Review of the interdepartmental scientific and practical seminar Faculty of Law, NWIP RANEPA on the topic "Legal Science and Law Enforcement Practice: interaction problems "(May 27, 2021)

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On May 27, 2021, a round table on the topic 'Legal Science and Law Enforcement Practice: Problems of Interaction' was held at the Faculty of Law of the Northwestern Institute of Management of the RANEPA, organized by the Departments of civil and labor law and constitutional and administrative law. The seminar was attended by lecturers of the Department of law: Professor Lyudmila Borisovna Eskina, Associate professors Vladimir Leonovich Wolfson, Valentina Petrovna Yesenova, Elvira Tagirovna Mayboroda, Marina Leonidovna Makarevich, Nikolai Petrovich Sedykh, Larisa Vladimirovna Schwartz, Senior lecturer Gulnara Nikolaevna Kopyatina and others. The event was co-moderated by the head of the Department of civil and Labor Law Nikolai Viktorovich Razuvaev and the head of the Department of constitutional and administrative law Anna Konstantinovna Solovyova.

During the discussion, issues related to the digitalization of the judicial system, problems of constitutional justice at the regional level, as well as acts of higher judicial instances as sources of law were discussed. Opening the work of the section, N. V. Razuvaev focused on the ideological, methodological and applied functions of legal science and on the place of scientific knowledge in the structure of legal activity.

According to N. V. Razuvaev, all types of practical activities of lawyers are based on the results of scientific developments and implement trends that characterize fundamental scientific knowledge. Legal science, therefore, has a direct applied effect, and the results obtained by it are reflected in law-making, law enforcement, and especially in judicial practice. This influence can be traced in all legal systems and throughout their entire history, as evidenced by the examples of developed and perfect legal systems of the past.

For example, in Roman law, the activities of lawyers, the consultations they gave (responsa) were used as a formal basis for making court decisions. Legal science had an equally important practical significance in the Middle Ages (for example, in Muslim law), as well as in the legal systems of the early Modern period. To make sure of this, it is enough to recall that the provisions from the works of Blackstone, G. Grotius and a number of other most authoritative scientists were used to restore gaps in legal regulation in cases where there were no specific norms. Moreover, legal historians have come to the conclusion that the oldest monuments of legislative activity (such as the Laws of Hammurabi or the Laws of the XII tables) were not just created by lawyers whose names have not been preserved on the pages of history, but also became the results of a scientific generalization of the variety of specific factual situations that developed in everyday social life. Thus, according to the researcher of Ancient Eastern law V. A. Yakobson: 'The laws of Hammurabi are the result of a thorough generalization and systematization of written and unwritten norms of law at different times'[172].

However, the considered influence of legal science on law-making and law enforcement becomes especially noticeable in crisis situations that characterize the change of paradigms of scientific knowledge with the transition to new stages of socio-cultural evolution. As the American philosopher Thomas Kuhn showed in his classic work 'The Structure of Scientific Revolutions', the evolution of scientific knowledge is characterized by periods of stable development of the so-called 'normal science', followed by abrupt transitions to new paradigms that represent models of setting research tasks and ways of solving them that are generally accepted in science at one or another stage of development[173].

The current stage of the development of legal science (first of all, the theory of law) indicates the transition to a new paradigm of cognition. If in the 1990s the rejection of the Marxist-Leninist ideology did not lead to a qualitative growth of scientific knowledge, then in recent decades, through the efforts of such theorists as A.V. Polyakov, A.V. Stovba,

[172] History of the Ancient East. The origin of the oldest class societies and the first centers of slave-owning civilization. Partone. Mesopotamia. Moscow: Nauka, 1983. p. 372.
[173] See: Kuhn T. The structure of scientific revolutions. Moscow: Progress, 1977.

I. L. Chestnov, etc., a post-classical theory of law was formed, corresponding to modern trends in the development of legal science and largely stimulating them[174].Taking into account the circumstances considered, N. V. Razuvaev concluded that the legal doctrine is still one of the main sources of legal education and has far from exhausted its significance as a source of law in the formal legal sense.

In the speech of V. P. Esenova, such aspects of digitalization of the courts' activities as automation of internal processes, in particular, the distribution of cases between judges, audio and video recording of court sessions, as well as automation of sending court notifications to participants in the process, making court decisions using special software were considered.

Thus, it was noted that the automation of the distribution of cases between judges, taking into account their specialization and workload, is not new in itself. This system, for example, was introduced in arbitration courts back in 2009.Now the task of using it is set before the courts of general jurisdiction, but this does not take into account the specifics of the judicial system, namely the fact that the judicial composition of the district court often has only one judge of a certain specialization, considering, for example, cases concerning land issues and real-estate. Accordingly, all cases of this specialization fall to this judge, which leads to a huge increase in the burden on such a judge, his burnout and often dismissal. Therefore, the use of automation tools for the distribution of cases without taking into account the specifics of a particular judicial composition of a particular district court will not contribute to achieving the goals for which, in fact, this system is being introduced.

The use of technical methods of recording sessions in the form of audio and video recordings in courts is also not new and has also been introduced in the system of arbitration courts for a long time. In the courts of general jurisdiction, the technical possibility of using these technologies itself depends to a greater extent on financing. Rather, the legal question is whether, when conducting audio and video recordings of meetings, it is necessary to completely abandon the paper registration of procedural documents, in particular the minutes of sessions.

The participants of the discussion came to the conclusion that, at least at the present time, a complete rejection of the written procedural document flow is not desirable, since the technologies do not yet have sufficient reliability and widespread use[175]. On the one hand, the use of blockchain technology in the preparation of court decisions and acts in electronic form would allow them to be more reliably protected from forgery, but this technology itself remains quite expensive. On the other hand, which is typical especially for courts of general jurisdiction, where the main participants in the process are citizens, not all participants use the technologies, have the appropriate hardware.

The exclusion of paper document management may put some citizens who do not have access to technologies in a vulnerable position compared to those who have it. This problem can be considered on the basis of the problem of proper notification of the participant of the proceedings about a particular procedural action. When using electronic communication methods, it is not always possible to guarantee and control the delivery and receipt of the relevant notification by the party. For example, a person may not have a personal account on the public services portal, an email address, or may have a phone that does not support the acceptance of documents of various file formats, etc.

In addition, it is difficult to verify whether the document was actually sent in electronic form to the recipient's address by the court. A citizen will not be able to conduct such a check on his own, he will obviously need at least the help of a lawyer, for which a citizen may not have the means. Also, the paper registration of the proceedings is an effective means of proving procedural and other violations committed during the trial, as part of the appeal of relevant decisions and acts in higher instances.

Another example of automation is the introduction of technologies for the preparation of judicial acts within the framework of public proceedings using software tools. Currently, an experiment is being conducted in several magistrates' precincts in the Belgorod Region, within the framework of which the preparation of court orders based on received documents on a number of indisputable cases will be automated and judges will only approve the relevant documents. The participants of the discussion noted that at the stage of writ proceedings, such automation does not create a significant threat of violation of the debtors ' subjective rights, since they still have the opportunity to submit objections to the issued order and then the trial will move to the stage of the claim proceedings. However, there is a problem with the use of self-learning neural networks, which consists in the fact that a person cannot control the decision-making process by a machine, but sees only the result.

At the same time, there have already been cases when the program came to erroneous conclusions, in particular, cutting off the number of potential employees according to discriminatory criteria, for example, gender, formed by the machine on the basis of the database obtained for previous periods in which women worked less and, accordingly, the number of their resumes in the total data volume was less, from which the machine concluded that hiring women is less desirable[176]. Thus, taking into account the peculiarities of the algorithms, the complete exclusion of a person from the decision-making process is hardly desirable at the present time. Especially considering that the decision is made by judges not only on formal grounds, but also on the basis of internal conviction, taking into account aspects of the legal culture of a particular community.

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174 See: Chestnov I. L. Postclassical Theory of Law, Moscow: Alef-Press Publishing House, 2012.

175 The problem of forms of judicial communication in the context of the general laws of their historical dynamics was discussed on the pages of the journal 'Theoretical and Applied Law'. See: Razuvaev N. V. The history of the Roman civil procedure as a universal model of the evolution of the law and order of the Ancient world // Theoretical and Applied Law. 2020. No.3 (5). pp. 46–62.

176 See: [Electronic resource]. URL: https://www.reuters.com/article/us-amazon-com-jobs-automation-insight/amazon-scraps-secret ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK08G (date of access: 02.06.2021).

In accordance with Article 2 of the Civil Procedure Code of the Russian Federation, civil proceedings should contribute to strengthening law and order, preventing offenses, forming a respectful attitude to the law and the court, and peaceful settlement of disputes. Automation of decision-making will also reduce the role of participation of attorneys and lawyers in the processes, which may negatively affect the realization of the right of citizens for defense in court. Automated legal proceedings are not capable of achieving such goals.

G. N. Kopyatina considered the problems of the existence of institutions of constitutional justice in the subjects of the Russian Federation, the issues of participation of state authorities of the subject of the Russian Federation in the appointment of judges of the constitutional court of the subject of the Russian Federation. Despite the fact that the actual activity of the constitutional (statutory) courts of the subjects of the Russian Federation is terminated from 01.01.2023 (taking into account the amendments made to the Federal Constitutional Law of December 31, 1996 No.1–FKZ 'On the Judicial System of the Russian Federation'), this issue is important in terms of determining compliance with the balance and the principle of separation of powers, ensuring legality at the regional level, in particular, the areas stipulated by the Constitution of the Russian Federation that are subject to independent regulation at the level of the subjects of the Russian Federation.

In the decision of the Constitutional Court of the Russian Federation No.2–P[177] of January 18, 1996, it was noted that the subjects of the Federation in the relations between the legislative and executive authorities are obliged to adhere to the same model of relations between these branches of government as at the federal level. At the same time, the Act of the Constitutional Court of the Russian Federation of December 27, 2005, No.491–O[178] stipulates that the authorities of the subject independently determine the scope of competence of the constitutional (statutory) court of the subject, the assignment or termination of the powers of judges of the constitutional (statutory) court of the subject, while maintaining the balance of the branches of power, as well as guarantees of independence and independence of judges of the constitutional (statutory) court of the subject of the Russian Federation.

The constitutions of the republics most often use a scheme of relations in which judges of constitutional courts are appointed by the legislative body on the proposal of the head of the subject, that is, following the example of the procedure for appointing judges of the Constitutional Court of the Russian Federation. From the analysis of twelve laws on the constitutional courts of the republics, ten such republics belong to group of republics using such scheme of relations (Bashkortostan, Dagestan, Ingushetia, Kabardino-Balkaria, Karachay-Cherkessia, Komi, Mari El, Sakha (Yakutia), North Ossetia — Alania, Chechnya). At the same time, it should be taken into account that the activities of the constitutional courts of Buryatia, Tyva and Karelia have been removeed[179].

Unlike most republics in the Republic of Tatarstan, judges of the Constitutional Court of the Republic of Tatarstan are elected in equal numbers by the President of the Republic of Tatarstan and the Chairman of the State Council of the Republic of Tatarstan[180]. It should also be noted that not all republics have the authority to participate in the nomination of candidates for the positions of judges of the constitutional courts, representatives from the legislative and judicial authorities, which does not fully take into account the representation of the interests of various branches of government.

An example of such a balance is demonstrated by the Republic of Adygea, where proposals for the position of judges of the Constitutional Court of the Republic of Adygea are made by representatives from the legislative, executive and judicial authorities. Judges of the Constitutional Court of the Republic of Adygea are appointed by the State Council — Khase of the Republic of Adygea from among the candidates recommended by the qualification board of Judges of the Republic of Adygea, on the proposal of:

1) deputies, deputy associations of the State Council — Khase;

2) the head of the Republic of Adygea;

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177 In the case about the verification of constitutionality of certain provisions of the Charter (Basic Law) of Altai Krai: ruling of constitutional Court of 18 January 1996, № 2–P // Collection of the legislation of the Russian Federation. 1996. No.4. St. 409.

178 At the request of the St. Petersburg City Court on checking the constitutionality of certain provisions of the Federal Constitutional Law "On the Judicial System of the Russian Federation", the Law of the Russian Federation "On the Status of Judges in the Russian Federation" and the Federal Law "On bodies of the Judicial Community in the Russian Federation": definition of the Constitutional Court of the Russian Federation No.491–O of December 27, 2005// Bulletin of the Constitutional Court of the Russian Federation. № 2. 2006.

179 On the abolition of the Constitutional Court of the Republic of Buryatia: Law of the Republic of Buryatia No.2938–V of May 9, 2018 [Electronic resource]. URL: https://docs.cntd.ru/document/543736525 (date of appeal: 08.06.2021); On the abolition of the Constitutional Court of the Republic of Tyva and the invalidation of Certain Legislative Acts of the Republic of Tyva: Constitutional Law of the Republic of Tyva No.30–KZRT dated January 11, 2019 [Electronic resource]. URL: https://docs.cntd.ru/document/550333661 (date of access: 08.06.2021); On the abolition of the Constitutional Court of the Republic of Karelia and the invalidation of certain Legislative acts (provisions of legislative acts) of the Republic of Karelia: the Law of the Republic of Karelia of February 25, 2021 No.2547–SAM [Electronic resource]. URL: https://docs.cntd.ru/document/465426873 (date of access: 08.06.2021).

180 On the Constitutional Court of the Republic of Tatarstan: Law of the Republic of Tatarstan No.1708–XII of December 22, 1992 (as amended). The Law of the Republic of Tatarstan No.22–ZRT of May 7, 2020) [Electronic resource].URL: https://docs.cntd.ru/document/917000213 (date of notification: 08.06.2021).

3) the Supreme Court of the Republic of Adygea[181].

Thus, not all republics provide for the powers to participate in the nomination of candidates for the positions of judges of the constitutional courts of representatives from the legislative and judicial authorities, which does not fully take into account the representation of the interests of various branches of government in the region.

The amendments of 2020[182], introduced in Part 3 of Article 118 of the Constitution of the Russian Federation, established the list of courts that make up the judicial system of the Russian Federation. This list includes the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, federal courts of general jurisdiction, arbitration courts of the subjects of the Russian Federation. Thus, the constitutional (statutory) courts of the subjects of the Russian Federation were not included in this list, which affected the amendment of the law on the judicial system of the Russian Federation.

A number of researchers express the idea that the subjects of the Federation lose the opportunity to implement the principle of separation of powers at the regional level, which may lead to a lack of control over the legislative and judicial authorities[183].The participants of the discussion agreed that the activity of the constitutional (statutory) courts of the subjects of the Russian Federation is important for establishing the balance of authorities in the region, but today this system has shown its inefficiency, since out of 85 subjects of the Russian Federation, only fifteen have constitutional (statutory) courts that consider a small number of cases per year.

Based on the fact that the constitutional courts that are part of the system of separation of powers are not created in all the republics of the Russian Federation, it can be concluded that the principles of separation of powers and unity of state power are not implemented sufficiently at the regional level. It is possible that in the future the legislation will return to the creation of constitutional (statutory) courts of the subjects of the Russian Federation. At the same time, the creation of judicial bodies of the subjects of the Russian Federation will be associated with the development of federalism in Russia and the improvement of the functioning of the regional constitutional (statutory) justice.

V. L. Wolfson suggested discussing the problems of sources of law on the example of explanations and decisions of the sessions of the higher courts. As the main thesis for discussion, the question was raised that the explanations and decisions of the higher courts in the Russian Federation have actually acquired the status of sources of law, for which there are no regulatory grounds. At the same time, this situation is not combined with the idea of separation of powers. This problem does not exist by itself, but is the result of the general problem of the unsystematic existence of sources of law in the Russian legal system.

Of course, the acts of the highest judicial instances play an important role in the formation of a stable judicial practice, but at the same time they should not replace rule-making and should not become a source of law.

Perhaps, the processes of development of the domestic legal order in the early 1920s became a distant historical prerequisite for giving judicial decisions the meaning of formally legal sources of law, when, in the conditions of extremely low quality of the level of local justice, the highest judicial instances began to assume a decisive role in law enforcement. In pre-revolutionary Russia, the supervisory judicial instance performed an exclusively managerial function in terms of monitoring compliance with the procedure of legal proceedings and could take measures within a specific case in the form of specifying the required procedure for applying the law or pointing out an omission, that is, the higher court could not tell the lower court exactly how to resolve a particular case.

After the revolution of 1917, the situation changed, which led to the formation of an approach in which, first of all, the compliance of court decisions with a specific norm was put at the forefront. This approach led to the fact that there was a fairly wide range of persons who could demand a review of the case, and the case could be subject to review even without the desire of the participants in the process themselves. Thus, the internal conviction of the judge was not decisive during making decisions, the main thing was to ensure that the decision corresponded to the norm.

So, knowing the historical prerequisites for the emergence of such an approach and taking into account modern realities, it is necessary to objectively say that in fact the acts of the highest judicial instances serve as sources of law, there are no formal grounds for which today. Such an imbalance entails a violation of the principle of separation of powers, without which a legal democratic state cannot exist.

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181 On the Constitutional Court of the Republic of Adygea: Law of the Republic of Adygea No.11 of June 17, 1996 (as amended). The Law of the Republic of Adygea dated July 6, 2020 No.349) [Electronic resource]. URL: https://docs.cntd.ru/document/446648833 (date of access: 08.06.2021).

182 On improving the regulation of certain issues of the organization and functioning of public power: the Law of the Russian Federation on the amendment to the Constitution of the Russian Federation No.1–FKZ of March 14, 2020// Collection of Legislation of the Russian Federation. 2020. No.11. P. 14–16.

183 See: Evloev I. M. Abolition of constitutional (statutory) courts of the subjects of the Russian Federation: a pattern or a mistake? // Actual problems of Russian law. 2020. Vol. 15. No.10 (119). pp. 141–150; Dvoimenny I. A. Regional Constitutional Justice: Status and Prospects // Region: Systems, Economy, Management. 2021. No.1 (52). pp. 188–194.