Opening Remarks by the Editor-in-Chief

LAW AS RESPONSE TO CHALLENGES OF NEW REALITY

Both in public and academic life the ending year was characterized by the pandemic of a new coronavirus infection, which, according to statistics, has become one of the longest and most massive in the last hundred years. We have to admit that humanity was not prepared for this challenge that had a dramatic impact on all social processes, including in the sphere of legal regulation. Since introduction of the first restrictive measures in March 2020, lawyers have witnessed a number of sharp conflicts related to imperfect, sometimes internally inconsistent, law enforcement practice due to gaps in the current legislation.

The conflicts that became especially acute include demand to wear masks in public places, mandatory vaccination and the resulting ban on being in cinemas, shopping centers, stadiums and other places of mass events without QR codes. These and many other legal restrictions, duties and prohibitions, usually imposed by by-laws, actions and decisions of regional executive bodies in constituent entities of the Russian Federation, not backed up by unified federal norms, gave rise to a sharp response from the public, the study of which may present a great interest.

The main stumbling block in political, legal, bioethical and even philosophical discussions is how effective are some public measures aimed at changing and (or) forming key paradigms of human behavior; if we consider the issue more widely — how acceptable it is to deprive man, free and rational being, of the right to make their own choice in emergency situations, of course, if consequences of such choice (even erroneous, made under great shortage of information and objective inability to adequately assess all factors influencing the situation) do not affect rights, freedoms and legitimate interests of other members of society. In other words, does a person have the right to freely dispose of their life, or is this right subject to restrictions imposed, if necessary, by the state for the sake of general public interests?[1]

Leaving aside opinions of those who make use of the situation and openly declare a supposedly inevitable "collapse of liberal globalism"[2], there are several answers to the question stated above. Moreover, the most obvious answer is that the pandemic as an objective emergency situation, to a certain extent affects interests of every and all members of the human community, with no exception, as well as interests of the community in general. And since society is not a sum of individuals, but rather an integrity whose interests obviously exceed interests of individual members, the state acting on behalf of this integrity must counteract any threats to public interests, including by restricting individual rights and freedoms, if necessary.

The lawyers seem to have widely accepted this point of view, not only specialists in constitutional or administrative law or other public law branches, but also civilists, who keep complaining about an allegedly existing "gap" in the national legal system between private and public law; that means, in fact, absence of a legally adopted opportunity to transform the method of private- law regulation by public law norms[3].

Of course, one cannot but agree with claims about lack of proper legal regulation and uncertainty of the current legislation on emergency situations, which have been clearly manifested during the ongoing pandemic[4]. E. V. Vlasenko notes that "the pandemic served as an indicator that showed lack of sufficient legal mobility for adaptation of the norms to emergency situations and adopted legal acts. As a consequence, regulations are hasty developed to match the needs of specific private law institutions that can solve immediate problems ... but cannot present full-fledged regulation measures in case of circumstances comparable to COVID-19."[5] Thus, majority of researchers who in one way or another touch upon the issues under consideration, believe that the task of the state is to establish and legislate a normative order that would be able to exhaustively regulate relations arising out of the pandemic, and to ensure regulation of such situations in the future.

It seems that this "normative optimism", despite an underlying distinct psychological opinion, can hardly be justified for several reasons. Indeed, the 2019-2021 pandemic had a number of precursors that, at first glance, made it possible to predict its onset and prepare for it in advance. In particular, we are talking about closely related strains of MERS-CoV and SARS-CoV, which, like SARS-CoV-2, belong to the subfamily of ortho-coronaviruses (*Orthocoronaviridae*), which have

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1 See: Tarusina N. N. The Right to Manage One's Life: Updating the Socio-Political Context in terms of COVID-19 Pandemic // Social and Humanitarian Knowledge. 2021. Volume 7. No.2. P.166-181.

2 See, for instance: The Versatility of Modern Pandemic Reality: collective monograph / ed. E.P. Vylkova. St. Petersburg: Publishing and Printing Association Institute of Higher Education, 2021. P.59 et seq.

3 See, in particular: Platonov V. M., Gabov A. V., Belov V. A. et al. COVID-19 and Contract Law // Law. 2020. No.4. P.23.

4 According to media reports, a number of foreign companies (such as Lyft, Jeffreys, etc.) have already extended restrictive measures for their employees, including working from home, for the whole of 2022, which, in turn, indicates that emergency situation will continue into the next year. See: Independent Investment Group ATON.RU [Electronic resource]. URL: https://www.aton.ru/research/daily (date of access: 01.12.2021).

5 Vlasenko E. V. The Role of the COVID-19 Pandemic in Development of Legal Categories // Law and Economics. 2021. No.2. P.14.

already provoked several outbreaks of mass diseases in the Middle East and Southeast Asia at the end of 2000s and early 2010s[6].

Nevertheless, we believe that it is not possible to predict, let alone normatively regulate the further course of events. To prove this, it is enough to recall the Spanish flu pandemic, which left dead about 50 million people worldwide. Although that strain is a variation of the well-known H1N1 serotype in charge of at least five pandemics in the last century alone, any new outbreak has been unexpected and catastrophic due to subsequent total disappearance of the strain that caused the infection. Likewise, if not more paradoxical and unpredictable, in the current coronavirus situation we can assume only one thing to a certain degree — this virus will totally disappear from the human population, which will make the current restrictive measures obviously meaningless in the future. We emphasize once again that despite a mass nature and multiple repetition of the relations in question, they will always remain too "atypical" to become a full-fledged subject of regulatory regulation.

We agree with V.A. Belov who rightly claimed that the pandemic situation does not create favorable conditions for the origin of any general norms. According to the researcher, "Legal significance of the pandemic should be assessed each time individually, in relation to certain actual circumstances. But, in any case, reference only to the pandemic is not relevant and has no meaning"[7]. In other words, in emergency, main tools of regulation are not norms, but, first of all, subjective rights and obligations of the parties to the evolving relations. It seems that in its evolutionary development any social, and even more so, legal institution as a normative phenomena inevitably goes through a stage when there are no significant and generally binding rules of conduct, and this role is played by subjective rights and obligations ***ad hoc*** relevant for participants in the relations.

This idea is based on general theoretical assumptions of social and legal nominalism (representing an ideological alternative to realism, advocated by supporters of the normative approach), the idea behind it is that society is a sum of its members interconnected by diverse communicative interactions. In terms of this approach, mutual legal claims of the subjects recognized by all other participants in legal communication seem a necessary prerequisite for legal communication. Thus, we are talking about mutual recognition that each person is a holder of inalienable and inalienable rights; where semantic and value essence is basic natural rights and freedoms of man, which, by their nature, are subject to universal recognition by communicants[8].

Hence, any actions taken in the interests of society in general, and especially actions aimed at restricting natural freedom, which is expressed by legal personality capacity, i.e. ability to possess rights and obligations[9], must be based on the common will of all members of the society and be recognized by each. In other words, each participant in legal communication must voluntarily assume a legal obligation to give up some of their personal freedom in the interests of other persons. If this requirement is not fulfilled, and when the will of some part of society (even the majority) is not transformed into a general will, legitimacy of restrictions will be doubted, as proved by a latent rejection of our fellow citizens against measures taken to combat the coronavirus, although expediency and effectiveness of such measures is beyond doubt.

It seems that only in case of well-established mechanisms for reaching agreement on vital issues (which, of course, includes overcoming emergency situations) we can talk about presence of real common will of the whole society. Development and external expression of this will is possible due to the fact that society (considered at a high level of scientific abstraction) is none the less real participant in social and legal communication than individual members. Therefore, individuals' consent that makes the background of any act of public will, will contribute to acceptance of additional duties and restrictions provoked by the current extraordinary situation.

There various ways and means to coordinate private interests and individual volitional acts, leading to creation of the will of society as a ***sui generis*** participant in legal communication. I hope that authors of the publications in this issue of "Theoretical and Applied Jurisprudence", explore problems relevant in scientific and practical terms and make their own contribution to solution of this problem.

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6 See: Shchelkanov M.Yu., Popova A.Yu. et al. History of Studies and Modern Classification of Coronaviruses (Nidovirales: Coronaviridae) // Infection and Immunity. 2020. V. 10. No.2. P.221-246.

7 Platonov V. M., Gabov A.V., Belov V.A. et al. Decree. op. P.26.

8 See: Polyakov A.V. Recognition of Law and Principle of Formal Equality // News of Higher Educational Institutions. Jurisprudence. 2015. No.6 (323). P.57-77.

9 See: Razuvaev N.V. Legal Personality a Legal Expression of Freedom // Scientific Papers of the North-West Institute of Management of the Russian Academy of National Economy and Public Administration. 2015. V. 6. No.3 (20). P.6-14.