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TERMS OF USE OF JUDICIAL ACTS FOR MACHINE LEARNING (ANALYSIS OF SOME JUDICIAL DECISIONS ON THE PROTECTION OF PROPERTY RIGHTS)

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The subject of the article is some judicial acts on cases concerning protection of private property issued in Russia in recent years in the context of changes in the procedural legislation and legislation on the judicial system.
The purpose of this article is to discover whether the current Russian judicial decisions may serve as input data for a machine learning algorithm in future.
The main results, scope of application. The article presents an analysis of the changes in the Russian procedural law and in the regulation of the national judicial system in the recent years, which form new trends in judicial practice, according to the latest cases for the protection of private property in the courts. The author makes an analysis of the effectiveness of justice in providing recourse to private property violations in Russia. It is discovered whether the judicial protection has been substantially improved, following the promises of the Russian government. The article argues that these trends in judicial practice will negatively affect the automation of justice in the context of the nationwide digitalization of justice Such digitalization requires setting guidelines for the automated judicial decisions followed by the automated delivery of judicial documents.
The methodology combines legal interpretation of judicial acts and Russian legislation comparative research, foresight and critical approach based on structured analysis, induction and deduction.
Conclusions. There is a systemic deficiency in protecting private property in Russia, since neither the rules of civil and administrative proceedings, nor the constitutional control tools provide adequate protection on the matter. The recent relocation of the Constitutional Court of Russia from Moscow to St. Petersburg did not promote the judicial independence of the Court. On the contrary, the Constitutional Court, through formal excuses refrains from processing complaints on violation of private property rights and on the inefficiency of judicial procedures. The recent merger of the Supreme Arbitration Court of Russia and the Supreme Court of Russia has contributed to the uniformity of judicial practice. It violated the rights the owners of the shared premises in apartment buildings, but favored the beneficiaries of the management companies, which breach the owners' rights.
Judicial acts studied in this article prove their ineffectiveness in contributing to the quality machine learning for artificial intelligence required for the transition to automatic generation of blueprints and templates of court decisions. Analysis of judicial acts allows to conclude that they cannot serve now as a basis for machine learning of artificial intelligence. They cannot be systematized in databases even by the criterion of the law norms applied by the plaintiffs, since the courts evade the procedural obligation to explain why they reject the law norms that serve as the basis for a lawsuit or complaint, and apply completely different ones. These circumstances require the immediate response from the state authorities, including finding efficient ways to provide sustainable development of justice, i.e. ensuring the Rule of Law and access to courts, since otherwise the digitization of justice will lead to the automation of arbitrariness.

1. Introduction

The question is raised due to the new goals of the "National strategy for the development of artificial intelligence for the period up to 2030" and the need to understand the existing framework for its implementation in the field of justice. How ready are we to automate decision-making?

This question is relevant in the light of both the ongoing struggle of jurisdictions for investors in the world after the pandemic, and the realization of national ambitions in the field of artificial intelligence. The effective judicial protection is a good "trump card" in the competitive struggle of countries. But does Russia have it?

Before answering this question, it is necessary to analyze the results of previous transformations from 2006 to the present, which are a launching pad for achieving new goals, in order to understand whether there is a basis for machine learning in the field of justice.

The explanatory notes to the draft laws on the reform of the judicial system indicated that the transfer of the Constitutional Court of Russia from Moscow to St. Petersburg would increase its independence, the unification of the Supreme Arbitration Court and the Supreme Court would contribute to the formation of unity of judicial practice, and administrative proceedings would increase the level of legal guarantees of judicial protection. These changes were carried out under the auspices of improving legal guarantees and effective judicial protection of citizens' rights. The elapsed period, in our opinion, is sufficient time to assess the results of the changes and find out how they will contribute to the achievement of the new goals of this Strategy.

The legal literature usually covers certain aspects of judicial reform [1, 416; 2, 3444; 3, 1124; 4, 156169; 5] or some stages of the process [6, 2141; 7, 5385; 8, 1218; 9, 3136]. There is no systematic analysis of ongoing changes and their impact on the achievement of new goals. The available scientific studies do not give a complete picture of the effectiveness of changes both in the structure of courts [10, 610] and in the rules of civil, administrative and constitutional proceedings, and also do not contain an assessment of how effective they are individually and in general, how they will affect the investment attractiveness of Russian jurisdiction and the transition to digital justice. Also, the scientific literature has not studied the judicial practice of recent years as a potential database (knowledge base) for automating the processes of generating court decisions or their projects using artificial intelligence (machine learning), with the exception of information system issues [11, 38].

The study of these aspects is very important both for assessing the achieved level of legal guarantees, which were previously announced by the authorities, and for assessing the existing basis for the transition to digital justice, where most of the legal routine processes should be automated: for example, the search and forecast of the outcome of a particular case on the grounds of the claim and the stated requirements, or automatic generation of draft court decisions. To do this, you need to train artificial intelligence using big data, consisting of court acts that have entered into legal force.

To achieve this goal, we use the practice of considering cases on the protection of private property in courts of general jurisdiction and compare them with the results of resolving similar cases in arbitration courts. Then we will analyze the effectiveness of judicial protection of private property in civil and administrative proceedings and compare the results obtained with constitutional proceedings, the implementation of which is designed to eliminate constitutionally significant gaps and contradictions in the legal mechanisms of legislation.

2. Methods of research and the circumstances that serve as its subject

As the focus of analysis chosen category of cases on protection of private property is a legitimate interest of the apartment owner to pay for the maintenance and repair of the General property of an apartment house in accordance with the owned interest in the common property to common property of an apartment house. Since the owners of apartments in apartment buildings are in the same conditions from the point of view of legal regulation of shared ownership, and the obligation to pay a fee applies to all: both the population and businesses that own commercial real estate - then this category of cases is, in our opinion, indicative. It will allow to assess the uniformity of dispute resolution of owners of premises in apartment buildings by both courts of general jurisdiction and arbitration courts, as well as to compare the legal positions of higher instances.

We will reveal how effective administrative and constitutional legal proceedings are as an additional guarantee of the protection of rights, freedoms and legitimate interests in Russia after the above-mentioned changes in legislation. To do this, we will first state the arguments of the claims, and then the reasoning part of the judicial act for each case, which, according to the rules of legal proceedings, must answer the legal questions raised

by the applicant. We will analyze how the motives of judicial acts correspond to the requirements of the procedural legislation. We will pay attention to the extent to which the findings are applicable to various judicial instances, and how this affects the formation of the unity of judicial practice and the protection of violated rights of owners of premises in apartment buildings. In conclusion, we will evaluate the justification of judicial acts as a source of knowledge base for training artificial intelligence. A reasoned court decision is not only a guarantee of a fair trial, a way of educating the legal consciousness of society and preventing possible violations in the future, but also the basis of big data, which can and should be analyzed for training artificial intelligence in order to both predict the outcome of cases, and create projects or templates of court decisions. Therefore, it is so important for the court to comply with the legal provisions that oblige the court to respond to all arguments and objections, and the procedural duty of the court to motivate judicial acts should ensure not only the right to know, but also the goals of justice.

The group of owners of premises in an apartment house (hereinafter referred to As the applicants) learned from its neighbor (the Complainant further B) that he won a dispute with the management company (the "company"), which demanded to collect from it debts on a payment for the maintenance and repair of the common property. The debt was recovered by the court of first instance. But the appellate court reversed the district court's decision and rendered a judicial act in favor of claimant B, indicating that according to paragraph 1 of article 37 of the Housing code of the share in right of common ownership to common property in an apartment house of the proprietor premises in this house is proportional to the size of the total area specified premises. Since the total area of the residential premises of applicant B is 150.8 sq. m, the total area of the premises belonging to the owners is 5031.1 sq. m. if the apartment building had a total area of 7165.6 sq. m, then the share of applicant B's apartment in the right of common ownership of the common property was 3% of the 2130.5 sq. m area of the common property of the apartment building; or 63.915 sq .m. Accordingly, applicant B is obliged to bear the cost of maintenance and maintenance of its share in the total property in the amount of 63,915 sq. m .

It became clear to applicants A that the management company C made the same mistake in relation to them, issuing inflated bills for the repair and maintenance of the common property of an apartment building in the amount of their living space. In 2018 they appealed to the district court of Moscow with claims to the management company for the recovery of unjust enrichment, interest for using borrowed funds, penalty for failure to voluntarily meet the consumer requirements, compensation of moral harm, referring to the fact that, under paragraph 1 of article 158 of the Housing code, the owner of the premises in an apartment house is obliged to participate in costs of maintenance of common property in an apartment house in proportion to his share in right of common ownership of the property by payment. Paragraph 1 of article 37 of the Housing Code establishes that the share in the right of common ownership of common property in an apartment building of the owner of the premises in this house is proportional to the size of the total area of the specified premises. applicants a own residential premises with a total area of 114 sq. m, which means that their share in the right of common ownership is 2.26% of the 2130.5 sq. m area of common property in an apartment building, or 48.2 sq .m. The defendant bills for payment in violation of the above housing legislation: the receipt in the "maintenance and repair" indicates the area of the apartment is 114 sq m instead of the square of the share in the common property to common property in the building, namely 48,2 sq. m. The difference in amounts is unjustified enrichment in the amount of 56,712 rubles 14 kopecks, which is subject to return to the plaintiffs in accordance with paragraph 1 of Article 1102 and Article 1103 of the Civil Code of the Russian Federation, as well as interest for the use of other people's money in accordance with Article 395 of the Civil Code of the Russian Federation, compensation for moral damage and a fine for the refusal of the managing company to voluntarily fulfill the legal requirement of the consumer under Article 13 and the Law "On Consumer Protection" in the amount of 50% of 56,712 rubles 14 kopecks.

The decision of the District Court of Moscow refused to satisfy the claims of A. The court referred to the provisions of articles 290 and 291 of the Civil code that establish the right of owners of apartments in apartment house on the common equity property on common areas of the house; and for control of which they may form a management company. The Court also cited the provisions of paragraph 1 of articles 37 and 135 of the Housing Code on the establishment by apartment owners of a homeowners ' association to manage the shared property of this house. In the decisions of the court of first instance, there is no justification why the arguments of the plaintiffs were rejected and other

rules of law were applied, which, based on their content, do not refute the claims.

A. filed an appeal with the Moscow City Court, in which they pointed out that the district Court did not apply the rules of law to which they referred in the claim, did not provide a justification for why the subject and basis of their claim were rejected by the court of first instance contrary to the requirements of procedural legislation.

The Court of Appeal upheld the decisions of the district court, listing all the articles previously indicated by the plaintiffs and the court of first instance, and noting that the court had fully investigated all the circumstances and made exhaustive conclusions. In the ruling of the court of appeal there are no answers to the legal arguments of the appeals.

The other cases of applicants A ended with a similar result.

Applicants A hoped that the Supreme Court of Russia, as a court of cassation instance, would restore justice in their cases by quashing illegal judicial acts, since similar business disputes are resolved in favor of the owners of premises in apartment buildings. For example, the Presidium of the Supreme Arbitration Court decision N YOU-13649/12 of October 29, 2012, indicated that the courts of three instances, refusing satisfaction of the claim, based on the fact that the alleged management company (the "company" C1) require the owner of non-residential premises in an apartment house (hereinafter-the applicant A1) on the recovery of the debt payment for the maintenance and repair of the General property of an apartment house in the amount of A1 belonging to the applicant's premises is not compensable as not based on law, since the calculation had to be made taking into account the fact that the area of the premises owned by the owners is 78,433. 4 sq. m. The applicant A1 owns 7,092. 5 sq. m. on the right of ownership. m in an apartment building, and its share is 9.042%. the area of the common property is 39,649. 6 sq. m, the proportional amount of the area attributable to the defendant is 3,585. 11 sq. m, which should be taken into account when calculating the maintenance of the property .

After the merger of the Supreme Arbitration Court and the Supreme Court in 2014, the supreme judicial body did not adopt collegial judicial acts on this issue. However, the same legal position is set out in the sole ruling of the judge of the Supreme Court of Russia No. 305-ES18-13931 of September 25, 2018, which states that "the amount of payment for the maintenance and repair of common property is determined by the share in the right of common ownership of common property, which is proportional to, and not equal to, the size of the total area of the premises owned by the owner." in this connection, applicants a had hope for the restoration of their violated rights by the supreme court.

The Supreme Court of Russia refused to satisfy applicants A in their cassation appeals, without providing a legal assessment of the arguments of the procedural appeals.

In parallel, the management company C appealed to the presidium of the Moscow City Court against the decision of the court of appeal, on which, among other things, the claims of the applicants a. the court of cassation refused to consider the management company C in its complaint.

In civil proceedings, applicants A had exhausted the possibilities of judicial protection, so they took advantage of the possibilities of administrative proceedings, challenging the provisions of the bylaws applied in their cases. And the applicants appealed to the Supreme Court with the administrative claim to the Government of the Russian Federation about recognition of paragraph 2 of the Rules of the local authority of the open tender on selection of managing organization for management of an apartment house, approved by the Decree of the Russian Government dated February 6, 2006 N 75 "On the procedure for local government open tender on selection of managing organization for management of an apartment house", in terms of the words "established the rate of 1 square meter of total area of the premises" void and contrary to Federal legislation. The applicants noted that the literal application of this paragraph leads to the fact that in the payment document in the line "maintenance and maintenance of common property" indicate the area of the owner's premises, and not the size of his share in the right. This violates his right and contradicts the provisions of Articles 37, 39, 158 of the Housing Code, Article 290 of the Civil Code and Article 15 of the Federal Law "On the Introduction of the Housing Code of the Russian Federation", as well as the decision of the Constitutional Court of January 29, 2018 No. 5-P.

The judges of the Supreme Court, citing Article 162 of the Housing Code on the selection of a management organization in the competition, concluded in the decision on the case N AKPI19-18 that there were no grounds for satisfying the claim. The decision of the Supreme Court does not justify why the arguments of the administrative claim were rejected and other rules of law were applied, which, moreover, do not refute the claims of the applicants A.

Applicants A filed an appeal, stating that the decision of the supreme court does not contain conclusions that the contested provision of the bylaw corresponds to acts of greater legal force and the legal position of the constitutional court, as well as there is no legal assessment of the arguments of the administrative claim. Applicants A pointed out that the court's conclusion on refusal to satisfy the claim in the presence of judicial acts where the contested provision of the Rules applies is erroneous, since the absence of the court's motives on a legal issue subject to mandatory presentation in the decision is the basis for annulling the court's decision under paragraph 4 of part 2 of Article 310 of the Code of Administrative Procedure.

The Appeal Board of the Supreme Court, repeating Article 162, 154 of the Housing Code, and then Articles 249 and 290 of the Civil Code, Article 36 of the Housing Code and the decision of the Constitutional Court of Russia of January 29, 2018 No. 5-P, concluded that there were no contradictions in the contested act to the normative legal acts that have the highest legal force, and refused to satisfy the complaint. Questions of law about the application of the contested provision in practice remained unanswered – judicial acts that violate the rights of applicants, as well as the practice of charging a fee in the amount of a share in common property, and not in the amount of the area of residential premises in an apartment building belonging to them.

In the Supervisory complaint of the applicants And to the Presidium of the Supreme Court indicated that judicial acts taken in their case, violated the constitutional principle of fair distribution of costs between the owners of shared ownership, violation of the right to know the motives of the decisions taken by the court and there is no unity of judicial practice on this category of cases within the Supreme Court of Russia: there are contradictions between the legal position of Judicial Board on civil cases and Judicial Board on economic disputes, but also within the Judicial division for administrative cases.

The Supreme Court of Russia dismissed the supervisory appeal of applicants A without giving reasons.

Applicants And appealed to Russia's Supreme Court with the administrative claim to the Government of the Russian Federation about recognition illegal the order of the Ministry of construction and housing and communal services from January 26, 2018 No. 43/PR, the use of which in practice leads to the fact that in payment for public services first, in the section "Information on the payer" indicate the area of the premises of the owner, and then hope to this area a fee for the maintenance and repair of common property, as well as letters are referred to as the Ministry of December 30, 2016. No. 45049-AT / 04, where an order is given for calculating the fee for the maintenance and repair of common property based on the area of the premises owned by the owner. The contested provisions contradict Article 249 of the Civil Code, paragraph 2 of Article 39 and paragraph 1 of Article 37, paragraph 1 of Article 158 of the Housing Code, Article 15 of the Federal Law "On the Introduction of the Housing Code of the Russian Federation".

By the ruling of the Supreme Court of July 2, 2019 in case no. APL19-225, the administrative claim in terms of challenging the said letter was returned as beyond the jurisdiction of the Supreme Court under paragraph 2 of Part 1 of Article 129, part 2 of Article 222 of the Code of Administrative Procedure, since the letter does not have regulatory properties.

The applicants lodged a complaint, stating that the right to apply for recognition act, have regulatory properties, inactive established by part 2 of article 217.1 of the Code of administrative procedure, which, as follows from the explanatory note to the draft Federal law № 892355-6 "On amendments to the Arbitration procedural code of the Russian Federation and the Code of administrative procedure of the Russian Federation in the part establishing judicial consideration of cases on challenging of individual acts», It was introduced in order to implement the Resolution of the Constitutional Court of the Russian Federation No. 6-P of March 31, 2015.

The Appeal Board of the Supreme Court, by a ruling of July 2, 2019, refused to satisfy the complaint, leaving in force the ruling of the court of first instance with reference to paragraph 2 of Article 129 of the Code of Administrative Procedure.

Judges of the Supreme Court of Russia referred to the Rules of provision of utilities to owners and users of premises in apartment buildings and houses, approved by the Decree of the RF Government dated may 6, 2011 N 354 "About provision of utilities to owners and users of premises in apartment houses and apartment houses", which require to specify the area of the premises of the owner, and concluded that there are no grounds for satisfaction of administrative claim in the case N АКПИ19-377. The court decision does not justify why the arguments of the administrative claim were rejected and other rules

of law were applied, which in no way refute the claims of administrative applicants A.

In such circumstances, the only way to protect the violated right of applicants A was to complain to the Constitutional Court about the inconsistency of laws and bylaws with the constitutional principle of fair distribution of expenses of participants in shared ownership. They appealed to the constitutional Court, stating that Article 154 of the Housing code of the Russian Federation, which establishes the structure of fees for municipal services to property owners and their tenants, uses the phrase "payment for housing", which in practice leads to the fact that the owners of premises in an apartment building is charged a fee for the maintenance and repair of their share in the common property of an apartment house in the size of the living space belonging to them by right of ownership residential premises. This violates the right of private ownership of funds of owners of premises in apartment buildings, who are forced to bear expenses in a larger amount than provided for by other articles of the Housing Code of the Russian Federation (Articles 37, 39, 158). The applicants have attached copies of the judicial acts on their cases certified by the courts, from which this interpretation of the law is clear.

The Constitutional Court first asked to clarify which rule is disputed by all applicants , and after clarifying it refused to consider the collective complaint, stating that there is no evidence of violation of their constitutional rights .

3. Analysis of the subject of the study in relation to the possibility of using judicial acts for machine learning

We believe that the described situation can be an example of the fact that the move of the constitutional court to St. Petersburg did not increase the level of its independence. The cases under consideration may indicate that if there are judicial acts that violate the constitutional principle of fair distribution of the burden of maintaining property in shared ownership, the court does not have the will to consider this legal issue. Perhaps this is due to the fact that by-laws of the Government of the Russian Federation are based on incorrect wording of the Housing Code of the Russian Federation, which contradicts not only its other provisions, but also the norms of federal laws and the Constitution. Secondly, the beneficiary of many management organizations in the field of housing and communal services (which are state budgetary institutions) is the government in the broad sense of the word. Satisfaction of the collective complaint and recognition of the contested norm of the Housing Code of the Russian Federation as unconstitutional may lead to a review of the applicants ' cases and the formation of the opposite judicial practice - in favor of the owners of premises in apartment buildings - which, in turn, will entail the recovery of unjustified enrichment from management organizations, including state ones. thus, the beneficiary will lose not only the already illegally obtained enrichment, but also possible in the future.

The introduction of the Code of Administrative Procedure of the Russian Federation did not increase the legal guarantees of judicial protection. Many disputes between a citizen and the state are still considered by the courts in the context of respect for the interests of the state, an example of which is the described situation.

The unification of the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation contributes to the formation of uniform judicial practice. A notable change is that the practice of arbitration courts, previously formed in favor of the owners of premises in apartment buildings, is coming to naught. Collective judicial acts of the supreme judicial body of arbitration courts are replaced by individual judicial acts of the Supreme Court, which are not perceived by lower courts, as well as by consultants of the Supreme Court as guidelines for judicial practice. Thus, the correct judicial practice of protecting private property is being reviewed, and erroneous judicial acts that have entered into legal force prevail, which negatively affects the prospect of considering similar cases in this category of disputes.

The practice of Russian courts is dominated by the "refusal scenario" of consideration of cases. Judicial acts containing diametrically opposed legal positions are considered to have entered into legal force. There is a scaling of contradictions in judicial practice in resolving cases of this category. In this situation, legal disputes are not resolved, but as it were "frozen", since there are opposite legal positions of the courts in relation to the owners of premises in apartment buildings (population and business), which negatively affects both confidence in the courts, and the level of law and order in the country, the level of legal awareness in society.

All judicial instances in all types of legal proceedings do not comply with the rule established by the procedural codes to answer the questions of law raised by the applicant. A huge array of judicial acts that are irrelevant to the requirements of the law has been formed. It is noteworthy that the rule of motivating a judicial act in the procedural codes is spelled out in more detail in relation to the acts of

the court of first instance. In the case of the court of second instance, it is set out in slightly less detail, and the higher courts are almost exempt from such a procedural obligation, although their legal position forms the practice of lower courts. We believe that for this reason, it is impossible for higher courts to effectively identify contradictions, achieve the goals of justice and effectively ensure the rule of law and access to justice.

The problem of non-relevance of judicial acts is very serious. It not only does not allow achieving the goals of justice – resolving conflicts in society, preventing offenses and strengthening the rule of law - but also does not contribute to solving its tasks – correctly resolving disputes, effectively identifying contradictions in judicial practice to higher courts.

Moreover, in our opinion, the problem of the irrelevance of judicial acts is one of the main obstacles to the digitalization of justice. Judicial acts are a knowledge base not only for judges and all potential participants in the process, but also for the analysis and training of artificial intelligence. More than 6 years have passed since 2014, the year of unification of the supreme courts, and a single database of judicial acts has not yet been created, which would allow for their relevant search and serve as a source of knowledge for both judges and artificial intelligence. The creation of such a unified database of judicial acts and the training of artificial intelligence is necessary to automate the routine processes of searching and selecting legal positions, building a tree of variations of possible (legally stipulated) decisions and their implementation conditions, text analytics and pattern recognition, generating sound judgments, predicting the outcome of the case.

Automation of legal processes, including the selection of judicial acts for the purposes of both forming a legal position on the case by potential participants in the dispute, and for the formation of uniform judicial practice will not give the expected results, since it will not be able to provide relevant answers on the application of those norms of the law on which the claims or arguments (appeals, cassation, supervisory) complaints, objections, judicial acts are based.

It was reasonable to review the requirements for the validity of judicial acts in the procedural legislation, creating a single high level of legal guarantees of their relevant motivation by all judicial instances.

4. Discussion

These conclusions can be countered by the following arguments:

A. Objection of formal logic

If the above-described judicial acts on the applicants ' cases have been reviewed by higher courts and entered into legal force, then they are legitimate and justified. Therefore, they can enter a database that will be used by artificial intelligence for training. This means that artificial intelligence will be able to generate acts with the same results as in the described cases as a result of training. Thus, we automate the decision-making process for this category of cases, which frees up time for other cases.

However, we cannot agree with this thesis, despite the fact that judicial acts have the status of having entered into legal force. a comparison of the provisions of the law on the court's guidance of the subject and basis of the claim in resolving the case and the above-described arguments of the courts regarding the stated claims and objections raised leads to the conclusion that this rule of legal proceedings was not observed by any court, any court instance and in any legal proceedings. Under such circumstances, the studied examples of judicial practice cannot be used as models for training artificial intelligence, since their loading into the database and consolidation with other judicial acts can lead to a negative effect. Moreover, their use will teach the machine to consider any arguments as relevant answers to the legal questions posed. The learning process will not be possible [12]. Such practices will also not contribute to the rule of law and the rule of law, harmony and peace in society [13]. This means that automating decision-making in this category of cases using artificial intelligence will not achieve the goal of justice, since disputes will not be resolved correctly. Therefore, it is impossible to use any court acts that have entered into legal force as models for training artificial intelligence.

B. Objection based on the informality of behavior

The main argument of this point of view is that it is impossible to prescribe an exhaustive set of rules for all cases of life. There is always a situation in which an individual approach is required. Judges who hold this view, in their practice, using this argument to deviate from the accepted rules, and even in cases where the rules regulate a controversial situation. They believe that a particular case will not affect all other cases.

as a result, we are faced with the task of "medimnus" (zeno's aporia), when each time, when deviating from the rules, for example, the requirements of legal proceedings for the court to answer the legal questions raised by the plaintiff and the objections of the defendant, there is a mass of judicial acts that do not contain answers to

questions of law. the dispute is not resolved on its merits, although it is legally over.

C. objection on the principle of the “head in the sand”

We can hope that the worst will not happen, and artificial intelligence will not generate deliberately illegal and unfounded judicial acts on this category of disputes because it is trained on proven and legally effective acts.

This objection is refuted by the arguments to the first thesis. In addition, there are no conditions in the legislation under which judicial acts that have entered into legal force can be ignored by other authorities and officials. Therefore, this rule of binding judicial acts will be applicable to machines, all legally binding judicial acts will be included in the database and become a knowledge base for artificial intelligence.

D. Objection based on the dialectical law of the transition of quantity to quality

In the cases under consideration, not a single judicial act was passed in favor of the applicants, which means that their rights and legitimate interests remained violated. It is these illegal and unjustified judicial acts that make up the majority of judicial acts in this category of cases. Therefore, both by the judicial system and the machine, they will be perceived as legitimate and justified, and therefore subject to execution and reproduction under similar circumstances. When the vast majority of judicial acts have the same outcome as the cases under consideration, this becomes the" quality " of justice. However, if the machine is given such examples of judicial practice for training, which are described in this article, then we will get either automation of randomization of judicial acts, or refusal to reproduce such practice. In the first case, individual judicial acts that are issued in favor of the applicants (users or owners of premises in apartment buildings) will be evaluated by the machine as a statistical error, and, therefore, will be at least ignored. We are against the automation of arbitrariness, as it violates the rights of individuals and organizations and does not correspond to the ideals of the rule of law and the goals of justice.

E. Mathematical objection

As a rule, judges are based on the fact that not everyone has knowledge of the law and is able to understand why they are denied protection of the violated right.

however, in the cases under consideration, the basis of judicial acts is an incorrect calculation of the proportion that every schoolchild studies and knows. therefore, the majority of the population, faced with an incorrect arithmetic calculation in a court decision, is obvious that it is unjust. moreover, if the priority principle of checking and analyzing the text of the judicial act is the rule of induction, then checking the mathematical calculation on which the motivation of the claim is based, and then the judicial act, will lead to conclusions about the incorrect calculation of the court, which will inevitably create a conflict with the first thesis of objections. it will also raise an ethical question: who will decide on which judicial acts artificial intelligence will be trained on? this issue has already been identified in the legal literature [11, p. 3639; 14] and at scientific conferences devoted to ethical issues of artificial intelligence.

F. geographical location and the rule of law

The move of the Constitutional Court to St. Petersburg took place under the auspices of the removal of the judicial body from the center of concentration of executive power [15], which was to further guarantee its independence. Based on this logic, the absolute independence of the Constitutional Court from the administration will be achieved at Cape Fligeli of Franz Josef Land in the Arkhangelsk region (the northernmost point of Russia).

However, this thesis cannot be accepted, since the move was aimed not only at raising the status of St. Petersburg, but also at demonstrating to the courts and judges how their fate can be decided overnight and their way of life can be changed by redirecting them to another region, eliminating those who are objectionable at the stage of transfer to another place of work or re-certification of employees. The signal was read by the community, which also affects the "justice" and speed of work, including this Court, which, in turn, did not remain without public attention [16, p. 159172].

G. The Law of the necessary set on the guard of justice

The introduction of administrative proceedings was announced by increasing the level of judicial protection in disputes between citizens and businesses with the authorities, which should have been provided with special rules and regulations.

However, the described practice of considering cases shows that even if there are directly provided rules for appealing normative and non-normative legal acts, it is extremely difficult to achieve justice in court. there are many reasons for this, including some of the above-mentioned theses, the exorbitant judicial burden [17] and the loss of the skill of justifying a judicial act due to a decrease in the requirements for their motivation in the

procedural legislation [18, 1215; 19, 39] and other arguments [20, 6368; 21]. The main reason, in our opinion, is that judicial practice is formed by the same judges who are used to choosing the strategy of the game that gives them the greatest personal gain: reducing their judicial load, maintaining the status of a judge and increasing material benefits with the same load. The "refusal" scenario of public disputes provides the judicial corps with relative stability in the number of cases and does not create acute conflicts with the administration [19; 20], on which its material well-being depends. For owners, this means that another legal procedure has been introduced, in which they can be denied the "search for truth", but at the highest cost, taking into account the rules of professional representation in the process. The increase in the number of types of legal proceedings that do not achieve the goal of justice destroys confidence in the judicial system of the country and leads to a loss of investment attractiveness of the country.

5. Conclusions

A cross-cutting analysis of the effectiveness of judicial protection of private property in the courts, albeit on the examples of several cases, allows us to conclude that it was not possible to achieve the promised high level of judicial protection. On the contrary, there is a systemic problem of reducing the quality of justice and the quality of judicial acts. Analysis of judicial acts revealed the lack of a basis for machine learning of artificial intelligence. The analyzed judicial acts are not even suitable for searching in the database according to the criterion of applying the norms of the law declared by the plaintiffs, since the courts evade the procedural obligation to explain why they reject the norms of the law that serve as the basis of a claim or complaint, and apply completely different provisions.

Recognition of this problem and its correction will open the way to achieving new goals of the National Strategy for the Development of Artificial Intelligence for the period up to 2030. Without this, progress is not only impossible, but also harmful, given that the automation of the analyzed judicial practice will not meet the expectations of society.

Until the problem of the relevance of judicial acts and their full compliance with the requirements of procedural legislation is solved, we cannot create a high-quality unified database of judicial acts that would simultaneously be a knowledge base for training artificial intelligence.

In view of the above, we can conclude that at present neither the promised results of procedural changes nor the basis for training artificial intelligence in the field of justice have been achieved. In this regard, the country does not have advantages both in the competitive struggle of jurisdictions and in the use of artificial intelligence in the field of justice, which is a serious challenge.

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REFERENCES

1. Alekseevskaya E. New Code of Civil Proceedings: Outlook. *Pravo. Zhurnal Vysshey shkoly ekonomiki = Law. Journal of the Higher School of Economics*, 2015, no №2, pp. 4-16. (In Russ.).

2. Alekseevskaya E. Compensation or Profanity? *Pravo. Zhurnal Vysshey shkoly ekonomiki = Law. Journal of the Higher School of Economics*, 2015, no 4, pp. 34-44. (In Russ.).

3. Sakhnova T.V. Processualization of the Code of Administrative Proceedings of the Russian Federation as a Mirror of Procedural Evolution. *Vestnik grazhdanskogo protsessa = Herald of Civil Procedure*, 2018, no. 4, pp. 11–24. DOI: 10.24031/2226-0781-2018-8-4-11-24. (In Russ.).

4. Terekhova L.A. Evidence in Courts of Cassation and Supervisory Instance. *Vestnik grazhdanskogo protsessa = Herald of Civil Procedure*, 2019, no. 1, pp. 157–169. DOI: 10.24031/2226-0781-2019-9-1-157-169. (In Russ.).

5. Koroteev K. Are Russian Courts Capable of Creating Precedents? Overcoming Inconsistency in Case Law. *Review of Central and East European Law*, 2013, vol. 38, no. 3-4, p. 341-362. DOI: 10.1163/15730352-00000007.

6. Borisova E.A. New Cassation on Civil Cases: Issues of Theory, History, Practice. *Vestnik grazhdanskogo protsessa = Herald of Civil Procedure*, 2019, vol. 9, no. 5, p. 21–41. DOI: 10.24031/2226-0781-2019-9-5-21-41. (In Russ.).

7. Borisova E.A. Novelization of Legislation in the Field of Verification of Judicial Acts in Civil and Administration Cases: Objectives and Means of Their Achievement. *Vestnik grazhdanskogo protsessa = Herald of Civil Procedure*, 2020, vol. 10, no. 2, pp. 53–85. DOI: 10.24031/2226-0781-2020-10-2-53-85. (In Russ.).

8. Borisova E.A. On the issue of reorganization of the judicial system of the Russian Federation. *Arbitrazhnyi i grazhdanskii protsess = Arbitrazh and civil procedure*, 2014, no. 3, pp. 12-18. (In Russ.).

9. Opalev R.O. The powers of the arbitration courts of the cassation instance to verify the validity of judicial acts. *Arbitrazhnyi i grazhdanskii protsess = Arbitrazh and civil procedure*, 2014, no.10, pp. 31-36. (In Russ.).

10. Klevtsov N.A. The effectiveness of civil justice: the problem of definition and assessment system in the context of the judiciary. *Arbitrazhnyi i grazhdanskii protsess = Arbitrazh and civil procedure*, 2015, no. 1, pp. 6-10. (In Russ.).

11. Minbaleev A.V. Regulation of the use of artificial intelligence in Russia. *Informatsionnoe pravo = Informational law*, 2020, no. 1, pp. 36-39. (In Russ.).

12. Egorkin S. The disappearance of the legal profession. Thoughts after taking a Harvard course in artificial intelligence. Available at: https://zakon.ru/blog/2020/06/09/ischeznovenie_yuridicheskoj_professii_mysli_posle_prohozhdeniya_garvardskogo_kursa_po_iskusstvennomu (accessed on 15.07.2020). (In Russ.).

13. Groen L.A. The 'Iukos Affair'. The Russian Judiciary and the European Court of Human Rights. *Review of Central and East European Law*, 2013, vol. 38, no. 1, p. 77–108. DOI: 10.1163/092598812X13274154887349.

14. Ponomarenko V.A. Civil process as an information system (substantive-communicative aspect). *Arbitrazhnyi i grazhdanskii protsess = Arbitrazh and civil procedure*, 2014, no. 10, pp. 3-8. (In Russ.).

15. Varaksin M. Putin explained why the Supreme court will move to St. Petersburg. Available at: URL: https://pravo.ru/news/201083 (accessed on 15.07.2020). (In Russ.).

16. Kostyukov A.N. Law enforcement in modern Russia. *Law Enforcement Review*, 2017, vol. 1, no. 1, pp. 159-172. DOI: 10.24147/2542-1514.2017.1(1).159-172.

17. Burdina, E.V., Petukhov N.A. Official load on judges: problems of definition, assessment, management. Moscow, RGUP Publ., 2017. 236 p. (In Russ.).

18. Alekseevskaya E.I. On the issue of justice of judicial acts in civil proceedings. *Mirovoj sud`ya,* 2014, no. 6, pp. 12-15. (In Russ.).

19. Alekseevskaya E.I. Right to know or failure of control system. *Vestnik arbitrazhnoy praktiki*, 2018, no. 3, pp. 3-9. (In Russ.).

20. Malyutin N.S. Trends in the modernization of constitutional review in the Russian Federation. *Konstitutsionnoe i munitsipal`noe pravo = Constitutional and municipal law*, 2020, no. 3, pp. 63-68. (In Russ.).

21. Campos J.E., Pradhan S. (eds.). The Many Faces of Corruption : Tracking Vulnerabilities at the Sector Level. Moscow, Alpina Publisher, 2010. 551 p. (In Russ.).

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