

Opening Remarks by the Editor-In-Chief

The long-awaited conference “Second Baskin Readings. Changes in Law: Innovation and Continuity”, which brought together a number of outstanding Russian and foreign legal experts, has become the event to which this issue of the journal “Theoretical and Applied Law” is dedicated. The relevance and practical significance of the topic of the conference – changes in law – are beyond dispute. In fact, law is a dynamic phenomenon that continuously changes with the development of society, its culture, political and economic structures, and therefore legal transformations not only accompany the existence of law, but also act as one of the main subjects of its scientific knowledge. At the same time, taking into account the breadth of the concept under consideration, changes in law are studied at different levels, which are of interest both for the theory, history and philosophy of law, and for branch legal disciplines.

In practical terms, this problem is directly related to legislative activity, its purpose, main directions and conditions of effectiveness. The strategy of law-making is determined not only by current factors, which, of course, are also present, exerting their own positive or negative, but always irremediable, impact on the adopted normative legal acts. However, much more important are the global trends in the development of law, which determine its dynamics in the long term. These trends are of a general social nature, including, among others, cultural, economic, political and other prerequisites for legal changes.

Their effect can be clearly seen in the era of radical changes, such as the time of the Great Reforms of the 1860s or the market transformations of the end of the last century. It is during such periods that the issues of reforming legislation, including the adoption of new codified acts or amendments to existing ones, are particularly acute. For Russian lawyers, the reform of various branches of legislation, apparently, is already becoming a familiar and even common practice. In that way, since 1994, when Part one of the current Civil Code was adopted, Russian civilists have witnessed several stages of civil law reform.

The first stage covers the middle and second half of the 1990s, when the foundations of modern civil law regulation were laid, meeting the needs of a market economy and a law-based civil society. The second stage was initiated by the adoption of Presidential Decree No. 1108 of 18.07.2008 “On Improving the Civil Code of the Russian Federation”¹. In this decree, as well as in the concept of civil law development approved by the decision of the presidential Council of the Russian Federation on codification and enhancement of civil legislation, dated 07.01.2009, new directions were outlined, including the reflection of the experience of judicial practice, the convergence with the legal practice of the European Union, the results of modernization of civil law in European countries, provision of stability of legislation and a number of other².

Finally, at the third stage of the reform, which has been ongoing since 2017, the creation of general regulatory prerequisites for the digital transformation of subjective civil rights becomes particularly relevant. Thus, changes in civil legislation in our country are rapidly reproducing the dynamics and trends that characterize foreign legal systems in the long-term retrospective, namely, the gradual development from the institutions of industrial society to post-industrial law and from it to modern digital law. In these circumstances, multi-stage reform of the system of justice, designed to bridge the gap between domestic and foreign legal systems, developed over decades of existence of “socialistic” civil law in our country, seems inevitable.

On the contrary, the constitutional legislation of the last decades was characterized by stability and the absence of large-scale transformations, which was designed to ensure the stability of the foundations of the constitutional system of the Russian Federation as a legal and democratic state.

It is no wonder that the constitutional reform of 2020 has caused active discussions among scholars who are trying to assess in the first approximation both its scope and the possible consequences of making changes to the Basic Law. The spread of doctrinal positions is noteworthy. For example, some experts object to the use of the term “constitutional reform” in relation to these amendments. Among other things, this position is reflected in official documents, namely in the Message of the President of the Russian Federation to the Federal Assembly dated 15.01.2020, which emphasizes that the potential

¹ Corpus of Legislation of the Russian Federation. 2008. No. 29. P. I. Article 3482

² See: Concept of Development of Civil legislation in the Russian Federation. Moscow: Statut, 2009.

of the current constitution “is far from exhausted, but the fundamental foundations of the constitutional system, human rights and freedoms... will for many more decades remain a solid value base for Russian society»³.

At the same time, the problem of changes in law is not limited to the considered aspects related to the reform of legislation, but is of important theoretical and legal, and even philosophical and legal significance. The regularities of legal evolution in their global, world-historical manifestations are of particular interest. It is known that this issue does not have an unambiguous solution, the complexity of its study is aggravated by the diversity of legal systems, their cultural and historical specifics. Nevertheless, it seems a promising task to consider the mechanisms, driving forces and main stages of the evolution of system of justice on concrete factual material. In particular, we are talking about the relationship between traditions and innovations in law, whether evolutionary transformations entail a radical renewal of the legal system or, with all possible changes, its institutions maintain stability and continuity due to the peculiarities of the legal mentality of society or people.

The articles published on the pages of the journal “Theoretical and Applied Law” are characterized by increased attention to the designated range of problems. The topics of publications offered to the reader are multidimensional and diverse. Thus, O. V. Stovba and Y. V. Mytsa comprehensively consider the category of guilt, and the attempt to reveal the meaning of this phenomenon through the prism of the ideas of M. Heidegger, W. Maihofer and other european authors. The article reflects O. V. Stovba’s long-term reflections and search for the creation of a phenomenological and existential law understanding unique for post-Soviet jurisprudence, which is a promising direction of a legal idea. The work of A. N. Medushevskiy, a long-time friend of the Faculty of Law of the NWIM, is devoted to the discussion of the legitimizing effect of the constitutional reform in Russia. We believe that the author’s conclusions can serve as a conceptual basis for understanding not only of constitutional amendments, but also of the problem of legal changes as such.

The central place in this issue of the journal is occupied by the research of civilists. Professor V. F. Ponomopulo proposed a deep and original interpretation of the regulatory treatment of citizens’ activity, taking into account the specifics of the legal capacity of individuals as the main subjects of private law. M. V. Tregubov, in his article devoted to the reclamation of property from unlawful possession, focuses on such a new institution for Russian civil legislation as *astreinte*, the admissibility of which to vindication claims causes active discussions in science and judicial practice. In addition, the author considers the vindication of intangible assets, which is of indisputable importance in the light of the above-mentioned trend towards digitalization of property turnover and digital transformation of civil rights. In the articles by L. V. Shvarts and V. A. Mayboroda, practical problems of legal regulation and application of the current legislation are considered in the broad context of modernization of the legal system of the Russian Federation at the present stage of development.

A tribute to the memory of the outstanding scholar and philosopher Yuri Y. Baskin was published by R. T. Mardaliev, prepared based on the materials of the thesis that the author defended at the time under the scientific supervision of Yuri Baskin. In addition, a detailed review of the Second Baskin Readings, prepared by I. K. Shmarko, is also available in this issue of the journal. In conclusion, I would like to express confidence that the discussion of legal changes initiated within the event will continue in the future, since the scale, as well as the scientific and practical significance of this topic deserve the closest attention of researchers.

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³ See: [Electronic resource]. URL: <http://kremlin.ru/events/president/news/62582> (date of reference: 14.12.2020).