**DISSERTATION LAW: REGULATORY FRAMEWORK,
PRACTICE AND CUSTOMS IN RUSSIA**

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Abstract.

The article considers the normative and practical aspects of the dissertation law, work of dissertation councils and certain elements of the procedures for defending dissertations. The importance of thorough preparation for the defense is emphasized and its directions are defined. Special attention is paid to the quality of the provisions submitted for defense. The analysis of typical errors in the formulation of such provisions is given.

Keywords: Dissertation law, dissertation council, dissertation, defense, position, applicant, preparation, procedure, regulation, practice,

custom.

1. CONSIDERATION OF QUESTIO

Russian legal norms and structure on dissertation defenses are based on the Soviet legal framework and scientific system. But at the same time we cannot say that Russian legal realities in this matter completely copy the Soviet structure. Compared with the Soviet period, the legal nuances in modern Russia related to the defenses have changed a lot, becoming more complex, more stringent in the system of control, including the legal aspect. In particular, the scandals of plagiarism, copyright and deprivation of degrees in a number of dissertation councils [Zayakin 2015, Volikhamov 2014, Ivanchik 2014, Muravyev 2019] were related to this. It should be noted that the main points in the consideration of all these problems was and is due to weakness of the legal field.

At the same time, it should be noted that in Soviet times, no one was particularly concerned with the legal issues of the dissertation. On one hand, there was no such question at all. On the other hand, the legal scheme did not even develop the grounds for it.

Many of the additional possibilities for a lighter scheme of defense of a dissertation have also become a thing of the past. One example is "defense by a set of works (articles, publications)," a practice that existed in Soviet times, although it was relatively rare. In this case, a scientist would collect their papers and conduct a defense based on them without preparing a dissertation. Usually such a system was practiced for scientists who were very famous or made in connection with some important circumstances. At present this practice is not used in the Russian Federation. Although recently the question of restoring such a system has been raised.

At the same time, the legal issues of dissertations are changing and

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expanding, although there is no unified system yet. It should be noted that the state plays a key role in this issue, as it is the main evaluator of the situation in the legal field and the adaptation of scientific works (in this case, dissertations) in the legal system.

2. STRUCTURE OF DISSERTATION'S DEFENSE

Every year in Russia thousands of dissertations are defended in the human sciences, including hundreds in legal disciplines. The latter will be the focus of the three components of dissertation law: dissertation councils, the defense process, and its main intrigue - the provisions submitted for defense. With this in mind, let us proceed to review the topic.

1. The status of the dissertation council is difficult to deduce from the two main normative documents related to it, to dissertations and to defenses of regulations. Thus, the provision on the council for the defense of dissertations for the degree of Candidate of Sciences, for the degree of Doctor of Sciences (hereinafter - Regulation on the Council), approved by Order of the Ministry of Education and Science of Russia from 10.11.2017 N 1093 (ed. from 24.02.2021), defines, mainly, the order of organization and work of dissertation councils, and the Regulation "On the order of awarding academic degrees", approved by the order of Government of the Russian Federation from 24.09.2013 N 842 (ed. from 01.10.2018, with amendments from 26.05.2020), is largely devoted to the requirements for dissertations [Regulations on the Board...2018].

The specified status was determined by the Supreme Court of the Russian Federation due to the need to establish the procedure and limits of appealing against the decisions (actions) of dissertation councils and the Higher Attestation Commission (hereinafter - VAK/HAC) in the country. The Supreme Court in the course of legal study of the current situation came to the conclusion that Russian dissertation councils are collegial bodies with the

authority to award academic degrees of Candidate of Sciences and Doctor of Sciences. In other words, we are talking about bodies that do not belong to public authorities, but are endowed with the named powers in the field of public administration.

And since in the vast majority of cases the awarding of the degree of Candidate of Sciences or Doctor of Sciences takes place according to the results of the public defense of a dissertation, the court does not have the right to check the validity of such a decision. Only the procedure of its adoption is subject to verification [Review of jurisprudence of the Supreme Court...2010].

The authority powers are carried out by dissertation council members on a pro bono basis. This circumstance, established normatively [Regulation on the advice for defense...2021], once caused a court dispute, based on the consideration that this approach violates the rights of a dissertation council member, forcing them to perform the duties of a council member for free, to bear the costs of travel and accommodation.

However, according to the Supreme Court of the Russian Federation, a member of a dissertation council does not have an employment relationship either with the dissertation council or with the organization under which the dissertation council is created, but carries out his duties voluntarily, on a voluntary basis. Therefore, by agreeing to participate in the work of the dissertation council, the specialist thereby agrees to perform their duties as a member of the dissertation council not on a commercial basis. In addition, in accordance with the regulations of the dissertation council, the costs associated with the consideration and defense of dissertations are borne by the organization under which the dissertation council is created [Decision of the Supreme Court... 2010].

In theory, the applicant has the right to submit his dissertation for

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defense to any dissertation council, provided that the scientific specialty and branch of science in which the dissertation was written correspond to the scientific specialty and branch of science in which the dissertation council is authorized by the Ministry of Science and higher education of the Russian Federation to conduct the defense of dissertations.

In practice, it is the chairman of the dissertation council who initially decides whether to accept a paper or not. Of course, to a large extent, such a decision is not usually made by one person. The motives for refusal can be the overload of the council with defenses in a given period, the problematic nature of the dissertation (subject matter), its notorious failure (in particular, the problem of scientificity, etc.), not to mention the incompatibility of the work with the profile of the chosen council. At the same time, it is possible to refer to the fact that the dissertation council only accepts for preliminary consideration dissertations that meet the requirements specified in the Regulations on the Awarding of Academic Degrees.

In such scenarios, the applicant has the right to go to court to demand that the dissertation council consider accepting their work for defense. However, in the absence of precedents, such a step may look odious and may not coincide with conservative notions of *comme il faut* in the academic sphere. In addition, as a rule, the chairman of the dissertation council proceeds from provisions that would be difficult for the court to refute. This is because judges generally do not work in science or do not often practice scientific inquiries. Therefore, it can be quite difficult for them to be opponents for the head of the dissertation council.

The next "filter" to pass the work is the commission created by the dissertation council (sometimes called the special council), whose tasks include presenting to the dissertation council a conclusion about the compliance of the topic and content of the dissertation with the council

profile, about the completeness of the dissertation materials in the works published by the applicant, about meeting the requirements for publishing the main scientific results of the dissertation, and about the compliance with the requirements for references to the author and source of materials or individual resources borrowed from the dissertation.

The grounds for refusal to accept a work for defense by the dissertation council are provided in clause 22 of the Provisions on awarding academic degrees and are of an exhaustive nature. Attempts to expand them in the dissertation council's decisions end up in cancellation of such decisions by the Higher Attestation Commission.

Thus, when the dissertation was accepted for defense against the background of a positive conclusion of the commission on the work, one of the council members expressed categorical disagreement with the wording of the dissertation topic and on this basis demanded to refuse to accept the dissertation for defense. But there are no such grounds in the Statute, so the question was put to a vote and the work was still accepted for consideration.

When selecting a candidate for the position of an opponent, it is important to understand that they should be from the ranks of scientists competent in the relevant branch of science and who have publications in the relevant field of research. In other words, the subject of the opponent's research must be close to or coincide with the topic of the dissertation. This is in distinction to the similar requirement for the dissertation supervisor, who only needs to work within the same scientific specialty in which the dissertation is written [Regulations on the council for dissertation... 2021].

The dissertation review is submitted to the Dissertation Council by the lead organization, which must be known for its achievements in the relevant branch of science and be able to determine the scientific and/or practical value of the dissertation. In practice, this means that the specialization of the

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leading organization is subject to the same requirements as that of the opponent. It must conduct scientific research in the same field to which the main content of the dissertation belongs. Although this principle can be considered in various aspects.

The review of the dissertation by the leading organization reflects the significance of the results obtained by the author of the dissertation for the development of the corresponding branch of science. And since the term "significance" in many cases is not very specific, in practice the leading organizations evaluate dissertations according to the criteria specified in the Regulations on the Awarding of Academic Degrees: novelty, theoretical significance, reliability of conclusions, etc.

2. The defense of the dissertation must take place in favorable conditions for all participants, the provision of which is the task of the dissertation council. With all the variety of such conditions, let us note at least two variants. First, the chairman of the dissertation council should, at the request of the applicant, announce, within reasonable limits, breaks in the meeting of the council. Secondly, while respecting the right of the members of the dissertation council to pose questions to the applicant, one should avoid "questioning with bias" and excessive displays of emotion in cases where the applicant's position does not coincide with the opinion of the council member. These moments should be controlled by the chairman.

The status of a dissertation council member who is late for the dissertation defense, who left before its completion, or who was temporarily absent from a dissertation council meeting is also of some interest. They can be present at the meeting, ask the candidate questions as part of the formal discussion, and express their opinion about the work in their presentation. However, such a member of the dissertation council is not taken into account in determining the quorum and does not participate in the secret voting.

The main element of the defense is provided in clause 38 of the Regulations on awarding academic degrees and is reduced to the fact that the applicant for an academic degree presents the essence and the main provisions of the dissertation. Then they are asked questions orally or in writing.

As a matter of fact, the main points of the dissertation are known to the members of the dissertation council by the time of the defense: its text is posted on the website of the organization to which the council belongs; copies of the dissertation are on the dissertation council table, and each member can see the author's abstract of the work in front of them. Therefore, the main importance of a dissertation candidate's speech comes down to the ability to build a proper speech, speaking skills, and knowledge of the material. And God forbid that he should read out the statements made for the defense: it is hard to imagine a more senseless thing to do, considering that these statements are laid before the eyes of every member of the dissertation council. In general, you should not read the text of the presentation - it gives the impression that the applicant for the degree does not have a good command of oral skills.

According to established customs, the length of a dissertation candidate's speech is up to 10 minutes for a Ph.D candidate dissertation and up to 20 minutes for a PhD dissertation. Exceeding these informal limits is not good for them. This can excessively tire the members of the council, because as a rule there is more than one applicant on the day of the defense.

Questions from members of the dissertation council to the dissertation candidate are usually arising from the points they put forward for defense. Successful answers to them are a matter of preparation for the defense, which should include, at a minimum:

- familiarization with the rules and stages of the defense, the rights and

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responsibilities of the applicant, taking into account the requirements of scientific ethics;

-psychological preparation, the purpose of which is a confident defense;

-preparation for answering the questions.

As practice shows, not every scientific supervisor (or doctoral advisor) is able to provide such preparation. This is revealed at the defense, when the applicant, forgetting about the time, instead of speaking, reads the content of their abstract or cannot answer the questions posed, or enters into an emotional verbal fight with a member of the dissertation council who does not agree with their position.

But the shortcomings of preparation are not the only issue. There is a curious case of a defense where the topic of the dissertation coincided with the direction of the organization to which the dissertation was submitted. He confidently and clearly answered all the questions asked, but the result of the vote on the work was negative.

Analysis of the course of this defense led to the conclusion that the applicant defended himself as a practitioner, he answered the questions as he could answer a client who visited his organization for consultation. Meanwhile, the dissertation is a scientific qualification work, and therefore its defense should be based on the provisions of legal theory.

After the completion of the most difficult for the applicant stage of answering the questions of the dissertation council members, the further defense procedure goes, as a rule, in a relaxed mode. The content of the conclusions of the leading organization, reviews of the official opponents and reviews on the abstract are known in advance, the candidate's answers to the comments are formulated in the course of preparation for the defense.

After the formal discussion is over, it is time for an informal

discussion, in which all those present at the defense can participate. Normatively, such a discussion is not regulated. Therefore, if any such person asks questions to the applicant, it is preferable to somehow react to this, to give an answer, although he is not obliged to answer them. Likewise, he has the right, but not the obligation, to use the final word in his defense [Regulations of the Dissertation Defense par.38., 2013]. At this stage it is possible for so-called unofficial opponents to speak from among any persons present at the defense. It is in the candidate's interest to respond to their comments on the work, if there are any. This can have an impact on the outcome of the defense vote. Of course, many scientists prefer to express their opinions in an informal setting, particularly after the defense.

As a general rule, the text of a dissertation, upon the completion of its defense, can be sent to the expert council of VAK/HAC only in strictly specified cases, including when the opponent or the leading organization has presented a negative review of this dissertation; it is required to clarify the contribution of the author of this dissertation to the research conducted, the degree of novelty and practical significance of the dissertation research results; if during voting in the dissertation council less than 75% of the dissertation council members, who were present at the meeting, voted to award the degree of Candidate of Sciences.

Thus, the VAK/HAC (Higher Attestation Commission) decides on the final award of the degree. In fact, it may not award the degree, even though the applicant has defended themselves in their dissertation council, if it finds numerous and fundamental violations in the submitted work. In Russia in 2016 there were only two institutions of higher education that are of federal importance and can issue degrees of their own type - Lomonosov Moscow State University and St. Petersburg State University.

Later this list was expanded to include independent state scientific

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centers, federal and national research universities. All these institutions have the right to issue diplomas of established standard, which are equal to the state standard, due to the great achievements of these scientific and educational organizations. That means it is a kind of "quality mark".

At the same time in the country there are many institutions that have not passed state attestation or licensing, they can also issue diplomas of their own sample, but their diplomas are not equated to state and are not recognized by the relevant authorities.

In addition, practitioners who defended the dissertation may be invited to the expert council of the VAK/HAC. This is necessary to confirm the independence of the dissertation execution, to clarify the new scientific results contained in it, as well as the personal contribution of the author of the dissertation to science [Regulations of the Dissertation Defense...2021].

And if the work is done by the author independently, there is no cause for concern or worry.

3. Ordinary mistakes in the defense.

3. The provisions submitted for defense are equally important for both the defense of the dissertation and for its consideration by the expert council of the Higher Attestation Commission (VAK/HAC).

The most common mistakes in such cases are as follows.

3.1. The provisions are overloaded with suggestions for improving the law. This excessive practicality of the dissertation may give reason for the VAK/HAC to send it for additional conclusion to another dissertation council for the reason that it should be, first of all, a scientific qualification work.

It is now the custom that these sentences are formulated in the last provision in order. In this way, space is freed up for the author's theoretical conclusions.

As for the number of statements, the same custom requires that they

should not exceed (approximately) 7 for PhD candidate dissertations, and no more than 16 for PhD dissertations. A significant deviation from these figures is unlikely to be understood by the dissertation council, and even less so by the opponents, unless the volume of the research topic itself justifies the impressive number of statements submitted for defense.

3.2. A defense is built on the denial of something. Thus, the assertion that business law does not exist, even if it is accompanied by a number of various arguments, in fact adds nothing to the bank of scientific knowledge. In this case it would be necessary to find its replacement, to formulate the basic elements of a branch that could replace it. In the absence of such considerations, the assertion, and the defense statement based on it, would be of no scientific value.

3.3. The provision contains conclusions that either resemble those previously made, or contain no novelty whatsoever.

Thus, in the work devoted to the analysis of civil science, the dissertator divided the scientists engaged in scientific work, depending on their preferences, into Westerners and nationalists. And if through the mediation of the former such verbal inconveniences as, for example, escrow got into the civil law, the latter firmly stand for the original way of development of the Russian civil law.

Although previously this conclusion was not expressed in such a clear form, the understanding of the national or Western orientation of civil servants has always existed. But it was not only in the field of law. For example, in the 19th century, it was common in Russian society to consider I.S. Turgenev a Westerner and I.A. Goncharov a Slavophile. And these are only the most famous examples of that time. Therefore, the dissertator's objections that "no one wrote like this before" are groundless.

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3.4. The provision contains a classification of any legal phenomena.

In the past this would have been enough, but by modern notions in the legal sphere it is not enough. Now classification without reference to its possible application is regarded as "gymnastics of the mind". It may be of interest if we are talking about the applicable legislation and, therefore, a reference point for jurisprudence; from the standpoint of improving the current legislation, etc.

3.5. Formulation of concepts and definitions.

Both of them may compose a defensible provision, if there is something new in them. In itself, the connection in the concept of known features of any legal phenomenon does not constitute novelty.

The same applies to the definition, which in our conditions differs from the concept only in the fact that it puts all such attributes in a single phrase, however long it may be, even to the disadvantage of its readability. Of course, this, too, contributes to the uncomfortable situation.

3.6. The provision is descriptive in nature. It is possible, for example, to assert, on the basis of research, that a particular legal instrument is applied in some areas and not in others. This conclusion as having no scientific and theoretical value should not be defended. In addition, it creates a negative impression of the dissertation as such. At best, it can be one of the links in the chain of reasoning, justifying the doctrinal conclusion in the work.

Concluding the consideration of the topic raised in this article, I should note that the issues covered in it are only part of the information that is useful for a candidate to know in the process of writing and defending a work and that they can get from their scientific supervisor (advisor). Of course, these provisions apply to the defense of a dissertation in Russia and in several countries of the former Soviet Union.

But in this case something else is more important. The three

components taken in the article: the dissertation council, the provisions submitted for defense (i.e., the main content of the work) and the procedure of its defense form a diverse, isolated set of legal relations, which forms the dissertation law and requires study.

It should be noted that the term "dissertation law" is not new. E.P. Gavrilov put it forward, considering the dissertation law through the prism of copyright[Gavrilov, 2018]. Dissertation as an object of copyright was analyzed by O.V. Bogdanova [Bogdaniva, 2019].

The specifics of the dissertation as an object of copyright should be reflected in dissertation law. It is also greatly influenced by the fact that most dissertations are submitted to the councils "on manuscript rights". Therefore, the issue of copyright is controversial, unless, of course, the author has previously published academic articles and monographs on the basis of his work. However, the latter in its content is much broader and includes both elements of administrative law and such a distinct institution as the legal regulation of science.

And since the defense of a dissertation is a responsible and important moment in the life of a researcher, and the quality of his work is of paramount importance not only for legal science, dissertation law requires thorough study and development.

In practice the dissertation after all the checks, it is additionally necessary to check through the program "Anti-Plagiarism" for the presence of borrowings from open sources, such as eLIBRARY.RU, the consolidated collection, RGB, NBB dissertations, paraphrases from the Internet, SPS GARANT, template phrases, translated borrowings, Internet Plus, quotations, etc. In accordance with all requirements under Russian regulations and the results of inspections, the chairman of the dissertation council makes decisions on the defense of scientific work.

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At present, if we compare the past (previous) five years, there are fewer defenses of candidate and doctoral dissertations in Russia, but still, according to the ratio of the output of the defense, there are many more candidate dissertations in all scientific fields, and twice as few doctoral candidates and applicants for doctoral degrees are defending doctoral dissertations. What exactly are the factors that affect the output of the defense of academic degrees? We assume that the recent changes in the legislation in the field of science of the Russian Federation.

In particular, stricter requirements for plagiarism, scientific relevance, and the validation of work have played their important role.

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