Subjective Rights in the Modern Legal Paradigm (According to the Results of the Inter-University Scientific-Practical Conference "Baskin's readings")

Irina K. Shmarko
Editor of the Publishing and Printing Center, North-West Institute of Management of the Russian Academy of National Economy and Public Administration under the President of the Russian Federation, Lawyer, St. Petersburg, Russian Federation; shmairi@gmail.com

ABSTRACT
Currently, public relations, government and legal regulation are undergoing transformation. Used legal institutions and instruments require rethinking and filling with new meanings. One of the legal categories that require in-depth theoretical analysis in order to adequately modern law enforcement conditions is the institution of subjective rights. The First Interuniversity Scientific-Practical Conference "Baskin's readings" was devoted to the analysis of this problem, according to the impressions of which this essay was written.
Keywords: subjective rights, legal paradigm, methods of scientific research, Baskin's readings, source of law, social claims

Humanity is developing by leaps and bounds: the Neolithic agricultural revolution, the emergence of statehood, the industrial revolution of the XVII century, and the technological breakthrough of the XX century. At the same time, the period of knowledge accumulation between transitions of social development to a new level is reducing more and more. At the present stage, on the one hand, the society has already stepped to a new level of social development at the beginning of the XXI century, into the so-called digital society, on the other hand, perhaps, we are already standing on the verge of moving to the next stage of development, the robotization age, when most human functions will be carried out through technology. The new stage of social development requires a new understanding and assessment of a person's place, features of human interaction, the position of new subjects of relations, for example, robots, artificial intelligence, cloned creatures, etc.

The legal reality of social existence cannot remain unchanged as well. It should be recognized that we still use the tools and institutions of the Ancient World, i. e. Roman law, which was conceptualized and gained new life in the Middle Ages, in the framework of the legal regulation of public relations.

Obviously, the use of old tools in the new reality does not always meet modern public interests. It became essential in these conditions to bring a scientific and philosophical understanding of the categorical framework, methods of studying and regulating social relations, filling the terminology with new meaning or adapting legal instruments and institutions to modern realities to a new level of significance.

In conditions of urbanization, the concentration of a large number of people within small territories, the complexity of interstate relations, which is associated with the globalization of international processes; changes in the role of interstate organizations and institutions, cross-cultural interaction, freedom of movement and the exchange of information provided by technological breakthrough, the issue of individual rights, the content and regulation of subjective rights and obligations, the determination of legal identity, the concept of the holder of subjective rights, and the scope of state intervention in the regulation of subjective rights of the citizens and other public relations participants issues is especially significant.

It is the issue of subjective rights that the First Interuniversity Scientific-Practical Conference "Baskin's Readings", organized by the North-West Institute of Management of the Russian Presidential Academy of National Economy and Public Administration, held in St. Petersburg on April 25, 2019, was devoted to. The Conference brought together prominent legal scholars, in particular, in the field of the theory of government and law, such as A. A. Starovoytov, I. L. Chestnov, N. V. Razuvaev, S. B. Glushachenko, I. B. Lomakina, K. K. Lebedev, and many others. The interest in the event and the issues raised for discussion speaks to the fact that there is an understanding of the topic importance and the need for its discussion in the scientific community.

All conference participants indicated such problems of the science of law as the need to update the conceptual framework of the science, changing the methodological tools in the context of changing social relations paradigm from subject-object one to a paradigm of human activity balance.

Professor I. L. Chestnov noted that post-classical, modern thinking is characterized not by absolute abstract concepts, but by context-dependence. Different cultures and civilizations localizing the subject

provide a different understanding of the world. In such conditions, it is impossible to talk about the universal character of the laws of logic. The exercise of human rights will be influenced by many factors: political, cultural, demographic, mental, and others. Thus, statutory regulation cannot be universal, cannot predict and consider all possible variants of human behaviour but rather can use a limited set of standard models.

In such conditions, the development of institutions that would allow the most objective assessment of the significance and consequences of a particular act of a particular subject is required. Such an approach inevitably leads to the conclusion that regulatory public institutions, such as the executive and the judiciary branches, should be ready to non-standard decisions within the framework of the general principles of law. Statutory instruments cannot be understood as instructions and be literally interpreted under such conditions, which will apparently contravene to the current level of the society development and people's needs and will lead to an increase in public and social tension.

The new paradigm sets the issue of the conformity of the tradition of giving primary importance to legal rules that affect the rights and obligations of a particular subject in specific behavioural acts to modern conditions. Professor N. V. Razuvaev, when discussing the problem of the correlation of legal rules and subjective rights, drew attention to the fact that it is subjective rights as a semiotic means of constructing legal reality in the course of active communication of subjects that construct legal reality; the evolution of legal reality comes down to the fact that rules are formed out of subjective rights based on their typification. When considering the concept of subjective rights and obligations, special attention should also be paid to reinterpreting of the content of the rights of public entities and their correlation with subjective rights. The latter problem becomes especially relevant when analyzing the concept of statehood, studying the degree of state intervention in the life of citizens and public associations, the degree of regulation of economic relations and subjective rights.

Understanding the modern legal paradigm and updating of the conceptual framework require a new approach to the scientific methods of cognition. Professor M. O. Akishin drew attention to the problems of the methodology of scientific knowledge. He quite rightly noted that the method of scientific cognition, where it was believed that the subject of cognition was excluded from the process and did not affect the result of the study, failed to stand the test of time. It is already evident today not only within the humanities that a scholar in one way or another influences the result of the study and cannot remain absolutely impartial in respect of the phenomenon being studied.

Understanding of such a methodological consequence once again confirms the fact that the paradigm of social relations has changed, in particular, the absence of a certain unified truth, which humanity aimed to search. We can say that there are laws of the "theory of relativity" in social relations. The application of medieval legal structures at the present stage of social development does not meet our needs. The legal tools used require reinterpretation, given that the complication of social relations can shift the paradigm of the rule of law towards a social state, within which the issue of the relationship between subjective rights and obligations and public interests can be considered in a completely different way.

The questions of determining which rights are subjective, whether their list has changed, and how we can determine new types of subjective rights and their sources arise within the changed social relations.

G. Yu. Dorsky suggested to define subjective rights through their reflection in obligations, e. g., the right to life and death (the right to control one's life) correlates or does not correlate with the duty of a doctor to euthanasia. This approach allows to more accurately determine whether subjective law is declarative, whether it exists in the framework of social relations, and whether it can be exercised by the subject. The given example gives rise to the following issue: is our right to life absolute and are we completely free to exercise it?

Consequently, the fixing of subjective right in a specific rule does not always reflect the real existence of such a right and the objective conditions for its implementation in public relations. Professor M. G. Smirnova drew attention to the problem of "stillborn" rules, which are enshrined in statutory instruments but are not real social legal claims of citizens. It is the legal claims of citizens within the framework of the integrative theory of law that constitute one of the elements of legal awareness, can be identified through such sources of law as judgements of the Constitutional Court, court decisions, an individual contract as a non-typical source of law, and as a result get enshrined in objective forms. What are these claims of citizens? Have they changed over the past one hundred or two hundred years?

How free are people in the exercise of their rights in modern society? Where is the limit of public control and restrictions interference with personal life? These issues are becoming extremely essential. According to M. L. Nokhrina, the definition of the subjective right of personal freedom as the freedom

of behaviour of a person in a non-property sphere unrelated to the impact on material and property benefits becomes extremely important. These are such rights as the ability to play music, jog in the mornings, swim in the river, etc. As soon as we recall that any of these rights is conditional upon the security of their exercise, it becomes clear that the recognition of the existence of such subjective rights will allow to control the degree of their restriction permitted by society. For example, to what extent can the everyone's right to swim in the lake be limited by providing preferences to certain individuals to use the shore thus restricting access to water? How limited can our right of movement be, for example, the right to enter state institutions and organizations? Can our right to determine our appearance be limited? Let us recall situations when students at schools are forbidden to dye their hair or wear jewelry. Where is the point when prohibitions become permissible and does it exist in modern society? Is there a public request, the claim to establish such restrictions? For instance, with regard to personal right to choose a profession, they are more and more often talking about the need for career guidance before entering a higher educational establishment: will it become mandatory? Calls are increasingly being made to establish mandatory medical examinations, including medical examinations of potential spouses, as conditions for the exercise of individual rights as part of the personal right to health. Are those voicing these claims crossing the boundaries of public interest interference in the sphere of personal subjective rights?

All the above issues are of paramount importance for each of us as the path of public and social development of our civilization depends on the answers to them. The time is ripe for the reinterpretation of the legal paradigm, institutions, and tools. Ignoring this problem will lead social relations farther from the possibility of a conscious choice of a reasonable transformation of the social structure in compliance with the needs of the modern community.