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ABOUT LAW ENFORCEMENT IN MODERN RUSSIA

The state of law enforcement in modern Russia is analyzed in the article on the basis of judicial statistics. The author gives a critical assessment of the most important decisions of the Constitutional Court of the Russian Federation handed down in 2015 - 2016 years in various spheres of legal reality:
local self-government;
the formation of the foundationd capital repairs of condominium houses;
pensions provision of ex-militaries;
legislative regulation of property valuation activity;
problem of execution of court decisions.

The Constitutional Court of the Russian Federation many times violated the Constitution of the Russian Federation. Since the Constitutional Court has recognized the legal abolition of elections of mayors in cities and towns. Constitutional Court recognized a legal collection taxes from citizens for capital repairs of condominium houses of others. Very often in the Russian law enforcement the Constitutional Court adopts a politically motivated decision, although such decisions are strictly prohibited by law. Unfortunately, the Constitutional Court of the Russian Federation not adequately protect the rights of Russian citizens and organizations.

The author comes to the conclusion of a big crisis of law enforcement caused of legal nihilism, rooted among the enforcers, is made in the article. Analyzing the examples of judicial practice author propose any ways out of crisis law enforcement.

Keywords: law enforcement, judicial statistics, foundationd capital repairs of condominium houses, pensions provision, local self-government, property valuation activity, legal nihilism, municipal reform.

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Introduction

Law is nothing without law enforcemrnt.

Analysis of enforcement practices in all areas of legal reality shows the deep crisis of law enforcement, as well as widespread deconstruction of the ideas of the rule of law and the rule of law. This conclusion is important for law enforcement both of executive and the judiciary bodies in all fields of law.
Of particular research interest in this context are the data of judicial statistics accumulated by the Judicial Department at the Supreme Court of the Russian Federation.

In 2015 3270 of 3780 claims of individuals to the tax authorities had been satisfied, 71 382 of 78,353 claims to the Pension Fund of the Russian Federation had been satisfied. Thus, nearly 90% of the enforcement regulations of the tax authorities and bodies of the RF Pension Fund were illegal and violated the rights of citizens. It should be borne in mind that these statistics do not cover decisions, which for various reasons could not achieve the courts.

During the first half of 2016 individuals brought 113,497 applications to state (municipal) bodies. 109 750 of them had been fully or partially granted.

It seems that such a situation is a consequence of legal nihilism which has deeply rooted among the state and municipal employees. The reasons for this can be argued: this can be be it the proverbial "cane system", the shortcomings of anti-corruption education or other factors. It is impossible not to recognize that profound disregard for the law in the actions of public authorities is a bad example to the general population, which can be a background of legal nihilism among enforcers. [1].

The practice of law enforcement

Unfortunately, even the Constitutional Court of the Russian Federation ignores the provisions of the Constitution, although it is the body which is intended to strictly abide law inspiring both law enforcers and citizens [2, c. 1511 - 1516; 3, c. 27 - 30].

The most recent prominent example of manipulation of the constitutional requirements is the decision of the Constitutional Court of 01/12/2015 Nr. 30-P in "Irkutsk case."

The Constitutional Court of the Russian Federation pointed out that on the basis of the provisions of Articles 72, 76 of the Constitution, "federal legislator has the right ... to choose the methods of formation of local self-government bodies which are, in its opinion, the proper ones. It can also carry out a distinction of authorities relating to the establishment of common principles of organization of local self-government between the bodies of the Russian Federation and of the subjects of the Russian Federation". But the argued law actually transferred to the jurisdiction of the Russian Federation subjects the key issues that are most important for the municipalities and municipal communities. However, due objective reasons, the subjects of the Russian Federation will not be able to provide municipalities the level of organizational and financial guarantees that may be provided by the Russian Federation. In addition, it is necessary to take some subjective factors into account. In recent years the "war" between the heads of regions and majors of cities has been developed in the Russian regions. The current legal practice shows that the implementation of the provisions of the Federal Law № 136-FZ and the Federal Law number 8 of the Federal Law led to the fact that relations between regional and local authorities are based not so much on a legal basis, but on a personal relationships. These circumstances have been inexplicably ignored by the Constitutional Court.

The Constitutional Court noted that the federal legislator had the right to provide specific reasons the participation of the Russian Federation in the legislative regulation of the order of formation of local self-government, while providing the necessary safeguards to exclude arbitrary limitation of autonomy of the population in local government. However, the federal legislator has not provided any guarantees to protect citizens' right to determination of the structure of local government, which does not correspond Articles 12, 130, 131 of the Constitution, as well as the legal positions of the Constitutional Court of the Russian Federation, previously expressed in its Resolution of 30.05.1996 N 13-P, judgment of 07.07.2011 N 15-P. The current version of the Federal Law № 131-FZ imperatively requires the municipality to bring its constitution into line with the decision taken by the law of the subject of the Russian Federation within three months.

The Constitutional Court of the Russian Federation divides all the municipalities into municipalities of upper level (urban districts, municipal districts) and municipalities of lower level (urban and rural settlements). According to the court, the municipalities of the upper territorial level are the municipalities, combining a) the quality of spatial associations of citizens, jointly implement the respective territory the right to local self-government, and b) the quality of publicly-territorial unit,

which is integrated in the system of state-power relations agencies public authorities which are intended not only to solve local issues, but also to participate in the implementation on its territory of the state functions.
The rural and urban settlements are more focused on self-organization in comparison with large municipalities. They have a higher potential personal involvement of population into the local community. Accordingly, in the opinion of the Constitutional Court of the Russian Federation, territories of rural and urban settlements need direct relations of local government with the population that allows different options of formation of other bodies, of course excluding their formation by state authorities. Article 131 of the Constitution of the Russian Federation allegedly provides wide discretion of local communities at the settlement level.

This position of the Constitutional Court can hardly bear any critic. Major cities are the points of the regional economy. The concentration of economic and human resources in the city objectively causes their rapid development. There is a positive effect of scale (otherwise - agglomeration effect) on economic development. Elimination of genuine local self-government in the territory of the urban district levels the scale effect that will lead to slower economic growth. In other words, large cities are engines of regional and federal economy. It is no accident that the Law of the Russian Federation of 07.06.1991, the № 1550-1 «On Local Self-Government in the Russian Federation" contained an entire chapter 9, "The Basics of city management organization", from the content of which it followed that the city should be managed as a single entity. The full local government in major cities is even more demanding than on the level of urban and rural settlements. Integration of urban self-government in the "vertical of state power" is detrimental to Russia in the conditions of severe economic crisis [4, c. 54; 5].

According to V.I. Vasiliev, "the electiveness is the main feature of the local self-government if it does not serve as a cover of democratic cover of powerlessness of local authorities but is one of the essential guarantees of local self-government" [6, p. 35]. N.V. Postovoy highlights the presence of elected bodies of local self-government as one of the essential characteristics of the municipal formation [7, p. 182] .
Formal increase of the number of options of empowerment of heads of municipalities (heads of local administrations) has practically led to the fact that the vast majority of subjects of the Russian Federation abolished the direct election of heads of municipalities (including municipal districts), having replaced them with the election of the head of the representative body from among the candidates submitted by the competition commission.
The head of the municipality in this model leads the local administration. In fact, this head becomes independent from the representative body of the local self-government and from the population, and dependent only from the highest official of the subject of the Russian Federation. But as practice shows, only a popularly elected mayor works with the greatest impact and feels his responsibility to the population that elected him. It is worth recalling that in developed foreign countries large and major cities are headed by popularly elected mayors [8, c. 55]. In addition, the Constitutional Court in its judgment of 15.01.1998 N 3-P, judgment of 30.11.2000 N 15-P stated the legal position that the determination of local self-government structures is a local issue and local issues can and should be solved by local authorities or the population itself, and not by the public authorities. The municipal power has features qualitatively distinguishing it from the government, in particular, the presence of a particular subject - the population of the municipality which is both the object and the subject of municipal legal regulation [9, c . 30] .

The Constitutional Court of the Russian Federation takes a lot of refusive definitions referring to the fact that the applicant did not show a violation of his rights in a specific case. For example, the definition of the Constitutional Court of the Russian Federation of 29.03.2016 N 670-O "The refusal to accept for consideration complaints from citizens Dvorskovoy Tamara Dmitrievna, Dmitrieva Natalia Vitalievna and others on violations of their constitutional rights in Article 2 of the Law of

Novosibirsk region "On some issues of organization of local self-government in Novosibirsk region" refused to accept for consideration of complaints on the grounds that the applicants have asked to check constitutionality of these regulations is due to the specific case [10, c. 192]. However, this check can be carried out only at the request referred to in Art. 125 of the Russian Constitution and Art. 84 of the Federal Constitutional Law of 21.07.1994 N 1-FKZ "On the Constitutional Court of the Russian Federation" subjects. There are no citizens among these subjects.

An urgent issue was considered and "permitted" in Decision of the Constitutional Court of the Russian Federation from 12.04.2016 Nr 10-P. A group of 94 deputies of the State Duma of the Russian Federation asked to recognize para. 4 Art. 179 of the Housing Code not compliant with Articles 19 (part 1), 35 (parts 1 and 2) and 40 (part 1) of the Constitution to the extent that it allows the use of the fund of capital repair in the absence of the will of owners of premises in apartment buildings. According to Articles 210 and 249 of the Civil Code and Art. 39 of the Housing Code the burden of maintaining the property (including common property in an apartment building) shall be on the owner of the property (member share ownership, owners of premises in an apartment building), which implies a direct fulfillment of this obligation by the owner, rather than shifting it to a third party. Thus, the owner of the premises in an apartment building may be obliged to pay for the cost of capital repair of common property in the block of apartments. Within the meaning of Art. 174 and Art. 179 of the Housing Code the regional operator itself does not form a fund of capital repair and can therefore use the money of the fund for financing of services and (or) works on capital repair of the common property only in a specific block of apartments.

The Constitutional Court expectedly recognized these legal provisions relevant of the Constitution, referring to the following. Based on the fact that the co-owners are obliged in proportion to its share participate in the payment of taxes, fees and other payments for the common property, as well as the costs for its maintenance and preservation (Article 249 of the Civil Code), the bearing of the costs of maintenance of common property in an apartment house (actually - the building and its structural elements), including the cost of major repairs, for each of the owners of premises in the house is not just an integral part of the burden of the content of his property (article 210 of the Civil Code), but also the duty, which derives from the fact participation in the ownership of the common property, and that the co-owners shall, in particular, to the other participants, which ensures the safety of a particular room in each block of apartments, as well as of the whole house.

This legal regulation takes into account the economic principles underlying the system of centralized storage savings for capital repairs of common property in apartment buildings and the management of these savings and conditional permanent uptake of funds in the account of the regional operator, as well as the absence of the reserved funds in its disposal. In addition, establishing a rule on the date of entry into force of the decision on the termination of the formation of capital repair fund on account of the regional operator and its formation in the special account, the federal legislator has proceeded, in particular, from the need to comply with Art. 17 of the Constitution, so that owners of premises in an apartment building, take such a decision aftert his house has already been renovated. Thus, they have realized their own interests, including the expense of the listed owners of premises in other apartment buildings forming the fund of capital repair on account of the same regional operator, continued within the prescribed period to transfer payments for capital repairs at the expense of the regional operator, realizing the social solidarity principle, assuming the maintenance of stability and predictability in the functioning of the centralized system of accumulation of savings for capital repairs of common property in apartment houses.

Another area of activity affecting a significant number of individuals and legal entities, and causing a lot of errors of law enforcement is the estimating activity. The plot of the case was the complaint of the municipal administration of the city of Bratsk (Decision of the Constitutional Court of the Russian Federation on 07.05.2016, № 15-P). According to Article 24.18 of the Federal Law of July

29, 1998 N 135-FZ "On evaluation activities in the Russian Federation", the results of determining the cadastral value can be disputed by legal persons in the court and the dispute review boards in case of determination of the cadastral value affecting the rights and obligations of these entities, as well as public authorities, local authorities in respect of real estate owned by the state or municipal property.

According to Decree of the Government of the Irkutsk region on November 15, 2013 Nr. 517-paragraphs were approved by determination of the cadastral the value of land as part of land settlements in the territory of the Irkutsk region as of January 1, 2012. JSC "" Ilim Group ", which is the owner of one of these plots of land, applied to the Commission for disputes on the results of determination of the cadastral value of the Office of the Federal Service for State Registration, Cadastre and Cartography in Irkutsk region, a statement on the revision of its cadastral value determined as of at that date and entered in the state cadastre of real estate in the amount of 7,116,608 240.55 rubles. (Subject to subsequent adjustment - 7,116,590 597.28 rub.). The Commission's Decision of 7 August 2014, which the cadastral value of the land was set at its market value as determined by the evaluation report and amounted to 452.84 million rubles, was challenged in the Irkutsk regional court by the administration of the municipality of the city of Bratsk, to submit another report on the assessment according to which the market value of the land amounted to 1.62 billion rubles. Relying on the expert who carried out the forensic evaluation expertise, according to which the market value of the land on January 1, 2012 amounted to 5,680,134,121 rubles., Irkutsk Regional Court found the Commission's decision on the disputes on the results of determination of the cadastral value of 7 August 2014 illegal.

The panel of judges on administrative affairs of the Irkutsk regional Court in support of the withdrawal on the absence of a court of first instance grounds for consideration on the merits the application of the municipal administration of the city of Bratsk, referred to the rules of the Code of administrative Procedure of the Russian Federation, on acting during the consideration of the case by the Irkutsk regional court rules of the Civil Procedural Code, as well as article 24.18 of the Federal law "On estimating activities in the Russian Federation." According to the appellate court, local governments have the right to challenge the results of the determination of the cadastral value (and, therefore, the decision, which they have been approved) only in respect of those properties that are owned by the respective municipalities.

Irkutsk regional Court cancelled the decision and refused to transfer the cassation appeal for review in the court session of the presidium of the Irkutsk regional Court, and the judge of the Supreme Russian Court refused in the transmission of a cassation appeal to the judicial board on administrative cases of the Supreme Court. Currently, due to the change of land category, which includes land belonging to JSC "Group" Ilim ", its cadastral value, restated as of August 3, 2015 in accordance with the decision of the Irkutsk Region Government on January 14, 2014 Nr. 11 is 732 666 316.78 rub.

Having considered the case, the Constitutional Court of the Russian Federation recognized as not conforming to the Constitution of the Russian Federation, and namely to its Articles 46 (part 1), 55 (part 3) and 133, the position of the first paragraph of Article 24.18 of the Federal Law "On estimating activities in the Russian Federation" - to the extent in which it interferes local authorities to appeal in court the results of determination of the cadastral value of the land which is not owned by the municipality but which is located on its territory, in cases where at the request of the owner of such land its cadastral value was substantially reduced on the basis of the establishment market value than could be affected by the rights and interests of the municipality, including those related to income tax revenues to the local budget.

As the Constitutional Court of the Russian Federation has mentioned, the tax revenues of local budgets form among other revenues from established by the tax Code of the Russian Federation and normative legal acts of representative bodies of municipal formations of local taxes, including land

tax, which according to the Budget Code of the Russian Federation shall be paid to to the municipal budget for the rate of 100 percent. Elements of this local tax are determined, according to the Tax Code of the Russian Federation, by normative legal acts of different levels: the tax rate are provided by the Tax Code, as the procedure and terms of its payment institutions are established by the acts of local authorities. Other elements, primarily the tax base in the amount of the cadastral value of land recognized as objects of taxation are established by the Tax Code.

The decisions taken by local authorities, in many respects depend on the state of the tax base for land tax. The quality of infrastructure, the administrative "burden" on entrepreneurship, business (investment) environment, the number and area of land located on the territory of the municipality and involved in the turnover in the property market in the form of objects of property rights, impact on the market and, accordingly, the cadastral value of land plots as objects of taxation. Consequently, the management activities of local authorities, ensuring the implementation of the public authorities at the municipal level, must be consistent with constitutional provisions forming the legal basis of the market economy, to promote the implementation of the constitutional rights of everyone to freely use his abilities and property for entrepreneurial and not prohibited by the law economic activity as well as citizens and their associations the right to private ownership of land, free possessment, usage and disposal of land without any damage to the environment, without compromising the rights and lawful interests of other persons, to provide everyone an opportunity to equitable economic and legal conditions to fulfill the constitutional obligation to pay the legally established taxes and charges (article 7, paragraph 1, article 8, article 34, part 1, article 36, paragraph 1 and 2, article 55, part 3, article 57 of the Constitution).

The state should provide a reasonable ratio of fiscal and budgetary interests and the economic interests of taxpayers, taking into account not only their objective differences, but also about generality, due to the fact that the validity of the fair tax obligations established in the moderate and predictable volume, forms a necessary prerequisite for their conscientious realization.

Reduction of the cadastral value of land used by its owners - individuals and organizations for doing business, especially if the plot has the large size, can reduce income to the local budget, tax revenues, and consequently, the financial capacity of local self-governments to meet the livelihood needs. In this situation, the results of determination of the cadastral value of land in the territory of the municipality and which are subject to taxation, not only affect the realization of the rights of owners of the land, but also can directly affect the rights and legitimate interests of municipalities as a territorial associations of citizens (Constitutional Court Decision of April 2, 2002 N 7-P) [12].

One of the most important aspects of law enforcement is the enforcement of judgments. The decision of the Constitutional Court of the Russian Federation from 10.03.2016 Nr. 7-P is devoted to Consideration of this issue.

By the decision of the Tula Novomoskovsk Region City Court on 15 September 2010 execution was levied on Rostovtsev’s property. On January 17, 2011 the claimant ("Sberbank of Russia") filed a writ for execution to the bailiffs, but then withdrew it, and therefore the 8 July 2011 the bailiff issued about the end of enforcement proceedings and filed a resolution on the withdrawal of seized property from sale July 18, 2011. On February 20, 2013 the enforcement proceedings were instituted in connection with the newly re-presentation of the writ of execution to the bailiffs, but after its withdrawal the bailiff finished enforcement proceedings and seized assets withdrawn from sale. In connection with the next presentation of the writ of execution to the execution on 3 December 2014 the bailiff re-instituted enforcement procedure.

M.L. Rostovtsev supposed that the the collector had missed a statutory three-year term for the presentation of the executive document for execution and applied for recognition of the decision of

the bailiff from December 3, 2014 illegal in the Central District Court of the city of Tula, which in the decision of 21 January 2015, refused to meet the stated requirements with reference to the provisions of Articles 21, 22 and 46 of the Federal Law dated 02.10.2007 N 229-FZ "On Enforcement Proceedings". The decision of the trial court was upheld by the decision of judicial board on civil cases of the Tula Regional Court of 7 May 2015. The judge of the Tula Regional Court of 26 June 2015 refused to transfer the cassation appeal on these to the cassation board.

According to the Constitutional Court of the Russian Federation, the protection of the violated rights can not be considered effective if the judicial act is not enforced in time; enforcement of a judgment, within the meaning of Article 46 (part 1) of the Constitution, should be considered as an element of judicial protection, which obliges the federal legislator in the choice within its constitutional discretion of a mechanism of enforcement proceedings to implement a consistent regulation of relations in this field, to create for them a stable legal framework and does not call into question the constitutional principle of the enforceability of the judgment (decision of the Constitutional Court of January 15, 2002 N 1-P, dated May 14, 2003 N 8-P, from July 14 I, 2005 N 8-P, dated July 12, 2007 N 10-P, dated February 26, 2010 N 4-P et al.). That means that the established by the federal legislator timeline of presentation of executive documents for execution must meet the interests of the protection of constitutional rights of the creditor, but they can not affect the main content of the constitutional rights of the debtor, which must be lost under no circumstances (the Constitutional Court's judgment of 14 May 2012 Nr. 11-P).

Such actions of the claimant during an unlimited time can lead to the fact that enforcement proceedings will not be completed by the execution of requirements contained in the executive document, and the debtor should be infinitely remain under threat measures of enforcement applied to him and his property. Thus, the related provisions of Part. 1 Art. 21, Part 2 Art. 22 and Part 4 Art. 46 of the Federal Law "On Enforcement Proceedings", as allowing after repeated interruption of the period of presentation of the executive document to the execution of the presentation of the executive document to the execution of a subsequent return to the claimant on the basis of his statements - whenever estimate within this period again since the return of the executive document on this ground the claimant and to renew it thus for an indefinitely long period of time, do not comply with the Russian Constitution and its articles 35 (part 2), 46 (part 1) and 55 (part 3).

Having considered the case, the Constitutional Court of the Russian Federation has declared as according to the Constitution of the Russian Federation and its articles 35 (part 2), 46 (part 1) and 55 (part 3), the provisions of paragraph 1 of article 21, Paragraph 2 of article 22 and Paragraph 4 of article 46 of the Federal law "On Enforcement Proceedings" to the extent that those provisions in their relationship allow - after repeated interruption of the period of presentation of the executive document to the execution of the presentation of the executive document to the execution of a subsequent return to the claimant on the basis of his statements - whenever estimate within this period again since the return of the executive document.

Conclusions

The principles of law enforcement are well-known: these are legality, efficiency, objectivity, consistency, equity, efficiency and appropriateness [13, c. 115-125]. The described situations and other cases of defective enforcement are caused by disregard of these principles. Including a misunderstanding of the principle of expediency. Enforcement acts are suitable when they achieve the greatest goal, provided the rule of law, and not the political will of the leaders of the various levels of government. The desire of the law enforcer to make a most appropriate and effective solution in particular case should not be opposed to the legality of the decision [14].

The law enforcement crisis in Russia is obvious. It can be overcome only through strict observance of the general principles in the legal education and legal practice of legal entities at all levels.

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