Opening Remarks by the Editor-in-Chief

PRESENT AND FUTURE OF NORMATIVE REGULATION

The topics of the articles published in the next issue of the "Theoretical and Applied Law" will surely attract the attention of readers who are already familiar with both authors and problems discussed in the publications. In fact, many of these publications were prepared based on the proceedings of the Third Baskin Scientific Conference held in April this year and devoted to the difficulties and prospects of the development of law and order in the conditions of digitalization of society and the state. As it is easy to notice, this has recently been one of the most discussed topics causing heated debates among specialists, both in separate aspects and in general.

At the same time, while some scientists consider digital transformation of law (primarily subjective rights) to be a long-term trend in the evolution of the rule of law, capable of radically transforming its nature and essence, making legal regulation more dynamic, flexible and effective, others tend to be more critical of new trends. At best, digital skeptics see in digitalization only a number of particular changes that are unable to fundamentally change the law as a regulator of human behavior. The set of models of the law subject to legal regulation is generally limited to common types of relations that invariably retain their significance in the conditions of digital and any other transformations[1]. In its utmost expression, such skepticism leads to the denial of any positive impact digitalization has on the rule of law.

As a result, all kinds of dangers, risks and challenges of the process under consideration are exaggerated; sometimes they exist only in the minds of the authors of the publications. The position of P.D. Konstantinov, who blames digital law for a certain "coldness of digital sound", seems very spectacular in this aspect. According to the author, "The coldness of digital communication in any case cannot replace the warmth of speech. Is the erasure of geographical boundaries sufficient if the parties are physically unable to touch each other, to look into each other's eyes?"[2] For all the poetry of the above quote, it can hardly be taken seriously, especially given the fact that in the information society many interactions, both material and procedural, if not entirely lie in virtual space, at least are mediated by it, which does not prevent the subjects of legal communication from achieving legally significant results[3].

Undoubtedly, in the conditions of virtualization and the anonymous nature of the communicants interacting verbally, the problem of mutual trust and the possibility of its loss is particularly acute, so it is difficult to disagree with P.D. Konstantinov, but it is unlikely that the activation of audiovisual and tactile contacts of communicants will contribute to its final solution. Moreover, the experience of the past, long ago and not so much, shows that the opportunity to look into the eyes of the interlocutor or touch him has not saved anyone from deception, fraud and other actions that nip trust in the bud. That is why even in the pre-digital socio-cultural worlds, including the Gutenberg Galaxy[4], attempts to solve this problem did not stop, forming more and more perfect mechanisms for protecting the stability of the rule of law and guaranteeing subjective rights. It seems that the digitalization of society will contribute to the further development of these mechanisms, coming from the loss of confidence to its strengthening — *per aspera ad astra*!

It seems that the truth in the dispute, as usual, lies somewhere in the middle (or "somewhere near", as the character who became the spiritual progenitor of today's digitalization enthusiasts would say). Obviously, digital reality is not a panacea for all ills. Along with new prospects for the development of the rule of law, it is fraught with threats to it, the most important of which, as already noted, is the crisis of mutual trust of participants in legal communication and, as a consequence, the delegitimization of the law[5]. At the same time, the digitalization of the rule of law is an objective process that affects the basic legal categories and, first of all, the regulatory mechanisms themselves forming the rule of law. In the context of the post-classical understanding of law developed by a number of modern theorists, the rule of law is a construction formed by sign-symbolic means[6], moreover, means in this case are understood as traditional signs of the language that give external expression to legal means, namely the norms of law and subjective rights, and the means themselves. Thus, within the

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1 Roman jurists, who wrote about typical relations as a subject of legal regulation, argued, referring to the authority of the ancient Greek philosopher Theophrastus, that law regulates the relations reproduced repeatedly, and not in isolated cases (Digests of Justinian. Ed. by L.L. Kofanov. Moscow: Statute, 2002. p. 109). Meanwhile, the changes caused by digitalization are not yet so deeply rooted in society as to actively transform the subject of legal regulation.

2 Konstantinov P.D. Digitalization as a Modern Threat to Law. Bulletin of Civil Procedure.2019. No. 2.p. 154.

3 See: Arkhipov V.V. Virtual property: Systemic Legal Problems in the Context of the Development of the Computer Games Industry. Law.2014. No. 9. pp. 69–90; Same author. Computer Games, the Magic Circle and the Semantic Limits of Law. International Journal of Cultural Studies.2019. No. 1 (34).pp. 73–87; Saveliev A.I. The Legal Nature of Objects Purchased for Real Money in Multiplayer Games. Bulletin of Civil Law.2014. No. 1.pp. 127–150, etc.

4 See: McLuhan M. Gutenberg Galaxy. The Formation of a Printing Man. Moscow: Academic Project; Mir Foundation, 2005.

5 The section of the Faculty of Law, held on June 26, 2021 as part of the Nevsky Forum, was devoted to the consideration of this complicated problem. We plan to publish a digest of the speeches of the participants of the section in the next issue of the journal.

6 See: Chestnov I.L. Postclassical Theory of Law. St. Petersburg: Alef-Press, 2012. pp. 160.

framework of the constructivist approach, the behavior of individuals in the field of law and order is regulated not only by norms, but also by subjective rights and obligations, acting as the initial, basic level of the legal system as a whole.

That is why it would be an unforgivable mistake to reduce regulation only to its normative component. As V.F. Popandopulo has noted, normative (regulative) regulation should be studied in the broader context of self-regulation of society, one of the manifestations of which is legal regulation. According to the scholar, "unlike normative regulation, self-regulation is a ***direct (internal) means of the formation and dynamics of law***, its true source. Self-regulation is the basis of the existing law and order in society. Normative regulation defines the boundaries of freedom of self-regulation and determines the regulatory order in society"[7].

From all above, several essential conclusions follow. Firstly, the subjective rights and obligations of the participants in these relations correlate with the norms regulating the relations with necessity, established and typical for a given society at the appropriate stage of its development. Moreover, the ability of norms to generate these subjective rights and obligations directly determines the effectiveness of normative regulation. In historical retrospect, it is self-regulation through the establishment and subsequent typification of subjective rights and obligations that precedes normative regulation, an example of which is not only law, but also all other sign systems — from language to etiquette. In all these cases, regulation at the initial stages of evolution was carried out ad hoc, in relation to specific actual situations and individual interactions of the participants.

Secondly, in modern conditions, this kind of regulation is applied in cases where normative regulation shows its insufficiency due to the fundamental novelty, as well as the multiplicity or diversity of the relations to be regulated. It is precisely the diversity and active dynamics that characterize the relations developing in the sphere of civil turnover, which make any attempts at their detailed normative regulation initially meaningless. That is why the traditional method of civil law regulation is dispositivity, fixed, in particular, in Article 1 of the Civil Code of the Russian Federation[8], the meaning of which is that the norms set an external framework for the freedom of participants in regulated relations (as V.F. Popondopulo rightly puts it).

At the same time, there is another case when individual regulation (self-regulation) precedes the normative one, determining the prospects for its development. Such a situation occurs when the emerging relations, due to their fundamental novelty, have not received proper regulatory consolidation, but their social significance is such that the law cannot ignore these relations. In this case, it is subjective rights and obligations that pave the way for normalization, anticipating its nature in a number of aspects. We are talking, in particular, about the forms of external consolidation specific to subjective rights of one kind or another. We have already noted earlier that in the conditions of digitalization of the rule of law, traditional forms of written texts are becoming insufficient. With the advent of digital rights, the nature of which still needs to be studied, words and letters have been replaced by numbers, computer programs and algorithms. It seems that in the future, the legislator will still face the need to take into account this circumstance, which will leave a noticeable imprint on normative regulation.

Digital transformation of law, apparently, will give impetus to the development of not only the current legislation, as well as judicial and law enforcement practice, but also legal science. For many years, a narrow specialization has been considered bon ton for a scholar, which, on the one hand, is explained by an understandable desire to protect the law from the invasion of incompetent amateurs which requires high professionalism and qualifications. On the other hand, however, this leads to closure in a close disciplinary framework and, as a consequence, to stagnation in research thought. As a result, jurisprudence remains aloof from the main path of development of most sciences and humanities, the necessary condition for the existence of which is inter-disciplinarity, the epistemological significance of it was emphasized by M.M. Bakhtin[9] in the middle of the past century. It seems that the establishment of a postclassical legal understanding will stimulate interdisciplinary research both in the theory of law and in separate legal disciplines. In particular, the widest possible introduction of mathematical and linguo-semiotic methods into law, leading to the creation of new trends at the intersection of the sciences, can lead to very interesting results.

It would not be too bold to say that further digitalization of law and the formation of appropriate regulatory methods will lead to the convergence of scientific disciplines. The advent of the digital age leads to the flourishing of inter-disciplinarity in the science of law. The journal "Theoretical and Applied Law" is ready to contribute (of course, not to the detriment of the quality of published materials) to interdisciplinary research of current legal problems. Hopefully, such studies will shed light on the main trends and patterns of the development of the rule of law, which determine the nature of its normative regulation.

Editor-in-Chief
Nikolai Razuvaev

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[7] Popondopulo V.F. Human Activity: Legal Forms of Implementation and Public Organization. Moscow: Prospect, 2021. p. 80.

[8] See: Civil Code of the Russian Federation. Part I. In ed. Federal Law No. 33-FZ of 09.03.2021. SZ RF. 1994. No. 32. St. 3301; 2021. No. 11. St. 1698.

[9] See: Bakhtin M.M. The Problem of the Text. Collected works. In 7 vols. 5. Works of the 1940s-1960s. Moscow: Russian Dictionaries, 1997. p. 306.