ABUSE OF LAW AS A PREREQUISITE FOR THE CRIMINALIZATION OF A SOCIALLY DANGEROUS ACT

INTRODUCTION
The abuse of law by individuals in their relationship with each other or with the state is the most widespread and dynamic type of violations. It can be explained by the fact that the dynamics of abuse cases are the reverse side of increasing the role and significance of law in public life and the very scope of human rights.

METHODS
Within the framework of this article, it is impossible to fully analyze all the possible situations of criminal abuse committed by citizens. Therefore, we will use the method of typology to provide their general description. The study shows that the abuse of law upon the commission of a crime can be manifested in different ways and reflected in various components of such a crime. It is advisable to determine the following features based on which these manifestations can be classified:

a) the role of law abuse in the mechanism of committing a crime;
b) the reflection of law abuse in components of a crime;
c) a type of law abuse, i.e. whether the actor goes beyond their rights or the exercise of such rights.

Considering these circumstances, there are two main approaches to the criminal assessment of law abuse by individuals: the abuse of law as a way of committing a crime and the abuse of law as the content of a criminal offense.

RESULTS
A) The abuse of law as a way of committing a crime
In some cases, the abuse of law is one of the possible and criminological ways of causing harm. At the same time, abuse manifests itself mainly in the form of exceeding the established limits for the implementation of subjective rights. The legislator does not recognize the increased danger of this method of committing a crime, does not consider it significant and does not include it into the main or qualifying features of crime components. Nevertheless, a person inflicts harm on one or another constitutional value through the abuse of law. The current judicial practice and criminal reality contain several examples of such behavior. For cognitive purposes, we can present them in two groups, depending on whether the abuse of law is associated with an appeal to official state structures for handling actions of the guilty or not.

From the viewpoint of the nature and amount of harm caused, the most dangerous type of law abuse is the one when the guilty requires the authorization of their actions by state and applies for official registration, i.e. the confirmation of their claims to a certain right.

According to one criminal case, Ms. Ogorodnikova concluded a contract for the sale and purchase of an apartment and received the full amount of money for the sold property. After a certain time, she filed a lawsuit through her representative to terminate this contract and recognize her ownership of this object due to the fact that the buyer of the apartment allegedly did not fulfill his obligations under the contract and did not pay for the purchased apartment. The court was misled by Ms. Ogorodnikova and her representative and satisfied the claim. According to one criminal case, Ms. Ogorodnikova concluded a contract for the sale and purchase of an apartment and received the full amount of money for the sold property. After a certain time, she filed a lawsuit through her representative to terminate this contract and recognize her ownership of this object due to the fact that the buyer of the apartment allegedly did not fulfill his obligations under the contract and did not pay for the purchased apartment. The court was misled by Ms. Ogorodnikova and her representative and satisfied the claim. Based on this judicial decision, the Federal Service for State Registration, Cadastre and Cartography of the Russian Federation issued Ms. Ogorodnikova a certificate of ownership. The criminal case against Ms. Ogorodnikova was considered by the court under Clause 4 of Article 159 of the Criminal Code of the Russian Federation and she was convicted (PRIGOVOIR PERVOMAISKOGO RAIONNOGO SUDA, 2019).
It is revealing that Ms. Ogorodnikova tried to challenge the constitutionality of Clause 4 of Article 159 of the Criminal Code of the Russian Federation because this rule, in her opinion, allowed to convict a citizen for referring to a court and executing a court decision that entered into legal force. The Constitutional Court of the Russian Federation did not find any grounds for accepting her appeal for consideration and substantiated its decision with a general thesis that the current legal regulation does not imply criminal liability for the commission of lawful actions (OPREDELENIE KONSTITUTSIONNOGO SUDA RF, 2020).

Given the above-mentioned Constitutional Court determination, the most striking and indicative example is the case of Mr. Moskalev. He was convicted under Article 128.1 of the Criminal Code of the Russian Federation due to the fact that his repeated appeals to state and municipal authorities contained knowingly false information about the behavior of the victim Zh. His appeal to the Constitutional Court of the Russian Federation was based on the fact that Article 128.1 of the Criminal Code of the Russian Federation recognized, in his opinion, a citizen’s appeal to state and local self-government bodies as the dissemination of information and, on this basis, provided criminal liability for libel. The court conducted a detailed analysis of the situation and stated that an appeal to a state or local self-government body within the current legal regulation (considering the potential risk of causing harm to the rights and freedoms of persons with whom the information contained in the appeal is associated) aims at obtaining assistance in the implementation of the rights and freedoms of the applied citizen or the rights and freedoms of others, therefore this act cannot be regarded as the dissemination (disclosure) of information.

The legitimate exercise of constitutional rights and freedoms should not entail unfavorable legal consequences, especially in the form of criminal liability. If a person goes beyond the limits of their constitutional rights established by the federal legislator, it can pose a threat to the constitutional rights and freedoms of others and protected public interests, which presupposes legislative restrictions in this area, including those related to prosecution. The systemic nature of citizens’ appeals, i.e. the application of constitutional rights to appeal to state and local self-government bodies by constantly sending information and forcing these bodies to repeatedly check the facts specified in such appeals, might indicate an intention to harm a person, whose illegal actions are described in the appeal (OPREDELENIE KONSTITUTSIONNOGO SUDA RF, 5 December 2019).

The Constitutional Court of the Russian Federation recognized that the exercise of a civil right to appeal to state bodies to harm the interests of another person abuses law, which might entail criminal liability for such a person due to the consequences of public danger. Considering such criminal acts, we should note that the abuse of law is a method of causing harm. This method is not obligatory and not reflected in law among the constituent elements of a crime. While criminalizing damage to one’s property, honor and dignity, the legislator ignores the fact that it occurs in the process of exercising rights by the guilty person. In this case, it refers to the right to appeal to courts and other state or municipal bodies. However, the legislator seemingly neglects the fact that the actions of the guilty person cause significant dysfunctional disorders in the activities of state bodies, and the behavior of state officials becomes the necessary condition for causing harm to the values protected by law.

From the perspective of the criminal and legal qualification of offenses, there is an issue that has not been addressed by the Russian specialists. In the process of abusing law, damage to constitutional values is caused by the deliberate actions of misled officials. As a result, harm is objectively inflicted not only on the rights and interests of citizens but also on the interests of public authorities and services. Since public officials are not held liable due to the absence of guilt, it questions the responsibility of abusers for executing constituent elements of malfeasance (for example, making a knowingly unjust decision) through the innocent actions of such officials. The current litigation practice is not aware of such cases, and it is extremely difficult to justify the indirect execution of malfeasance by an individual, if not impossible (OBRAZHIEV, PIKROV, 2019, p. 354-360, 374-379).

However, it is unacceptable to leave the harm inflicted on the interests of public authorities and services without a proper response. For these purposes, it is appropriate to use the experience of some foreign countries. For example, § 164 of the German Criminal Code provides constituent elements of false suspicion. According to its provision, whoever, with the
intention that official proceedings or other official measures be brought or be continued against another before an authority, falsely accuses another before an authority or a public official competent to receive criminal reports or a military superior, or publicly, of having committed an unlawful act or a breach of an official duty incurs a penalty. Whoever, with the same intention, falsely makes any other assertion of fact about another before one of the authorities referred to in the above-mentioned subsection or publicly which is suitable for causing official proceedings or other official measures to be brought or continued against that person incurs the same penalty (GOLOVNENKOV, 2014). According to the German experts, this offense should be imputed to persons who abuse their right to appeal to state bodies, along with the rule providing criminal liability for the harm caused by such an abuse (FRISTER, 2013, p. 520-521). Due to the growing amount of considered cases on the abuse of law and the use of judicial decisions as a front for causing harm, there is every reason to discuss the need to introduce similar provisions into the Criminal Code of the Russian Federation.

Along with the aforementioned types of using one’s rights and freedoms as a method of causing harm, we should recognize situations in which law is violated without the involvement of state structures. In these cases, there is a direct interaction between the abuser and the victim of a crime.

For instance, there is such a phenomenon as patent trolling. According to the corresponding scientific literature, a person receives a patent for some well-known object and subsequently makes recovery claims to economic entities to receive remuneration for its use (one obtained a patent for a "glass vessel", i.e. a bottle used by almost all beverage manufacturers). This trolling is the abuse of law because the behavior of such a patent troll is formally legitimate until a court declares the issuance of the relevant patent unlawful and cancels it. However, the troll’s behavior is contrary to general principles of conscientiousness and reasonableness of parties to civil relations (ROVNEIKO, 2020, p. 284-285). It is difficult to assess this behavior in conformity with the existing rules on liability for fraud and extortion, which requires the adjustment of criminal law. Despite its gaps, the current legislation indicates that the abuse of law as a method integrated into the mechanism of the so-called "common" crimes.

Being a crime in the sphere of interpersonal relations, arbitrariness is the most typical form of law abuse. In one of the criminal cases, Mr. Tangiev was convicted under Clause 2 of Article 330 of the Criminal Code of the Russian Federation. Having a court decision on the procedure for using an apartment in joint ownership with the victim that prescribed, among other things, to bring this dwelling in accordance with technical documentation (to destroy illegal internal walls), Mr. Tangiev was not authorized to fulfill this decision but arbitrarily removed the door to the victim’s room from its hinges, entered it and violated the victim (PRIGOVOIR BASMANNOGO RAIONNOGO SUDA, 2011). Later he tried to challenge the constitutionality of Article 330 of the Criminal Code of the Russian Federation since it allegedly allows investigative and judicial authorities to qualify legal and lawful actions aimed at the direct execution of court decisions and bailiffs’ requirements as unauthorized and arbitrary. However, his claims were proved unjustified (OPREDELENIJE KONSTITUTSIONNOGO SUDA RF, 2015). The Constitutional Court of the Russian Federation refused to consider any complaints from citizens about the unconstitutionality of Article 330 of the Criminal Code of the Russian Federation (OPREDELENIJE KONSTITUTSIONNOGO SUDA RF, 23 November 2017; 25 June 2019). The arguments were as follows:

- Article 330 of the Criminal Code of the Russian Federation presupposes criminal liability only for specified actions and only when a person realized their arbitrariness and unlawfulness but wanted to implement them, foresaw the possibility or inevitability of consequences in the form of significant harm, wanted them to occur or deliberately admitted these consequences or treated them indifferently;
- Article 330 of the Criminal Code of the Russian Federation does not contain provisions limiting the applicant’s right to protect their rights and freedoms by all the means not prohibited by law, including the right to judicial protection of property based on the principle of adversariality and equality of the parties. Defining arbitrariness as a violation of the procedure established by law for the exercise of civil rights, this rule
presupposes that citizens have the opportunity to exercise these rights and protect them from unlawful encroachments in a legal way.

Article 330 of the Criminal Code of the Russian Federation can be regarded as a classic example of criminal abuse of law. The legislative description of its components emphasizes the action of the guilty person and the method of their criminal behavior that can have different consequences. This provision serves as a general prescription which, in terms of qualification, can fade into the background if the danger of abuse-related consequences "outweighs" the danger of the abuse itself.

Considering the abuse of law in terms of its criminal and legal qualification, we have revealed the following general logic that should be used as the basis for legislative decisions when assessing the abuse of law as a method of causing harm:

- The abuse of law should be criminalized as an independent action, while general rules on the abuse of law in communication between private entities (arbitrariness) should be opposed to general rules on responsibility for the abuse of law in interaction with state institutions;
- General rules on liability for the abuse of law should be limited to the violation of the established procedure for realizing subjective rights inherent in a person and do not include situations in which abuse is expressed in the excess of the right itself, i.e. goes beyond the permissible extent;
- If the consequences of the abuse of law exceed the danger of the abuse itself, the legislator and the law enforcement officer have the right to assess such actions according to the rules applicable to the totality of the crimes committed.

**B) The abuse of law as the content of a committed crime**

A special role in several criminal cases related to the abuse of law is played by those in which the abuse of one or another legal act becomes the essence of a crime. As a rule, a person goes beyond the permissible extent of law. In this regard, the observance of the established procedure for its implementation is not questioned. Such actions receive an independent criminal and legal assessment at the level of components of a crime, whose role in the structure of criminal law is determined not by the violated law but rather by the consequences of such a violation. Thus, the abuse of freedom of speech can be considered both as a crime against the honor and dignity of an individual (Article 128.1 of the Criminal Code of the Russian Federation) and as a crime against state security (Article 280 of the Criminal Code of the Russian Federation). At the same time, the abuse of freedom of assembly can be regarded both as a crime against public safety (Article 205.5 of the Criminal Code of the Russian Federation) and as a crime against public health and public morality (Article 239 of the Criminal Code of the Russian Federation).

It is impossible to give at least a brief description of such crimes within the framework of this study. According to the doctrine of abuse of law, their assessment is conducted by the Constitutional Court of the Russian Federation (it assessed provisions on responsibility for public calls for terrorist activity (OPREDELENIJE KONSTITUTSIONNOGO SUDA RF, 2014; 21 September 2017; 28 November 2019), incitement to hatred or enmity, the humiliation of human dignity (OPREDELENIJE KONSTITUTSIONNOGO SUDA RF, 2016; 27 June 2017; 18 July 2017), public calls for the actions aimed at violating territorial integrity (OPREDELENIJE KONSTITUTSIONNOGO SUDA RF, 28 March 2017), slander and insult against the parties to a trial (OPREDELENIJE KONSTITUTSIONNOGO SUDA RF, 2004)) and becomes more authoritative in the sphere of science (SMIRNOVA, 2008; MERKUREV, SOKOLOV, 2019).

This approach helps solve two fundamental problems of interpreting and applying the relevant provisions: firstly, to substantiate the wrongful behavior of a person; secondly, to provide an objective description of the act itself. At the same time, it is not possible to give such a description without the constitutional and legal analysis of law abused by the guilty person. It indicates not only theoretical but also practical significance of the constitutionalization of criminal law.
CONCLUSION
While establishing and implementing responsibility for the abuse of law, it is necessary to determine the content and limits of subjective rights common to citizens and then, guided by the priority of content over the form of one’s behavior, develop and apply the elements of a crime, provided that the harm is inflicted directly or indirectly on civil rights and freedoms since the criminalization of law abuse of rights, in which harm is inflicted exclusively on the interests of the state, is constitutionally unacceptable. The concept of law abuse in the sphere of criminal relations allows realizing the individual responsibility of state representatives implementing the non-legal policy of human rights violation, violating human rights in the process of applying laws or abusing civil rights as a method and content of a criminal act.

REFERENCES
FRISTER, H. Ugolovnoe pravo Germanii. Oshchayja chast [The German Criminal Code. General Part]. Moscow: Infotropik Media, 2013.

GOLOVNENKOV, P. Ugolovnoe ulozhenie (Ugolovnyi kodeks) Federativnoi Respubliki Germaniya: nauchno-prakticheskii kommentarii i perevod teksta zakona [The German Criminal Code: scientific comments and law translation]. Moscow: Prospekt, 2014.

MERKUREV, V.V.; SOKOLOV, D.A. Realizatsiya otvetstvennosti za zloupotrebleniya pravom na vyrazhenie mneniya i svobodi na provedenie sobranii i obedinenii [Implementing responsibility for the abuse of law in relation to the freedom of expression and assembly]. Monitoring pravoprimeneniya, 4(33), 35-40, 2019.

OBRAZHIEV, K.V.; PIKROV, N.I. (Eds.). Kvalifikatsiya prestuplenii [The classification of crimes]. Moscow: Yurlitinform, 2019.

OPREDELENIJE KONSTITUTSIONNOGO SUDA RF No. 1411-O "Ob otkaze v prinyatii k rassmotreniyu zhaloby grazhdanina Nosika Antona Borisovicha na narushenie ego konstitutionnykh prav statei 282 Ugolovnogo kodeksa Rossiiskoi Federatsii" [Constitutional Court determination No. 1411-O of June 27, 2017 "On refusing to consider the appeal of A.B. Nosik on the violation of his constitutional rights by Article 282 of the Criminal Code of the Russian Federation"]. 27.06.2017. Available at: https://apkrfkod.ru/pract/opredelenie-konstitutsionnogo-suda-rf-ot-27062017-n-1411-o/.

OPREDELENIJE KONSTITUTSIONNOGO SUDA RF No. 1503-O "Ob otkaze v prinyatii k rassmotreniyu zhaloby grazhdanina Korta Evgeniya Sergeevich na narushenie ego konstitutionnykh prav statei 282 Ugolovnogo kodeksa Rossiiskoi Federatsii" [Constitutional Court determination No. 1503-O "On refusing to consider the appeal of E.S. Kort on the violation of his constitutional rights by Article 282 of the Criminal Code of the Russian Federation"]. July 18, 2017. Available at: https://legalacts.ru/sud/opredelenie-konstitutsionnogo-suda-rf-ot-18072017-n-1503-o/.

OPREDELENIJE KONSTITUTSIONNOGO SUDA RF No. 1797-O "Ob otkaze v prinyatii k rassmotreniyu zhaloby grazhdanina Dilmukhametova Airata Akhnafovicha na narushenie ego konstitutionnykh prav chastyu tretei stati 47 i chastyu pervoi stati 205.2 Ugolovnogo kodeksa Rossiiskoi Federatsii" [Constitutional Court determination No. 1797-O "On refusing to consider the appeal of A.A. Dilmukhametov on the violation of his constitutional rights by Article 330 of the Criminal Code of the Russian Federation"]. September 21, 2017. Available at: https://legalacts.ru/sud/opredelenie-konstitutsionnogo-suda-rf-ot-21092017-n-1797-o/.

OPREDELENIJE KONSTITUTSIONNOGO SUDA RF No. 1807-O "Ob otkaze v prinyatii k rassmotreniyu zhaloby grazhdanina Tsvetkova Sergeya Nikolaevicha na narushenie ego konstitutionnykh prav polozheniyami stati 330 Ugolovnogo kodeksa Rossiiskoi Federatsii" [Constitutional Court determination No. 1807-O "On refusing to consider the appeal of S.N. Tsvetkov on the violation of his constitutional rights by Article 330 of the Criminal Code of the Russian Federation"]. September 21, 2017. Available at: https://legalacts.ru/sud/opredelenie-konstitutsionnogo-suda-rf-ot-21092017-n-1797-o/.
Russian Federation”). June 25, 2019. Available at: https://legalacts.ru/sud/opredelenie-konstitutsionnogo-suda-rf-ot-25062019-n-1807-o/.

OPREDELENIYE KONSTITUTSIONNOGO SUDA RF No. 186-O “Ob otkaze v prinyatii k rassmotreniyu zhaloby grazhdanki Zarovnyatykh Eleny Nikolaevny na narushenie ee konstitutsionnykh prav polozheniyami stati 297 Ugolovnogo kodeksa Rossiiskoi Federatsii” [Constitutional Court determination No. 186-O “On refusing to consider the appeal of E.N. Zarovnyatkh on the violation of her constitutional rights as stated in Article 297 of the Criminal Code of the Russian Federation”]. May 27, 2004 Available at: https://lawrussia.ru/texts/legal_123/doc123a320x337.htm. Access: March 12, 2021.

OPREDELENIYE KONSTITUTSIONNOGO SUDA RF No. 1927-O “Ob otkaze v prinyatii k rassmotreniyu zhaloby grizhdanina Zhukova Mikhaila Aleksandrovicha na narushenie ego konstitutsionnykh prav polozheniyami stati 282 Ugolovnogo kodeksa Rossiiskoi Federatsii” [Constitutional Court determination No. 1927-O “On refusing to consider the appeal of M.A. Zhukov on the violation of his constitutional rights as stated in Article 282 of the Criminal Code of the Russian Federation”]. September 29, 2016. Available at: https://legalacts.ru/sud/opredelenie-konstitutsionnogo-suda-rf-ot-29092016-n-1927-o/.

OPREDELENIYE KONSTITUTSIONNOGO SUDA RF No. 1970-O “Ob otkaze v prinyatii k rassmotreniyu zhaloby grizhdanina Tangieva Bekkhana Tavsultanovicha na narushenie ego konstitutsionnykh prav statei 330 Ugolovnogo kodeksa Rossiiskoi Federatsii” [Constitutional Court determination No. 1970-O “On refusing to consider the appeal of B.T. Tangiev on the violation of his constitutional rights as stated in Article 330 of the Criminal Code of the Russian Federation”]. September 29, 2015.

OPREDELENIYE KONSTITUTSIONNOGO SUDA RF No. 2055-O “Ob otkaze v prinyatii k rassmotreniyu zhaloby grizhdanina Koroleva Igorya Valerevicha na narushenie ego konstitutsionnykh prav chastyu pervoi stati 330 Ugolovnogo kodeksa Rossiiskoi Federatsii” [Constitutional Court determination No. 2055-O “On refusing to consider the appeal of I.V. Korolev on the violation of his constitutional rights as stated in Article 330 of the Criminal Code of the Russian Federation”]. September 25, 2014. Available at: https://legalacts.ru/doc/opredelenie-konstitutsionnogo-suda-rf-ot-25092014-n-2055-o-ob/.

OPREDELENIYE KONSTITUTSIONNOGO SUDA RF No. 2769-O “Ob otkaze v prinyatii k rassmotreniyu zhaloby grizhdanina Dekanskogo Alekseya Alekseevicha na narushenie ego konstitutsionnykh prav chastyu pervoi stati 330 Ugolovnogo kodeksa Rossiiskoi Federatsii” [Constitutional Court determination No. 2769-O “On refusing to consider the appeal of A.A. Dekanski on the violation of his constitutional rights as stated in Article 330 of the Criminal Code of the Russian Federation”]. November 23, 2017. Available at: https://legalacts.ru/sud/opredelenie-konstitutsionnogo-suda-rf-ot-23112017-n-2769-o/.

OPREDELENIYE KONSTITUTSIONNOGO SUDA RF No. 31245-O “Ob otkaze v prinyatii k rassmotreniyu zhaloby grizhdanina Naplavkova Sergeya Valerevicha na narushenie ego konstitutsionnykh prav chastyu pervoi stati 205.2 Ugolovnogo kodeksa Rossiiskoi Federatsii” [Constitutional Court determination No. 31245-O “On refusing to consider the appeal of S.V. Naplavkov on the violation of his constitutional rights as stated in Article 205.2 of the Criminal Code of the Russian Federation”]. November 28, 2019. Available at: https://legalacts.ru/sud/opredelenie-konstitutsionnogo-suda-rf-ot-28112019-n-3245-o/.

OPREDELENIYE KONSTITUTSIONNOGO SUDA RF No. 3372-O “Ob otkaze v prinyatii k rassmotreniyu zhaloby grizhdanina Moskaleva Mikhaila Vasilevicha na narushenie ego konstitutsionnykh prav chastyu pervoi stati 128.1 Ugolovnogo kodeksa Rossiiskoi Federatsii i statei 318 Ugolovno-protsessualnogo kodeksa Rossiiskoi Federatsii” [Constitutional Court determination No. 3372-O “On refusing to consider the appeal of M.V. Moskalev on the violation of his constitutional rights as stated in Article 128.1 of the Criminal Code of the Russian Federation and Article 318 of the Criminal Procedure Code of the Russian Federation”]. December 5, 2019. Available at: http://publication.pravo.gov.ru/Document/View/0001201912260001.
OPREDELENIIE KONSTITUTSIONNOGO SUDA RF No. 665-O "Ob otkaze v prinyatii k rassmotreniyu zhaloby grazhdanina Kashapova Rafisa Rafailovicha na narushenie ego konstitutsionnykh prav statei 280.1 Ugolovnogo kodeksa Rossiiskoi Federatsii" [Constitutional Court determination No. 665-O "On refusing to consider the appeal of R.R. Kashapov on the violation of his constitutional rights by Article 280.1 of the Criminal Code of the Russian Federation"]. March 28, 2017. Available at: https://legalacts.ru/sud/opredeleniie-konstitutsionnogo-suda-rf-ot-28032017-n-665-o/.

OPREDELENIIE KONSTITUTSIONNOGO SUDA RF No. 792-O "Ob otkaze v prinyatii k rassmotreniyu zhaloby grazhdanki Ogorodnikovoi Valerii Valerevny na narushenie ee konstitutsionnykh prav chastyu chetvertoi stati 159 Ugolovnogo kodeksa Rossiiskoi Federatsii" [Constitutional Court determination No. 792-O "On refusing to consider the appeal of V.V. Ogorodnikova on the violation of her constitutional rights by Clause 4 of Article 159 of the Criminal Code of the Russian Federation"]. March 26, 2020. Available at: https://legalacts.ru/sud/opredeleniie-konstitutsionnogo-suda-rf-ot-26032020-n-792-o/.

PRIGOVOAR BASMANNOGO RAIONNOGO SUDA G. MOSKVI po delu No. 1-199/2011 [Verdict of the Basmanny District Court in case No. 1-199/2011]. October 6, 2011. Available at: https://sudact.ru/regular/doc/3gshLFuMQby/?regular-txt=тангиев&regular-case_doc=&regular-lawchunkinfo=Статья+330.+Самоуправство%28УК%2BРФ%29&regular-date_from=&regular-date_to=&regular-workflow_stage=&regular-area=&regular-court=&regular-judge=&_=1592301643936&snippet_pos=376#snippet. Accessed on: Jun. 16, 2020.

PRIGOVOAR PERVOMAIKOGO RAIONNOGO SUDA G. IZHEVSKA (Udmurtskaya Respublika) po delu No. 1-1/2019 [The verdict of the Court of the Pervomaisky District in Izhevsk (the Udmurt Republic) in case No. 1-1/2019]. May 8, 2019. Available at: https://sudact.ru/regular/doc/vxl91Z4sw0JU/. Accessed on: Jun. 16, 2020.

ROVNEIKO, V.V. Problemy ugolovno-pravovoi otsenniki patentnogo trollinga [The issues of criminal and legal assessment of patent trolling]. Vestnik Udmurtskogo universiteta. Ekonomika i pravo, 30(2), 282-288, 2020.

SMIRNOVA, A.A. Difamatsiya kak pravonarushenie i zloupotreblenie pravom: konstitutsionno-pravovoi aspect [Defamation as an offense and abuse of law: constitutional and legal aspects]. Thesis for a Candidate Degree in Law Sciences - Moscow State University named after M.V. Lomonosov, Moscow, 2008.
Abuse of law as a prerequisite for the criminalization of a socially dangerous act

Resumo
Dentro de componentes de um crime, o abuso da lei pode ser apresentado como um método ou conteúdo de comportamento ilegal. A avaliação dessas circunstâncias na lei carece de consistência, o que requer sua análise no contexto de regras gerais de criminalização. Para otimizar os meios penais e legais de prevenção ao abuso de lei, é necessário: 1) opor-se às regras gerais sobre o abuso da lei na comunicação entre entidades privadas às regras gerais sobre a responsabilidade pelo abuso de lei em interação com as instituições estatais; 2) limitar as regras gerais sobre a responsabilidade pelo abuso de lei à violação do procedimento estabelecido para a realização de direitos subjetivos inerentes a uma pessoa; 3) avaliar tais violações de acordo com as regras aplicáveis à totalidade dos crimes cometidos se as consequências do abuso da lei excederem o perigo do próprio abuso.

Palavras-chave: Constitucionalização do direito penal. Criminalização de atos socialmente perigosos. Abuso da lei. Modus operandi. Ilegalidade como elemento constituinte de um crime.

Abstract
Within components of a crime, the abuse of law can be presented as a method or content of illegal behavior. The assessment of these circumstances in law lacks consistency, which necessitates their analysis in the context of general rules of criminalization. To optimize criminal and legal means of preventing the abuse of law, it is necessary: 1) to oppose general rules on the abuse of law in communication between private entities to general rules on responsibility for the abuse of law in interaction with state institutions; 2) to limit general rules on liability for the abuse of law to the violation of the established procedure for realizing subjective rights inherent in a person; 3) to assess such violations according to the rules applicable to the totality of the crimes committed if the consequences of the abuse of law exceed the danger of the abuse itself.

Keywords: Constitutionalization of criminal law. Criminalization of socially dangerous acts. Abuse of law. Modus operandi. Illegality as a constituent element of a crime.

Resumen
Dentro de los componentes de un delito, el abuso de la ley puede ser presentado como un método o contenido de comportamiento ilegal. La evaluación de estas circunstancias en la ley carece de coherencia, lo que requiere su análisis en el contexto de las normas generales de penalización. Para optimizar los medios penales y jurídicos de prevención del abuso de la ley, es necesario: 1) oponerse a las normas generales sobre el abuso de la ley en la comunicación entre entidades privadas a las normas generales sobre la responsabilidad por abuso de la ley en interacción con las instituciones del Estado; 2) limitar las normas generales sobre la responsabilidad por abuso de la ley a la violación del procedimiento establecido para la realización de los derechos subjetivos inherentes a una persona; 3) evaluar tales violaciones de acuerdo con las normas aplicables a la totalidad de los delitos cometidos si las consecuencias del abuso de la ley exceden el peligro del abuso en sí.

Palabras-clave: Constitucionalización del derecho penal. Criminalización de actos socialmente peligrosos. Abuso de ley. Modus operandi. La ilegalidad como elemento constitutivo de un delito.