Opening Remarks by the Editor-in-Chief

Destiny of Scientific Discussions in the Digital Age of the Law and Order

Nowadays, technological development driven by digital transformation of society greatly affects the system of justice, and research challenges widely discussed in the legal community come to the fore. In our opinion, these challenges together with activities of legal scholars are determining legal policy, in general, and law enforcement practice, in particular. It should be noted that a profound digitalization to some extent has turned to be unexpected, unthinkable issue at the beginning of the last decade, when we saw emergence of heated discussions about ways and prospects for further development of law and state in the postmodern era. For instance, your present correspondent one spoke about essential characteristics of the post-modern state, believing that intellectual motifs to consider their contents had not yet been formed and would hardly be formed in the near future[1].

It is easy to see that the concept of "post-modernity" in theoretical discourse has had ambiguous connotations, indicating a crisis of uncertainty in scientific and practical spheres, characterizing the latest stage in the evolution of the system of justice, started in the 1980s. This uncertainty hindered formulation of any well-grounded scientific conclusions or forecasts for further development, and has long been in the center of focus among Russian scholars. For example, I. L. Chestnov wrote, "if jurisprudence wants to overcome the long-running crisis of dogmatization and reification of law, we must look for new ways and find them in the postclassical research program"[2].

No wonder that is such context digitalization has been attracted attention of researchers who realized that it might be an escape from an ideological and methodological deadlock both in the general theory of law and specific legal disciplines[3]. It should be pointed out that the issues of digitalization were first discussed in terms of digital democracy, which manifested possibilities of digital technologies applied to regulate political and legal relations[4]. Despite some skepticism, demonstrated by the scientific community, who doubts effectiveness of electronic procedures as a means of making decisions and forming a common will, we are positive that these procedures indicate a shift of legal communication into a brand new stage of evolutionary development.

However, it should be remarked that political deliberation that requires active participation of society members and strives to establish a universal agreement (consensus) of their opinions[5], is very difficult to be digitalized, to say nothing of replacing man — an existentially and socially free creature — with artificial neural networks. It might appear more fruitful to initiate discussion about digital transformation of subjective civil rights, since it can result in a range of interesting conclusions about their legal nature and essence, thus, making a great contribution to development of civil science[6].

Despite intensive efforts of researchers, digital transformation of subjective civil rights (first of all, property and obligation) is still very obscure; but nevertheless, scholars already can make assumptions about modifications in civil law contracts that require minimal activity of counterparties (the so-called "smart contracts")[7]. Another very promising trend is dynamics of the civil law system and digitalization of personal non-property rights, which promotes emergence of new legal communication participants and new legal entities previously possessing no legal personality.

What is meant here is artificial intelligence, which in the traditional paradigm has been treated as a database and an object, rather than a subject of civil rights. We believe that identification of the role of artificial intelligence in the system of modern law and order requires either total rejection of the concept of freedom as a driving force of legal communication, which would be detrimental to law as such, or rethinking of the concept of freedom to confirm its timeless value under new conditions. It seems that the last variant is more preferable, since it opens global prospects for evolution of the system of

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1 See: Razuvaev. N. V. State in the Evolutionary Dimension: Monograph. Moscow: Yurlitinform Publishing House, 2018.P. 438.

2 Chestnov I. L. Postclassical theory of law: monograph. St. Petersburg: Publishing House "Alef-Press", 2012. P. 116.

3 See, for instance: Talapina E.V. Law and Digitalization: New Challenges and Prospects // Journal of Russian Law. 2018. No.2 (254). P. 5–17; Saurin A.A. Digitalization as a Factor in the Transformation of Law // Constitutional and Municipal Law. 2019. No.8. P. 26–31; Kozhokar I.P. Influence of Shortcomings on Judicial Enforcement in the Era of Digitalization of Law // Legal Science. 2019. No.7. P. 9–12.

4 See: Vaskova M.G. Problems of development and Implementation of Electronic Democracy in the Electronic State // Russian Legal Journal. 2010. No.4 (73). S. 47–50; Chebotarev V.E., Konovalova E.I. E-Democracy, E-Government, E-Democracy at the Current Stageo Development of the Russian Federation // Legal World. 2012. No.7. P. 35–38.

5 See: Rawls J. Political Liberalism. New York: Columbia University Press, 1993. P. 5; HabermasJ. Three Normative Models of Democracy // Democracy and Difference/ed. S. Benhabib. Princeton: Princeton University Press, 1996. P. 29; Mouffe Ch. Deliberative Democracy or Agonistic Pluralism [Electronic resource] // URL: https://www.ihs.ac.at/publications/pol/pw_72.pdf (date date of access: 14.06.2021).

6 See: Sannikova L.V., Kharitonova Yu.S. Legal Essence of New Digital Assets // Law. 2018, No.9. P. 93–95; Vasilevskaya L.Yu. Digital Rights as a New Object of Civil Rights: Problems of Legal Qualification // Economics and Law. 2019. No.5 (508). P. 3–14; Abramova E.N., Braginets A.Yu. On the Concepts of Ownership and Property in the Digital Era // Economics and Law. 2020. No.6 (521). P. 12–21, etc.

7 See: Saveliev V.A.. Contract Law 2.0: "Smart" Contracts as the Beginning of the End of Contract Law // Bulletin of Civil Law. 2016. No.3.P. 48.

justice in the era of high technologies that sometimes facilitate paradoxical illusions that society can fully eliminate a human factor from its development. However, we think that that everything above indisputably proves that the law serves the last stronghold of humanity in the rough waters of technological determinism, and makes grounds for subtle, but nevertheless confident optimism that human dignity and freedom in the digital age will remain as essential as before.

So, we can see that digital transformation of society, law and state has breaded new and unexpected development prospects, but also bought new challenges to face with. These challenges, first of all, include de-personification, anonymization and, as a result, loss of mutual trust of participants in legal communication. Therefore, some researchers are tempted to claim not only the "death of the subject", which is not a new trend, since such views were expressed by F. Nietzsche and M. Foucault[8], but also the end of legal science, which, as they think, will be unnecessary when the notorious "neural networks" will supersede an autonomous will of individuals requiring theoretical and philosophical comprehension.

In this context, the editorial board see the main mission of the journal "Theoretical and Applied Jurisprudence" as stimulation of productive academic discussions in every possible way, despite a false alarmism that predicts soon exhaustion of legal knowledge. The board firmly intends to resist attempts of dragging political slogans under the shelter of "pure science" and replacing the research agenda with ideological one. We are guided by the principle of objectivity, formulated by M. Weber, who stated: "A journal cannot be an arena of "objections", replies and rebuttals; but in its pages no one will be protected ... from being subjected to sharpest factual scientific criticism. Whoever cannot bear this or who takes the viewpoint that he does not wish to work in the service of scientific knowledge with persons whose other ideal are different from his own,, is free not to participate"[9].

That is why our journal will always keep away of those who seek to discredit the idea of human rights and freedoms enshrined in the Constitution of the Russian Federation[10], and use the concepts of academic rights, freedom of opinion, thought and speech solely for the purpose of asserting their own ideological positions. "Theoretical and Applied Jurisprudence" journal will keeps a keen eye on urgent issues of the general theory of law and specific legal disciplines that will clarify the laws of development of the system of justice in terms of digitalization. We believe that the contents of this issue presented hereby indisputably prove this.

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[8] See: F. Nietzsche. Merry Science // F. Nietzsche. Complete Works in 13 volumes. Moscow: Publishing House "Cultural Revolution", 2014. V. 3. P. 440; Foucault M. Words and Things. Archeology of the Humanities. St. Petersburg: Publishing House "A-cad", 1994. P. 404; Renault A. The Era of the Individual. On the History of Subjectivity. St. Petersburg: Publishing House "Vladimir Dal", 2002.

[9] Weber M. "Objectivity" of socio-political and socio-scientific knowledge/M. Weber // Selected works: Protestant Ethics and the Spirit of Capitalism. Ed. 2nd, rev. and add. Moscow: Publishing House "Russian Political Encyclopedia", 2006. P. 279.

[10] See: Constitution of the Russian Federation. Adopted by popular vote on 12.12.1993 with amendments approved during the popular vote on 01.01.2020 // SZ RF. 2020. No.11. Article 1416.