Overview of the online conference "Second Baskin Readings. Changes in Law: Innovation and Continuity" (Saint Petersburg, October 14, 2020)

Conference "Second Baskin Readings. Changes in Law: Innovation and Continuity" was held on October 14, 2020 on the Zoom platform by the North-West Institute of Management of the RANEPA with the organizational assistance of the journal "Theoretical and Applied Law" and the Anatoly F. Koni Foundation for the Support and Development of the Historical Heritage. The conference was attended by prominent Russian and foreign legal scholars.

The scientific discussion at the conference was organized within three panels: "Theoretical problems of legal changes" (moderator — Andrey V. Polyakov), "The Constitution of the Russian Federation: the Dialectic of Stability and Development" (moderator — Sergey L. Sergevnin) and "Civil Law reform at the present stage" (moderator — Evgeny B. Khokhlov). We present to the readers an overview of the speakers' presentation at the conference, during which topical issues related to the need for a theoretical, doctrinal rethinking of the changes taking place in the law and the reflection of these changes in the adopted normative acts, including the adoption of the so-called law on laws[1], were brought up.

1. Theoretical problems of legal changes

Andrey V. Polyakov[2]. In order to talk about the changes in law, it is necessary to understand what law is. At the same time, it is clear that depending on what is considered law, will also depend the possibility of defining the concept and criteria of what can be considered changes in law. Thus, looking at law from a narrow perspective, when it is identified with legislation, will narrow down the possible answers to questions about what constitutes its change. On the other hand, if the law is understood more broadly, then we are expanding the horizons of our ideas about this problem.

Personally, I am interested in the degree of changes in law or the variability of law in this area. The fact that the law is changeable is quite obvious. And sometimes, if we take, for example, the aspect of legislation, it changes, quite radically. But does this mean that these changes occur solely for rational reasons and that everything related to changes in law can be rationally calculated? Or, on the contrary, development in law, change, is a purely spontaneous development that is not subject to rational control and is carried out by adapting something to something, for example, the social mentality to some external social conditions. These are all problems that require their own understanding and response.

In my opinion, it is obvious that if there is variability in law, if the law changes, then there must be something unchangeable, permanent, fundamental in it, that is, some basis that can serve as a foundation for these changes, explain these changes and, perhaps, even in some sense predict these changes or even formulate some normative, appropriate changes in the law, that is, determine the criteria that the law must meet, if we consider its normative, even legislative aspect.

In this context, of course, I imagine the immensity of this task, because for centuries, if not millennia, this question has been tried to be solved within various scientific and non-scientific philosophical approaches. And up to the present time, the conflict, in a broad sense, of approaches, for example, positivism, jus naturalism, historical and other schools, including modern theories, persists in relation to this issue. From these positions, one can compare, for example, the ideas of scientists of the St. Petersburg scientific school, in particular Leon Petrazycki, and the positions of other schools that are of no less interest, for example, the ideas of the Moscow school of Pavel Ivanovich Novgorodtsev. It seems to me that the ideas that were formulated within these approaches in general have not lost their significance today. Moreover, since L. Petrazycki was no stranger to a very peculiar understanding of natural law and even considered himself one of the founders of its revival, his ideas still have their own scientific potential within the theory of the revival of natural law.

[1] A video recording of the conference is also available at the following links: https://www.youtube.com/watch?v=IXTAfeOgBSo; https://www.youtube.com/watch?v=XA4bs0DGJf8; https://www.youtube.com/watch?v=DqUECOduKgw.

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In the very understanding of L. Petrazycki of law and the changes that occur in it, one can notice some ambiguity, since, as he said, law develops spontaneously, that this is some kind of unconscious ingenious adaptation of the people's mentality to the ideals of good and the public welfare. And, according to Petrazycki, it turns out that sooner or later the development of human society will come to a state in which the ideal of the common good in the form of common love will prevail. In the politics of law, he put forward this ideal of love as the crown of social development. At the same time, it is interesting that Petrazycki did not associate the ideal of love with law, that is, for him love meant the triumph of love, but not of law and morality, that is, love overcomes law and morality, which become unnecessary if the ideal of love triumphs. At the same time, the very concept of love was quite mysterious in Petrazycki's works: by it he understood the highest beauty of the soul, and it is obvious that this ideal of love by Petrazycki is rather an aesthetic perception of this phenomenon than an ethics of duty.

Leon Petrazycki, as it seems to me, had been an opponent of the Kantian approach for all his adult life. And if we consider this ideal of love, put forward by him, then, strictly speaking, as an ideal, it, in my opinion, does not have the necessary features, it does not correspond to a certain main regulatory rule, on the basis of which one can build relationships with other people. If we try to rethink the ideal of love in this context, then its well-known formulation "thou shalt love thy neighbour as thyself!" is a kind of rule based on the recognition of the communicative equality of subjects. In this sense, it is not sexual love, which requires the exclusivity of some object chosen as the object of love, but love, which requires equal treatment of all, and this is inevitably based on the recognition of all subjects as objects of such love. From this point of view, love is an equal treatment of all, giving due to all neighbors, by which we can understand, of course, different subjects, but in general, it is undoubtedly the recognition of everyone as a person, which, accordingly, on the basis of the premise of communicative equality, means the recognition of their legal personality.

By the way, this kind of recognition of the other as an object of due respect and, in this sense, love means not only imperative emotions in relation to such subjects, but also attributive ones. This is what we can consider law under Petrazycki. From my point of view, it is this recognition of another subject that allows us to consider such other subjects as rightholders, personable entities, and, accordingly, to conclude that the reciprocity of recognition is the basis of this kind of relationship. If one interprets Petrazycki's approach in this way, one can find its similarity to the ideas of P. I. Novgorodtsev, who formulated the ideal of an autonomous moral person with natural rights, freedom and equality with other subjects, which essentially coincides with the idea of recognizing the legal personality of another, and one can say that his ideas also implement the principle of mutual recognition. In this context, we see the convergence of the ideas of Petrazycki and Novgorodtsev. The same principle of mutual recognition as the basis for understanding the law can be found in the students of Petrazycki, for example, in Pitirim Sorokin or John Finnis.

Thus, in my opinion, the principle of mutual recognition can and should be considered as the basis of law as such and the existence of the legal in law.

Vladislav V. Denisenko[3]. If we consider criteria for such phenomena as changes in law and what those changes should be in present, then, in my opinion, the so-called theory of citizenship in the context of foreign philosophy of law, to which authors such as Will Kymlicka and others related the issues of public communication, is of special interest. In this aspect, we should recall the ideas of the libertarian theory of law, which stated that the development of law is an increase or even the mathematics of freedom. A couple of years ago, a Canadian scientist Bjarne Melkevik criticized in his works the ideas of Giorgio Agamben about the potential threat of a legal hell. Meanwhile, we are now seeing the emergence of a certain threat to citizenship and the ideas of the so-called open society. Thus, the modern reality to some extent embodied the ideas and futuristic forecasts in the spirit of Karl Schmidt, when the rights of citizens are not canceled, but suspended for, in general, an indefinite time.

It can be noted that, as a lot of classic authors — Rawls, Habermas, etc. — wrote, if the modernization of society and the legal system during the late modernism or post-modernism followed the path of development of civic consciousness and greater freedom, than at the moment, which is accompanied by elements of emergency and biopolitics[4], in the sense that the question of recognition of rights is a

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[4] We are talking about the concept of biopolitics, which was developed in the works of M. Foucault and J. Agamben (see: *Foucault M.* The Will to Truth: Beyond Knowledge, Power, and Sexuality [Volya k istine: po tu storonu znaniya. vlasti i seksualnosti]. Moscow : Kastal, 1996 (in rus); Agamben, G. Homo Sacer: Sovereign Power and Bare Life. Stanford : Stanford University Press, 1995). — ed. note

kind of fiction, we can talk about the emergence of such phenomena as “democracy without the people”. Under these conditions, the idea of a fortress state, classical sovereignty, and the formation of a certain biopolitical threat to the theory of citizenship arises again, as Kissinger wrote.

Thus, the society is currently at a crossroad, we can go along the path of so-called “paper equality”, where rights and freedoms have a formal consolidation, but do not receive a real embodiment in life, or the path of implementing the concept of so-called random or aleatory democracy using digital technologies. For example, in France, back in 2016, the law on the digital republic was adopted, which reflects the concept of continuous democracy.

Yuri Yu. Vetyutnev[5]. Discussion of the problems and issues of changing the law, changes in the law is not possible without taking into account the ongoing socio-cultural changes.

To begin with, I would like to give an example. Just now, a democratic plot is unfolding in my hometown, Volgograd. The plot is quite grotesque and prolonged, it is connected with the local referendum on changing the time zone. Some time ago, a referendum was held, that is, a purely democratic procedure as part of direct democracy. People were given the opportunity to decide which time zone to live in: Moscow time or local time. The majority of the population voted to live according to local time, as it is more appropriate to the geographical coordinates of our city and the physiological needs of the population. The decision came into force, the city switched to local time. Almost immediately, after the decision was made, the citizens’ dissatisfaction with the decision began, which was expressed, interestingly, not only by those who voted against this decision, but also by many of those who voted for it. There was a campaign for a year or two, and this year a new vote was held on the question of returning to Moscow time, for which the majority voted. Simultaneously, a campaign was initiated to return to local time even before the vote took place and the decision was made to return to Moscow time under the second procedure. That is, the city, without waiting for the transition back to Moscow time, based on the decision taken on the results of the second vote, while in the local time mode, fights for the vote to be announced on the transition back to local time.

This example does not discredit the idea of democracy in general and direct democracy in particular, but, in my opinion, shows certain limitations that exist for the possibility of implementing procedural forms of democracy, namely, it demonstrates that the democratic form itself in no way guarantees the legitimation of the decision taken. For democracy to truly be this effective tool of legitimation, something else is needed. Democracy is not magic, it is not a ritual that is sufficient for the decision to be valid, it is not enough just to perform a certain set of actions, to come to the polling station, to cast a ballot, in order to achieve the desired legal and socio-cultural result. No, it is necessary to add some more value component to this action, for example, so that people who expressed their will through voting appreciated their own will and were ready to cultivate this will for a long time. If popular opinion changes so rapidly that the relevant legal acts reflecting earlier decisions do not even have time to enter into legal force, then it turns out that democracy, at least, does not perform its legitimizing functions, that is, it performs its will-forming function, its formative function, but does not perform the function of recognition, because, as we see, the decision is made, but is not recognized, even by those who made it, because those who made the decision have no value of their own will.

Thus, it is necessary to investigate the value component of legal changes, which, in my opinion, is determined by two main parameters that should be taken into account in order to control this aspect of any changes. The first is the deficiency aspect. We can find it as a hypothesis in the works of the world’s leading expert on the problem of values, Indu Hart, who conducts world-wide sociological research on values. He also comes to the conclusion that, as a general rule, values are what is missing. Not every social phenomenon can acquire a value character, but only that which has objective utility and significance, and, importantly, that, which is perceived as limited in its scope, that, which causes the effect of need, that is, deficiency. The second aspect necessary for the formation of value, — is reflection, that is, a certain level of theoretical generalization, and in this sense, of course, any value is the product of interaction of a sufficiently broad social basis with the obligatory participation of the intellectual elite, which can establish, reflect, describe and conceptualize this or that objectively existing need, that is, give an adequate verbal designation that could then be used in official documents and become the subject of broad public awareness and recognition. In this context, I believe that today, at least, the Russian legal system is facing certain difficulties of a kind of value jam. The value basis, which is assumed to be present in the Russian legal system and is settled at the level of legislation, is a fairly broad

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value basis, represented by a large set of different benefits, values enshrined in the constitution, generally recognized in international documents, starting with freedom, justice and equality, the three basic values offered by the libertarian concept of law, and supplemented by other values, such as social solidarity, which received exactly this formulation in the new version of the constitution, and also the values of order, unity, and peace.

So, this value basis is to some extent eroded, emasculated, because, in fact, the element of deficiency is lost, although it is clear that society as a whole is never satisfied fully by the level of freedom that it has, and the level of justice that it has achieved under this or that social structure, but the fact is that to realize, to settle the deficit of a particular good and, accordingly, its value weight can only be in the presence of such a value, instrumental or secondary, as openness, that is, any changes involve some comparative aspect. Cognition comes through comparison. In order for us to come to a conclusion about what needs to be changed and what needs to be saved, we need to compare the different options. These may be variants presented in different national cultures, or they may be variants presented in different models and concepts within the same national culture. In my opinion, it is this value that is in an objective deficit today, namely, the openness of the worldview and the openness of communication, namely in the legal environment, in the legal sphere.

On the one hand, the functional closeness of the legal community, that is, a professional legal corporation, is completely inevitable and appropriate, because this secrecy keeps the entropy from various unnecessary outside influences, from extra-legal effects and allows to keep the same dogma, a legal doctrine that is fairly conservative and characterizes legal science and legal practice as more slowly varying in comparison with the surrounding reality. On the other hand, the same closeness also renders a disservice to the legal system and the legal community, because there is a moment of value stagnation, and because of this, it was very difficult, for example, for jurists to understand the current situation from a value point of view. If we look at what has been happening with the legal system today, over the past year, it looks like a value revolution. With a cursory glance at what is happening, you can see that a single value, and not the most important value, which has never been evaluated as a leading legal value — health — actually crushes all other values.

For example, in our state, at a certain period of time, a good half of all constitutional human rights and freedoms were restricted, and every human right enshrined in the constitution or any other text protects a certain value or group of values. So, it turned out that health is at the official level, at the level of rights in state policy is more important than all these values, more important than freedom, justice, equality. But the professional legal community has not formed or expressed its opinion on this issue. We see that neither philosophy nor the theory of law has yet analyzed all these events associated with pandemic restrictions, with a clear change in the value configuration of the legal system. This insensitivity to rapid social changes, I believe, is a value defect of the legal system and gives this legal system a certain insecurity. It turns out that with visible conservatism, it is not so difficult to break the existing legal guarantees, because the value core at the level of philosophical concepts is one thing, and the value instruments at the level of specific legal decisions is completely different, and these instruments are not provided in any way doctrinally. They have a purely situational business character, which leads to a divergence, a split between two value models, official and generally accepted at the level of philosophical thinking.

From my point of view, greater openness is needed both at the procedural and communicative levels, for example, as part of mass, public discussions on the legality of the measures taken from a value point of view, as well as on the formal, legal correctness of these restrictions. It seems to me that the leading task of the scientific community in this process, including our theoretical and legal community, is precisely a communicative task, that is, the creation of communication platforms and the discussion of emerging problems not in the mode of emergency and assault, some one-time actions, but in a permanent mode. Unfortunately, until such an infrastructure is created, we do not have the ability to quickly respond to current events, as, perhaps, it would be worth doing. Modern technological instruments can help solve this problem. If we manage to set such a task and solve the problem of operational theoretical and philosophical support of current events on the legal agenda, this in itself will be a positive change for our situation and for the common cause as well.

Andrey N. Medushevskiy[6]. The question of changes in law is one of the fundamental topics in the philosophy of law and the theory of constitutionalism. As Georg Jellinek wrote, the history of law is the history of revolutions in law. He separated such concepts as change in law and transformation of law

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for a reason. The latter was understood as a change in the content of legal norms in a changing social context. This division of concepts, in my opinion, is important in order to correlate legal changes and actually social, political changes and to be able to talk about the dynamics in the development of law. In this aspect, I believe, the balance of legal and political factors is important to ensure the legitimacy of changes. Constitutional amendments are one of the tools for maintaining legitimacy.

So I would like to raise a number of questions. The first is the theory of legitimacy in the context of constitutionalism. I understand legitimacy as the consent of the governed, based on the belief that this power is just. It is clear that the basis of legitimacy in different epochs may be completely different ideas that define this belief. But the theory of legitimacy must relate these ideas to law and constitutionalism. The classical theory of legitimacy, if we turn to Max Weber, did not directly raise these questions, because for him legitimacy was the subject of the sociology of religion, and he mainly wrote about the motivation of social behavior, referring to the traditional rational charismatic legitimacy, and paid less attention to the legal aspects. It is clear that in modern situation, when all states are law-bound, or at least declare that they are, that is, law is the fundamental principle of the legitimacy of power, the question of the relationship between legitimacy and constitutionalism, legitimacy and legality, arises in a completely different way. Therefore, it is important to supplement the theory of legitimacy with a number of new aspects, such as positive and negative legitimacy in relation to the adoption of values, substantive and instrumental legitimacy, legal and extra-legal legitimacy, stable and unstable legitimacy.

In general, we can say that legitimacy acts as a dynamic process of reproducing the public's trust in the government, based on a particular perception of constitutional values, principles and norms. And this legitimacy is largely determined by the interaction of public expectations and all the actors of constitutional reform. From this point of view, the question of what is the contribution of the constitutional amendments of 2020 as an element of the justification of the legitimacy of the government becomes relevant. To answer this question, it is necessary to consider such aspects as the content and structure of the legitimacy of the Russian government in the context of the amendments. In this direction, in my opinion, it is necessary to distinguish three areas of analysis.

First, the revision of the ratio of positive and negative legitimacy in the categories of space and time and the meaning of existence, which means a change in the balance of constitutional and international law; the inclusion in the constitution of historical legitimacy, the parameters of identity as the basis of constitutional development and what is called the nationalization of elites. Secondly, it is a revision of the ratio of substantive and instrumental legitimacy, in this regard, the interpretation of the so-called social contract is important, the transition from its liberal interpretation to an interpretation based on the ideology of solidarism, and the use of a neoconservative type of legitimization of power, as well as a number of instrumental parameters, guarantees of certain social obligations of the state, the justification of social paternalism and the formation of institutions that can give a certain mobilization effect. Third, it is a revision of the ratio of the levels of legitimacy in a federal state, namely, national, regional and local, that is, the institution of self-government, which are united by the concept of a system of public power. Within this new concept, which is gaining constitutional consolidation, there is an idea of the functional unity of all levels and branches of government, both horizontally and vertically, resembling the neo-imperial structures of statehood. In general, of course, we are talking about a significant fundamental change in the legitimizing foundations of Russian political power.

The next question from the standpoint of the theory of legitimacy, which is related to the amendments, is the ratio of legitimate goals and means of transformation of public power. In this respect, it is important that between them there is a certain contradiction: as a legitimate purposes increasing the flexibility of power and the expansion of parliamentarism that was really settled by a number of amendments in relation to the status of legislative, executive and judicial authorities was declared, but it is obvious that all three branches of government became more limited in relation to presidential power, which is their focus, it executes the function of a mediator and even a controller for them. In general, we can say that it is a further revision of the model of a mixed form of government. The key point in this issue is the formal endowment of the head of state with the functions of leading the government. In fact, we are moving from the dualistic form that was declared initially to the concept of a quasi-presidential regime with a very centralized nature of the powers of the head of state.

In this regard, it is important to consider another issue concerning the balance of the constitutional and metaconstitutional foundations of the legitimacy of power. Under the constitutional foundation, we understand the legally settled powers of the head of state, under the metaconstitutional — those that rely on the role of the president as a symbolic figure in the public space. It can be stated that the amendments significantly altered the balance of constitutional and metaconstitutional authority, because

the amendments reinforced a new symbolic status of the President as the guarantor of civil peace and accord in the country, which implies a series of consequences, namely, the extension of immunity of a head of state, the change of the ratio between legal and personalist legitimacy in favor of the latter, and thus there are prospects for an unlimited term of office of the incumbent leader. All this, of course, indicates a significant change in the structure of the legitimacy of power that has existed up to now.

The next aspect of this problem that I would like to address is related to what can be defined as the institutional or procedural legitimacy of power. Currently, there is an active dispute between the two polar points of view. The developers of the amendments and their supporters say that these amendments are essentially technical, they have not changed anything, since they do not affect the fundamental chapters of the constitution, namely the provisions of the 1st, 2nd and 9th chapters. Their opponents, on the contrary, say that this is a constitutional coup, because the fundamental values, principles and norms of the constitution have been changed. I believe that, paradoxically, they both are correct. The developers are teetering on the edge of constitutionality: while formally remaining faithful to the fundamental principles, they practically introduce a new legitimizing concept of power. This is achieved through the use of the "amendment-repeal" tool, when the continuity of constitutionalism is simultaneously broken by the adoption of an amendment law, but immediately restored by the law itself. In fact, the law itself contains a mechanism for legitimizing amendments: an appeal to the Constitutional Court, which gets the right to evaluate these amendments on the basis of the law on amendments itself, that is, there is such a kind of autolegitimation of power.

In this situation, there are three key points of contention. Firstly, linking the adoption of the law on amendments with the President's appeal to the Constitutional Court, secondly, the extremely broad interpretation of the issue by the Constitutional Court itself, which granted legislators huge delegated powers to change the articles of the Constitution, and thirdly, it is the creation of the institution of all-Russian vote, which, strictly speaking, has nothing to do with the amendments, but rather acts as an additional institution of political legitimization of power. This problem of tension over constitutional norms was resolved at the political level, namely by the unanimous support of the law on amendments and the method of its adoption by all branches of government, the State Duma, the Federation Council, the Constitutional Court, regional legislatures, and ultimately by a plebiscite. It is clear that this whole process of adopting amendments was accompanied by a rather skilful use of political technologies, which proved effective in the conditions of the information monopoly of the government. As a result, the combined legitimacy of the amendments was formed as a synthesis of legal, institutional and socio-political arguments.

If we compare the current legitimizing form of power in its new form with what was previously in the constitution, then, in my opinion, this formula looks contradictory, since it has a dual nature. It combines the constitutional-democratic basis of the political system and at the same time connects it with the non-legal extra-constitutional parameters of legitimation, such as culture, history, nation, solidarity, the special symbolic nature of public power, etc. This achieves an important result: within this formula, the sovereign, that is, the people, democratically delegates its power to the head of state, who thereby performs the function of its permanent and sole representative. This formula requires comprehension from a theoretical point of view and shows how it is possible to change the law by its directional interpretation and the directional inclusion of amendments.

In conclusion, we can raise the question of what positive and negative aspects has this reform brought. If we talk about the positive contribution of the reform, I would define it as overcoming the growing contradiction between the constitutional form and the real content of the political regime, which I interpret as constitutional re-traditionalization, which in principle corresponds to the third phase of the great post-Soviet constitutional cycle. Yes, this is the basis of stability, but this stability is achieved by resuscitating the more traditional content of constitutional provisions. If we talk about the shortcomings or negative aspects of the reform process, I would point out here the internal contradictions of the legitimizing formula, composed of different legitimizing principles, that is, constitutional and meta-constitutional, as well as the unresolved issue of the transfer of power, which was raised during these reforms, but actually postponed to the future, which, of course, lays down possible contradictions and a potential split of elite groups for a certain time.

What is the result of the amendments in terms of legitimation of the Russian political power? I believe that the most accurate definition of the current political regime is the concept of constitutional authoritarianism, some also use the concept of constitutional dictatorship. If we approach this definition from the point of view of legitimacy, then this is a system of government in which, on the basis of the constitution, with the consent of society, confirmed by a plebiscite, and with the unanimous approval of all branches of government, the institution of the head of state, personified in the figure of the current

leader, is established with almost unlimited power. The stability of the legitimizing formula and the power itself now depends mainly on one factor — the success of this leader.

In general, observations on modern Russian constitutional amendments in the context of legitimacy allow us to draw a number of general conclusions. One of them is that the theory of constitutional cycles, which examines the various stages of the relationship between positive law and the legal consciousness of society, works and shows us how, decades after the adoption of the constitution, we largely restore the ideas that existed before its adoption or, in any case, at the initial stage of constitutional reforms. It is important to combine the analysis of constitutional changes and constitutional transformations. We can talk about the correlation between formal legal and political analysis of these processes. And the third thing that is also important for the theory of legal transformations is the understanding of the process of legal construction of a new reality using such a tool as constitutional reform[7].

Iya I. Osvetimskaya[8]. I would like to discuss progress or regress in law. On the one hand, a cursory historical view over the development of law allows us to talk about its movement towards improvement and humanism, because, first, in the history of the development of law, there is a gradual transition from prohibitive to permissive norms, to a corresponding emphasis on permission and subjective rights. Second, the private autonomy is becoming more and more stable. It would seem that the interests of the individual are increasingly taken into account, and the legal equality of the individual is gradually being consolidated. Third, the state's activities are subject to increasing regulation and control by society in the historical perspective, compared to the previous stages of society's development. And fourth, humanistic principles are clearly manifested in the improvement of the legal regulation of public relations.

However, all that has been said does not yet give grounds to state what direction this process is subject to — progress, regress or stagnation. In order to determine this direction, appropriate criteria are needed. I would like to refer to the criteria that Pitirim A. Sorokin once identified. He said that we must first decide by what objective measures we can determine whether the legal state of humanity is approaching or moving away from the ideal state with the course of history. In his work, which he devoted to the study of the legal progress of mankind and the study of the main rules of development of law, P. Sorokin wrote that the criteria of law progress and criteria for its measurements are based on certain postulates, such as the free personal development, humanization of public life. He says that if with the progressive course of history law liberates the individual more and more, enhances freedom and basic rights and also values the personal development, this is the first proof of legal progress of mankind. He also highlights a lot of rules that, in his opinion, confirm the progressive development of law, but it is also interesting what limits the law should reach, what it should come to. P. Sorokin compares law to the role of the animal handler, believing that law will teach people to live in society, and when a superhuman is formed, for which no compulsion will be required in order to build their relationships with other people, the need for law will become irrelevant.

In my opinion, this is too lofty an idea of society, and in the earthly life it is impossible to achieve this state of a superhuman, so the goal of law, rather, is to ensure the freedom of the individual from the arbitrariness of power. And to my surprise, I found that S. S. Alekseev wrote about this quite accurately. In particular, he said that "from the socio-political and humanitarian side, legal progress consists in such a development of law in world history, in which with its help universal, democratic values are established, the principles of legality that resist arbitrariness and lawlessness, and a democratic civil society are formed."[9]. He developed the idea of social progress as a legal progress, believing that without law there is no social development.

At the same time, S. S. Alekseev believed that the progress of law is measured by the natural-legal scale, that is, the implementation of human and civil rights, and the achievement of the social-legal ideal, and on the way to this, the main point of social progress is the rule of law. He distinguished four basic stages of development of law: the rule of force, the fist law, the rule of power, the rule of civil society. Then he concretized these stages, combining the rule of force and the fist law, singling out another stage — the rule of the state between the ruleof power and the rule of civil society, and called the last stage of development the humanistic law. The regulation of social relations at this stage is based on the idea of natural undeniable human rights, they are the criteria for the legality of the legitimacy of

[7] A more detailed presentation of the author's views is contained in the article "2020 Constitutional Reform as the Problem of Legitimacy Theory", published on the pages of this issue.

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[9] *Alekseyev S. S.* Theory of law [Teoriya prava] Moscow : BEK Publishing House, 1995. 320 p. (in rus)

social norms adopted by the state. That is, the humanistic ideals and principles of the rule of law should determine the vector of social development, the organization of society. And here, I believe, the idea of revived natural law plays a dominant role.

Taking into account all these criteria, it is interesting to analyze how the 2020 amendments to the Constitution meet these principles. I will allow myself to refer to the research conducted by A. N. Medushevskiy in his article "Rebirth of the Empire? Russian Constitutional Reform 2020"[10], where he argues that the amendments create a hyper-centralized system, where the public interest prevails over any private interest, all levels of the managerial hierarchy, institutions of power are subordinated to the maintenance of functional unity, embodied and expressed in the institution of the head of state, and this type of political system actualizes a number of stable historical stereotypes of public perception, such as: passivity of society, weakness of parliamentarism, the predominance of the state and paternalistic expectations, the dependence of the judicial system and the sustainability of the commitment to a strong individual standing above the law and institutions. And if we correlate this with the criteria that were highlighted by P. Sorokin and S. S. Alekseev, it seems to me that there are sufficient grounds to assume that such changes in law do not correspond to the ideas of these scholars about progress, but rather indicate the opposite, a certain regression in the development of both law and society.

Nikolay V. Razuvaev[11]. Despite the fact that the problem of legal changes, transformations, and the problem of the evolution of law, apparently, is more interesting for historians than for legal theorists and philosophers of law, given the importance of the issues at hand, we all enter this field, and many of us share common methodological and paradigm positions. Many scholars, although with certain reservations, proceed from the post-classical legal understanding, which, as I. L. Chestnov wrote, is characterized by two basic ideas — the idea of relativism and the idea of the construction of legal phenomena and legal reality.

Within the idea of relativism, any changes and transformations are possible only on the basis of the existance of certain invariable values of invariant concepts that are generally significant for all participants and subjects of legal communication, including for future generations, which make up the semantic core of phenomena and allow us to assess the degree of transformational activity and generally talk about transformation as such. This dialectical approach, which reveals the presence of both changeable and unchangeable in any legal phenomenon, in my opinion, should be fundamental when we talk about changes in law and the dynamics of legal reality.

But as for the constructivist paradigm, the question arises: is it possible to reconcile the construction of legal reality with its historical dynamics and changes? Such attempts are being made, and such approaches exist. I myself have been trying for quite a long time to reconcile these two ideas: the idea of construction and the idea of evolution, the evolutionary dynamics of law. It seems to me that this can be done if we consider the construction of legal reality as a semiotic situation, as the dynamics of sign vehicles of construction. We can speak of signs as vehicles of language, that is, in the specific sense in which this term is used by linguists: vehicles of language, phonemes, morphemes, words, grammatical constructions.

When applying them, we have the problem of transformational grammars, as Noam Chomsky and Steven Pinker wrote, namely, that there are deep-level grammars that are prerequisites for language transformations as such at the surface level. This idea can also be applied to law. There is a very interesting book by Yu. Vedeneev: "Grammar of Law and Order"[12], whose ideas I share. Indeed, the generative grammar of law, which ensures the coherence of legal reality, acts in the diachronic dimension as a transformational grammar that determines the evolution of legal phenomena. At the same time, the dynamics are manifested at the level of specific legal signs, not just linguistic signs.

It is in this perspective that there is a dispute about what is primarily subjective rights or legal norms. It seems to me that the idea of legal evolution is manifested in the gradual acquisition by signs of properties of general significance: originally from the concrete subjective rights and duties attached to particular legal situations and growing out of these legal situations, and only then, on the basis of these

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[10] *Medushevskiy A. N.* Rebirth of the Empire? Russian Constitutional Reform 2020 [Vozrozhdenie Imperii? Rossiiskaya konstitutsionnaya reforma 2020 goda]. [Electronic resource] URL: https://publications.hse.ru/articles/372430522 (date of reference: 03.12.2020).

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[12] See: *Vedeneev Yu. A.* A. Grammar of law and order : monograph [Grammatika pravoporyadka : monografiya]. Moscow : "Prospekt", 2018. (in rus)

subjective rights by their generalizations, to giving them general significance by various means, through doctrine, through judicial decisions. By the way, this can be perfectly demonstrated on historical material. As a result, norms are formed and, accordingly, the modern legal order, which acquires a normative dimension, which allows us to contrast it and at the same time correlate it with such legal orders as Roman private law, where, after all, the normative change was not so significant and was associated more with specific legal situations, subjective rights.

And here arises the question: what allows individuals as holders of these subjective rights to avoid conflict? After all, if we say that there is no general rule on the basis of which we build our behavior, there are only specific subjective rights and people who are their holders, shouldn't the situation of "war of all against all" arise, the very fist law, the rule of force, about which S. S. Alekseev, Rudolf von Ihering, and other authors wrote? However, this view seems simplistic to me. Nevertheless, in every legal order, no matter how early in its evolution, there is this value idea of mutual recognition by subjects of each other as participants in legal communication. And this mutual recognition as the initial prerequisite of legal communication, the construction of legal reality in the process of communicative interaction of individuals allows us to avoid mutual conflict, the war of all against all, the fist law, etc.

But it is natural that a general harmony will never be achieved, which is why there are various mechanisms for resolving contradictions, including judicial ones, on the basis of which specific situations, subjective rights are generalized and ultimately given the property of general significance, fully embodied in the norms that arise at the subsequent stages of the evolution of legal communication.

Roman A. Romashov[13]. My presentation is devoted to the amendments to the Constitution of the Russian Federation. The first thing I would like to draw attention to is the change in the attitude to the constitution itself in the history of Russian political and legal science, and the second, in my opinion, important question is related to the legal technique of constitutional amendments, to what extent these changes are justified and innovative.

So, if we are talking about changes in the attitude to the constitution in the political and legal system of Russia, then we should distinguish three main stages: the attitude to the constitution in pre-constitutional history — in the Russian Empire, then — the period of attitude to the constitution in the conditions of the Soviet state and law, and finally — in the modern period. If we talk about the Russian Empire, the constitution for that period is an act of an extremist nature, the attitude to it, from the point of view of Tsar Alexander III — is an inscription on the project of Loris-Melikov[14]. In the Soviet period, the constitution is the Basic Law, equal in status to the Holy Scripture and in this respect it is unchangeable. If there is a global change in public relations, then the constitution changes. Changes to the text of the Basic Law begin when the Soviet state begins to experience a serious crisis. So, since 1988 serious changes have been, indeed, made to the Constitution. However, if we take the Soviet Constitutions themselves, they can be divided into two main groups: founding constitutions of the 1918 and 1924, which task was to ensure the emergence of state type of the USSR and the RSFSR, and two subsequent constitutions — they were milestones, the task of which was to justify the appropriate stage of building of communism: the Constitution of 1936, the Basic law of victorious socialism, and the Constitution of 1977 — of the Developed socialism. At the same time, within the Soviet constitutionalism and federalism, there was a clear constitutional tradition, when starting in 1924, the union autonomous republics adopted regional constitutions that clearly corresponded to the Constitution of the USSR.

If we talk about the modern Constitution, it, on the one hand, combines a founding nature, since it establishes a new state — the Russian Federation, which has declared itself the legal successor of the Soviet Union, and at the same time it is a milestone constitution, since it defines Russia as the next stage of a sole millennial Russian state, which in amendments to the Constitution is designated as the Russian Federation with a millennial history. In addition, if we talk about constitutional transformations, the real transformation is that regional constitutions are essentially independent, that is, they are not connected in any way with the Constitution of the federation. In particular, the Constitution of Tatarstan was adopted in 1992, almost a year before the adoption of the Federal Constitution, and has no direct connection with the latter.

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[14] "Thank God, this criminal and hasty step towards the Constitution was not taken, and the whole fantastical project was rejected in the Council of Ministers by a very small minority." cited by: Constitutional projects in Russia in XVIII-beginning. XX centuries [Konstitutsionnyye proyekty v Rossii XVIII — nach. XX vekov]. Institute of Russian History of the Russian Academy of Sciences, 2000. P. 70. (in rus) (editorial comment)

The Law on the Procedure for the Adoption and Entry into Force of Amendments to the Constitution of 1998[15] clearly regulates in Article 3 the requirements for proposals for amendments. Together with the draft law on the amendment to the Constitution of the Russian Federation, the justification for the need to adopt this amendment is presented, as well as a list of laws, federal laws, etc., the addition and adoption of which would require the adoption of such an amendment. Thus, the introduction of amendments to the Constitution must be justified at a certain legal and technical level.

If we consider the amendments to the Constitution from the standpoint of legal technology, we can note the following. First, the semantic content of the Constitutional Chapters 1 and 2 can be changed by making amendments to Chapters 3-8. Second, the instruments of amendments initiated by the President, such as the establishment of a working group, the All-Russian vote, are provided for neither in Chapter 9 nor in the law on amendments to the Constitution. In fact, they represent exclusive, non-normative legal and technical means to amend Chapter 9 of the Constitution. That is, the main constitutional transformation that took place during the adoption of amendments is that the constitution can be changed without changing the text of those chapters that cannot be corrected.

In my opinion, the provisions of the first and second chapters are particularly seriously affected by such amendments as changing the structure of the unified multinational people of the Russian Federation. This structure is settled in the preamble and in the article 3, but article 68 assumes that the Russian language is established in the state as the language of the state-constituting people, by which, it seems, the Russian people is understood, despite the fact that the state-constituting people is a multi-ethnic people. This change is very serious, because it brings us back to the structure of federalism that was enshrined in the Russian Constitution of 1918 and 1925, where the Russian Soviet Republic was defined as a union of free nations, a federation of union national republics and did not contain a list of federal subjects.

Another important innovation is, in fact, the abolition of Article 15 of the Constitution, which establishes the priority of international law, since Article 79 determines that international law will enter the legal system of Russia only if it does not contradict the national law enshrined in the Constitution.

An important change is the consolidation in the Constitution of the legal structure of public power, which unites state power and local self-government.

Another significant innovation is the actual establishment of the absolute presidential veto, since the introduction into the legal and technical structure of overcoming the constitutional veto of the Constitutional Court with its final decision implies that if the Constitutional Court supports the point of view of the president, then it is considered impossible to overcome this veto.

A significant change is in giving the constitution a personalized character by enshrining the resetting of all expired and served presidential terms of the current president. This amendment is substantially similar to the amendment made to the Constitution of the Republic of Tajikistan.

In fact, the Russian Federation is indeed a strong presidential republic, and the amendments actually consolidate the existing functional status of the President as the head of the executive branch. Article 83 specifies that the President executes overall leadership of the government, article 110, part 1 establishes that the Executive power is vested in the government under the overall guidance of the President, the Prime Minister bears personal responsibility before the President, these provisions suggest that the President of the Russian Federation heads the Russian Government.

If we talk about the conclusions that follow from the analysis of the changes made, which in fact are constitutional transformations in relation to the form of government and the form of the political regime of Russia, then, in my opinion, it is necessary to draw two conclusions: the amendments complicate the text of the Constitution, cause its internal inconsistency to increase. The second conclusion is that the constitutional reform carried out from above clearly demonstrates the flexibility of the current Constitution of Russia and indicates its potential readiness for subsequent changes in the future.

Oleksiy V. Stovba[16]. I want to focus on the changes in law, looking at them from the perspective of a theorist, a philosopher of law, and consider how the dominant ideas about law change in this regard. The starting point for my reasoning will be the ideas of the non-classical philosophy of law. From this perspective, I would like to consider how the fundamental concepts of law are changing from the point of view of non-classical theory. And in turn, changes in these fundamental concepts of law can become a theoretical and methodological basis for a more adequate writing and formulation of statutory instruments

[15] On the Procedure for the Adoption and Entry into Force of Amendments to the Constitution of the Russian Federation : Federal Law No. 33-FZ of 04.03.1998. (editorial comment)

[16] Doctor of Laws, Vice Rector for Research and Methodological Work of Kharkiv Institute of Management Stuff, Kharkiv, Ukraine.

or for a more rational interpretation of them. In my opinion, it is fundamental for the non-classical theory of law to strictly distinguish between the law sphere and the legal sphere. After expression by Michel Foucault of his ideas, we can no longer argue that the legal sphere is the sphere of power discourse, of decision-making by those who actually have power, in relation to those who obey. And in order to legitimize this state of affairs, these decisions can be given a legal character, they can be put in the legal form. At the same time, they do not have a strict connection with the sphere of law.

I will explain this with an example. Legislation may prohibit, for example, same-sex marriage. From the point of view of law, it does not matter who a person lives with, it is obvious that same-sex marriage, for example, does not pose any threat to the rule of law, but due to, for example, some traditions, etc., the current government may consider that such marriages should be legally prohibited. The same regards to other ambiguous phenomena in different legal systems, such as: prostitution, drug legalization, carrying weapons. Obviously, from a point of view of law, it does not matter whether such phenomena are allowed or prohibited in a particular society. We see that, for example, in such developed legal systems as German, where prostitution is legalized, Dutch, where light drugs are legalized, American, where the free carrying of weapons is allowed, which may seem shocking from the point of view of the Russian or Ukrainian citizen, the law and order there does not collapse. We must clearly recognize that such prohibitions are purely consensual and belong entirely to the sphere of legal prohibition or legalization. By separating the law and legal spheres, we conclude discussions on a number of issues, for example, whether the death penalty is in accordance with the law or not — this is an exclusively conventional issue in a particular community. If we move into the sphere of law, then the fundamental thing from the point of view of non-classical theory is, in my opinion, the destruction of the myth of the continuum of the legal field and the reinterpretation of law as a discrete and self-reproducing phenomenon. In other words, we are faced with the obvious fact that law does not exist in itself, in some ideal dimension of what is due, whether it is naturally legal, positive or otherwise. The law must be constantly reproduced in the form of a certain algorithm of relations between people. If the law does not exist by itself, but must be reproduced, then we will try to see what changes, for example, at the level of constitutional doctrine, it can lead to.

I will focus on the example of rethinking human rights. From the point of view of classical constitutionalism, human rights are essential human capabilities that are given to one by nature. Of course, the state can recognize or not recognize them, but they do not disappear, remain immanent content of the legal personality, the person's status as a legal subject that belongs to them by birth, by nature. But if we consider human rights from the point of view of the doctrine of the discreteness of law, we will face the fact that most often a person acts freely without any restrictions, without having any ideas about their undeniable constitutional rights. In fact, the coincidence or contradiction of his actions with these natural human rights is exclusively accidental. If we consider from this point of view the human rights enshrined in the constitution, we will face the fact that this is nothing more than a directive from the legislator to the representatives of the executive branch or the judiciary on how to act due to certain actions of a person, that is, they represent a certain disposition.

Let me explain with an example. Freedom of movement is restricted due to the pandemic. An ordinary person learns about this when he cannot move from one point to another, and if he tries to move, a representative of the state authority will forbid him to do so. Thus, a person learns that he has some right when he is faced with the inability to realize his normal physical abilities, the need to move in one direction or another. And in this case, the right of a person to move is revealed in the fact that they can apply to a certain state body with a request to remove this restriction, and then the state body decides on the basis of the disposition of the legislator whether to help him in this or not. As I. D. Nevvazhay said, if you want to eat, it does not mean that you have the right to eat. This ability— to eat — turns into the right to eat, when someone does not let you eat, then you are fighting for the exercise of this right, self-reproducing through your struggle for this right this real physical ability of yours, as a constitutional right or an undeniable human right. From this point of view, it is possible to interpret the norms of the criminal code, where there is no prohibition on murder, theft, but there is a disposition for a judge and other officials to choose measures of restriction against a certain person if he commits certain acts.

Thus, from the point of view of non-classical theory, the spheres of law and legal must be strictly distinguished. The sphere of legal is the sphere of power, which is occasionally put in a legal form. From this point of view, law is not a continuum, but a discrete self-reproducing phenomenon. And if we consider many dogmas of the classical theory of law and classical constitutionalism from this point of view, it turns out that what we call the undeniable human rights is nothing but the disposition of the legislator to representatives of other branches of government. At the same time, the sphere of human actions is in the sphere of law, not legal sphere, and it intersects with legal sphere only in some cases, which I have mentioned.

2. The Constitution of the Russian Federation: the Dialectic of Stability and Development

Suren A. Avakyan[17]. In my presentation, I would like to consider issues related to the constitutional reform that has taken place, which leads to the need to identify areas of scientific research in this area. First, despite the fact that the constitutional amendments do not affect Chapter 1 of the constitution "Foundations of the constitutional system", it is impossible to talk about the Constitution and the future without taking into account the chapter on the constitutional system. We should consider the constitutional order in two aspects. The first aspect is that the foundations of the constitutional order form the basis of our entire system of authorities. It turns out that the system of authorities is a constitutional system. The second aspect, which follows from the current perception of the constitutional system, is that the constitutional system is also bodies: state authorities and local self-government bodies, included in the conceptual range of public power. The concept of public power is not disclosed in the Constitution, although we proposed a possible formulation of this concept at the working group on amendments to the constitution, and it was supported by the working group, but it was not included into the final version of the text of the amendments. It is necessary to proceed from the understanding of public power as the power of the people, carried out in society with the support of the institution of civil society. Thus, one of the directions for future research is to fill the structures that have been included into the constitution with the legal content.

The second area of constitutional and legal research is the analysis of regulation and prospects for the development of social relations. At the moment, the term "social" is used three times in essential aspects of the Constitution, in particular: the social state, social solidarity and social partnership. The concept of the social state was in the Constitution before the amendments, it is enshrined in Article 7 of the Constitution, but the concepts of "social partnership" and "solidarity" are new. Although in real life they were used before. The concept of social partnership appeared in the legislation and study of labor law and was reflected in the Labor Code of the Russian Federation. Thus, social partnership becomes a relevant category in our state and society. For example, in Kazakhstan, this category has received constitutional regulation to a certain extent. In formal terms, this concept includes the state, civil society institutions, business institutions, local self-government, citizens' associations. All these elements of social partnership are necessary in order to act not only in the labor sphere, but also in all other aspects of the social life of citizens and country as a whole. The concept of the social state is also included into the Constitution, and legal scholars need to begin the disclosure and study of the actual content of these concepts.

The 1977 Constitution contained such a concept as a social basis — an unbreakable union of workers, peasants and intelligentsia. Now we use three key concepts, but we are not talking about any social union, social strata. We need to decide: either they do not exist, or if they do, then we need to study them and talk about them. What does the concept of social solidarity include? Is this solidarity between each individual person? For example, in the Constitution of 1977 there was such a concept as a labor collective. Now we use such a concept as an assembly of employees. What is the difference? There are countries where the labor collective is not opposed to the employer, it is in cooperation. For example, in Japan, employers regularly hold meetings of labor collectives and report on production results. That is, such phenomena exist, and we will have to talk about it using the concept of social solidarity to determine what is behind it.

Another issue that needs to be studied is the content of the concept of "civil society". The constitutional order cannot exist solely as a combination of state power and local self-government, both public associations and political parties are also elements of civil society. There is no concept of civil society in the Constitution itself. It is mentioned once in connection with the powers of the government. At the same time, the concept of civil society is used in other documents. It would be worth defining this concept in the constitution. It is also necessary to talk about legal institutions that claim to somehow guide the development processes in civil society: parties and movements are not only associations of people, they participate in the management of society, that is, public institutions can be added to the institutions of state power and local self-government as elements of the management of civil society. If we talk about civil society, it may be necessary to make some changes to the Constitution in connection with such an existing institution as the church, which is one of the institutions of the constitutional system

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of our country, and in Article 14 of the constitution, religious associations are mentioned as existing in our state.

My fourth point is that we need to reduce the number of positions that are filled through elections. The elections have become a means to express not only positive, but also negative emotions, especially in the case of neighboring republics. We should think about how many elections to hold and whether we really need them at all the levels at which we hold them. For the purposes of restricting access to elections, it may be appropriate to introduce a system of making a deposit by candidates to participate in elections. If the candidate wins the election, the money is returned to him, and if he loses, it goes to the budget. Another possible tool could be the introduction of a material qualification as a legal fact that generates legal consequences, at least for someone who wants to be elected as a deputy or official.

The constitutional reform showed that those who said that we should not get carried away with the concept of a living constitution were right, we should reform the constitution, and not limit its development to the interpretation of only 11 members — judges of the Constitutional Court — a few representatives of society as a whole.

Konstantin V. Aranovsky[18]. If we talk about what is more important for the Constitution, stability or development, then I, as a judge who took an oath to serve the Constitution of the Russian Federation, would choose stability, otherwise I would have violated this oath. The Constitution of 1993, in its two fundamental chapters, which set out the list of human rights and freedoms, enshrining the fundamental importance of the individual, is an outstanding work of constitutional creativity, faith in the law and submission to the law. Some authors of the text of the Constitution later expressed their disappointment with the result of their work, for example, S. S. Alekseev, Oleg Rumyantsev, who said that he would like the concept of civil society to be included in the Constitution. In my opinion, the failure to specify the concept of civil society and its role in the Constitution in itself does not preclude its existence, and if civil society in Russia is not sufficiently formed, it is not a problem of the Constitution, but a problem of a society that is not quite ready for these fundamental institutions.

In 2001 and later, I wrote about how the constitutional tradition was originally formed and how constitutional law is now accepted by Russian society, which has developed its own aesthetic preferences. These preferences are partly correlated with constitutional law, and in other parts are not fully supported by society or supported with significant reservations. In general, when the constitutional material enters a new space, it always portends difficulties in its rooting, or sometimes even rejection. This trend can be seen in the motley constitutional geography, where the constitutional tradition knows both success and failure. Constitutional law emerged in its own guidelines and coordinates, and this means that the Constitution is not such a mobile and flexible legal formation, so that the nation could handle it irresponsibly. I wrote then about the risks and difficulties that the Russian constitutional law was going to face with the inevitable pauses and failures in its development, with retreats and restorations. This reasoning can now be tested for diagnostic and predictive validity.

In further constitutional forecasts, and perhaps even in prescriptions, I would suggest taking into account some general circumstances. First, I would suggest paying attention to this general observation: deviation from the constitutional norm and even encroachment on the norm do not in themselves refute it. The fact is that there is no such thing as legislation without deviations, especially if the rule comes to the national environment from borrowing. But offenses and disenfranchisement do not cancel the law. In general, a person has the ability to deviate. And as long as there is a norm, it will certainly be violated from time to time. It is possible to remove a violation of the norm from people's lives only by removing the rules and people themselves. Conflicts with the local environment also do not prejudge the final failure of constitutional law.

For example, the fate of constitutionalism among Catholics in the European south or in Latin America is not linear; in Spain, the Constitution, working its way up, immediately fell at the beginning of the XX century, and then spent 40 years in lethargy. But these are not fatal defeats of constitutional law. These are symptoms of a dangerous heredity, which may mean something in diagnoses and prognoses, but still both in the south and in the center of Europe the problems of constitutionalism are not considered groundless and hopeless. Even in the Far East, the prospect is not completely denied, although with complex reservations. Among the Japanese, in some Chinese societies, and in Korea, there are signs of a confident adaptation of constitutional law. In Russia, however, despite the socialist upheavals, an influential peasant culture developed and persisted. It is, of course, not identical to the tradition that has developed over the centuries in the Protestant culture of the German root, but it is not so different as to completely exclude a commonality in constitutional preferences.

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In any case, this makes Russia's attempt to settle into the contours of constitutional law at least not hopeless. The adaptation of this law is a difficult task, for which success is not a foregone conclusion, but it is also not excluded. We will take into account the positions of the legal profession separately, bearing in mind that the Constitution is, of course, a common cause, but at the same time it is a matter of legal profession. And it is not for lawyers, in any case, to hesitate in a constitutional enterprise, especially since some of them are bound by an oath to the constitutional rule of law, order, and justice. And even if the initial positions of the constitutional case seemed hopeless, and it sometimes happens, is this a reason to get out of it and retreat to a lawyer who has spent considerable time in the profession and has probably become convinced that it makes sense to work hard, without guessing about the prospects, even in hopeless cases, and that the surest case can be lost through misfortune and negligence even with the best prospects.

Therefore, it is not always useful to gain prospects in a profession that lives by faith in the law. In general, constitutional law has something to rely on and someone to rely on in Russia. And by the way, perhaps most of all it is based on hopelessness. This hopelessness has long been working for the constitution, forcing the nation to rely on constitutional law in its core values, despite all disagreements. Of course, it is impossible to oblige every person to value and cherish something, but if the Russian Federation subordinate itself to the Constitution as a people's state governed by the rule of law, then loyalty to these values, that is, civil freedom, is attached by itself. Excessive hesitation in the execution of a constitutional foundation decision is fatally dangerous. The constitution is a real prospect, otherwise the country would have to end in disintegration.

As for the living Constitution, there is a frame part which can not be canceled, the fundamental provisions, deviations from which lead to the degradation of constitutional law, but there are more flexible provisions subsidiary to the fundamentals, which, however, provide it with vitality and adaptability. For example, in relation to the term solidarity: this concept is really important, but since the constitution also prohibits the establishment of a single state ideology, it is obvious that the content of this concept does not include mandatory participation in common ideas, in common political lines.

It seems to me that as a result of the recent amendments to the constitution, there have been no dramatic changes that would cancel the fundamental constitutional and legal foundation decisions that have already taken place, that would seriously shake these decisions and revise them radically.

Lyudmila B. Eskina[19]. The fact that we are discussing issues, topics, and problems related to constitutional law today shows that there is an opportunity to conduct such a discussion, which is important in itself. The presence of such a discussion shows that the constitution still works, because it stipulates that everyone has the right to their own opinion. And in this case, I believe that our dialogue embodies this constitutional message. I agree that the Constitution of 1993 is the greatest achievement of constitutionalism in our country. I am deeply convinced that this is one of the best documents created not only in our country, but also within modern constitutionalism, because it was created at the peak of reform, society was ready for changes, and, most importantly, it was based on all the developments created by world modern constitutionalism. However, I want to say that changes in law and changes in regulatory framework are different phenomena. Changes in legislation and even amendments to the Constitution do not coincide completely with changes in law, and they should not coincide. Law is a deeper process, it is something that society will perceive. Thus, later we will be able to understand which amendments to the constitution our society will accept, that is, begin to implement. Then we will be able to say that these are changes in law, for now these are changes in regulatory framework.

In the end, it is possible to include anything in a regulatory act, we have repeatedly encountered this in our history, but whether such provisions will turn into law is an issue of interest to us.

In my opinion, this reform should be considered together with the reform that began in 2008, that is, with all the amendments that are currently made to the Constitution of 1993. And they should be evaluated systematically, in their entirety.

Two different questions arise in connection with these amendments. The first is the question of stability of the Constitution, the second is the subject of constitutional regulation, which has become one of the most relevant and practically significant.

As for the stability of the Constitution, no one, neither the Soviet government, nor the modern theory of constitutional law, refused that the stability of the Constitution is one of its most important qualities. Unfortunately, the Constitution is not stable in our country, although we all recognize and postulate its significance in theory, nevertheless, the Russian constitution is a flexible Constitution, and

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it is constantly changing. This fact largely speaks about the attitude of Russian society, traditional consciousness and the attitude of the government and the population to the Constitution. Nevertheless, legal nihilism still remains a very important feature of our society. This was mentioned by the President of the Russian Federation D. A. Medvedev. Therefore, we do not treat the Constitution as a mandatory legal act, we treat it as a document in which you can always change something. But society cannot always move on the escalator, there must be unshakable principles of reasonableness and justice, and these are the principles of law. Thus, the 1st, 2nd and 9th chapters of the Constitution compile such a framework, the basis of the social structure. The discussion about changing the Constitution has been going on for years, at various levels. So, there were proposals to return the death penalty, the institution of deprivation of citizenship, to change Article 13 and return the state ideology, to abandon the priority of international generally recognized principles and norms, etc. In my opinion, it is necessary to create a worldview, to do everything so that the Constitution is perceived as something sacred, which can not be encroached on, at least in its main postulates.

As for the issue of the subject of constitutional regulation, if we look at the amendments that have been made to the Constitution over the past ten years, we can assume that these amendments largely demonstrate a return to the Soviet constitutional model. They lead to the expansion of the subject of constitutional regulation. The Soviet Constitution regulated all spheres of life in society: both the economy and the social structure, there were norms that allowed the state to interfere in almost all spheres of society. It was perceived as a kind of a society life program. The new model of the Constitution of 1993 proceeds from a different understanding of the subject of constitutional regulation, which has specific boundaries. It answers the question of how the society wants to see our public power. Therefore, the subject of constitutional regulation, laid down in the Constitution of 1993 — is the relationship about the organization of public power and nothing more. As a result, the Constitution does not interfere in the spheres of culture, morality, the upbringing of children, or the problems of solidarity, it only regulates what concerns the organization and exercise of public power, and in this sense it is more clear and specific. The amendments made, in fact, show that the state is making a side turn, because social development does not go in a straight line, it happens both in zigzags and with turns to the past. To some extent, this whole system of amendments brings us back to the Soviet understanding of the Constitution and to the Soviet models that were enshrined in the constitutions of 1936 and 1977.

This is relevant to the state of a heterogeneous society. The return to the Soviet constitutional modeling to some extent reflects the state of society, in which there is a very different understanding of what relations the Constitution should regulate. In this situation, the theory of law becomes important, in particular constitutional law, which should give more or less satisfactory answers to the raised questions in such a way that they are acceptable to the majority of society. Naturally, although in the Soviet era we perceived the Constitution as a program, the foreign constitutions, which appeared two centuries earlier, were not programs, they appeared as a mechanism of legal restriction of power demanded by society. It is still difficult for our society to realize this, which is understandable, because over the course of a century, our Constitution has developed according to a different scenario and has absorbed a different understanding. Sooner or later the society will choose adequate and moderate forms that will reflect the balance of proportionality that our society needs, and on the basis of this confidence, it will try to adjust the law in accordance with its needs and level of development. The society itself must answer the question of which norms will turn from formal to legal norms.

Society does not need to be corrected, it just develops in a certain way, but the Constitution can be corrected, it itself provides such a possibility, but there must be a consensus in society that such changes are required, that without them it will be much worse. The state itself is a product of society, and it must serve society, as Article 2 of the Constitution tells us, establishing the duty of the state to recognize, observe and protect the human and citizen rights and freedoms.

Sergey D. Knyazev[20]. Certain adjustments in the perception of the Constitution, in its meaning and role in the formation and functioning of the Russian state on the basis of the constitutional legal order still took place.

In such circumstances, is there any reason to say that the provisions of the constitutional foundations that were established by the adoption of the Constitution in 1993 were seriously questioned? It seems to me that there is no reason for this, if only because the textual content of the 1st and 2nd chapters is not affected. It is in my view symbolic and correct, that the preamble to the Constitution stayed untouched, although the 9th Chapter does not insist on that it cannot be changed, but the purpose

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of the preamble is settling those circumstances and the goals set by the Russian society and the authors of the Constitution at the time of its adoption.

Why does the amendment not affect the foundations of the constitutional system, the basic constitutional principles and values, and should not affect the constitutional format of the individual, human and civil rights and freedoms in our state? At least because with all the new material that has become part of the Constitution, if we look at it critically, we will see that a significant part of it is not some kind of a know-how, but provisions that are well known to the Russian legal system, which at the time of introduction to the Constitution were already tested either by the legislator or as legal positions of the Constitutional Court of the Russian Federation. You must admit, that the prohibitions that have appeared in the Constitution, provided for persons running for the position of president or for the positions of deputies of the State Duma or applying for senior positions at the regional and federal levels, are not new norms. For example, let us take the provisions that constitutionally assigned the Constitutional Court the authority to check or review decisions of supranational, interstate jurisdictional bodies in terms of whether the Constitution of the Russian Federation allows the execution of relevant documents, whether such execution will lead to a violation of the Constitution and a deviation from its norms. This is also nothing new: first, this provision was formulated by the Constitutional Court, and then it was established by the legislator after the Constitutional Court. Why has this been done, what is the purpose? From my position as a researcher, not a judge of the Constitutional Court, there are two points here: if you look at the conclusion that the Constitutional Court adopted on the President's address, in which he assessed the proposed amendments to the Constitution, saying that, in his opinion, these amendments to the constitutional text do not contradict the first and second chapters of the Constitution, which does not mean that only such amendments could take place, then you can see that the legislator had a wide range of possibilities, and not the only option for changes. But by adopting these amendments, the legislature has actually bound itself to the introduced provisions and has no right to deviate from the amended constitutional provisions.

I do not know how this will be implemented in practice, but if we take, in particular, the amendments that established prohibitions on having bank accounts in foreign credit organizations, a ban on running for office or holding positions for persons with a second citizenship, who have the right to permanent or preferential residence abroad — these amendments were previously in the law, and now have become part of the constitutional text. At the same time, we are well aware of the legal positions of the Strasbourg Court, which has already recognized such bans and restrictions on voting rights on the grounds of having a second citizenship as not complying with the provisions of the European Convention. From this point of view, it is quite possible to predict that sooner or later the relevant institutions may receive an assessment from the Strasbourg Court, including in relation to the Russian national legal system. And then the Constitutional Court may face the question of what standards to follow.

Often the initiators of the amendments and, to a lesser extent, the members of the organizing Committee, who worked on the text of the amendments, stated, after the adoption of the amendments, that Russia's Constitution will indeed acquire a constitutional identity, as many of its provisions will reflect our national perception of constitutional values and that it will ensure that Russia will stand up against Western constitutional counterparts. The very question of Russian constitutionalism does not provoke any rejection on my part. Of course, the question of the constitutional identity of the Russian Federation has a right to exist, and I absolutely agree with the way it is justified in the decisions of the Constitutional Court of the Russian Federation. What is meant by constitutional identity? For example, when we talk about a jury trial, this is an element of constitutional identity, since the constitution provides for the functioning of such an institution, which in itself is not an inviolable attribute of the constitutional order. The procedure for filling the vacancy of the President of the Russian Federation — direct elections — is also an element of Russia's constitutional identity. The principle of a federal structure is also an element of Russia's constitutional identity, but when constitutional values are abandoned under the guise of creating their own constitutional identity, independence and uniqueness, this raises big questions. Academy of Science member O. E. Kutafin was once asked about how he related to the concept of Russian constitutionalism, the goals of its content and creation. He replied that he had a very positive attitude, but on one condition, that initially it was necessary to determine what would prevail in Russian constitutionalism: Russian or constitutional. From this point of view, I am not against the constitutional identity of Russia, but on the condition that there will be enough constitutional traditions, values, and constitutional order, and there should be no rejection of the foundations of this constitutional order.

The Constitutional Court in its conclusion on the amendments, speaking about the amendment that caused the greatest resonance in society, I am talking about the amendment that allowed the current president to run for two future terms, expressed a number of assessments and judgments, but indicated

that such an amendment is permissible and possible provided that such unshakable foundations as the separation of powers, parliamentarism, the rule of law, legal equality, independent fair justice, etc. shall be unconditionally observed. That is, when speaking about the admissibility of amendments, that they do not contradict the Constitution and the foundations of the constitutional system, the Constitutional Court was forced to once again articulate that all amendments are appropriate, permissible and can be implemented only if the foundations of the constitutional system are unconditionally followed.

Of course, the adoption of the Constitution itself has largely influenced the assessment of how the concepts and categories of stability and development of the Constitution and constitutionalism relate and should relate in constitutional practice in Russia. But it is equally important to understand that the constitutional text, the Constitution itself, is an indispensable normative base of constitutionalism, but how it will be implemented in practice will largely depend on the legislator, who is now making titanic efforts to implement amendments to the Constitution by adopting or changing the relevant laws and regulations. And of course, it will depend on the law enforcement agency, including the courts. How this will affect our lives, what real changes the amendments to the Constitution will entail — all this we have yet to learn.

Rebekka M. Vulfovich[21]. I am not a lawyer or a specialist in constitutional law, but everyone will admit that the adoption of certain constitutional norms, their consolidation and reflection in laws and regulations, is certainly important and creates the basis for management activities. No less important is the point that is associated with the implementation of all these provisions in practice. Since our constitution still stipulates that Russia is a social state, the goal of this state in a democracy can only be to create an optimal, that is, the highest possible, uniform quality of life throughout the country. And as we know very well, this is impossible without effective activity of the subjects of the Russian Federation, as well as municipalities. After all, what the local government does is directly related to the quality of life in each particular place. And all the social guarantees that are now additionally enshrined in the Constitution, are, of course, implemented through the management of territories, through their development.

When we say that local self-government is an element or a part of a unified system of public power, we must first imagine how this provision will be implemented in practice. The fact is that the term “public” in our case is almost synonymous with the state, it has not yet found its meaningful specific understanding and definition. Initially, when the question arose about what to call the management in the Constitution and the legislation adopted in accordance with it, we came to the term “state”, because the very word “public” was perceived as something inappropriate and not suitable for enshrining in laws, etc. The understanding then gradually matured that the term “public”, is something that significantly expands the spectrum, the set of actors involved in the process of ensuring the quality of life, and local government is the cornerstone here. Having included local self-government in the system of public power, we must clearly define the place and role of this institution, because in accordance with Article 12 of the Constitution, it is not only an institution of government, but also the level of power. And we must clearly define how decisions will be made, how powers will be separated, and how functions will be divided between all levels of the management system.

Local self-government in accordance with the federal law on the general principles of the organization of local self-government is primarily regulated by the federal center and only then by the subjects of the federation. The mechanism of regulation in the direction from the federal level and below is currently settled by law, that is, the algorithm for regulating the activities of local self-government from top to bottom. Given that Russia has signed and ratified the European Charter of Local Self-Government, it has direct effect on our territory, and its principles were laid down in the Constitution of 1993: the principle of the right to local self-government (Article 12, chap. 8), the principle of general competence, which is expressed in the fact that municipalities have the right to carry out any activity on their territory, if it is not illegal or unconstitutional, but when they are squeezed into a very strict framework established initially by federal law, and then by the law of the subject of the Russian Federation, the scope where they can independently determine what to do and how to do it, is very limited; the principle of subsidiarity, which stipulates that the movement of separation of powers, separation of functions must occur in the opposite direction — from bottom to top, that is, for the basic functions of life necessities, the municipalities should be empowered to do everything they are able and meant to do best.

The question of funding immediately arises. The same European Charter establishes the obligation of the states that have ratified it, to support local self-government financially for the performance of its

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basic functions. If we act from the positions indicated in the European Charter, then local self-government, in cooperation with the federal subjects, exercises the maximum amount of powers, including with financial support not only from the subject, but also from the federal budget. The federal level assumes those absolutely general functions and powers that the subjects of the Russian Federation and municipalities are not able to perform or it is not rational and effective in accordance with the laws of modern management.

If this is how we understand the inclusion of local self-government in the system of a single public authority, then perhaps we will get good results. The public authority unites not only state bodies and local self-government bodies, but also public organizations, on which the state and local authorities should rely as part of the system of public power. In addition, in the system of public power, there is also an individual who makes the most important, fundamental decisions independently or together with their family, and if they are supported in this by the state, the possible results will be more positive. If the state decides for the individual how and where to live, what kind of housing to apply for, it is unlikely that this will have a positive impact.

The most important thing is that we have passed through all this many times during the long history of our state. And the main thing that we need to strive for today, that we need to develop, is what today, primarily in democratic countries, is called collaboration. This is not just an interaction in which someone acts as a pointing finger, someone in the role of executing various kinds of instructions, orders, programs, projects that come down from above, but it is a process in which all its participants act as equal partners, support each other and take on everything that they are able to perform best. Such a system of public authority, where we have a very solid foundation in the face of local government will have greater efficiency, because there are only 85 subjects of the Federation, and tens of thousands municipalities, and each of them has its own characteristics, which are neither the subject nor the Federal center is able to take into account, as they are not able to catch and channel all the many needs and interests of different groups and different people. To do this, there should be sufficient opportunities for the manifestation of municipality's own will in the law and, of course, in the constitutional document, including political will, to organize its life in accordance with the interests and needs of the individuals, families, public organizations, municipalities, regions and the Federal center. The intense process that we have observed in recent years, in the transfer of basic functions, such as, for example, health care service, from not only the settlement, but also municipal district level at the level of the subject of Federation, as we have seen in recent months has led not only to erosion of the essence of local self-government and its underlying purpose, but also to quite serious consequences in general.

Today, once again, it is necessary to restore paramedic and midwifery centers, strengthen the primary local element, allocate money for this and delegate the corresponding functions to a lower level. As for finance, there are still such tools as dotations, subsidies, subventions, the use of which is quite well established, and it is possible to use these tools in full, based on the needs of municipalities. Thus, it is necessary to determine what local self-government means for us –management or power, while there is still a constant ambivalence of attitude towards the institution of local self-government. The current trend of state-building of local self-government bodies lies in the fact, that it has practically no financial sources of its own, and, therefore, it is not self-sufficient. But the main problem is not finance, but understanding the place and role of the municipality in the overall system of public administration. Determining the role of local self-government in the system of public administration is not only a political question, but also to some extent a philosophical one, on the answer to which the prospects for the development of municipal government in Russia depend.

Nikita S. Malyutin[22]. I would like to devote my presentation to analyzing the impact of the reform on the institution of human rights and freedoms in the Russian Federation. As part of my presentation, I will allow myself to identify several problems that I think are most significant in this area. As a result of the reform, the constitutional text was changed, which did not formally affect Chapter 2 of the Constitution, which concerns human rights and freedoms. However, in terms of their legal effect, these changes have an impact on our entire national legal system, and a number of adjustments relate to the part of human rights and freedoms. The question arises as to how to evaluate such changes in terms of their location in other chapters, and not in the chapter that the constitution intentionally originally contained these provisions.

The following four questions can be identified. What is the nature and status of the additional guarantees of human rights and freedoms that have emerged as a result of the amendments to the Consti-

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tution? Super-guaranteed, when the scope and list of rights and freedoms enshrined in Chapter 2 of the constitution is expanded? These are, for example, the provisions of the Constitution regarding guarantees of cultural identity, established by Article 26-44, and the provisions of Article 67.1 of the Constitution.

The next question that arises in this connection is: can a future legislator who wants, for example, to renounce these guarantees and who can technically do so, since they are enshrined in Chapter 3 of the Constitution, renounce them without a real invasion into the content of the right, which cannot be implemented based on a systematic understanding of the constitutional text?

The second point, which within the framework of this problem is of serious importance. As a rule, when the state focuses its attention not on the list of rights and additional guarantees, government policies, what we see, for example, under the position that children are the most important priority of state policy etc., for these formulas, the state seeks to hide the impossibility of real provision of rights. And we see this in many foreign countries, such as India, Central and Eastern Europe, Brazil, etc. And it seems that the transition from rights to such guarantees, in fact, still reduces the guarantee effect of fundamental rights, which are enshrined in Chapter 2 of the Constitution. Although today this problem does not have a clear answer.

Another set of questions is raised by the provisions of the Constitution, which do not directly relate to the law. For example, Article 68 establishes that the state language is Russian. There is no novelty in this provision, but this language has become the language of the state-constituing people. And since we can assume that if the state language is Russian language, this constituent people is the Russian people. Then the question arises, how to correlate the right of the state-constituent people to the language with the provision of Article 26 of the Constitution that the right to the native language is secured for everyone and equally. It turns out that the equality that underlies the construction of the entire chapter 2 and the entire constitution as a whole is called into question, since these chapters are the foundations of the constitutional system. This is a question that needs to be considered somehow.

The third set of problems is the so-called disputed rights and guarantees. Debatable, from my point of view, because there is a number of new provisions concerning such spheres of life, which are probably still shouldn't be touched, as they relate to very sensitive aspects of social life in which the state should act in the most correct and minimal regulatory, to intervene in these relations as little as possible. We have the opposite picture, when three sensitive areas — the family, marriage, as a union of men and women, and God — were affected by changes in the constitution. It seems to me that the examples of our foreign colleagues quite seriously demonstrate that the invasion of the state and the attempt to over-regulate these sensitive areas, despite the fact that they may carry a certain positive context, as a rule, always exacerbate the problems associated with these areas, especially in the conditions of our multinational state. This is, for example, the problem of the ratio of language groups, religious relations, taking into account the mention of God in the Constitution, this is the problem of same-sex unions, which can be treated differently, but the aggravation of this problem is unlikely to contribute to stability in society and its consolidation.

The fourth set of issues is the adjustment of the protective mechanisms of human and civil rights, primarily the main mechanism of protection — the Constitutional Court. The amendments to the Constitution led to a significant degree of nationalization of the Constitutional Court. Thus, before the amendments to the Constitution, the Constitutional Court, according to N. S. Bondar, was more than a court, because in its activities it was more focused on a certain spirit of the constitution, its idea, meaning, which made it possible to ensure greater protection of human rights and freedoms. Now, in fact, the amendments formalize the activities of the Constitutional Court to a greater extent and make it more focused on the interests of the state.

Thus, the provisions on the competence of the Constitutional Court were reformulated in the law. If earlier the competence was formulated with a focus on the powers, that is, on the essential task of the court, now the powers are formulated with a focus on the subject of the appeal, and in this regard, the fact that from this huge set list of grounds for applying to the Constitutional Court a citizen has the right to apply only in one case becomes particularly striking. Increased degree of involvement of the President in the constitutional court's activities, in particular, the grounds for the appeal of the President to the constitutional court narrowed the scope of citizen participation in constitutional justice, which creates additional regulatory barriers related to the exhaustion of domestic remedies, the inability of persons to apply for protection of other persons without the consent of the subject etc. The state becomes more and more involved in the constitutional process, and the citizens — less and less involved. This trend is also reflected in the introduced constitutional compliance of the decisions of the interstate courts, bodies on their compliance with the Constitution, which in itself is true because the Constitution, as the

source, the top of the mountain of national legal system must ensure its stability and uniformity, therefore, all that comes in from outside, has to be checked for conformity with the Constitution. But the introduction of this tool provides for the possibility of filing a constitutional complaint for the state, when only the state can challenge the law enforcement decisions of foreign courts, and the applicant, a citizen, cannot. And this also shows that the model of constitutional justice is now focused on protecting the interests of the state, not citizens.

Kimmo NUOTIO[23]. Finland has followed an evolutionary path of constitutionalism. Finnish constitutionalism has its roots in the Swedish Constitution, many of the provisions of which were reflected in the Finnish Constitution of 1899, which was then applied for 200 years. Thus, Finnish constitutionalism is characterized by a long-term development.

The great difference between the Finnish constitutionalism and the Russian one is the system of bodies responsible for the interpretation and application of the Constitution. The Finnish system includes several actors through which the institution of human rights is embodied. We started the process of changing the Constitution in 1995, in particular by writing a new chapter on human rights. In our system, the constitutional committee of the Parliament is responsible for checking and monitoring ordinary laws for compliance with the Constitution. It invited lawyers and scientists to consult and express opinions. There are systems, as in Russia, where the right to appeal to the Constitutional Court is limited to certain cases, and there are systems where anyone can appeal to the court with questions of interpretation and application of the Constitution. In Finland, it is quite rare for the Supreme Court to analyze the problems of constitutional law enforcement in order to identify contradictions in the provisions of ordinary laws of the Constitution, when the constitutional committee of the Parliament could not foresee and identify the occurrence of such a contradiction. The doctrine says that if the constitutional committee of the parliament has acknowledged the conformity of the adopted law with the Constitution, the court cannot contradict this position. But sometimes the constitutional committee may not take something into account, and then there are such exceptional cases, as, for example, a couple of years ago, when the Helsinki Court of Appeal considered a case on the application of the provisions of the Constitution.

It is also necessary to monitor what actual trends are developing in society, the very development of society is driving the development of law enforcement. For example, same-sex marriage is actually recognized in Finland not at the government level, but at the public level, which, in the end, is also embodied in the legislation.

Another observation I want to make is that in the 1970s there was a realisation of the need to think of law not as acting in the interests of the State, but rather in the interests of the individual. This turn in the public consciousness led to the emergence of a lot of judicial practice related to the problems of access to justice, and as a result, it was embodied in the accession of Finland to the Council of Europe and in the constitutional reform of 1995, in strengthening the role of the Constitutional Committee in the development of the system of public administration. The new Constitution established not only the powers of state authorities, but also the obligations to implement and ensure the realization of human rights.

Many states have a constitution, but not all of them have the provisions of the constitution translated into ordinary law enforcement, because we are trying to build a real state of law, where the constitution is an important part of the legal system. Of course, the legal history of Finland is very different from the Russian one, both in historical turns and in the duration of its development. Of course, we understand that the Constitution is a living instrument, but it is also the product of scientific schools, judicial practice, politics, the activities of the Constitutional Committee and broad international public communications. Therefore, it is impossible to choose one thing — stability or development of the Constitution, we value both of these aspects. The Constitution does not so much speak about the proper content of the law, as it contains the basic principles necessary for the work of the rest of the legislation. It is clear that the Constitution should reach people through certain channels, such as courts, regulatory acts, ordinary laws. An important and debated question is how to implement the provisions of the Constitution in the real life of people. The work of the Constitutional Committee of the Parliament has developed over the years, and the committee has earned special respect among other parliamentary committees. The collapse of the Finnish constitutional system, in my opinion, can occur if the committee becomes politicized, if members of various political parties use it for their own political interests, and if the consensus reached so far on the role of the committee solely as a source of legal interpretation is destroyed. Such events may trigger an increase in the role of the Supreme Court in building constitutionalism. But for now, the committee retains its role solely as an interpreter of the constitution.

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3. Civil Law reform at the present stage

Vladislav V. Arkhipov[24]. I would like to devote my presentation to general approaches in considering the impact of information technologies on law as such, as a social phenomenon in the broadest sense of the word, and I think that one of the main issues that arise here is caused by the general enthusiasm about information technologies and their some re-evaluation for the purposes of law. No one denies that information technology is changing the world and that the current sad conditions of the coronavirus pandemic and self-isolation have pushed the world towards greater digitalization and made technology more widespread. But in the discourse of the conversation on the law and information technology, especially information about the law in the theory of law structure, and, in a sense, in civil law, there is a very common question: "does law changes with the development of information and telecommunication technologies?".

The history of this issue is quite well known, the discussion on this topic arose a long time ago, in the early 90s, as to whether the so-called "cyber-law", as it was then called, even had its own subject. The 90s were the beginning of the commercial use of the Internet in some Western countries, that is, digital technologies at that time had not yet acquired the universal nature. L. Lessig believed that technologies change the world to some extent, as they change the format of social interaction. When we are in a real physical environment of communication, we do not have the ability to influence the architecture of this environment, as he said, and the architecture sets the boundaries of legal regulation. He gave an example that we do not see a special regulation that would prohibit, for example, theft as a thing of the property of a skyscraper, that is, in this case, we are talking about the possibility of theft only of rights, since otherwise it is physically impossible to do. The contrast lies in the fact that as we move into the digital environment, a certain "space" itself (although there are doubts that it is possible to identify the concept of space in the traditional legal sense with digital space, because space does not literally arise here, but a long-lasting communication occurs) exists constantly, in contrast to discrete communication through the telephone, telegraph, etc. My personal position is that if we consider this situation within the post-classical rationality, then, even taking into account my enthusiastic attitude to information technologies, there is no significant impact of these technologies on the law.

It is obvious that new subjects of legal relations have appeared, that new forms of communication are given legal significance by analogy with previously known ones. In my opinion, the law should be distinguished from the form by which relations are organized, and the law in this sense has not changed in any way. For example, the essence of smart contracts is that with the help of software tools, a mechanism for fulfilling obligations is constructed, which the parties do not have the right and technically cannot change after this mechanism has been launched, and thus the obligations cannot be violated. This is the ideology of smart contracts, but there is no reason to link the technical implementation and the fact that we cannot change the technically legal rights and obligations of the parties. Thus, the list of possible legal changes required under the influence of technology is extremely small and specific. For example, the most striking change is the idea of the place of activity in an interdisciplinary way in both private and public law, as in modern practice, the idea is developing that the place of activity, which is mediated by information and telecommunications technologies, between different jurisdictions is determined by the direction of the company's business strategy (we are talking about the well-known cases of Facebook and Twitter).

When considering this legal construction, the first thesis that I would like to propose as a general principle that should be implemented within the context of law and information technology is the principle of "Occam's razor", which will be expressed here in two key terms: the first is that we must act on the rebuttable theoretical presumption that technology does not change the essential foundations of law until proven otherwise; and the second is that we do not need to introduce or even produce new legal constructs until proven necessary. Law always remains a matter of the relationship between people as individuals. And the digital rights enshrined in Article 141.1 and Article 128 of the Civil Code of the Russian Federation, taking into account the changes of the latter, are an example of a rather controversial construction. A new object of civil turnover was legally settled, and its goal was fundamental — to explain the legal nature of objects that are constructed using blockchain technology. One of such striking objects that do not fit into the legal paradigm is a cryptocurrency that exists at the level of open blockchain technologies. In fact, an interesting construction has appeared, the law on investment platforms, which provides for the concept of utilitarian digital rights, which is true from the point of view of the regulatory approach, but no fundamental changes on the part of the law have occurred here, in my opinion.

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Recently, as part of our work on the philosophical and legal aspects of artificial intelligence, we came to another conclusion: the issue of modern technologies and artificial intelligence, in particular, is related to the issue of legal personality. Not in the sense that the most daring authors now discuss the hypothetical legal personality of artificial intelligence, creating a fiction or a real legal personality, but from the position that law itself is determined by the idea of the legal personality of a person acting on the basis of free will, endowed with freedom and responsibility, regardless of whether such freedom actually exists. This is such a fundamental ontological presumption of law, because without it, law disintegrates. This concept of legal personality affects various ideas about technology, including the possibility or impossibility of making legally significant decisions in an automated way, because, as I see it, it can cause our rejection not even that the decision is made without human participation, but that the logic of law is based on the idea that the one who makes the decision must obey it himself, and an automatically generated decision in this sense does not imply a subject of subordination on the part of the law enforcement agent, or hypothetically may not assume it.

The main thing in law is the subject of law, endowed with freedom and responsibility. Human nature has changed little, and law is the relationship between people.

Elena N. Dobrokhotova[25]. I would like to discuss the positive lessons of the pandemic as a perspective for regulating the work of high school teachers. I believe that the period of anti-epidemic restrictions provoked many unexpected decisions, primarily in the organization of teachers' work. The organizational aspect is a forerunner to think about the main question, which of these practices of self-regulation should take legal form in terms of the specifics of regulating the work of teachers, in particular, the work of higher school teachers; we have categorized version of the regulations for teachers, and what we refer to temporary anti-crisis measures, including in terms of self-regulation as a mechanism of legal regulation of social, labour and civil relations, because the teachers are working under contracts of different sectoral nature of the service contract, employment contracts, civil contracts for services. The period of the pandemic regarding the regulation of work of higher school teachers, in my opinion, gave some positive lessons to lawyers, it was this period which highlighted those unresolved problems in the regulation of work of higher school teachers and educational organizations in general, on which we closed our eyes. We thought that solving them could wait.

The first, key problem is the need for a radical change in the approach to the rationing of teacher labor. As soon as the labor standards are introduced, employers will be placed in conditions of restrictions for the exploitation of the labor of employees and will be obliged to comply with them, as well as bear responsibility for violating these standards. Nevertheless, I believe that this is a key problem for labor legislation, because labor standards are a sign that constitutes the sectoral nature of relations of non-independent labor. It is the regulation of labor that distinguishes labor legislation from other organizational and legal forms of involving teachers in educational activities.

The second problem is the need to review the fundamental theoretical approaches to the existence of such a phenomenon in education as the nomenclature of positions. When we talk about the nomenclature of positions, we understand that, for example, in relation to the teaching staff, the positions of professor, docent, senior lecturer, assistant, teacher with higher education have been introduced, but just in the time of the pandemic, when the means of information and telecommunications technologies have been actively used, allowing the student and the teacher to interact remotely. These technologies have revealed the fact that It is not so much important to squeeze lecture hours into the structure of the teacher's activities, as it is the question of seminar hours. What was previously solved in terms of achieving educational goals with the help of seminars and practical classes, technologies and educational platforms have significantly taken over, which revealed a huge amount of individual independent work, including the work of a teacher in the form of individual support for a student. And this significantly brings the pedagogical technology of teaching closer to the legal category of individual pedagogical training, assistance by a teacher for each student.

Given the individualization of the learning process it is necessary to raise the question that, in conjunction with individual pedagogical support it is needed to revise the burden on teachers and assign them to students. Now the teacher has to evaluate each work uploaded by the student with an individual review and adjust the student's training, the stages of their professional growth, so that they achieves the results that they set for themselves, including the features of inclusive education, in which the question of individual programs is also raised. Thus, individual pedagogical support is a new type of teacher's work, as part of evaluating students' independent work and improving their professional

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activities, and this type of teaching activity should be correlated with the positions in the nomenclature of employees' positions in the education system. In this situation, the position of a tutor becomes relevant, which, although it appeared in the list of positions in the field of education, is still understood as auxiliary. But in the current conditions, a tutor can and should be a person who really has a fairly high range of qualification characteristics in the professional field.

When we talk about revising the approach to the nomenclature of positions, we also turn to the system of qualification requirements, which even before the coronavirus began to change in the direction of formulating professional standards. Standards are formed by types of professional activity, and within each type, possible types of positions are defined, for which the so-called generalized labor functions are determined. These functions outline the very field of self-regulation at the level of an educational organization, when the employer, based on the structure and shared definition of the types and educational programs implemented by this educational organization, for which it has a license, understands what kind of personnel structure it needs and in what capacity it should hire professors, docents, etc. And when the employer solves this issue, it has a good tool in determining the labor functions for a person who occupies an appropriate position in the teaching staff system, using a system of effective contracts. Thus, we come to the conclusion that it is necessary to coordinate the system of effective contracts with the nomenclature of positions and professional standards that should appear in the regulation of work of higher school teachers.

So, the problems of revision of approaches to the formation of teachers' labour and the nomenclature of positions are centralized issues involving the state regulator, as is the attitude to the formation of the qualification requirements in the field of empowerment and involvement in the activities of the academic universities teachers, whose physical presence on the territory of the University is not always necessary. The pandemic has shown that the opportunities for inviting teachers from all over the world have expanded, but foreign teachers have a different structure of qualifications, titles, degrees, a different idea of the educational space and the educational environment, each has their own experience. Thus, on the one hand, the question arises whether we should have centralized exclusively national approaches to the system of qualification requirements and, on the other hand, whether we should leave it to the employer to establish and expand the list of qualification requirements. Perhaps it would be better to give the employer only the definition of the limits of responsibilities in adapting qualification requirements to international standards, given that each teacher has their own individual interest in participating in a particular type of educational program. And if a teacher aims, for example, to work in a specific university, in a specific master's program, then we should correctly determine both the qualification requirements and the content of an effective contract for that teacher, so that the educational organization could create conditions for fulfilling the requirements of such a contract, so that the teacher had time to prepare a publication and publish it with indication of affiliation with this educational organization.

Thus, I come to a very simple decision that the category of the calendar year or academic year, as the term of the employment contract with the teacher, has ceased to be universal and defining. Now it is necessary to link the term of inclusion of a teacher in the activities of an educational organization rather with the type of the educational program that the teacher is aimed at, and to achieve those effective indicators of an effective contract that are significant for the educational organization and that it expects to increase when it invites a teacher from another region or country.

And finally, the revision of the competitive procedures in this canvas looks quite natural. The period of the pandemic showed that we can not be tied to the fact that the personnel potential of higher school teachers is a closed market not just for specialists in this field, but also a closed regional and national labor market.

It is also necessary to review the structure of teachers' activities. We are now focused on the academic hours, but we still have scientific work and the need to publish, there is a long-term strategic work on the preparation of monographs and textbooks. Each teacher relates oneself to a particular scientific school, participates in its work and, thus, is not only an employee of this employer. At the same time, the issue of including scientific activity in the structure of the workload and the content of labor duties to this employer is also a diverse issue, which requires a combination of different regulatory mechanisms.

Thus, it is necessary to harmonize the legislation on education, legislation on science, civil legislation from the standpoint of the protection of intellectual property in terms of regulating the work of higher school teachers; in relation to the regulation of labor it is necessary to harmonise the legislation on education and labor laws, in which we see mostly the stages of movement of regulation of the employment relationship: features of the employment contract, transfers, changes in the employment

contract, termination, but we do not see regulations of use of the property of the employee who works remotely or in combined mode, when the employee is actually creating a mini office at home. It is also necessary to review the issue of monitoring the performance of the teacher's duties, the degree of power of the employer in relation to the employee.

I cannot but draw attention to the fact that the rules and modes of using remote work cannot be directly extended to hybrid modes, such as, for example, restrictions on the employer's obligations in the field of labor protection in terms of monitoring compliance with the requirements of labor protection at a remote workplace to regulate the work of remote workers. When we talk about teachers working in a hybrid mode, these issues are at the forefront. And the practice of self-regulation during the pandemic has shown that educational organizations are puzzled by this issue. And in terms of the additional agreements that were signed by the parties, a labour protection was identified as the payment of the cost of the employee that it has incurred in connection with the fact that It has to pay for Internet, access to information and legal bases, buying office equipment, etc.

Thus, during the pandemic, we have gained a large and diverse experience of self-regulation. And it seems to me that from the point of view of evaluating the effectiveness and mechanisms of regulating the work of higher school teachers, this experience requires communication and consideration. We need to create some centers and research groups that would analyze it and answer the question of what will be ultimately attributed to temporary special norms, and what will be included in our lives forever.

Vladimir F. Popondopulo[26]. I would like to devote my report to the problem of ensuring the quality of legislation in general and civil legislation in particular. At the same time, I use the phrase "activity environment of private individuals" as a category that allows me to reveal the task of ensuring the quality of civil legislation more clearly. I must draw your attention to the fact that we all make a clear distinction between the activities of private individuals and public authorities. Ensuring the necessary regulatory treatment for private activities, the activities of private individuals, means that the legislation complies with the nature of the activities regulated by it and the relations that mediate this activity. It is well-known that the legislation should only define the necessary requirements for a particular type of activity, leaving a wide scope for the individual — private person's own discretion. But the regulatory treatment of the activities of public authorities, on the contrary, assumes, or should assume, detailed regulation, since the competence of the bodies, the limits of the powers of these bodies, officials, legal procedures through which certain powers are exercised, judicial and administrative procedures are important here. This clear separation of differences in regulatory principles is important to emphasize.

As a general preliminary conclusion, we should note that to the extent that legislation creates regulatory opportunities for human freedom and to the extent that it strictly defines the powers of public bodies, it contributes to the task of ensuring the necessary regulatory treatment for a particular activity. This conclusion is of practical importance, which is that these provisions of regulatory treatment of activities can be used in the process of improvement of legislation, its implementation, in the formation of modern legal thinking of those involved in lawmaking, law enforcement, and the resolution of social conflicts. The correct definition of the necessary regulatory regime allows us to establish the general direction of the development of legislation and reflect the existing system of law more adequately, to express the concept of a particular regulatory act being designed, to use the appropriate legal tools and various legal means, structures, mechanisms.

Determining which regulatory treatment should be the basis for the regulatory act being developed is the first step in translating socio-economic requirements into legal language. This is what determines the strategy of statutory regulation in the society.

Taking into account these provisions on the regulatory treatment of human activity, we turn to the question of the legal nature of legislative acts, which can be largely ensured by solving the following tasks. Perhaps I will not mention all of them, but I will point out, in my opinion, the main ones and immediately draw attention to the fact that, unfortunately, they are not solved in the best way in Russia.

First, it is the definition of the purpose and subject of legislative regulation.

Second, it is necessary to ensure the necessary balance of federal legislation, regional legislation and acts of local self-government. At present, we have insufficient regional governance and virtually no local self-government, so federal, regional and local regulation in terms of legislation is not provided.

Third, it provides the necessary balance of centralized and local regulation. In this matter, we also see a tendency for the state to constantly expand into public life, which is considered almost an axiom, but we, as lawyers, should be aware that solving all issues from the center, both by legislative means

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and by direct means, is not a solution to the issue of ensuring the quality of life of society and the quality of regulation of public relations.

Finally, it is ensuring the balance of unification and specialization of regulation. Here, too, we see that the more specialized the legislation is, the more differentiated it is, the more it shows that the legislator, through this specialization, differentiation, essentially intervenes, imposes its various ideas about how natural relations should develop. And the practice of adopting numerous normative acts, which is now being implemented, leads to the fact that these numerous acts contain very detailed rules for regulating various relations, and there is not much benefit from them.

The solution of these tasks will also allow us to understand the existing trends in the legislative regulation of public relations and determine the optimal limits of this regulation, to provide the necessary regulatory treatment of human activity, to show what ratio of means of regulating public relations will provide such a treatment to the greatest extent.

The first task, that is, the definition of the goals and subject of legislative regulation, I would like to consider in more detail: how would a solution to this problem make possible to ensure the legal nature of legislative acts. It is also known that the question of the limits of the activity of the legislator is considered in legal science from the standpoint of sufficient minimization of the legislative regulation of public relations. Soviet, Russian, and foreign lawyers wrote about this. It is known that the domain of law exists as an objective reality, regardless of whether we are aware of it or not. And regulatory treatment is essentially a subsidiary means of regulation, by which the legislator gives legal relations legal force, brings them under the protection of the state, confirms in the public consciousness the fact that the relations have a normal and correct character. Thus, the initial limiter of the activity of the legislator is the scope of the law, legal relations. Legal are, in my opinion, the relationship of individuals based on equality, autonomy of will and property independence of their participants — it is a well known formula and it is contained in article 2 of the civil code. Legal relations arise from the division of labor and the exchange of its results on an equivalent basis. The external regulator should take into account this social pattern, since it is an objective constraint on the will of the legislation. Since legislative regulation is a subsidiary, complementary means of regulating relations, complementary to legal regulation, and essentially self-regulation, it is necessary to determine the goals of such legislative regulation.

Let us turn to the Constitution of the Russian Federation, which states that human rights and freedoms are the highest value, and the role of the state, including its legislative branch, is to recognize, observe and protect the human and citizen rights and freedoms. Human and citizen rights and freedoms are directly applicable, they determine the meaning, content and application of laws, the activities of the legislative and executive authorities, local self-government, and are provided by justice. The objectives of legal regulation are confirmed by the provisions of article 55 of the Constitution, according to which an enumeration of fundamental rights and freedoms shall not be construed as a derogation of other universally recognized human and citizen rights and freedoms, there must not be laws that abrogate or derogate the human and citizen rights and freedoms. At the same time, these norms state that the human and citizen rights and freedoms may be restricted, but only for the purposes and in accordance with the procedure strictly specified in the Constitution. It seems that these provisions of the Constitution determine not only the goals of legislative regulation, but also its limits. It is necessary to support the authors who write about the need for a fundamental definition of the subject of legislative regulation, which can be done both directly in the Constitution of the Russian Federation and in a special law on normative acts. The main thing is not about where the subject of legislative regulation will be determined, but how the list of issues that should be regulated by legislation should be determined, including the borders, as the legislation should not go beyond the established goals and limits.

There are suggestions to comprehensively define the subject of legislative regulation, but, in my opinion, it is unlikely that this corresponds to external conditions — life is very diverse. There is a suggestion to define the subject of legislative regulation by reflecting the basic open list. And there is a suggestion to consolidate the principles by which the issue of attributing public relations to the subject of the exclusive regulatory impact of the law should be resolved. It seems that it would be reasonable to solve the issues that are the subject of regulation of the law, based on the objectives of legislative regulation, enshrined in the special law on normative acts by defining their basic list and settling the principles and criteria for determining the subject of legislative regulation. This approach is applied, for example, in Article 34 of the French Constitution, which specifies not only the institutions and relations that are regulated by legislative acts, but also the principles that determine the subject of legislative regulation.

Let us turn to the Civil Code of the Russian Federation. In accordance with paragraph 2 of article 3 of the Russian Civil code the norms of civil law contained in other laws, should correspond to the Civil

code of the Russian Federation. This legislative provision is evaluated in the legal literature in different ways, and mostly critically, since we are talking about legislative acts that are often of the same legal force. The Constitutional Court of the Russian Federation drew attention to this in one of its resolutions. I believe, however, that to solve the issue of the relationship of civil law contained in the civil code and other legislative acts, we should not use traditional formal criteria (form, the legal validity of the act), but the determining the bonding strength of these external forms of expression of law with law as such objective criterias; of how the right is directly reflected in legislation. When determining the priorities of legislative acts, one should proceed from such a criterion as the degree of compliance of the legislative norm with the fundamental human and citizen rights and freedoms.

From this point of view, there should be no doubt that the codified norms of legislation have priority over the norms of the same civil legislation contained in other normative acts. I would venture to suggest that the codified norms of civil legislation should play a system-forming role in the system of all legislation, not just civil legislation. From these perspective, for example, the Civil Code of the Russian Federation is often called the economic constitution. Given that the norms of the Civil Code regulate not only property relations, but also personal non-property relations based on equality, autonomy of will, its meaning is much broader. On the basis of the value of the Civil Code of Russian Federation in the system of legislative acts, which directly provides along with the Constitution the freedom of the human activities, other legislative acts (not only the special norms of the civil law, but also norms of administrative, criminal, procedural law) should define only the necessary restrictions for human activity, leaving wide scope for private discretion of the individual.

The only question that remains is how to legally consolidate the leading role of codified norms of the civil code? It would be logical to do this in the law on regulations, which would need to be adopted. In many countries of the world, including all the CIS member states, except Russia, such laws have been adopted, and a model law on normative legal acts for the CIS member states has also been developed. Based on this, it would be logical to suggest to develop such a regulatory act on regulatory acts in Russia and adopt it.

This law should regulate all the main aspects of legislative and other rule-making activities.

First, it should define the concept of a normative act, the boundaries of regulation, the principles of the regulatory activities for the purpose of regulation, taking into account differences in the nature of the activities of private persons and activities of public institutions. This act should define the types of normative acts and their relationship to each other, in particular, legislative and subordinate acts, federal, regional and local, centralized and local, general and special, etc., including case law, customs, generally recognized principles and norms of international law, international treaties, all external forms of expression of law, in my opinion, should be reflected in this act. It should also reflect other aspects: the procedure for developing the draft law, including its public discussion, adoption, publication, amendment and repeal. Such a normative act can become a certain restriction on the arbitrariness of the activities of the legislative power, executive bodies and the judiciary.

Natalia Yu. Rasskazova[27]. Any complex system, according to Gödel's theorem, is objectively contradictory and incomplete. This is mathematically proven and fully applicable to our legal system. It is very complex, objectively contradictory and incomplete, and in such a system we will always face gaps and contradictions, and the need to eliminate them. Of course, when we talk about law, we cannot restrict law as a part of culture by regulation or legislation, but in practice, lawyers are primarily faced with mandatory norms. At the same time, it is the legislation as a set of normative acts that should be the main interest of the state, or rather legislation. The main general trend of the existence of law in legislative acts is, of course, the deterioration of the quality of legislation, and it is in the field of civil legislation. First, it is a noticeable decrease in the necessary degree of abstractness of the law norm. The general rule is that the law works when the norms that are set out in it are abstract, which means that the law enforcement officer, primarily the court, has the opportunity to apply these norms in changing life circumstances. Current laws, which can not be understood in substantive terms, formally look often impossible to comprehend, contain articles into multiple pages with a thorough description, with the transformation of the text of the law into step by step instructions, that leads to a disaster for the proper law enforcement — to limit of judicial discretion.

The second common modern trend is an increase in the flow of legislative work, while the preparation of bills is entrusted to the relevant departments, laws in the field of private law are made by officials, people primarily with economic, managerial, accounting education. As a result, the administrative type

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of thinking actively penetrates into civil law regulations. In the texts of rules regulating civil law relations, the principle of free will, dispositivity (everything that is not prohibited is allowed) should be applied. At the same time, now in the texts of laws, we often see formulations such as "a citizen can...", "an organization can...", which means the permissive principle of regulation. I am inclined to think that the authors of the texts of the laws do not even realize what is the defect here. And we are talking about civil law regulation, in which it is enough to prohibit what is not allowed, and that's all. As a result, what is allowed by the civil code is often allowed again in current laws. This leads to a distorted perception of law, to a rejection of laws and a decrease in the authority of laws.

The problem of the low level of legal culture of the drafters of laws has become a common place. In 2016, the Constitutional Court prepared "Bulletin on the aspects of improving law-making activities". The constitutional court outlined in this document the fact that the common drawback of our laws today was the uncertainty, namely the blurring of terminology, unclear application of laws of the mechanisms used, vagueness of concepts and definitions of laws, the uncertainty of duties imposed on the subjects of legal relations. A significant part of the legislative norms that were later recognized as unconstitutional or applied in an unconstitutional way were introduced in the form of amendments at the second reading stage. Legislature processes end with the adoption of laws that embody all these defects. It is an axiom that the uncertainty of a legal norm is one of the best conditions for arbitrariness, for unlimited discretion in the application of the law. A special case of a contradiction in laws is the inconsistency of regulation between the norms of different spheres. And the most painful issue for practice is the inconsistency between the norms of real civil law and environmental standards, in particular, the Land Code of the Russian Federation. For example, in the first place the code was an act of public law regulation, which apply administrative principles of regulation of social relations, but it also include sketchy elements of civil law regulation, which does not fit into the system proposed by civil code, because they fragmentary snatched for the application of certain administrative rules that constitute the land code of the Russian Federation. The general consequence of this is a disdainful attitude to the law at all levels: the drafters of laws, law enforcement officers, participants in the turnover.

What should we do in such a situation? The first is to adopt a law on regulations and make this process transparent. The second is to teach people, especially lawyers, to respect the law. In recent years, students, according to my observations, refer more and more to judicial practice in their works and refer less and less to the law. This is one of the manifestations of a disregard for the law, an understanding of the poor quality of laws and the fact that they are not able to perform the function assigned to them.

Another trend in the development of our legislation is the usurpation of the rule-making function, primarily in the form of acts of interpretation issued by ministries and departments. Many state bodies have the right to provide explanations on the application of laws and other normative acts regulating relations within the competence of these bodies. Until relatively recently, these explanations of various bodies had been considered as the opinion of the competent authority, the reference to which relieved the person who relied on this opinion from responsibility, and nothing more. But over the past few years, the abundance of such explanations and their categorical nature has led to the fact that it has become impossible to ignore the normative nature of the explanations of state authorities. In 2016, there emerged provisions in the procedural codes that the explanations of legislation that have normative properties, if issued by the executive authorities, can be challenged. The emergence of such norms is understandable, since in the conditions of the pressure on the participants of the turnover, a legal mechanism of protection is required.

Since the executive authorities are not formally entitled to rule-making in the relevant area, then the question arises as to how to determine which explanation has normative properties. For me, as a lawyer, a regulatory act coming from a state body is an act that is subject to execution. And how to determine that the act is normative? If we are talking about classical legal acts, then the determination of whether this act contains a law norm occurs primarily from the analysis of the content of the rule. And when the acts of the executive authorities are evaluated, as explained by the plenum of the Supreme Court of the Russian Federation[28], the act has normative properties if it is used as a generally binding in law enforcement activity in relation to an indefinite circle of persons.

Thus, it turns out that the recognition of an act of interpretation of a law as normative depends only on how this act is used by the body that issued it. If the authority has posted it on its website,

[28] On the practice of consideration by courts of cases on challenging normative legal acts and acts containing explanations of legislation and having normative properties : Resolution of the Plenum of the Supreme Court of the Russian Federation No. 50 of 25.12.2018.

it is considered that such an act has normative content, if it is sent by letter to the relevant applicant, then it is an act of non-normative nature. But the main problem, in my opinion, is that this array of regulations has grown by itself and we are forced to accept them as regulatory sources. In this situation, we can talk about the usurpation of rule-making activities by the executive authorities. For example, the Bank of Russia issues regulatory clarifications, despite the fact that the law on the Central Bank of the Russian Federation[29] does not say that it can give any clarifications at all, but it nevertheless issues them, they are accepted, applied in practice, and challenged in court.

A similar problem exists in the field of case law. Unlike previous legislation, which indicated that the guiding explanations of the Plenum of the Supreme Court of the Russian Federation were binding for the courts, authorities and officers applying the rule, at the moment these provisions were excluded from the law and there is only a provision stating that the act of interpretation in a particular case is binding on lower courts. Based on the law, the Plenum of the Supreme Court of the Russian Federation on the court decision[30] stated that the resolution of the Plenum of the Supreme Court of the Russian Federation shall be taken into account by the courts, however the court shall be guided by law when making decisions. At the same time, we see that judicial practice in the field of private law claims to be a full-fledged source of law. And many colleagues assess this trend as progressive, primarily emphasizing that we are talking about the penetration of the continental legal system of case law into our legal system. First, it should be noted that a precedent in the common law system is a binding source of law. In this case, the court decision contains the reasons for its adoption, but these reasons do not depend on the plot of a particular case. And as a result, such a decision contains, in fact, a norm, a generally binding rule. Lower courts are subject to common law precedent, not because they are convinced by the reasons behind the decision, but simply because the higher court said so and for the lower court it is the source of the law. In practice, we see that judicial acts acquire great weight in the field of law enforcement. Suffice it to say that the emergence of a new law review, published by the Supreme Court of the Russian Federation, can turn around all of the legal representations on any issue, if the review contains some kind of resolution which shows that the Supreme Court changed its previous perspective for similar or analogic case.

There are no motivations that would claim to be ratio decidenti, that is, the part of the precedent that contains a normative prescription in the common law tradition. Can the Supreme Court of the Russian Federation be a rule-making body? In order to discuss this question, we must first decide whether we recognize that it is the norm that is the source of law for practical application. If we agree that a practicing lawyer who works daily in their field needs a norm, that the source of law for practical application for utilitarian purposes is a norm, then we must ask the following question: is society ready today to provide the Supreme Court with a rule-making function. If we agree with this and are ready to recognize the right of the Supreme Court of the Russian Federation to rule-making, then this provision, the convention must be consolidated at the level of law.

At the same time it is necessary to determine the place of rules that are created by the Supreme Court in the course of its enforcement activities in the hierarchical system of normative acts. It is also necessary to determine the order of official publication of these regulations and the rules of their operation in time. Huge problems arise due to the fact that the effect of the resolutions of the Plenum of the Supreme Court of the Russian Federation is preserved, but the laws are changed. Finally, it is necessary to create conditions for the rule that is born in law enforcement practice and formulated in the decisions of the plenum to be accompanied by a statement of reasons, that is, what constitutes the necessary prerequisite for the emergence of a precedent in the common law system.

Tatyana S. Yatsenko[31]. I would like to address issues related to inheritance law in the digital age. First of all, I want to note that the scientific and technological development of society is taking place at an extremely high speed and this is a serious challenge for the law. The reason for this is that traditional legal systems are not designed for the emergence of new objects of civil rights and do not take into account the peculiarities of their turnover, while this is very important for inheritance law, because it is one of the most conservative and stable legal institutions.

First of all, we are talking about the difficulties in inheriting so-called digital assets. The Russian legislator has so far reduced all digital assets to digital rights, i. e. tokens. Although there are many more

[29] On the Central Bank of the Russian Federation (Bank of Russia): Federal Law No. 86-FZ of 10.07.2002.

[30] On the court decision: Resolution of the Plenum of the Supreme Court of the Russian Federation of 19.12.2003 No. 23 (ed. of 23.06.2015).

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digital assets distinguished abroad, which include not only tokens and cryptocurrencies, but also documents created with the help of programs, digital videos and photos, domain names, legally uploaded to computers trZ files, accounts in social networks, e-mail, etc.The market of such assets is now multibillion-dollar, but almost in no country in the world is it properly regulated. And the problem, especially with tokens and cryptocurrencies, is caused by the specifics of the creation and turnover of these objects through the mechanism of distributed registries. Heirs, if the testator did not leave access codes, may not know that such an asset was available, and even if they knew about it, they will not be able to get it without an access code. In fact, inheriting such assets may not be possible right now. The issue of inheritance of accounts in the Internet is of particular relevance. The judicial practice in the world on this issue is already developing. And as practice shows, social networks strongly resist allowing the inheritance of accounts, and even include special conditions in user agreements.

Abroad, attempts are being made to solve this problem, in particular, by legislative regulation of the procedure for access of heirs to digital assets, by creating special information repositories. Such an initiative was taken in Denmark by the notary chamber. There it is planned to create a kind of repository where the corresponding keys will be stored, which, if the testator wants it, will be transferred to the heirs. So far, no initiatives have been taken in Russia on this issue. But in connection with the legalization of digital rights, this issue should be raised unequivocally. In addition, the development of the Internet, social networks, and messengers has led to the widespread use of so-called electronic wills.

And contrary to the mandatory rules on the invalidity of wills drawn up in violation of the established form, such wills in foreign countries are gradually legalized within the judicial practice. These are wills in the form of audio and video messages posted on platforms such as Youtube, these are wills created using the Microsoft Office program, etc. So, in one of the cases, the court recognized the text of a document created in the Word program as a will. This document ended with the testator's full name in the place where his signature should have been in the standard form of the will. And as circumstances confirming the possibility of recognition of the will, the court accepted such facts, taking into account that the computer had a password, the document was not changed after the death of the testator, and it legalized such a will.

The regulation of electronic wills is becoming a problem not only in the context of control over the execution of these wills, but also in the technical features of their execution. The first platform for drawing up electronic wills "To help testators" appeared in 2000, that is, it was possible to draw up the text of a will using software tools, and then apply to a notary with it. Now the situation has changed. For example, in Australia, a person wrote a will in the WhatsApp application, sent it to friends and committed suicide, and then the court legalized this will, because it considered that the will was expressed clearly and fully enough. Reading foreign literature, I see that not only authors from countries with a common system of law emphasize the need to recognize and regulate such wills, but also European scientists also express opinions that it is necessary to recognize audio and video wills as legally valid, since they allow us to more fully and clearly identify the will of the testator. Russian legislation explicitly prohibits the composing of wills using electronic means, at the moment this is absolutely true, since it is technically impossible to ensure the composing of such wills. But we need to understand that this is a temporary measure, and now we should think about how to solve this issue.

Several US states have attempted to pass laws on electronic wills. In Nevada, the law was passed in 2006, but did not enter into force. A new version appeared in 2017, but is still not in effect. As far as I know, the state of Arizona passed a law in 2019, which involves the so-called biometric identification of the testator by their physical characteristics (irises, veins, fingerprints), in addition, it is supposed to put digital markers that will warn about unauthorized interference by third parties in changing the text of the relevant will. But in the United States, as the authors of the bill themselves admit, technology does not yet allow them to technically provide everything that is provided for by this law. Therefore, to some extent, the digital optimism about the institute of wills seems superfluous. Some authors believe that with the help of blockchain technologies, the problem of electronic wills can be solved quickly and effectively, it will remove the notary figure from this area, because the will will be automatically executed and drawn up, the person will only need to appoint a guardian figure, who after the death of the testator will notify the network that this has happened, make a transaction, take appropriate actions, and the network will ensure the execution of such a transaction. But the blockchain technology itself is vulnerable, no matter what its developers say about it, and we already know about hacker attacks on the relevant systems. Nevertheless, inheritance law is a sphere of mandatory regulation, and if there is no state control in this area of relations, it is impossible to say that the interests of the testator will be respected.

It is clear that the trends in the development of legal relations, of course, need to be taken into account and already now we should think about what the scientific justification for these changes may be.

In foreign literature, different concepts are proposed, for example, the concept of virtual property. It is impossible to ignore these trends in the development of inheritance law.

Askhat N. Kuzbagarov[32]. With regard to the topic of the conference on the reform of civil legislation, I asked myself what happened to the subject of civil legislation in the end. Article 2 of the Civil Code of the Russian Federation reflects the triplicity of those relations that are included in the subject of regulation of a civil law act. The classic version of property and personal non-property relations remained, and no one disputes this. In 1994 we introduced the concept of entrepreneurship, which was enshrined in section 1 of article 2 of the civil code, and thus, a long-standing dispute, which was against the autonomy of business law, was leveled and "victory" won by those who believe that civil-law regulation is the most important and the entrepreneurial or business manifestation of law in this area is secondary. Recently, since 2012, corporate legal relations have been included in the subject of civil law regulation. Thus, today the subject of civil legislation includes a triplicity of relations: property and personal non-property, corporate relations and entrepreneurial activity. If we ask ourselves whether this is a good thing or a bad thing, then we need to look at the consequences of this reform. In my view, nothing good came out of this, because I believe that it is impossible to say that relations within the entrepreneurial activity are based on equality and autonomy of will, that corporate relations are based on the legal equality of their participants. I believe that, no, such an identity cannot be made. Our legislator follows its own path, and the combination of these three different types of legal relations under the auspices of the Civil Code subsequently formed a contradiction in law enforcement, when the same Supreme Court of the Russian Federation takes different positions on certain categories of cases with a difference only in time. It happens that less than three years pass. The courts, the district courts, take very different positions on the very same issues and relations. In my opinion, combining these types of relations for regulation in a single civil code is not entirely correct, since they have different features, for example, the nature of risks and their distribution. It seems to me that the more classical version was the dualistic order of regulation, when trade relations were separated from the subject of civil regulation into an independent area of regulation.

Konstantin K. Lebedev[33]. I would like to briefly address the issue of changing the subject composition of entrepreneurial and other types of economic activity. The concept of entrepreneurial activity in the Civil Code of the Russian Federation underwent a change in 2017. Now the concept of entrepreneurship is formulated as follows: the civil law regulates the relations between persons engaged in entrepreneurial activities, or with their participation, based on the fact that business is a separate undertaken at one's own risk activity aimed at systematical profit from the use of property, sale of goods, performance of works or rendering of services. Persons engaged in entrepreneurial activity shall be registered in this capacity in accordance with the procedure established by law, unless otherwise provided for by this Code. In the definition, the term "persons" is used not quite correct, although it is clear that we are talking about citizens, and not about commercial organizations that are registered in this capacity. But I would like to draw attention to the clause "unless otherwise provided by this Code", because now not only the Civil Code provides that citizens, who conduct business activities, are allowed not to register in certain cases, which means that the clause should not sound as it is currently formulated, but at least with reference to the current legislation.

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