).

The legislative foundation of the Italian system in the field of migration and asylum policy is in the Constitution²², specifically Article 10, which is among the fundamental principles and in paragraph 3 provides for the right of asylum in the Italian territory for the foreign citizen who is denied “the effective exercise of democratic freedoms”. Over the years, the Italian ordinary legislation has taken steps to promote and organize numerous safeguards in this matter, in considerable part through the receipt of European community legislation. In this regard, it is worth recalling, for example, the Council Directive 2003/9/EC²³ (implemented in Italy by Legislative Decree 30 May 2005, n.140²⁴), which lays down minimum standards for the reception of foreign applicants for the recognition of refugee status in the national territory, in accordance with the standards of the Member States, as well as the Council Directive 2004/83/EC of 29 April 2004²⁵ (implemented in Italy by legislative decree 19 November 2007, n. 251²⁶), on minimum requirements for the attribution to third countries’ residents or stateless people of the status of refugee or person who otherwise needs international protection.

A brief reminder of the main Italian laws on immigration shows that the most important measures have been taken starting from the end of the 90s, that is, in the last decade of the last century, when Italy began to be the

¹⁹URL: www.eu-imminent.com [Accessed 13 March 2017].

²⁰Ministero dell’Interno. Decreto 23 aprile 2007. Carta dei valori della cittadinanza e dell’integrazione // G.U. 2007, 15 giugno. No. 137.

²¹CM.: URL: <https://www.istat.it/en/archive/foreigners> [Accessed 1 April 2017].

²²Costituzione della Repubblica Italiana. URL: <https://www.senato.it/documenti/repository/istituzione/costituzione.pdf> [Accessed 31 March 2017].

²³Council Directive 2003/9/EC of 27 January 2003 Laying down Minimum Standards for the Reception of Asylum Seekers // OJ L 31 6.2.2003. P. 18—25.

²⁴Decreto Legislativo 30 maggio 2005, n.140 “Attuazione della direttiva 2003/9/CE che stabilisce norme minime relative all’accoglienza dei richiedenti asilo negli Stati membri” // G.U. 2005, 21 luglio. No. 168.

²⁵Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons who otherwise Need International Protection and the Content of the Protection Granted // OJ L 304 30.9.2004. P. 12—23.

²⁶Decreto Legislativo 19 novembre 2007, n. 251 “Attuazione della direttiva 2004/ 83/CE recante norme minime sull’attribuzione, a cittadini di Paesi terzi o apolidi, della qualifica del rifugiato o di persona altrimenti bisognosa di protezione internazionale, nonché norme minime sul contenuto della protezione riconosciuta // G.U. 2008, 4 gennaio. No. 3.

subject of major migration flows. The first organic law is the law n.40 of 6 March 1998²⁷ on the legal status of foreigners (and coordination with the legislation of previous years), followed by legislative decree n.286 of 25 July 1998 which contains the “Consolidated Text on immigration and the status of foreign people”²⁸. This is the first organic law on the subject followed, in successive years, by the Decree of the President of the republic containing the Implementing Regulation (Presidential Decree n.394 of 31 August 1999²⁹). With the turn of the century, in 2001, it was approved a Decree of the President of the Council of Ministers (DPR of April 9, 2001) aimed at the “Planning of entry flows of immigrant workers coming from outside EU community in the State”³⁰, a decree which since that time has been renewed every year. Changes to the Consolidated Text on Immigration in 1998 have been made by a law of 2002 (Law n.189 of 30 July 2002, fully operational since 2005³¹) and by law n.94 of 15 July 2009³², containing what was called the “Security Package”. This law introduced the concept of “crime” (a punishable offense with prosecution) for the foreigner who returns back to Italy after being expelled.

The evolution of this legislation testifies to the effort made by the Italian government to better manage the political, economic, social tensions caused by large migration flows, ensure the security and at the same time promoting a real integration of foreigners in the national community. The types of measures are diversified, for example, in relation to different conditions and classifications of immigrant people who are: foreigners (regardless to the country of origin), immigrants, regular immigrants, illegals, clandestines. With specific reference to economic immigration, officially it is allowed to stay in Italy for a period exceeding three months only to those who have an employment contract, under which the immigrant obtains a renewable residence permit. By special decree, the government sets every year the amount of people allowed to enter to Italy for working reasons (with the exception of the nursing staff of which the Italian system has a great need).

As regards the practical management of immigration and asylum policies, under Italian system the competences are basically divided into three main government bodies: the Ministry of Interior (security management, entry, residence and integration processes), the Ministry of Labour (management of the integration into the labor market, planning of annual amounts), the Ministry of Foreign Affairs (visa management and entry permits). The Presidency of the Council of Ministers has been given responsibility for the overall coordination of initiatives, exercised through a special inter-ministerial committee for the coordination and monitoring of the government provisions on immigration. The Ministry of Interior, in particular, is the reference institution for the bodies entitled for managing immigration flows at national, regional and local level, and attended by the main public and private entities as for example: regional government, city administrations, professional business organizations and trade unions. All these entities are collected and collaborate within the Territorial Councils, special bodies established by law in 1999, who have the task of managing the relationship between the national center and the periphery, monitoring migratory phenomena, facilitate the best decisions for the integration of the immigrants. The Ministry of Interior is also responsible for the management of a special service, the Unique Desk for Immigration, a unified structure at the local operational level with the task of examining the migrants’ documents. As for the role played by the Ministry of Labour it is appropriate to recall a specific aspect of his activities concerning the relationship with the trade unions, whose contribution is very important for the integration of immigrants into the labor market. An example of this contribution is the agreement that the government signed in September 26, 2016 with the unions to extend the period of residence permits to many foreign workers who have been affected, as the Italian workers, by the employment crisis of recent years (500,000 unemployed) and for the many immigrants who still have not been able to fit in the labour market (1.2 million inactive).

Finally, it is known that Italy recently has become the main point of arrival of migration flows across the Mediterranean Sea, mainly because of war, famine, climate change. 170,000 arrivals in 2014, 150,000 in 2015, 159,000 in the first ten months of 2016. The majority of refugees and immigrants are coming from Africa, from Nigeria (15 percent), Gambia (10 percent), Somalia (9 percent), Eritrea, Guinea and Ivory Coast (8 percent); many have crossed the Sahara desert and boarded in Libya from which 89 percent of vessels arrive to Italy (2015). Noteworthy, in recent times, have become Italy’s disagreements with the EU and many member states on the policies to be followed as well as the practical breakdown of migrant quotas. In this respect the Union is experiencing a great failure, as reported by the United Nations (UNHCR): till September 2016, the Union has managed to reposition between all member states only 5,290 immigrants, 4,134 of them from Greece and 1,156 from Italy. This has created a situation of great political and strong tension and strong is the denunciation by Italy of the lack of effective European solidarity. Among the most significant proposals submitted by the Italian

²⁷Legge 6 marzo 1998, n. 40 “Disciplina dell’immigrazione e norme sulla condizione dello straniero” // G.U. 1998, 12 marzo. No. 59. — Suppl. ord. No. 40.

²⁸Decreto Legislativo 25 luglio 1998, n.286 “Testo unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero” // G.U. 1998, 18 agosto. No. 191. — Supplemento Ordinario No. 139.

²⁹Decreto del Presidente della Repubblica 31 agosto 1999, n. 394 “Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero, a norma dell’articolo 1, comma 6, del decreto legislativo 25 luglio 1998, n. 286” // G.U. 1999, 3 novembre. No. 258. — Supplemento ordinario. N. 190.

³⁰Decreto del Presidente del Consiglio dei Ministri del 9 aprile 2001 “Programmazione dei flussi d’ingresso dei lavoratori extracomunitari nel territorio dello Stato per l’anno 2001” // G.U. 2001, 17 maggio. No. 113.

³¹Legge 30 luglio 2002, n. 189 “Modifica alla normativa in materia di immigrazione e di asilo” // G.U. 2002, 26 agosto. No. 199. — Suppl. ord. No. 173.

³²Legge del 15 luglio 2009, n. 94 “Disposizioni in materia di sicurezza pubblica” // G.U. 2009, 24 luglio. No. 170 — Suppl.ord. No. 128.

Government at the European Council summits, it is worth remembering those relating to Migration Compact³³, which aims to define a pattern of proposals to enhance cooperation with third countries from which the greatest migratory flows are coming, and that of the Migration Bond³⁴, to finance extraordinary management plans with reference to: humanitarian assistance and technological equipment for the operation of the migrants' collection centers (on the United Nations model), integration into the European community, organization of repatriations. According to Italy it is urgent the Union promote the following initiatives: a) adopt and apply a different system of distribution of quotas (no numerical quotas but in percentages), b) revise deeply its External Action in the field, the Global Approach to Migration and Mobility, launched in 2005 and revised in 2011³⁵; c) focus its activities on the African continent; d) adopt a matrix for in-depth analysis of migration flows and their integration processes; e) provide financial support and remuneration for those countries that open asylum to immigrants; f) as for repatriations, Italy proposes the overcoming of bilateral agreements between individual states and the transition to agreements signed and managed directly by the Union.

VIII. The ethical and social responsibility of the scientific community. As final comment, we must remember that the Agenda 2030, with its Goals and Targets, part of which concerns the management of migration, as we have seen, was built on the base of a great preparatory work, started in practice in 2012, which involved representatives of governments (politics), scientists (academy), representatives of civic associations (civil society) and was finally approved by the General Assembly, individual states and governments.

In this preparatory work, UN have also identified, defined and approved the new tasks and duties that relate to the scientific world and the relationship between science and politics. To this goal, the United Nations (2015), has launched a special initiative aimed at building an organic relationship of collaboration between science and policy, the so called program of Science-Policy Interface (SPI), a useful tool to promote a regular and systematic exchange and dialogue between scientists and policy makers.

Facing with the complex phenomena of the sustainable development, which include the migration phenomenon, the scientific community is called offer to major development players a fundamental contribution of analysis and studies based on a methodological interdisciplinary and systemic approach, for the best assessment of these complex processes. All that requires the convergence and collaboration among the various scientific disciplines, and the ability to link the specific sector studies to a shared vision and understanding of current trends in the complex systems such as the transnational realities are.

The United Nations documents recall also the importance of supporting and integrating the interdisciplinary approach even with another method of analysis and study defined as “trans-disciplinary”. That is a method combining interdisciplinary approaches and participatory ones, with the involvement in the research processes of the various actors outside scientific community (i.e. economic players and union' organizations) as well as of the various communities (local communities, user groups and consumers, non-governmental organizations, up to public opinion)

Additional advices have been clearly defined and approved by the Scientific Advisory Board of the UN Secretary-General as follows: science must consider well its social responsibility (i.e. it must direct its efforts according to specific values and social objectives); it must also promote the desired innovative processes ensuring that such processes are still ethically acceptable, sustainable, socially desirable. It is clear that the relationship between science and policy, as defined by the Interface-SPI initiative, is not linear, in the sense that each of the actors has a definite role to play. In any case, science is one of the actors of the political process, and it works together and alongside with other players in that process.

One of the main roles that the scientific world should play, according to the new Science-Policy Interface — SPI system constitutes the identification and reporting of the emerging problems, when they are proven as such by the scientific point of view, assessed on the base of valid methodologies, confirmed by forecasting models. The problem, UN states, is that the political community often does not give enough attention to what is being reported by the scientific community as an emerging and important issue. Hence also the UN determination of a precise working methodology that would primarily allow to evaluate and select the signals coming from the scientific community; it deals with a structured process aimed at helping the same scientific community to select the truly relevant and shareable open questions on sustainable development, before involving the political community.

REFERENCES

- Ambrosini, M. (2005). *Sociologia delle migrazioni* [Sociology of Migrations]. Bologna: Il Mulino (In Ital.).
- Castles, S. (1995). How Nation-states Respond to Immigration and Ethnic Diversity. *New Community*, 21(3), pp. 293—308. DOI: 10.1080/1369183x.1995. 9976493.
- Castles, S. and Miller, M.J. (2009). *The Age of Migration: International Population Movements in the Modern World*. 4th ed. Basingstoke: Palgrave MacMillan

³³Migration Compact. Contribution to an EU Strategy for External Action on Migration. URL: www.governo.it/sites/governo.it/files/immigrazione_0.pdf [Accessed 7 April 2017].

³⁴Barigazzi Ja. Matteo Renzi Proposes European “Migration Bonds”. URL: <http://www.politico.eu/article/matteo-renzi-proposes-european-migration-bonds-donald-tusk-jean-claude-junker-border-controls/> [Accessed 7 April 2017].

³⁵European Commission. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. The Global Approach to Migration and the Mobility. Brussels, 18.11.2011. COM(2011) 743 final.

Kearney, M. (1991). Borders and Boundaries of State and Self at the End of the Empire. *Journal of Historical Sociology*, 4(1), pp. 52—74. DOI: 10.1111/j. 1467-6443.1991.tb00116.x.

Kearney, M. (1995). The Local and the Global: the Anthropology of Globalization and Transnationalism. *Annual Review of Anthropology*, 24, pp. 547—565. DOI: 10.1146/annurev.anthro.24.1.547.

Massey, D.S., Arango, J., Hugo, G., Kouaouci, A., Pellegrino, A. and Taylor, J.E. (1993). Theories of International Migration: a Review and Appraisal. *Population and Development Review*, 19 (3), pp. 431—466. DOI: <https://doi.org/10.2307/2938462>.

Portes, A. and Böröcz, J. (1989). Contemporary Immigration: Theoretical Perspectives on its Determinants and Modes of Incorporation. *International Migration Review*, 23(3), pp. 606—630. DOI: 10.2307/2546 431.

Sennett, R. (2009) *The Flexible Man*. Milan: Feltrinelli.

Tabboni, S. ed. (1993). *Vicinanza e lontananza. Modelli e figure dello straniero come categoria sociologica* [Proximity and Distance. Models and Figures of the Foreigner as a Sociological Category]. Milano: Franco Angeli (In Ital.).

Zolberg, A. R. (1989). The Next Waves: Migration Theory for a Changing World. *International Migration Review*, 23(3), pp. 403—430. DOI: 10.2307/ 2546422.

AUTHOR'S INFO:

Marco Ricceri — Professor, General Secretary of the Institute of Political, Economic and Social Studies (EURISPES), Italy.

FOR CITATION:

Ricceri, M. (2017). The Challenges of Immigration to Nation-States: To Be Open or Closed? Contradictions in the European System. The Italian Case. *Proceedings of the Institute of State and Law of the RAS*, 12(3), pp. 69—100.

INSTITUTION OF THE PARLIAMENTARY COMMISSIONER FOR HUMAN RIGHTS IN THE RUSSIAN FEDERATION: ISSUES OF ITS GROWTH AND FURTHER DEVELOPMENTS

Maxim A. Kudryavtsev

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

Commissioner for Human Rights in the Russian Federation is created as an important specialized state authority with the view to provide protection and remedying grievances of human and civil rights. It represents a Russian analog of the institute of ombudsman which has proliferated around the modern world. Human Rights Commissioner in Russia is a parliamentary ombudsman which means to be an institute of parliamentary control. The control is not conducted by the parliament itself, but mediated by an independent official. The executive power is not the one subjected to this kind of control, but public authorities in general, including a range of central and local governmental bodies and officials. The competence of the Commissioner for Human Rights falls into three directions of activities with apt powers: 1) dealing with complaints about violations of human rights; 2) interaction with the lower chamber of Parliament — the State Duma; 3) cooperation with other public power bodies and officials. Herewith the traditional functions of the Commissioner for Human Rights in Russia — redress of human rights grievances, information and initiation/optimization there might be pointed out additional functions — compensatory-auxiliary and organizational/coordinating functions. Commissioner's activities on the implementation of its main task — handling complaints about violations of human rights and undertaking measures for their protection and restoration — used to provide him with the extensive empirical material which will help to identify the most vital and acute current issues in the field of social cooperation between man, society and state and to propose relevant resolutions on the matter.

At the moment the institution of ombudsman in Russia is under intensive development. This is reflected in the emergence of numerous offices of ombudsmen. Alike multiplicity of the offices of ombudsmen is setting out the case for creation a joint independent system for the protection of human rights by the state which should integrate the federal Commissioner's activities with those of his colleagues in the entities of the Russian Federation. The leading role in coordinating the official ombudsman system of human rights protection in the Russian Federation should belong to the Commissioner for Human Rights due to parliamentary nature of this institution, associated with the principles of parliamentarism in action.

➔ Human rights, parliamentary control, Commissioner for Human Rights, specialized commissioners for human

rights, right to good governance, human rights institutions, official system of human rights protection.

REFERENCES

- Avak'yan, S.A. (2005). *Konstitutsionnyi leksikon: gosudarstvenno-pravovoi terminologicheskii slovar'* [The Constitutional Lexicon: State-legal Terminology Dictionary]. Moscow: Yustitsinform (in Russ.).
- Dobrynin, N.M. (2005). *Konstitutsionnoe (gosudarstvennoe) pravo Rossiiskoi Federatsii. Sovremennaya versiya noveishei istorii gosudarstva* [Constitutional (State) Law of the Russian Federation. A Modern Version of the Contemporary History of the State]. In 2 vol. Volume 1. Novosibirsk: Nauka (in Russ.).
- Dodonov, V.K. cont. and Lafitskii, V.I. ed. (1995). *Konstitutsionnoe (gosudarstvennoe) pravo: spravochnik* [Constitutional (State) Law: Reference Book]. Moscow: Yurist (in Russ.).
- Eckstein, K. (2004). *Osnovnye prava i svobody po rossiiskoi Konstitutsii i Evropeiskoi Konventsii* [Fundamental Rights and Freedoms according to the Russian Constitution and the European Convention on Human Rights and Fundamental Freedoms]. Moscow: NOTA BENE (in Russ.).
- Glushkova, S.I. (2005). *Prava cheloveka v Rossii* [Human Rights in Russia]. Moscow: Yurist (in Russ.).
- Khamaneva, N.Yu. (1998). *Upolnomochennii po pravam cheloveka — zashchitnik prav grazhdan* [Commissioner for Human Rights — the Defender of Citizens' Rights]. Moscow: Institut gosudarstva i prava Rossiiskoi akademii nauk (in Russ.).
- Khamaneva, N.Yu. (1997). *Zashchita prav grazhdan v sfere ispolnitel'noi vlasti* [Protection of the Citizens Rights in the Sphere of Executive Power.]. Moscow: Institut gosudarstva i prava Rossiiskoi akademii nauk (in Russ.).
- Kudryavtsev, Yu.V. ed. (1996). *Kommentarii k Konstitutsii Rossiiskoi Federatsii* [A Commentary on the Constitution of the Russian Federation]. Moscow: Fond "Pravovaya kul'tura" (in Russ.).
- Lukasheva, E.A. ed. (1996). *Obshchaya teoriya prav cheloveka* [The General Theory of Human Rights]. Moscow: Norma Publ (in Russ.).
- Lukasheva, E.A. ed. (2004). *Prava cheloveka* [Human Rights]. Moscow: NORMA (in Russ.).
- Maklakov, V.V. ed. (1997). *Inostrannoe konstitutsionnoe pravo* [Foreign Constitutional Law]. Moscow: Yurist (in Russ.).
- Saidov, A.Kh. (2004). *Obshchepriznannye prava cheloveka* [Universally Recognized Human Rights]. Moscow: Institut gosudarstva i prava Rossiiskoi akademii nauk (in Russ.).
- Tikhomirova, L.V. and Tikhomirov, M.Yu. (2005). *Yuridicheskaya entsiklopediya* [Legal Encyclopedia]. Moscow: Yurinformtsentr (in Russ.).
- Tiunov, O.I. ed. (2005). *Konstitutsionnye prava i svobody cheloveka i grazhdanina v Rossiiskoi Federatsii* [Constitutional Rights and Freedoms of Man and Citizen in the Russian Federation]. Moscow: NORMA (in Russ.).

AUTHOR'S INFO:

Maxim A. Kudryavtsev — Candidate of Legal Sciences, Research Fellow of the Theory of Constitutional Law Department, Institute of State and Law, Russian Academy of Sciences.

FOR CITATION:

Kudryavtsev, M.A. (2017). Institution of the Parliamentary Commissioner for Human Rights in the Russian Federation: Issues of Its Growth and Further Development. *Proceedings of the Institute of State and Law of the RAS*, 12(3), pp. 101—123.

ENSURE THE RIGHT TO HEALTH: DEMOGRAPHIC AND INSTITUTIONAL INDICATORS

Natalia S. Kolesova

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

According to international human rights documents the right to the highest attainable standard of health belongs to every person. Realization of this right depends on a wide range of social and economic factors that are pre-requisites of man's healthy life. Those are safe conditions of work, friendly environment, safe medications, affordable proper medicare, etc. The modern development of health care results in a substantial increase in number of the above mentioned factors that in the aggregate precondition the level of a nation's health. The present article considers the key indicators — demographic and institutional — that reflect the status of those social and economic factors and consequently characterize the extent to which the right for health protection is realized. These indicators are the objective criteria of how successful a given state appears to be in implementing its specific health protection policy.

The demographic indicators include life span and life expectancy (with respect to different social and age-specific groups), birth and death rates, incapacitation and other factors usually taken into account when monitoring the right for health protection and on a broader scale when calculating the human development index. The institutional indicators — e.g. sufficiency of the number of active medicare centers, quality of consumer goods and services, provision of state-run programs, distribution of relevant resources — indicate the degree of realization of the right to healthcare in all its forms and on all levels. The present article also highlights health-related problems of special groups (disabled persons and AIDS patients) most vulnerable to discrimination and thus as a rule are subjected to specific monitoring. When put together the demographic and institutional indicators provide data for an overall objective analysis of the extent of realization of healthcare rights.

→ Right to healthcare, demographic processes, healthcare system, medicare, demographic indicators, institutional indicators, years of life lost (YLL), human development index.

REFERENCES

- Gokhan, A.B.A. and Metin, A.T.E.S. (2016). The Relationship between Health Expenditure and Socioeconomic/Demographic Indicators: and International Comparison. *Journal of International Health Sciences and Management*, 2, (1), pp. 113—118.
- Gruber, J. (2011). *Health Care Reform: What It Is, Why It's Necessary, How It Works*. New York: Hill and Wang.
- Juskevicius, J., Balsiene, J. (2010). Human Rights in Healthcare: Some Remarks on the Limits of the Right to Healthcare. *Jurisprudencija/Jurisprudence*, (4), pp. 95—110.
- Khabrieva, T.Ya. and Tikhomirov, Yu.A. eds. (2010). *Kontseptsiya razvitiya rossiiskogo zakonodatel'stva* [The Concept of Development of the Russian Legislation]. Moscow: Eksmo (in Russ.).
- Kotel'nikova, Z.V. (2015). Vzaimosvyaz' praktik potrebleniya alkogolya s sotsial'noi strukturoi sovremennoi Rossii [Relationship of Alcohol Consumption with Social Structure of Contemporary Russia]. *Sotsiologicheskie issledovaniya* [Sociological Studies], (4), pp. 105—112 (in Russ.).
- Novgorodova, A.V. (2015). Poteryannye gody zhizni — indikator zdorov'ya naseleniya [Years of Life Lost as the Indicator of the Population Health]. *Narodonaselenie* [Population], (2), pp. 74—86 (in Russ.).
- Shcherbakova, E.M. (2015). Demograficheskie itogi I polugodiya 2015 goda (chast' I) [The Demographic Results of the First Half of 2015 (Part I)]. *Demoskope-Weekly*, [online] (653—654). Available at: <http://demoscope.ru/weekly/2015/0653/barometer653.pdf> [Accessed 14 November 2016] (in Russ.).
- Tsybul'sky, V.B. (2015). Nekotorye prichiny ukhudsheniya pokazatelei deyatelnosti sistemy okhrany zdorov'ya v strane [Some Causes of Deteriorated Performance Indicators of the Health Protection System in Russia]. *Sotsial'nye aspekty zdorov'ya naseleniya* [Social Aspects of Population Health], [online] (2). Available at: <http://vestnik.mednet.ru/content/view/675/30/lang,ru/> [Accessed 12 November 2016] (in Russ.).
- Ulumbekova, G.E. (2015). *Zdravookhranenie Rossii. Chto nado delat'* [Healthcare of Russia. What to do]. 2nd ed. Moscow: GEOTAR-Media (in Russ.).
- Vishnevskii, A.G. (2015). Novaya epidemiologicheskaya model' i zdravookhranenie [New Epidemiologic Model and Healthcare]. *Demoskope-Weekly*, [online] (653—654). Available at: <http://www.demoscope.ru/weekly/2015/0653/tema01.php> [Accessed 14 November 2016] (in Russ.).
- Yumaguzin, V.V. and Vinnik, M.V. (2014). Faktory smertnosti ot vneshnikh prichin i puti ee snizheniya: opyt ekspertnogo interv'yua [Factors of Mortality From External Causes and Ways to Reduce It: Experience of the Expert Interview]. *Sotsial'nye aspekty zdorov'ya naseleniya* [Social Aspects of Population Health], [online] (4). Available at: <http://vestnik.mednet.ru/content/view/595/30/lang,ru/> [Accessed 12 November 2016] (in Russ.).
- Zvezdina, N.V. and Ivanova, L.V. (2015). Ozhidaemaya prodolzhitel'nost' zhizni v Rossii i faktory, vliyayushchie na nee [Life Expectancy in Russia and Its Underlying Factors]. *Voprosy statistiki* [Statistical Studies], (7), pp. 10—20 (in Russ.).

AUTHOR'S INFO:

Natalia S. Kolesova — Candidate of Legal Sciences, Senior Research Fellow of the Human Rights Department, Institute of State and Law, Russian Academy of Sciences.

FOR CITATION:

Kolesova, N.S. (2017). Ensure the Right to Health: Demographic and Institutional Indicators. *Proceedings of the Institute of State and Law of the RAS*, 12(3), pp. 124—143.

DEVELOPING BUSINESS SELF-REGULATION AS A CONDITION FOR ECONOMIC RENEWAL

Larisa I. Bulgakova

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

The Framework for improvement of self-regulatory mechanisms approved in 2015 by the Government of the Russian Federation defined the objectives, the principles and the organizational structure of the unified Russian model of self-regulation and its elements: members of a self-regulating organization, self-regulating organizations (SRO) themselves, and their national associations. The suggested unified Russian model of self-regulation is unique as compared to the models already adopted in different fields of the Russian economy or abroad. SRO combines private and public means in achieving its goals. Development of self-regulation leads to redistribution of the functions of economic management between governmental structures and self-regulation structures. The innovation potential of the SRO is realized through effective implementation of its basic functions: regulation, control, guarantee, information and also functions of training and professional development of SRO members. The analysis of the implementation mechanism established for these functions shows the need for more detailed rules.

Maintaining two types of self-regulation (compulsory and voluntary) is justifiable given clear legislative determination, not only of the basic approaches and principles of self-regulation, but also of specific typical features. However it is clear that obligatory membership of economic actors in SRO constitutes a restriction of freedom of business activity. Voluntary self-regulation has a few forms including: self-regulating organizations based on voluntary membership, as well as diligence codes, that have become widespread in recent years. The diligence codes further the development of self-regulation in the so-called «inter-sectoral economic sphere»: such phenomenon is absent when SRO are created according to the field principle. The research has shown the need to modernize the legislation on the self-regulation of business and professional activity.

→ Innovative economy, self-regulation, self-regulatory organization, a single model of self-regulation, business activity, professional activity, the functions of self-regulating organizations, diligence codes.

REFERENCES

- Batrova, T.A. (2014). Samoregulirovanie v sfere torgovli [Self-regulation in Commerce]. *Kommercheskoe pravo. Nauchno-prakticheskii zhurnal* [Commercial Law Journal], (1), pp. 13–16 (in Russ.).
- Bonnici, M. and Pia, J. (2008). *Self-Regulation in Cyberspace*. The Hague: TMC Asser Press. DOI: 10.1007/978-90-6704-635-0.
- Bulgakova, L.I. (2013). Obespechenie imushchestvennoi otvetstvennosti samoreguliruemym organizatsii po obyazatel'stvam svoikh chlenov [Ensuring Liability of Self-Regulating Organizations on Behalf of Its Members]. *Pravo i ekonomika* [Law and Economics], (4), pp. 22–26 (in Russ.).
- Egorova, M.A. (2017) *Kontseptsiya sovershenstvovaniya mekhanizmov samoregulirovaniya: pro et contra* [The Concept of the Self-Regulatory Mechanisms Improvement: pro et contra]. Moscow: Yustitsinform (in Russ.).
- Ershova, I.V. ed. (2015). *Samoregulirovanie predprinimatel'skoi i professional'noi deyatel'nosti: edinstvo i differentsiatsii* [Self-regulation of Business and Professional Activities: Unity and Differentiation]. Moscow: NORMA: INFRA-M (in Russ.).
- Ershova, I.V. (2014). Samoregulirovanie predprinimatel'skoi i professional'noi deyatel'nosti: voprosy teorii i zakonodatel'stva [Self-Regulation of Business and Professional Activities: Issues of Theory and Legislation]. *Aktual'nye problemy rossiiskogo prava* [Actual Problems of Russian Law], (10), pp. 2143—2150 (in Russ.).
- Henderson, M.T. (2013). *Self-Regulation for the Mortgage Industry*. University of Chicago Coase-Sandor Institute for Law and Economics Research Paper. Issue 638. DOI: 10.2139/ssrn.2241799.
- King, A., Prado, A.M. and Rivera, J. (2011). Industry Self-Regulation and Environmental Protection. In: P. Bansal and A.J Hoffman, eds. *The Oxford Handbook of Business and the Natural Environment*. Oxford: Oxford University Press. pp. 103–131. DOI: 10.1093/oxfordhb/9780199 584451.001. 0001.
- Lisitsyn-Svetlanov, A.G. and Maksimov, S.V. (2014). *Modeli preodoleniya krizisa sistemy gosudarstvennogo kontrolya v sfere ekonomiki* [Models of Overcoming the Crisis of the System of State Control in the Economy]. [online] Institute of State and Law, Russian Academy of Sciences. Available at: <http://www.igpran.ru/articles/3535/> [Accessed 10 December 2016] (in Russ.).
- Petrov, D.A. (2015). *Pravovoi status samoreguliruemoi organizatsii v sfere predprinimatel'stva: problemy teorii i praktiki* [The Legal Status of Self-Regulating Organization in the Field of Entrepreneurship: Problems of Theory and Practice]. Saint Petersburg: Nestor-Istoriya (in Russ.).

AUTHOR'S INFO:

Larisa I. Bulgakova — Candidate of Legal Sciences, Senior Research Fellow of the Business Law

FOR CITATION:

Bulgakova, L.I. (2017). Developing Business Self-Regulation as a Condition for Economic Renewal. *Proceedings of the Institute of State and Law of the RAS*, 12(3), pp. 144—161.

**MODERNIZATION OF THE LEGAL ENVIRONMENT FOR THE INNOVATIVE (DIGITAL)
ECONOMY:
THE ELECTRONIC DOCUMENT LAW**

Nina I. Solovyanenko

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

Performance of legal transactions in a high-tech way using electronic documents permits to ensure business efficiency, transparency, constructive cooperation between enterprises and governmental bodies, speedy trial and open justice. Creation of legal conditions for electronic document circulation in the economy is included in the “road map” of the national enterprise initiative “Improving the quality of the regulatory environment for business”. While modernizing the Russian legislation on electronic documents in business transactions in the period of transition to innovative (digital) economy it is advisable to take into account the newest methods and principles of regulation of electronic transactions applied in the respective acts of the Eurasian Economic Union and European Union as well as in the model laws of the UN Commission on International Trade Law (pertaining to electronic commerce and electronic signatures). The Russian legal base in this sphere is insufficient. General legal regime of electronic documents is underdeveloped as are legal mechanisms and procedures required for electronic document circulation, including in international relations (such as electronic identification, trust service providers, electronic seal, electronic time stamps, long-term storage of electronic documents, website authentication services and electronic registered delivery services). The use of electronic documents in all spheres of the Russian economy is possible only with the appropriate legal mechanism. For these purposes, the Federal law “On the electronic document” should be drafted and adopted. A legal mechanism should provide for trust services for electronic transactions. Federal law “On electronic document” should include the principles of functional equivalence and technological neutrality.

→ Innovation economics, electronic commerce, electronic justice, functional equivalent, electronic document, electronic signature, qualified certificate, an electronic document law, electronic public procurement, trusted service, providers.

REFERENCES

- Agarkov, M.M. (1993). *Uchenie o tsennykh bumagakh* [The Securities Doctrine]. Moscow: Finstatinform (in Russ.).
- Blythe, St.E. (2005). Digital Signature Law of the United Nations, European Union, United Kingdom and United States: Promotion of Growth in E-Commerce with Enhanced Security. *Richmond Journal of Law and Technology*, 11(2), pp. 1—20.
- Braginskii, M.I. and Vitryanskii, V.V. (1997). *Dogovornoe pravo. Obshchie polozheniya* [Contract Law. General Provisions]. Moscow: Statut (in Russ.).
- Bylevskii, P.G. (2016). Kak skoro elektronnyi dokument zamenit bumazhnyi? [How Soon Will the Electronic Document Replace the Paper One?]. *BIS Journal — Informatsionnaya bezopasnost' bankov* [BIS Journal — Information Security of Banks], (2), pp. 14—19 (in Russ.).
- Dorokhov, V.Ya. (1982). Ponyatie dokumenta v sovetskom prave [The Notion of a Document in the Soviet Law]. *Pravovedenie*, (2), pp. 53—60 (in Russ.).
- Mason, St. (2012). *Electronic Signatures in Law*. 3rd ed. Cambridge: Cambridge University Press. DOI: 10.1017/CBO9780511998058.
- Sabanov, A.G. (2016). Metodika formulirovaniya zadach po sovershenstvovaniyu normativno-pravovoi bazy postroeniya prostranstva doveriya k elektronnyim dokumentam s pravovymi posledstviyami [Tasks Formulation Method of Improvement of the Legal Base for Creation of the Trust Area to Electronic Documents with Legal Consequence Enhancement]. *Zashchita informatsii. Insaid* [Zasita Informacii. Inside], (5), pp. 14—19 (in Russ.).
- Sabanov, A.G. (2014). Yuridicheskaya sila elektronного документа: tekhnologicheskaya sostavlyayushchaya [The Legal Force of Electronic Document: Technological Component]. *Zashchita informatsii. Insaid* [Zasita Informacii. Inside], (3), pp. 20—25 (in Russ.).

Solovyanenko, N.I. (2005). Zaklyuchenie dogovorov s ispol'zovaniem elektronnykh dokumentov v sistemakh elektronnoi trgovli [The Conclusion of Contracts Using Electronic Documents in Electronic Commerce Systems]. *Khozyaistvo i pravo* [Business and Law], (3), pp. 50—58 (in Russ.).

Wang, F.F. (2014). *Law of Electronic Commercial Transactions: Contemporary Issues in the EU, US and China*. London: Routledge. DOI: 10.4324/97802036 28812.

Wang, F.F. (2009). *Online Dispute Resolution: Technology, Management and Legal Practice from an International Perspective*. Oxford: Chandos.

AUTHOR'S INFO:

Nina I. Solovyanenko — Candidate of Legal Sciences, Senior Research Fellow of the Business Law Department, Institute of State and Law, Russian Academy of Sciences.

FOR CITATION:

Solovyanenko, N.I. (2017). Modernization of the Legal Environment for the Innovative (Digital) Economy: the Electronic Document Law. *Proceedings of the Institute of State and Law of the RAS*, 12(3), pp. 162—175.

LEASE OF PUBLIC LANDS: RELATIONS BETWEEN CIVIL LAW AND LAND LAW

Nikolay N. Mel'nikov

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

Sergey A. Sklyaruk

Orel Regional Court
6, Krasnoarmeiskaya str., Orel 302040, Russian Federation
E-mail: 75sas@mail.ru

Objective characteristics of the earth as the basis of human life and activity determine certain legal restrictions in the exercise of subjective rights to land plots. The Constitution of the Russian Federation, the Civil Code and the Land Code specify that land and other natural resources may be in different forms of ownership and can be marketable.

The problem of correlation of land and civil law regulation of contractual relations is one of the most complex theoretical and practical problems. There are the diametrically opposite points of view: civil law scholars are proponents of inclusion of private-law norms contained in different codes on protection and use of natural resources to the RF Civil Code. Land law school oppose this approach as it will lead to unacceptable blurring of the relevant rules in different codes.

Despite many studies, modern Russian scholarship has not developed a uniform solution for demarcation of subject-matter regulation by civil law and land law in the sphere of lease relations; this issue has not been resolved in the current legislation, in particular the Civil Code and the Land Code of the Russian Federation.

Contractual relations are the subject of legal regulation of civil law, and in accordance with the Constitution of the Russian Federation regulation of this sphere is administered by the Russian Federation, while the land legislation is under the joint authority of the Russian Federation and its constituent entities.

The permissibility of regulation of civil relations, including land use, by acts issued by the constituent entities of the Russian Federation is debatable. Different approaches are observed in practice. The above contradictions lead to competition of the branches of the Russian legislation (Civil Code and Land Code) and the various levels of legal regulation (the Russian Federation and the constituent entities of the Russian Federation).

⇒ Competence of the Russian Federation, competence of the constituent entities of the Russian Federation, civil law, land law, limits of the effect of law in time, the principle of legal certainty, the lease contract, lease payment calculation.

REFERENCES

Abova, T.E. and Kabalkin, A.Yu. eds. (2011). *Kommentarii k Grazhdanskomu kodeksu Rossiiskoi Federatsii. V 2 t. T. 1. Chasti pervaya, vtoraya GK RF* [The Commentary to the Civil Code of the Russian

Federation. In 2 vol. Volume 1. First and Second Parts of the Civil Code]. Moscow: Yurait Publ (in Russ.).

Dobrachev, D.V. (2005). Razmer arendnoi platy kak sushchestvennoe uslovie dogovora arendy zemel'nogo uchastka [The Amount of Rent as an Essential Condition of the Lease Contract of a Land Plot]. *Zhurnal rossiiskogo prava* [Journal of Russian Law], (7), pp. 66—76 (in Russ.).

Filatkina, Yu.E. (2009). Vliyanie na razvitie arendy zemel'nogo uchastka kak kompleksnogo instituta zemel'nogo prava, nekotorykh veshchnykh i obyazatel'stvennykh institutov rimskogo prava [The Influence of Some Property and Obligation's Institutes of the Roman Law on Development of Rent of the Plot of Land, as Composite Institute of the Land Law]. *Advokat* [Advocate], (10), pp. 90—97 (in Russ.).

Galinovskaya, E.A. (2012). Ispol'zovanie zemel'nykh uchastkov dlya ikh kompleksnogo osvoeniya v tselyakh zhilishchnogo stroitel'stva [Use of the Plots of Land for their Comprehensive Development for Housing]. *Imushchestvennye otnosheniya v Rossiiskoi Federatsii* [Property Relations In The Russian Federation], (1), pp. 28—33 (in Russ.).

Guev, A.N. (2009). *Postateinyi kommentarii k chasti pervoi Grazhdanskogo kodeksa RF* [Article-by-article Commentary to the First Part of the Civil Code of the Russian Federation]. [online] SPS Garant. Available at: <http://ivo.garant.ru/#/document/5694127> [Accessed 23 March 2017] (in Russ.).

Kozyr', O.M. (2003). Osobennosti regulirovaniya sdelok s zemlei zemel'nym zakonodatel'stvom [Peculiarities of Regulation of Land Transactions by Land Law]. *Ekologicheskoe pravo* [Environmental Law], (4), pp. 7—16 (in Russ.).

Mattei, U. and Sukhanov, E.A. (1999). *Osnovnye polozheniya prava sobstvennosti* [Basic Provisions of Property Law]. Moscow: Yurist (in Russ.).

Sannikova, L.V. ed. (2016). *Grazhdanskii kodeks Rossiiskoi Federatsii. Postateinyi kommentarii k razdelu III "Obshchaya chast' obyazatel'stvennogo prava"* [The Civil Code of the Russian Federation. Commentary to Section III "The General Part of Contract Law"]. Moscow: Statut (in Russ.).

Semyakina, A.V. (2016). Arenda zemel'nykh uchastkov po angliiskomu i rossiiskomu pravu [Leases of Land in English and Russian Law]. *Zakony Rossii: opyt, analiz, praktika* [Laws of Russia: Experience, Analysis, Practice], (12), pp. 28—33 (in Russ.).

Shchennikova, L.V. (1996). *Veshchnye prava v grazhdanskom prave Rossii* [Proprietary Rights in Civil Law of Russia]. Moscow: NORMA (in Russ.).

AUTHORS' INFO:

Nikolay N. Mel'nikov — Doctor of Legal Sciences, Senior Research Fellow of the Agrarian and Land Law Department, Institute of State and Law, Russian Academy of Sciences.

Sergey A. Sklyaruk — Candidate of Legal Sciences, Judge of the Orel Regional Court.

FOR CITATION:

Mel'nikov, N.N., Sklyaruk, S.A. (2017). Lease of Public Lands: Relations between Civil Law and Land Law. *Proceedings of the Institute of State and Law of the RAS*, 12(3), pp. 176—192.

LEGAL MECHANISMS OF INTEREST CALCULATION IN TRADE LOAN AGREEMENT

Evgeny M. Belugin

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

Loan agreements interest calculation has been discussed in Russian legal literature. Equation of a trade loan with a loan for consumption poses the main problem: the commercial nature of a trade loan agreement is not taken into account. A trade loan requires differentiated approach to interests collection that would take into account commercial significance of the loaned items. Bearing in mind the applicability of norms on sales to a trade loan agreement and its commercial character, it would be appropriate to apply interest rate fixed in art. 809 (sec. 1) of the Russian Civil Code based upon the price of the loaned goods. The price can be fixed in the agreement or if it can not be deduced from it, interest calculation can be based on the price normally paid in the same circumstances. Clear legislative recognition of commercial character of trade loan agreement would facilitate legal regulation fitting real economic relations.

→ Interest, trade loan, loan obligations, commercial contract, fixed interest, loan agreement, working capital.

REFERENCES

Abova, T.E. (2012). Nekotorye voprosy regulirovaniya grazhdansko-pravovykh otnoshenii v svete proekta

federal'nogo zakona "O vnesenii izmenenii v chasti pervuyu, vtoruyu, tret'yu i chetvertuyu Grazhdanskogo kodeksa Rossiiskoi Federatsii, a takzhe v otdel'nye zakonodatel'nye akty Rossiiskoi Federatsii" [Some Issues of Regulation of Civil Relations in Light of the Draft of the Federal Law "On Modification of the First, Second, Third and Fourth Parts of the Civil Code of the Russian Federation, as well as Certain Legislative Acts of the Russian Federation"]. *Trudy Instituta gosudarstva i prava RAN* [Proceedings of the Institute of State and Law of the RAS], (5), pp. 79—95 (in Russ.).

Abova, T.E. and Kabalkin, A.Yu. eds. (2011). *Kommentarii k Grazhdanskomu kodeksu Rossiiskoi Federatsii. V 2 t. T. 1. Ch. 1, II GK RF* [The Commentary to the Civil Code of the Russian Federation. In 2 vol. Volume 1. Part I, II of Civil Code of the Russian Federation]. M. Yurait Publ (in Russ.).

Kozyr', O.M., Makovskii, A.L. and Khokhlov, P.A. eds. (1996). *Grazhdanskii kodeks Rossiiskoi Federatsii. Ch. 2. Tekst, kommentarii, alfavitno-predmetnyi ukazatel'* [The Civil Code of the Russian Federation. Part 2. Text, Comments, Alphabetical and Subject Index]. Moscow: Mezhdunarodnyi tsentr finansovo-ekonomicheskogo razvitiya Publ (in Russ.).

Krashennnikov, P.V. ed. (2011). *Postateinyi kommentarii k Grazhdanskomu kodeksu Rossiiskoi Federatsii, chasti vtoroi* [Article-by-article Commentary to the Second Part of the Civil Code of the Russian Federation]. In 3 vol. Volume 2. Moscow: Statut (in Russ.).

Kryukov, A.N. (2007). *Grazhdansko-pravovoe regulirovanie otnoshenii, svyazannykh s pol'zovaniem chuzhimi denezhnymi sredstvami* [Civil-law Regulation of Relations Connected with the Use of Borrowed Money]. The Candidate of Legal Sciences Thesis. Ekaterinburg: the Ural State Law University (in Russ.).

Sergeev, A.P. and Tolstoy, Yu.K. eds. (2005). *Grazhdanskoe pravo: Uchebnik* [Civil Law: Textbook]. In 3 Vol. Volume 2. 4th ed. Moscow: TK Velbi; Prospekt (in Russ.).

Sukhovskii, V.A. (2006). *Obyazatel'stva tovarnogo i kommercheskogo kredita* [Trade and Commercial Loans'Obligations]. In: *Aktual'nye problemy grazhdanskogo prava. Sbornik statei* [Actual Problems of Civil Law. Collection of Articles]. Issue 10. Moscow: NORMA. pp. 94—122 (in Russ.).

Vitryanskii, V.V. (2004). *Dogovor zaima: obshchie polozheniya i otdel'nye vidy dogovora* [Loan Agreement: General Provisions and Separate Kinds of the Agreement]. Moscow: Statut (in Russ.).

Zankovskii, S.S. (2004). *Predprinimatel'skie dogovory* [Business Contracts]. Moscow: Volters Kluver (in Russ.).

Zotov, V.P. and Zhidkova E.A. (2014). *Opredelenie sushchnosti oborotnogo kapitala v sovremennoi ekonomike* [Determination of the Working Capital in the Modern Economy]. *Tekhnika i tekhnologiya pishchevykh proizvodstv* [Food Processing: Techniques and Technology], (2), pp. 135—139 (in Russ.).

AUTHOR'S INFO:

Evgeny M. Belugin — Senior Specialist of the Scientific Information Department, Institute of State and Law, Russian Academy of Sciences.

FOR CITATION:

Belugin, E.M. (2017). Legal Mechanisms of Interest Calculation in Trade Loan Agreement. *Proceedings of the Institute of State and Law of the RAS*, 12(3), pp. 193—203.

Fukuyama, F. (2014). *Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy*. New York: Farrar, Strauss and Giroux. [Russ. ed.: Fukuyama, F. (2017). *Ugasanie gosudarstvennogo poriadka*. Translated from English by K.M. Korolev. Moscow: AST Publ.]

Illariya L. Bachilo

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

Francis Fukuyama's new book, "*Political order and political decay*" is part of a stream of philosophical, political, sociological and legal research focusing on the fate of the world and methods for its governance. While his previous books served as a warning for both society and the scientific community about the dangers of technological advancement, in the current volume Fukuyama — a philosopher, sociologist and futurist — examines real possibilities for the prevention of the "decay" or weakening of political order. This study embraces history in addition to the current reality, focusing on Fukuyama's perception of the status and prospects of three socio-political institutions: the state, law and representation. In his consideration of flaws inherent in the modern state (bureaucracy, corruption, patronage, clientelism, etc.), Fukuyama reflects on how nations are formed and on the ratio of «good» to «bad» governments. He sheds light on the structure of state functions, providing a system for their classification. Fukuyama then delineates paths towards military rivalry and state modernization, showing preference for peaceful political reforms based on social coalitions and the

process of social and economic modernization. The issue of law and its primacy in the system of social relations is considered in relation to the historical development that occurred in China, Japan, the United States, Argentina and in European States. While Fukuyama is careful not to offer any concrete recipes or solutions, he does identify the current status of basic state institutions and indicates the need to interrupt the “decay”, occurring in the existing order of governance and its institutions through their modernization and reform for efficient operation.

→ F. Fukuyama, institutionalization, institution, state, government, democracy, representation, legislation, law.

REFERENCES

Fukuyama, F. (1992). *The End of History and the Last Man*. New York: Free Press [Russ. ed.: Fukuyama, F. (2004). *Konets istorii i poslednii chelovek*. Translated from English by M.B. Levin. Moscow: AST Publ.: ZAO NPP “Ermak”].

Fukuyama, F. (2002). *Our Posthuman Future: Consequences of the Biotechnology Revolution*. New York: Farrar, Straus and Giroux. [Russ. ed.: Fukuyama, F. (2004). *Nashe postchelovecheskoe budushchee: Posledstviya biotekhnologicheskoi revolyutsii*. Translated from English by M.B. Levin. Moscow: AST Publ.: OAO “LYuKS”].

Fukuyama, F. (2014). *Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy*. New York: Farrar, Strauss and Giroux. [Russ. ed.: Fukuyama, F. (2017). *Ugasanie gosudarstvennogo poryadka*. Translated from English by K.M. Korolev. Moscow: AST Publ.].

AUTHOR’S INFO:

Illariya L. Bachilo — Doctor of Legal Sciences, Professor, Honored Lawyer of the Russian Federation, Chief Research Fellow of the Information Law Department, Institute of State and Law, Russian Academy of Sciences.

FOR CITATION:

Bachilo, I.L. (2017). Review: Fukuyama, F. (2014). *Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy*. New York: Farrar, Strauss and Giroux. [Russ. ed.: Fukuyama, F. (2017). *Ugasanie gosudarstvennogo poryadka*. Translated from English by K.M. Korolev. Moscow: AST Publ.]. *Proceedings of the Institute of State and Law of the RAS*, 12(3), pp. 204—214.