Law Journal of North-West Institute of Management of the Russian Presidential Academy of National Economy and Public Administration under the President of the Russian Federation

ТЕОРЕТИЧЕСКАЯ И ПРИКЛАДНАЯ ЮРИСПРУДЕНЦИЯ

Theoretical and Applied Law

> Laws must go hand and hand with the progress of the human mind.
>
> Thomas Jefferson

2021 № 3(9)

ISSN 2686-7834

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Opening Remarks by the Editor-in-Chief

PRESENT AND FUTURE OF NORMATIVE REGULATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Editor-in-Chief
Nikolai Razuvaev

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

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

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

Dualism of Public Relations Regulation (Legal and Regulatory Regulation)

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ABSTRACT
The article examines the issues of differentiation of the regulation of public relations, defined primarily by the differentiation of public relations, and then inherent in their legal forms (based on self-regulation) and external regulatory forms (based on power regulations). The need to renounce the traditional differentiation of the right to industry, including its division into so-called private and public law, is justified because it reflects external forms of expression of law, i.e. differentiation of legislation governing a variety of public relations, divided into private and public relations. The notion of dualism (pluralism) of the law must be replaced (or at least interpreted) with the notion of dualism of the regulation of public relations, meaning legal and regulatory regulation, with all the ensuing consequences. Such an approach implies the need to clarify the entire terminology range of jurisprudence. This article discusses issues such as the legal and regulatory regime (mechanism) of public relations regulation, legal and regulatory principles for regulating public relations, legal and regulatory legal facts, as circumstances that are the basis for the emergence, change and termination of legal relations and power relations.
Keywords: dualism of public relations regulation, private law, public law, mechanism for regulating public relations, principles of regulation of public relations, methods of regulation of public relations, legal facts

1. Introduction

In determining the essence of legal regulation, it is necessary to renounce the regulative understanding of law it is necessary to distinguish between legal forms (the concept associated with the manifestation of the will of a person) and regulatory forms (the concept associated with the will of the state) as an external form of expression of law. It is also necessary to renounce the traditional differentiation, including its division into so-called private and public law[1], since it reflects the external forms of expression of law, in particular, the differentiation of legislative norms regulating a variety of public relations, including private and public relations.

The concept of dualism of law, its division into private law and public law, should be replaced (or at least interpreted) by the concept of dualism of regulation of public relations, meaning legal and regulatory regulation with all the consequences. In my opinion, the phrase "private law" is a tautology, since the right is realized only in the private sphere of society; private law is the right of individuals, manifested in their volitional actions recognized by other members of society. The phrase "public law" is also incorrect, since political power is implemented in the political (public) sphere of society's life, defining in its norms public demands addressed both to individuals (private life of society) and to the political life of society. Public law is not law, but public power, politics, the science studying state, not jurisprudence. The political (public) sphere of society's life is studied by these sciences as objective (external) foundations of law, as its environment.

The differentiation of public relations, depending on their nature, into private and public ones, underlies the differentiation of the system of law and legislation, the legal and regulatory status of participants in public relations, the legal and regulatory regimes of activity of participants in public relations, including legal and regulatory means of regulation, etc.

This approach implies the need to clarify the terminology of jurisprudence. In this study, we will consider such issues as the legal and regulatory regime (mechanism) for regulating public relations, legal and regulatory principles for regulating public relations, legal and regulatory legal facts as circumstances that serve as the basis for the emergence, modification and termination of legal relations and authoritative relations.

2. The main part

2.1. Dualism of the mechanism of regulation of public relations

The concept of the mechanism of legal regulation is traditionally interpreted as a mechanism of regulative regulation. Attempts to expand the content of this concept at the expense of such aspects as "psychological mechanism of influence on

[1] Antonov M.V. On the System and Branches of Legislation Law and Economics. 2011. No. 3.P. 56.

public relations", "social mechanism of law", "informational impact of law"[2], ultimately came down to traditional normativity, described through concepts such as general permits, general prohibitions, types of legal (normative or regulative) regulation[3]. This is explained by the methodological difficulties of correlating heterogeneous knowledge, their synthesis within the framework of a unified legal theory of the mechanism of regulation[4].

It seems that a general theory of the mechanism of regulation of public relations cannot be created if one remains exclusively on the positions of legal positivism (normativism), a mechanistic approach to the regulation of public relations and does not see the internal (essential) side of the regulation of public relations. Public relations, acting as a direct subject of legal and regulative regulation, are a form of human activity and are determined by its nature. It follows from this that the essence of legal regulation is public self-regulation. Here its own logic is manifested, based on the coordination of the wills of acting individuals pursuing their interests. The term "mechanism" is very vaguely applicable to self-regulation, since the diversity of an individual's behavior cannot be laid in the procrustean bed of any particular mechanism. Another thing is regulative regulation, the mechanism of which is expressed by the logical structure of the legislative norm: hypothesis, disposition, sanction.

For the emergence of a legal relationship (as well as an authoritative relationship), life circumstances, which are given legal significance, play a decisive role. And these are not only the current legislative norms, which by definition are legal facts with which an individual correlates his behavior. There is a well-known discussion about the connection of facts of legal significance and legal relations (authoritative relations). Let's leave aside the question of legal facts in the mechanism of regulation of public relations, we only point out that some authors believe that a legal fact does not generate rights and obligations independently, the latter stem from a legislative norm; a legal fact exists only because it is provided for by a legal norm[5]. Other authors, although, do not exclude legal norms from the necessary prerequisites for the emergence of a legal relationship, and point to the causal relationship of legal facts and the rights and obligations they generate[6].

It seems that legal relations (but not power relations) may arise due to circumstances that lie outside the limits of the normative text. A non-normative approach to the methodology of legal facts research has long been founded in the Civil Code of the Russian Federation, where it is determined that civil rights and obligations may arise not only from the grounds provided for by legislation (this should be taken critically), but also from the actions of citizens and legal entities, which, although not provided for by it, but by virtue of the general principles and meaning of civil legislation (which is also controversial) give rise to civil rights and obligations (paragraph 1 of Article 8). Consequently, the mechanism for regulating public relations may be non-normative.

The basis for the emergence and implementation of a legal relationship is: a) interested behavior (action or inaction) of an individual aimed at acquiring or exercising a right (i.e. a certain legal claim); b) the behavior of other individuals corresponding to such a claim, expressing recognition (or non-recognition) of the actions of the first individual as legal. The tradition of understanding law as legal communication, manifested in claim and recognition, theoretically took shape in the philosophy of law of Hegel, who wrote: "Be a person and respect others as persons; ... for property, as the part of the existence of a person, it is not enough for the inner representation of this person and his will that something belongs to him, for this it will be necessary to take possession of the thing. The existence that such a will thereby receives includes the recognition of others. The inner act of the personality's will, which says that something is mine, must be recognized by others as well"[7]. Thus, an individual's claim must be recognized in order to obtain a law-forming force and thereby become a legal, i.e. subjective right.; recognition is a constitutive moment, a foundation, a principle of legal understanding[8].This approach to legal understanding is more or less inherent in representatives of communicative theories of law, both foreign[9] and Russian[10] including Soviet ones[11].

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2 Alekseev S. S. The Mechanism of Legal Regulation in a Socialist State. Moscow, 1966.P 62. Problems of the Theory of Law. Sverdlovsk, 1972. P. 155, General Theory of Law, Moscow, 1981. P. 291.

3 Alekseev S.S. General Permissions and General Prohibitions in Soviet Law Moscow, 1989.

4 Tarasov N. N. Object and Subject of Legal Science: Approaches and Methodological Meanings of Distinction Jurisprudence.2010 N1, p. 32–34.

5 See Vershinin A.P. Subordination of the Categories "Legal Fact" and "Legal Relationship". Methodological Problems of the Theory of Legal Facts. Yaroslavl, 1988.P. 10. Kutyukhin, I. V. About the Connection of Legal Fact and Legal Relationship. Leningrad Legal Journal. 2006. No. 2.P. 39.

6 Isakov V.B. Legal Facts in Soviet Law. Moscow, 1984. P. 16-17. .Krasheninnikov E.A. Studies on the Nature of Legal Facts. Methodological Problems of the Theory of Legal Facts. Yaroslavl, 1988. P. 3–6. Zinchenko, S. A. Civil Legal Relations: Approaches, Problems, Solutions [Zinchenko S. A. Civil Legal Relations: Approaches, Problems, Solutions. Rostov-on-Don, 2011. 236 p.]Rostov-on-Don, 2011.P. 18.

7 Hegel. Philosophy of Law. Moscow, 1990.P.98, 108. (translated from German).

8 Ovchinnikov A. I. Spiritual Significance of Law in Legal Hermeneutics. Jurisprudence. 2014. No. 6.P. 105.

9 See Habermas J. Moral Consciousness and Communicative Action. St. Petersburg, 2006. 382 p. (translated from German).Fuller, L. L. Human Interaction and the Law. The Principles of Social Order: Select. Essays of Lon L. Fuller. Durham. N.C., 1981.

10 See Polyakov A.V. Postclassical Jurisprudence and the Idea of Communication. Jurisprudence. 2006. No. 2. P. 26–43. . Vetyutnev, Yu.Yu. Morphological Aspects of Legal Communication. Jurisprudence 2014. No. 6. P. 110–117.

11 See Pashukanis, E.B. Selected Works on the General Theory of Law and State [Moscow, 1980. Reisner, M.A. Law. Our Law. Foreign Law. Common Law. Moscow-Leningrad, 1925. Kannike S.Kh. Towards the Development of the Concept of "Legal Communication" (Some Methodological Aspects) Scientific Notes of the Tartu State University. Issue 806. Methodology of Law. Common Problems and Industry Specificities. Works on Jurisprudence Ed. I.N. Gryazina. 1988. P. 70–92.

The interaction of individuals based on the claim of one and the recognition of this claim by another (by others) is a mechanism of legal regulation, and in reality a mechanism of self-regulation of society, the elements of which are: a) the interested behavior of an individual, consistent with the interests of other individuals, in order to establish mutual rights and obligations (the fact of acquiring a right and the emergence of a legal relationship); b) the implementation of acquired rights and obligations of individuals (the facts of the implementation of the right leading to a change, termination or the emergence of new legal relationships).

In necessary cases, legal regulation (self-regulation) is supplemented by regulative regulation of public relations, and then a legislative norm is included in the mechanism of legal regulation, providing for a generally binding requirement for a certain behavior (prescription, restriction, prohibition). Individuals in the course of self-regulation of their behavior should take into account not only the requirements of legislative norms, but also the rules of behavior established by other institutions of society, including customs, precedents, contract terms, religious and party norms.

The norms of legislation, being external regulators of human activity, correct the behavior of an individual, force him to adapt to regulatory requirements that reflect some common interests of society (one or another of its institutions). An individual can realize his interest in accordance with regulatory requirements (when the interests of the individual and regulatory requirements coincide), or to give up completely or partially his interests, obeying regulatory requirements, or to act contrary to regulatory requirements, taking on the risk of bearing negative consequences associated with his behavior that violates regulatory requirements.

The recognition of regulatory regulation as an external factor affecting human behavior and complementing self-regulation with another element — the norm (rule, standard) of behavior, lets us talk about the mechanism of regulative regulation.

Legal regulation and regulative regulation are qualitatively different ways of regulating public relations, which in the legal literature are usually described by the categories of "enabling regime" and "permissive regime", but, as a rule, all in the same normative tone. For example, S. S. Alekseev defines a legal regime as an order of regulation, which is expressed in a set of legal means that characterize a special combination of interacting permits, prohibitions, as well as positive obligations and create a special direction of regulation[12].It is easy to see that in this definition we are talking about the regulatory regime of regulation, since "a special combination of interacting permits, prohibitions, as well as positive obligations and creating a special direction of regulation" are external regulators of relations determined by public authorities. By the legal regulation regime (self-regulation), one should understand one's own choice of behavior (interaction) of individuals based on their interest, of course, taking into account the effect of the regulatory regime of regulation expressed in a certain set of restrictions and prohibitions.

The regulatory regime of regulation expresses the degree of detail of regulatory regulation mediated by legislation and can be based on: a) dispositive principles related to the characteristics of the activities of private individuals (mainly civil legislation)[13] and b) imperative principles that may relate both to the characteristics of the activities of public authorities and to the characteristics of the activities of private individuals (administrative, criminal, procedural legislation).

The legal regulation regime characteristic of the activities of private individuals expresses the direct connection between the legal form (the agreed will of private individuals) and the social content of regulated relationships. At the same time, private individuals, entering into legal relations, take into account the requirements of the norms of legislation, i.e. the requirements of the regulatory regime (both dispositive and imperative). Thus, the legal regime for regulating the activities of private individuals (self-regulation) finally depends on the regulatory regime for regulating such activities.

In a state governed by the rule of law, the regulatory regime of private persons' activities (both dispositive and imperative) is based on the recognition of the freedom of such activity and manifests itself in all its elements: in the acquisition and termination of the corresponding status of a private person, in the acquisition, exercise and termination of rights, in the protection of violated rights. Thus, the legislation recognizes the freedom of entrepreneurship, which is the most important type of activity of individuals, which manifests itself in the acquisition and termination of the status of an entrepreneur, in the acquisition, exercise and termination of their rights (personal, property, obligation), in the protection of violated rights.

The importance of legislation for the freedom of activity of individuals is not only and not so much that it defines the rules of conduct of individuals, but that it establishes regulatory means and regulatory mechanisms for the implementation and protection of the rights of individuals. The guarantee of the realization and protection of the rights of individuals is the principle enshrined in legislation "everything is allowed that is not prohibited by law", which is designed to completely eliminate ambiguities in the legality or illegality of the actions of individuals in any sphere of society. This legislative principle has been consolidated in many normative acts and, above all, in the basic laws of legal states. It defines the activities of private individuals in a democratic society and a rule of law state.

The comparative characteristics of the regime of regulation of the activities of private individuals and the regime of the activities of public authorities show their natural difference and the inadmissibility of mixing. Not the rejection of the division of interests into private and public, as representatives of various collectivist theories (theories of social functions, theories

[12] Alekseev S. S. General Permissions and General Prohibitions in Soviet Law. Moscow, 1989. P. 185.

[13] Yakovlev V. F. Civil Law Method of Regulation of Social Relations. Sverdlovsk, 1972. P. 70–71. Puginsky B.I., Safiullin D.N. Legal Economics: Problems of Formation. Moscow, 1991.P. 54–56.

of economic law, etc.) say, but strict consideration of their relations should be the basis of the types of regulation: legal and regulatory.

It is possible to identify the socio-economic system, the political regime of the society according to the regulatory regimes underlying the legislation, dominant in society.

Regulatory regulation as an attribute of the state has its own social value, this cannot be denied, but it should not replace the legal regulation of public relations. Regulatory restrictions on the freedom of private life are necessary, but each regulatory act should highlight the scope of free discretion of a private person (law) and its boundaries (a norm providing for restrictions and prohibitions).

Thus, we emphasize that the dualism of regulation, its division into legal and regulative (and not the dualism of law — the division of law into private and public) is the defining moment in the understanding of law and its environment. Legal regulation is the self-regulation of members of society based on their own interests and determining the rule of law in society. Regulatory regulation is an external regulation used as a subsidiary means of regulating public relations in order to establish the desired public order.

2.2. Principles of regulation of public relations

The concept of "principles of law" is traditionally interpreted from the position of legal positivism[14]; some authors differentiate the concepts of legal principles and principles of law depending on the difference between the concepts of the legal system and the system of law[15]; others do not make such a distinction, believing that legal principles are the essence of the principles of law, principles of legal regulation, which should be reflected in the system of objective law in the form of principles-ideas[16].

Nevertheless, it seems that the differentiation of subjects, methods and mechanism of regulation of public relations into legal and regulative ones implies a similar differentiation of the principles of regulation of public relations into legal (private) and normative (public) ones. Thus, paragraph 1 of Article 2 of the Civil Code of the Russian Federation it is stated that private relations are regulated on the basis of the method of equality of participants in such relations, thereby recognizing that equality is an immanent property of private relations (subject of regulation). Paragraph 1 of Article 1 the Civil Code of the Russian Federation states that civil legislation is based on the recognition of equality of participants in private relations, which indicates the legislative declaration to take this circumstance into account in all its norms (both specific and general that is regulatory principles of regulation) and the methods (means) used to regulate private relations. It follows from this that there is a legal principle of equality inherent in private relations, and a normative principle of equality expressed in the norms of civil legislation. The content of these principles may coincide if the legal principle is adequately reflected in legislative norms and manifests itself as a normative principle, but it may not coincide if there is no such reflection, there are various kinds of normative distortions.

There may be legal principles regulating public relations that have not found expression in a similar regulatory principle (for example, the principle of conscientiousness was such before it was reflected in paragraph 3 of Article 1 of the Civil Code of the Russian Federation, although it has always been taken into account by legal practice), as well as regulatory principles regulating public relations that have no analogues in the field of law (for example, the regulatory principle of legality as an external requirement of the legislator to participants in public relations, although it has always been taken into account by participants in real public relations).

The question of the sources of the formation of the principles of regulation of public relations is also debatable. Some authors derive normative principles from certain proto-principles, perhaps referring to legal principles, but this can only be guessed based on the author's message that the principles of law are transformed into norms of law[17]. In reality, the principles of law are the principles of natural non-normative relationships of the participants in the relationship, and normative principles are a normative reflection of legal principles as they are recognized by the legislator. This process of formation of normative regulation of public relations (at the level of principles and specific norms) is based on the patterns characteristic of the emergence and development of public relations themselves, which are the subject of regulation through certain methods of legal regulation[18].

The question of the relationship between the concepts of "regulatory method" and "regulatory principle" is also debatable: according to some authors, regulatory methods can act as principles of law[19]; others distinguish between goal-setting principles and principles-methods that define techniques and means to achieve the goals and objectives of regulation[20]; still others more reasonably believe (but do not consistently prove their position, limiting their conclusions to only one type

[14] Principles of Private Law. Ed. T.P. Podshivalova, V.V. Kvanina, M.S. Sagandykova. Moscow, 2018. 400 p.

[15] Skurko E. V. Legal Principles and Principles of Law: Their Expression in the Legal System, the System of Law and Legislation of the Russian Federation (Topical Problems of Theory and Practice) New Legal Thought 2005. No. 6. P. 20–25.

[16] Protasov V. N. What and How the Law Regulates. Moscow, 1995.P. 48.

[17] Konovalov A. V. Principles of Civil Law: Methodological and Practical Aspects of Research. Abstract of Thesis. of Doctor of Legal Sciences. Moscow, 2019.P. 12–13, 17.

[18] Muromtsev S. S. Definition and Basic Division of Law. Moscow, 1879.P. 17–19, 46.

[19] Konovalov A. V. Ibid. P.18.

[20] Volos A. A. Principles-Methods of Civil Law and Their System. Moscow, 2018.P. 58-59, 81–95.

of activity — procedural) that the principles of law characterize the purpose of regulated activity, apparently assuming that the methods of regulation are the means to achieve the corresponding goals[21]. It seems that the principle of regulation and the method of regulation are different categories that characterize the mechanism of regulation of public relations. And the presented theoretical positions should be evaluated from the difference between legal and normative/regulative.

So, in the sphere of legal regulation, the principles of legal regulation and methods of legal regulation are immanent properties of the subject of legal regulation — private relations. At the same time, the principles of law as a generalized expression of the regulatory principle are determined by the nature of the regulated social relationship (equality, autonomy of the will, property independence of the participants in the relationship)/ They presuppose the use for the purposes of legal regulation of certain methods (means) of regulation, which are transactions and other volitional actions of persons pursuing their interests. Of course, transactions and other volitional actions of persons pursuing their interests must be carried out within the limits of permissible regulatory regulation.

In the field of regulative regulation, both the principles and methods of regulation are determined by norms and are a reflection (more or less true) of legal (primary) and public (secondary) relations. At the same time, normative principles as a generalized expression of norms, the content of which is determined subjectively by the rule-making bodies, presuppose the use of certain methods (means) of regulation for the purposes of regulatory regulation, which are power acts (acts of various public authorities).

Power acts are based not on the self-interest of public authorities, but on the functional purpose of their activities, determined by legislation. In other words, acts of authority must also be carried out within the limits permitted by the relevant statutory legislation.

2.3. Legal facts

Legal fact is a term meaning a generalizing concept of various life circumstances, which are given the legal significance of the grounds for the formation and exercise of rights and obligations: transactions, administrative acts, offenses, etc. In Russian legal science, legal facts are defined as facts of actual reality, with which the norms of law associate the onset of legal consequences[22]. The question arises: can rights and obligations (legal relations) arise, change, terminate regardless of legislative norms? If they can, then the role and significance of legal facts in the mechanism of regulation of public relations is different from that given to them by representatives of legal positivism.

In recent years, scientific papers have appeared in which the conclusion about the dependence of legal facts on legislative norms has been reasonably questioned. So, they state that regarding legal facts as a "conductor" of the energy of the norms of law only confuses the situation, distorting the true picture of the movement of law. Legal forms (legal relations) generated by legal facts develop according to their internal laws, and legal facts affect legal relations only by generating, changing or terminating them. The consequences of this can be understood only by analyzing the movement of the legal relationship. Legal facts are volitional acts that generate, change or terminate rights (objective and subjective)[23]. Without setting out to critically analyze the above position, I will note its merit, which is expressed in the fact that thanks to it, the unconditional connection of a legal fact and a legislative norm has been broken.

The legislative enumeration of the grounds for the emergence of civil rights and obligations is redundant, since a non-normative approach to the methodology of legal facts research has long been laid down in the Civil Code of the Russian Federation, which established that civil rights and obligations arise not only from the grounds provided for by law, but also from the actions of citizens and legal entities, which, although not provided for by law, but by virtue of the general principles and meaning of civil legislation, give rise to civil rights and obligations. Thus, the legislator himself recognizes that civil rights and obligations may arise due to circumstances that lie outside the normative text[24].

It essential to emphasize that a legislative norm "can never generate legal consequences itself besides legal facts"[25]. The concept of legal relations (as well as power relations) arising directly from the law should be abandoned as unscientific. In order to understand the role and significance of legal facts in private and public relations, they should first be divided into legal and regulatory, and already within each of the selected groups, more fractional classifications should be carried out, in particular, legal and illegal facts should be distinguished.

In the sphere of private relations, legitimate legal facts are life circumstances determined by the interests of an individual, with which he associates the emergence, change or termination of a legal relationship. At the same time, the individual takes into account external circumstances, including the requirements of legislative norms and other social circumstances (for example, customs, possible risks, etc.). Illegal legal facts are the actions of an individual that violate the interests of other persons (for example, violation of a contract) and the regulatory requirements of society.

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21 Barabash, A. S. On the Concept of Principle in Various Branches of Law. Russian Legal Journal. 2019. No. 2. P. 98.

22 Krasavchikov O. A. Legal Facts in Soviet Civil Law. Moscow, 1958.181 p. Rozhkova, M. Legal Facts in Civil Law. Appendix to the Economy and Law Journal. 2006. No. 7. P. 6–9.

23 Zinchenko S. A. Legal Facts in the Mechanism of Legal Regulation. Moscow, 2007. P. 12,13.16.

24 Didenko, A. G. Challenges of the Time: The Theory of Legal Facts and Its Reflection in Legal Reality [Didenko A. G. Challenges of the Time: The Theory of Legal Facts and Its Reflection in Legal Reality. Almaty, 2015. 66 p.] Almaty, 2015.P. 11-12.

25 Krasavchikov O. A. Ibid. P.181.

Thus, in the sphere of private relations, the connection of fact and norm is possible (when there is a need to turn to the services of public authorities: state registration, obtaining a license, seeking judicial protection, etc.), but it is not unconditional, since the subjects of private relations acquire and exercise their rights and obligations independently, based on their own interests (paragraph 1 of Article 8 of the Civil Code of the Russian Federation). Assessment of the legality of the behavior of subjects of private relations is possible only if there are regulatory grounds (facts) to verify their behavior (lawsuits, complaints, etc.).

In the sphere of public relations, the relationship between fact and norm is unconditional, since public authorities exercise their powers solely on the basis of the law, their counterparties (citizens, legal entities) also obey the legitimate requirements of the authorities. In the legal structure of the regulatory regulation mechanism, the legislative norm itself acts as a legal (normative) fact and, together with the action of a public authority (a specific factual circumstance), entails the emergence, change and termination of the power relationship. A normative legal fact is by definition legitimate, unless, of course, it is established that a legislative norm is not legal, for example, it is recognized unconstitutional.

The requirements of legislative norms play the role of additional legal facts (means of regulation) in the mechanism of regulation of public relations, ensuring normal development of the legal relationship, and in case of its violation — the realization of the consequences of the violation through the apparatus of state coercion. For example, a deal, being a legal fact that generates a legal relationship, in cases provided for by law, is subject to state registration. Accordingly, the requirement for state registration (act of state registration) of a deal acts as a normative legal fact, complementing the act of choosing the behavior of an individual guided by his own interests and taking into account the requirement of a legislative norm.

Normative legal facts underlie not only regulatory legal relations (as part of legal facts) and power relations (for example, regulatory administrative relations), but also the basis for the emergence, modification or termination of protective legal relations and power relations, as a consequence of violations of regulatory relations, when norms containing sanctions of administrative, criminal and procedural legislation are subject to application.

3. Conclusion

Summarizing this study, we can conclude the following:

- Differentiation of public relations into private and public is the defining criterion underlying the *dualism of regulation* of public relations (dividing it into legal and regulatory regulation), as well as in understanding the essence of law (a system of mutually agreed or unilateral, recognized by others, volitional actions) and its environment (including legislative requirements), the mechanism of regulation of public relations (legal and regulatory), legal facts (legal and regulatory) in this mechanism.
- The actual legal facts are volitional actions (inactions) of individuals who are subjects of private relations recognized by others. Since these entities are faced in their activities with the requirements of legislation and other external circumstances, for example, force majeure circumstances, as well as circumstances such as violation of their rights, their volitional actions (necessary and sufficient for the emergence, modification, termination of the legal relationship) are supplemented by the above external circumstances, connecting to the mechanism of self-regulation (the actual mechanism of legal regulation) a subsidiary mechanism of regulatory regulation.
- Normative facts, strictly speaking, are not legal; they are connected to legal acts in order to establish legal relations, as well as power relations (administrative, criminal, procedural), within which the powers of public authorities are implemented. But even in this case, power relations and the facts of their dynamics are based on legal relations and the facts of their dynamics. For example, a criminal legal relationship is the result of a violation of a normal social relationship (legal relationship or power relationship); a procedural attitude is the result of an appeal to the court for the protection of a violated right (legal relationship) or an authority (power relationship).
- Legal facts in the mechanism of legal regulation should be defined as the circumstances of reality with which the will of the participants in private relations connects the onset of legal consequences (the emergence and implementation of legal relations), and in the mechanism of regulatory regulation — as the circumstances of reality with which legislative norms (the will of the legislator) connect the onset of legal consequences (the emergence and implementation of power relations).

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Reinforcement of the Papuan Traditional Communal Rights for the Control of Land and Natural Resources

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ABSTRACT
The ulayat rights of Papuan customary law communities over control of land and natural resources are rights granted by laws and regulations with a number of special powers. This study aims to analyze and provide a conception of strengthening the customary rights of the Papuan customary law community to control over land and natural resources. This research method uses a normative-juridical legal research type, which refers to the legal norms of legislation (statute approach), as well as legal theories and principles as supporters. This research is descriptiveanalytical, using qualitative analysis methods. The results of this study indicate that although the regulation of the customary rights of the Papuan customary law community has been in place for a long time, there are some basic things that need to be considered. Several regulations in the Perdasus do not represent the Papua Special Autonomy Law and tend to be contradictory. These provisions raise a number of problems for the Papuan indigenous peoples with regard to land ownership and the use of natural resources.
Keywords: Customary Law, Customary Law Community, Customary Rights of Papua

1. Introduction

Indonesia is not only known as a maritime country, but also as an agrarian one in terms of its geographical structure, which is rich in natural resources. Article 33 paragraph (3)of the Constitution of the Republic of Indonesia of 1945, states that, "The earth, water, and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". This article essentially provides not only for the assertion of Indonesia's sovereignty over its territory, but also as for the implementation of the Indonesian state's authority to ensure protection of natural resources, as well as the citizens of the country.

The wealth of the Indonesian nation is also evident in the diversity of Indonesian cultures consisting of various ethnic groups with their respective local wisdom.[1]The existence and position of ethnic groups in Indonesia, whether consisting of law communities or customary law communities, are recognized and protected[2], as mentioned in Article 18B paragraph (2), namely, "The State recognizes and respects customary law communities and their traditional rights as long as they exist, and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law ".

One of the existing ethnic groups in Indonesia is the customary law community of Papua / West Papua, amounting to more than 200 indigenous tribes, living in seven Indigenous Areas of Papua namely Mamta Region, Saireri Region, Domberai Region, Bomberai Region, Meepago Region, Lapago Region and Ha Area Anim.[3] Article 1 (sub-paragraph p) of Law No. 21/2001 (Gov. Regulations No. 1/2008), and Law No. 35/2008 (hereinafter referred to as the Papua Special Autonomy Law), state that "indigenous peoples are indigenous Papuans who live in the territory and are bound and subject to certain customs, with a high sense of solidarity among its members ". Furthermore, some specific issues governing the Papuan indigenous peoples are further regulated in the Papua Special Regional Regulation (Perdasus)[4].

Basically, a customary law community of Papua in its daily life uses products of forests and rivers[5], which are considered to be indigenous territories. Control over a certain area, which is the environment of its citizens, includes the right to use the land and all its contents, and is referred to as customary rights[6]. In Article 43 Paragraph (1) of the Papua Special Autonomy Law,

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the rights of indigenous Papuans are not only recognized, respected, and protected but also developed. The development of the rights of indigenous and tribal peoples in Papua and West Papua aims to maintain their existence and prosperity.

The Papua Special Autonomy Law provides for the development of the rights of indigenous Papuan communities within the framework of the special autonomy policy, giving legitimacy to Papuans in terms of control and management of land and natural resources. However, in practice, several problems are found related to overlapping regulations regarding these issues. On the one hand, control is exercised by the state, and on the other hand it is given to indigenous and tribal peoples based on customary rights.

Some of the cases include, for example, the case in Boven Digoel regarding the logging and development of oil palm concession plantations by the MJR company; the land concession case in Boven Digoel district between the government and the MSM, TKU and UNT companies; the concession permit cases in Boven Digoel Regency between the government and the IAL company, and in Mappi Regency between the government and the BMM, MSB and HSS companies.[7] In practice when a customary area is made a concession area by the state, this can ultimately reduce the access of indigenous peoples to managing such areas based on customary rights. Sometimes a permit is also issued to a third party without involving all the relevant indigenous peoples[8], which results in land disputes. This is caused by differences in attitudes and interests related to land and/or the use of natural resources, either between fellow indigenous peoples and communities, or between customary law communities and the government.

The State of Indonesia in its Constitution as stipulated in Article 18B paragraph (2) declaresrespect for rights and recognition of the existence of indigenous peoples. This means that the existence of indigenous and tribal peoples is not only recognized, but also developed and strengthened[9].The need to strengthen the rights of the local population of Papua is of particular importance in the context of recent regional controversies that tend to reduce the confidence of indigenous Papuans in being protected by the country. The task of strengthening the customary rights of the indigenous population of Papua arises not only due to the fact that the Indonesian Constitution provides appropriate guarantees, but also in order to strengthen the confidence of the Papuan population in the Indonesian state.

2. Research Methods

In this study a normative-legal method is used that combines the study of legislative norms (statutory approach) with using legal theory and principles as supportive sources. This research is descriptive and analytical, based on qualitative analysis methods.

3. Findings and Discussion

3.1. Customary Rights to Land of Papua Customary Law Communities

Article 43 Paragraph (3) of the Special Autonomy Law of Papua, states that the exercise of customary rights as long as they exist, with respect to control of the former communal land obtained legally according to statutory regulations, is carried out by the customary authority of the relevant customary community according to the provisions of the local customary law. The right to control the land includes the customary rights of the customary law community and/or the individual rights of the members of the customary law community.

Article 1 of Papua Perdasus No 23/2008, interprets customary community's land rights as a partnership right owned by a certain customary law community over a certain area which is the environment of its citizens including the right to use the land and all its contents in accordance with statutory regulations. At the same time the individual rights of customary law community members over land are the individual rights owned by such members over a certain area which constitutes their living environment including the right to use land and all its contents in accordance with statutory regulations.

The Papua Regional Government is obliged to recognize the existence of customary communities' rights and / or the individual rights of indigenous people over land. Recognition of the customary community's rights is based on the results of research, which involves several parties, namely:

a. customary law experts;
b. representatives of customary institutions/ customary elders or customary authorities authorized for customary rights and / or individual rights of citizens of the relevant customary law community;

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c. non-governmental organizations;
d. officials of the National Land Agency of the Republic of Indonesia;
e. officials of the Legal Section of the Regent / Mayor's Office;
f. officials of forestry and mining agencies; and
g. officials of other relevant agencies.

The results of the study are then reported to a Regent / Mayor and /or Governor for further determination, whether a particular indigenous community in Papua still exists.

If based on the regulation of the Regent/Mayor and / or Governor it is stated that it still exists, then the customary law community and/or individual members of the customary law community concerned are authorized to carry out management based on customary rights. The management includes:

a. carrying out the management of customary communities' rights and/or individual rights of customary community members to the land in accordance with customary law in force in the relevant indigenous peoples;
b. holding consultations with third parties outside the customary law community members who need land for various purposes; and
c. right to transfer some or all of the customary rights to the residents to be controlled by each citizen as an individual right.

The management of customary communities' rights and / or the rights of indigenous people to land, must not conflict with statutory provisions. In addition, Article 9 of Papua Province Perdasus No. 23/2008 states that the authority to manage customary rights of customary communities and/ or individual rights of indigenous people to land do not apply, in cases provided for by a Special Regional Regulation, to land plots belonging to individuals or legal entities that own such plots in accordance with current legislation.

As mentioned in Article 8 of Perdasus No 23/2008, the management of customary communities' rights and/or individual rights of members of customary communities to land, includes following powers:

a. to carry out the management of customary communities' rights and/or the individual rights of customary community members to land in accordance with customary law in force in the relevant indigenous peoples;
b. to hold consultations with third parties outside the customary law community members who need land for various purposes; and
c. to transfer some or all of the customary rights to the residents to be controlled by each citizen as an individual right.

If the waiver of all or part of customary community or individual customary rights to land is exercised in favor of third parties other than customary law communities for different purposes, then in accordance with Article 8 paragraph (1) sub-paragraph b, such waiver is subject to the provision of appropriate compensation, the amount of which shall be determined by joint agreement. Customary land rights can also be transferred for temporary use and management by a third party under a lease or an income distribution agreement, or in another agreed form.

In the Law of the Republic of Indonesia No 5/1960 concerning Basic Regulations on Agrarian Principles (UUPA), there are actually no provisions that specifically regulate management rights. In the explanation of the UUPA, it is only stated that: "The state can give such land to a person or legal entity in accordance with the permitted use of the land plot and the needs of this person, for example, with the right of ownership, the right of commercial use, the right to build, the right to use, or provide land for management to a governing body (Department, Bureau, or Autonomous Region) to be used for the exercise of their respective duties".

The right to land management was only provided for in the Regulation of the Minister of Agrarian Affairs of the Republic of Indonesia No 9/1965 regarding the exercise of State ownership rights to land and the implementation of subsequent policies.

When concluding land agreements, the general rules concerning the validity of contracts must be taken into account, in accordance with Article 1320 of the Civil Code of the Republic of Indonesia. An agreement is considered valid if it simultaneously meets the following conditions: (i) the intention of the parties to bind themselves with the terms of the agreement, (ii) the parties have the rights to enter into such an agreement, (iii) the availability of certain goods, more precisely, goods that can be sold and can be the subject of such an agreement, (iv) there is a valid reason for entering into an agreement.

Use of natural resources by customary law communities of Papua

In Article 64 of the Papua Special Autonomy Law, it is stated that the Government of the Papua Province is obliged to carry out comprehensive environmental management taking into account spatial planning, the need to protect living natural resources, non-living natural resources, artificial resources, conservation of living natural resources and their ecosystems, cultural reserves , biodiversity in the context of the climate change, and taking into account the rights of indigenous peoples and to the maximum extent the welfare of the population. This means that the Government of the Papua Province must play an active role in environmental management, including paying attention to the welfare and rights of indigenous peoples in the use of natural resources.

Managing natural resources, both by the provincial and district / city governments, is carried out on regular basis in several stages such as planning, implementation, supervision, and evaluation. This is intended to improve the quality of the use of natural resources and respect the rights of indigenous and tribal peoples. Based on Article 10 paragraph (3) of Papua

Province Perdasus No 22/2008, the type of management of natural resources is chosen in accordance with the provisions of the legislation concerning management of natural resources. In addition, the management and use of natural resources must be based on the provincial spatial plan and Regency/City spatial plan.

As for the use of natural resources by indigenous and tribal peoples, it is carried out by a representative of the customary authority. Customary authority in Papua Province, according to Perdasus No 22/2008, is a member of a customary law community authorized to head such a community in conducting social, economic, political, legal and cultural relations with other parties based on the relevant customary law provisions. Furthermore, as stipulated in Article 5 of the Perdasus of the Papua Province No 22/2008, the rights of the customary authorities are as follows:

a. to represent a customary community in conducting legal relations in using and transferring customary community rights to another party; and
b. to make decisions on the use of natural resources based on discussions of community or tribe members.

According to Article 6 of Perdasus of the Papua Province No 22/2008, the obligations of the customary authorities are:

a. to safeguard and maintain the boundaries of customary land areas bound for the use of natural resources;
b. to implement cooperation agreements on the use of natural resources based on the approval of indigenous and tribal peoples; and
c. to implement the agreements specified above in accordance with the provisions of customary law and receive the approval of community members in writing.

Based on Article 12 of Papua Province Perdasus No. 22/2008, indigenous and tribal peoples have the right to use natural resources in the course of business activities. Such activities can be carried out individually or in groups. Use of the natural resources carried out by individuals must aim to meet the economic needs of the household in accordance with the relevant customary law provisions. Whereas according to Article 13 of the Papua Province Perdasus No 22/2008, joint use of natural resources must be carried out through the creation of a business organization belonging to the community of customary law.

3.2. Reinforcement of the Customary Rights of the Papuan Customary Community

The control of land and the use of natural resources by the customary law community of Papua and individual indigenous people have been regulated by various legal acts. However, there are some basic things that need to be considered so that the existence of indigenous and tribal peoples as outlined in the Indonesian Constitution was not only the subject of the declaration, but also got comprehensive implementation in practice. In the same way, the provisions of the Constitution are not only declarative, but also require implementation. There are several things that need to be considered with regard to the customary rights of indigenous Papuan communities and individual indigenous people relating to the rights to customary land[10],< Perdasus No. 23/2008 on the Customary Rights of Indigenous Law Communities and Individual Rights of Indigenous Law Community Members to Land.> as well as the use of natural resources[11].< Perdasus No. 22/2008 on Protection and Management of Natural Resources of the Papuan Indigenous Law Community.>

First. One of the important elements in the establishment of special autonomy for the Papua Province is the establishment of the Papuan People's Assembly (MRP). This assembly is a cultural representative body of the Papuan Indigenous People (OAP) with a number of authorities related to the protection of OAP rights, based on respect for customs and culture, empowering women, and strengthening religious harmony. This means that the MRP institution is designed to represent the interests of the peoples of Papua. However, in the Perdasus there are no provisions governing the involvement of the MRP in cases related to indigenous population, in particular regarding customary land rights and the use of natural resources.

As a result, all issues related to the use of land and natural resources are resolved at the Government"s level based on the provisions of Perdasus. The involvement of the Council in resolving issues related to the use of land and natural resources is limited precisely because it is not authorized to do so according to Perdasus. However, when interpreting the provisions of the Law on Special Autonomy of Papua, which has greater force than Perdasus, one can obviously come to the conclusion that the Council has the authority to protect the rights of the traditional population, especially in relation to the indigenous peoples of Papua.

Second, in Article 9 of the Perdasus No 23/2008 on the customary rights of indigenous law communities and individual rights of indigenous law community members to land, it is stated that: "The authority to manage the customary rights of customary law communities and/or individual rights of indigenous population to land as referred to in Article 8 does not apply to land plots which at the time of the implementation of this Special Regional Regulation already belonged to individuals or legal entities with certain land rights in accordance with statutory regulations."

The essence of this provision is that the rights of individuals and legal entities that are not representatives of the indigenous population of Papua cannot be challenged due to the fact that they already own the land on the basis of certificates obtained in accordance with previously adopted legislation.

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In Papua, there are many cases of land disputes between ordinary citizens or investors and indigenous Papuans[12]. The background of the problem is that the Papuan indigenous people say that the land used for construction by ordinary citizens or investors, although legally owned, in fact belongs to them. Of course, residents or investors who have valid land certificates cannot be sued because of the provisions of Article 9 of Perdasus No 23/2008.

Several questions arise. For example: who issues certificates confirming the rights to land for such citizens or investors; what should be the approach to the land rights of the indigenous peoples of Papua who own it without any certificates? One of the reasons for this situation may be the fact that part of the territory of the traditional indigenous population is uninhabited. Within the framework of law enforcement practice in Indonesia, the term "abandoned land" automatically means that this land belongs to the state. However, according to information from the Head of the Boven Digoel District Forestry Service (KADISHUT), there is actually no abandoned land in Papua[13]. Ownership of land and natural resources of the Papuan people cannot always be proven with a certificate of ownership, because the Papuan people tend to identify their territory based on natural boundaries such as rocks, trees, or mountains[14].

Third. In Article 6 of the Perdasus of Papua Province No 22/2008, there is a provision that states that "customary authorities are obliged to maintain the boundaries of customary land plots intended for use of natural resources". This provision is understood as customary community ownership of land. This means that customary rulers are obliged to protect areas and forests for the use of natural resources. In a case that occurred in Jair District, Boven Digoel district, a Korindo Group company originating from Korea, burned 57,000 hectares of forest land belonging to the indigenous Mandobo Tribe because it was considered uninhabited[15]. This of course violates the provisions of the Papua Province Perdasus No. 22/2008, because even though indigenous people' lands are given to third parties, Papuan indigenous people do not lose their rights and obligations to preserve their territory in the context of using natural resources.

The tragedy of this land burning occurred because the company or a third party who received the permit were only required to fulfill state administration requirements, but were not required to comply with the requirements of customary law applicable in Papua. This is important because companies or third parties are mostly (or almost entirely) from outside Papua, so they tend not to think that customary law in Papua must be respected based on Papuan rituals or customs.

Fourth, based on Article 13 paragraph (1) of the Perdasus of Papua Province No 22/2008, the joint use of natural resources must be carried out by establishing a business entity belonging to the customary law community, the type of which is adjusted to the legislation. This means that there is only one option for indigenous people in the use of natural resources, namely through business entities. This approach does not take into account the socio-cultural characteristics of the indigenous population of Papua. The establishment of a business entity in Indonesia is carried out within the framework of a modern legal mechanism in accordance with the requirements of the relevant law. The question is, what is the legal instrument for establishing a business entity that is in line with the Special Autonomy Law, especially for the Papuan indigenous people who live by customs and local wisdom? The Papuan indigenous people are used to buying and selling using traditional mechanisms, so they tend not to be too familiar with the mechanism for establishing business entities related to land and the use of natural resources.

Fifth, when exercising their powers to control the use of land and natural resources, traditional communities adhere to the norms of customary law, while both communities themselves and their individual members are usually considered not subjects, but objects of rights. Thus, legal relations with customary communities and individual members of the community arise solely in connection with the use of land and natural resources, in other cases they are treated as objects of legal reality, while the task of developing human resources within communities in order to expand their commercial activities does not arise.

It should be noted that the Papua Special Autonomy Law was adopted in order to provide special powers not only for the purpose of managing the territory, but also for the development of human resources and ensuring the interests of the local population in Papua and West Papua. The indigenous peoples of the Papua should be considered as a community or as subjects of law with all their peculiarities. It is necessary to strengthen the rights of the indigenous population so that traditional communities and individual representatives of the indigenous population could develop in terms of welfare and sovereignty over their customary territories.

Additionally, this will also contribute to the decentralization of the regional governments of Papua and Western Papua, which are given special powers.

In relation to strengthening the Papuan customary law community and Papuan indigenous people, there are several things that can be done. First, Perdasus No. 22/2008 must be reviewed so that it gets in accordance with the substance of the Special Autonomy Law as the legal basis for implementing Special Autonomy in Papua. As already mentioned, the

[12] Sobolim, D. & Terrajana, S. (2019, September 15). Ini sebab banyak terjadi sengketa tanah di Papua. [Electronic resource] Diakses dari :https://jubi.co.id/ini-sebab-banyak-terjadi-sengketa-tanah-di-papua/ (date of access: 25.06.2021).

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[15] Amindoni, A. & Henschke, R. (2021, November 12). Papua: Investigasi ungkap perusahaan Korsel 'sengaja' membakar lahan untuk perluasan lahan sawitt. [Electronic resource] URL: https://www.bbc.com/indonesia/indonesia-54720759 (date of access: 25.06.2021).

MRP, which is the representative body of OAP, especially with regard to the protection of indigenous people, must be given firm authority to resolve the problems experienced by the indigenous people of Papua. It should also seek to be a mediator between the government and companies or third parties.

Second, it is also necessary to establish at the legislative level the obligation of companies or third parties to comply with the requirements of customary law applicable to the indigenous population of Papua in addition to the state regulatory requirements. The traditional population of Papua follows their own legal customs, so if a third party complies with the requirements of Papua customary law when developing or using land or natural resources, then there will be fewer potential conflicts with the local population, since members of customary communities will be aware that they are respected and their customs are recognized. In addition, it is necessary to strictly observe the regulations concerning sanctions for violation of the rights and customs of local communities based on customary law. This will not only reduce the likelihood of conflict, but also help to increase the confidence of the indigenous peoples of Papua in entering into agreements with companies or third parties.

Third. Perdasus No. 22/2008 should provide for the possibility of concluding agreements between traditional communities and companies or third parties regulated by customary law and traditions of Papua. Such a provision will not contradict Article 1320 of the Civil Code, which provides for discretionary powers for the parties when concluding agreements. In the logic of Article 1320 of the Criminal Code, it is believed that the "rules" for the parties to a transaction are contained in the agreement itself. If, in certain cases, the activities of commercial organizations for the use of land and natural resources should be conducted on the basis of modern regulatory requirements, then the regional Government should on the regular basis assist such organizations in understanding the requirements and customs of the local traditional communities of Papua. This is necessary so that the local indigenous population can become a reliable and trustworthy partner in the use of natural resources.

Fourth. The customary law communities of Papua, individually or in groups, within the framework of transactions on the use of land and natural resources should be considered as subjects of relations. In other words, traditional communities and individual representatives of the indigenous population should "be masters in their country." This applies to the conditions and special powers of the Papua region, the legitimacy of which is provided by the legislature. Within the framework of building legal relations with customary communities and individual representatives of the indigenous population, attention should be paid to the social conditions and traditions that are preserved in the Papuan traditional culture.

4. Conclusions

Since the territory of Papua has received special powers by law, the main expected goal is that every aspect of the development of the territory of Papua can be implemented taking into account local characteristics and time needs. Based on the above, it can be concluded that there still are certain unresolved issues that hinder the development and existence of customary law communities in Papua. In terms of regulation, some of the provisions in the Perdasus should be revised in order to bring them into compliance with the requirements of the time. Reinforcement of the customary rights of the customary law communities of Papua is currently becoming particularly relevant, given the decline in the level of trust of the Papuan people in the state.

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Trust as a Factor in the Legitimization of the Law in the Digital State[1]

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ABSTRACT
The article deals with a complex of issues related to trust in the legal system. The problem of understanding trust from the perspective of various types of understanding of law is revealed. The analysis of trust as a factor of legitimation of law is carried out. The author comes to the conclusion that trust in law allows us to reveal the issues of the effectiveness of the law. Trust in the modern digital state is connected with the principle of deliberation in the process of making public legal decisions.
Keywords: trust in law, legitimacy of law, social capital in the legal system, legal culture, the principle of deliberation in law-making, digital state

The theory of classical rationalism, created in the Enlightenment, proceeded from the possibility of universal laws for all peoples. The ideas of natural human rights, the concept of division of powers, and popular sovereignty proceeded from the common rational standards for all States. These ideas of Enlightenment are still the basis of international humanitarian law and are enshrined in the constitutional norms of most States. However, in the second half of the twentieth century, the ideas of the Enlightenment project began to be criticized. First, this is due to changes in society, which allowed us to call it a postmodern or late modern society. As domestic researchers of modern society point out: "Postmodernity is defined as an era characterized by a sharp increase in cultural and social diversity, a departure from the previously dominant unification and from the principles of pure economic expediency, an increase in the multi-variance of progress, a rejection of the principles of mass social action, the formation of a new system of incentives and motives for human activity, the replacement of material orientations with cultural ones, etc."[2] It is also noted that the distinctive features of this era are the trends that have manifested themselves in the cultural practice and self-consciousness of the West over the past two decades. We are talking about the revision of the cardinal prerequisites of the European cultural tradition associated with progress as an ideal and a scheme of history, reason organizing the whole cognizable world around itself, liberal values as a standard of socio-cultural arrangement, the economic task of a steady increase in material goods. Such a reversal of the usual — "modernist" — ideas (hence the term "postmodernism") covers a variety of spheres of cultural activity[3]. Thus, a well-known expert on this issue in relation to law, I. L. Chestnov, emphasizes that the postmodern situation is characterized primarily by cultural diversity. The scientistic orientation of the previous epochs, based on the belief in the omnipotence of reason, was replaced by radical relativism.[4] The theories of modernization of African societies after the Second World War, without considering the peculiarities of national culture, led only to the deterioration of the political and legal system of these countries. Therefore, it has now become obvious that for the effective operation of the law, it is necessary to have, in addition to improving legal technology, informal cooperation in society as well.[5] In a postmodern society, this has led to an increased interest in political and legal science in the issues of legitimation of law in the context of cooperation.[6]

The complex of issues related to cooperation has been developed for a long time, and for the first time the importance of these issues was pointed out by Alexis de Tocqueville. He noted that the peculiarity of Americans lies in their tendency to create voluntary organizations that provide significant support to American democracy. A. de Tocqueville negatively characterized individualism, pointing out that it "at first only depletes the virtues of public life, but in the long term ... becomes an aggressor and destroys everything around, in the ultimate state no longer differing from pure egoism"[7]. Currently, the theory of cooperation and trust is an influential trend in social philosophy. Formal political and legal institutions are successful when they are supported by informal norms and traditions. The operation of law is related to the culture and norms of a particular society. The easiest way to verify this is by comparing the USA and Latin American countries, which, having achieved independence for their legal systems, took the USA as a model. Meanwhile, most of these States have not achieved

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[6] Bauman Z. Individualized Society. Moscow, 2002; Sztompka P. Trust. The Basis of Society. Moscow, 2012.
[7] Tocqueville A. Democracy in America. Moscow, 1999. P. 240.

the effectiveness of political and legal institutions that exists in North America. The main reason is often pointed to the cultural factor: Latin America inherited the culture of the Iberian Peninsula. If Protestantism in the USA strengthened the tendency of society to unite in voluntary associations, then imperial and Roman Catholic traditions in Latin America, on the contrary, weakened civil society[8].

Currently, modern sociologists designate the ability to cooperate by the category "social capital". F. Fukuyama defines social capital as generally accepted norms and values practiced by a certain group of people and allowing them to cooperate.[9] When there is social capital in society, it is possible to talk about trust between subjects, allowing citizens to interact because of common values. One can join the opinion of sociologists who point out that the well-being of a country, as well as its competitiveness against the background of other countries, is determined by the level of trust inherent in its society.

A high level of trust is associated with the so-called spontaneous sociability, when new associations are created in society that are not related to state power, but also do not coincide with the family. M. Seligman points out that "in the modern era, trust arises as a specific form of generalized exchange, as an integral part of the system of unconditional concepts inherent in society, regulating not only the sphere of informal and private interactions, but also more formal, public and institutionalized spheres, such as the state structure and economy"[10].

If there is a high level of trust in society that promotes the unification of citizens, then the legislation will achieve its goals. On the contrary, when values in society prevent unification, legal regulation is not supported by informal norms, which leads to its inefficiency. In cases of the destruction of norms and rules, formal institutions are ineffective, and a state of anomie occurs, described in the works of E. Durkheim. In the process of legal reforms, positive law should not destroy social institutions that promote social solidarity. Moreover, the legal policy of the state should be aimed at maintaining social ties that provide a certain level of public confidence in the law, as this is a necessary condition for its legitimacy. The role of trust and social capital is particularly relevant in modern Russian society, since "legitimation in it cannot be realized only through religious and traditional norms"[11]. Many other things are important here: the presence of associations to preserve individuals' sense of belonging to social groups, and the growth of social capital in society, or, in other words, spontaneous sociability.

It should be noted that the criticism of individualism (in its negative sense) and the justification of the positive role of informal interactions does not mean the denial of the liberal democratic institutions of the state. The latter, indeed, have no alternatives, and the "end of history" for other ideologies came with the collapse of state socialism. We are talking about the criticism of the theories of J. Locke, T. Hobbes, when society was represented by a collection of rational individuals who united to meet their needs based on a social contract. Meanwhile, appeals aimed at denying universal liberal principles, in relation to the domestic political and legal system, should hardly be considered promising. It is appropriate to recall once again the words of Francis Fukuyama, who points out that in traditional societies that were based on various, primarily religious principles, a rather narrow circle of trust was formed, limited by family, religious community, race, or sect. These irrational reasons for unification led to social conflicts within the country or military conflicts in foreign policy because societies based on different principles were constantly in conflict[12]. Therefore, it is the universal principles formed by the Enlightenment era, reflected in the concepts of individual rights and formal equality, that can ensure the development of society. The very idea of unlimited individualism is harmful to society, it justifies the destruction of any rules that bind society, while the principle of universal human equality, legally enshrined, is the only possible basis for state-legal development. In the foreign philosophy of law, the theory combining human rights, freedom and popular sovereignty is the concept of Yu. Habermas. In Russian legal thought, the ideas of freedom and formal equality are most clearly expressed in the theory of legal libertarianism by V. S. Nersesyants.[13]

In recent decades, modern society and the state have been radically changing under the influence of the processes of informatization and digitalization. In several countries, for example in France, laws on the digital state have been adopted. Informatization and digitalization of society and the state have formed a phenomenon that J. Baudrillard called "hyperreality", pointing to the specifics of the modern welfare state and legal regulation in the information society. In modern society, the economy is changing, "the superstructure determines the basis, labor does not produce, but socializes, representative authorities do not represent anyone. The modern era is characterized by a sense of loss of reality"[14]. The loss of reality is associated with the transition to digital or virtual reality when an individual cannot distinguish truth from fiction. In the situation of a postmodern society, "when reality turns into a model, the opposition between reality and signs is erased, everything turns into a simulacrum, that is, into a copy depicting something that either did not have an original at all, or eventually lost

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8 Fukuyama F. Trust. Moscow, 200. P. 23.

9 Ibid. P. 8.

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it."[15] Baudrillard cites the 1991 Gulf War as an example of a simulacrum of political life. The scientist described this military campaign in the book "There was no War in the Gulf", revealing for the first time the issues of the media, which no longer just distort reality, but create it. The image of the event on the TV screen seems to replace reality itself, making the event itself superfluous.[16] In the context of the expansion of the sphere of digital relations, the problem of trust in the law is being actualized. First, we are talking about the sphere of public law decision-making in law. It is no coincidence that William Kymlicka points to the so-called "deliberative turn" that has taken place in the constitutional legislation of Europe since 1990: "... democratic theorists are increasingly focusing on the processes of discussion and opinion formation preceding the vote. Their attention has shifted from what is happening in the voting booth to what is happening during public discussion in civil society"[17]. To substantiate the legal force of the law and to ensure the necessary level of trust, deliberative procedures are recognized as necessary. The category of deliberation came to us from Ancient Rome, as it was first used in the works of Publius Cyrus (I century BC), to whom the legal principle "Deliberandum est diu quod statuendum est semel" is attributed. In ancient Rome, the word deliberation meant "to consult", "to consult or to weigh the pros and cons". In modern foreign scientific literature, the category of deliberation is used, which is translated into Russian as "an act of reflection, weighing and studying the reasons for and against the choice"[18]. The specifics of the deliberative model of democracy, its difference from other models, lies in special democratic procedures related to making political decisions directly by the population, without delegating the will. At the same time, "the principle of deliberation in the legal system should not be considered as simply synonymous with the institutions of direct democracy. The main thing in the deliberative model is the process of communication or discourse, which should be provided legally to all interested persons, not just a small group of representatives"[19]. Deliberative procedures are widely used at present in the process of constitutional reforms, as well as at the level of local self-government in the EU countries. These procedures make it possible to achieve the necessary level of support for the law in a digital state.

In conclusion, not all social institutions and practices need to be supported through legal policy. At the present stage of the development of statehood and law, the question of what values should underlie the institutions of civil society can be solved from the point of view of expanding the field of trust in society. Trust is currently impossible without formal equality and freedom, and the expansion of interaction between subjects in the legal field. This approach will help to overcome the crisis of legitimacy associated with modern social processes.

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On Bringing the Controlling Debtor to Subsidiary Liability (Clause in the Ruling of the Constitutional Court of the Russian Federation in the Case of Checking the Constitutionality of Clause 3.1 of Article 3 of the Federal Law "On Limited Liability Companies" Dated May 21, 2021No. 20-P)

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ABSTRACT
The article touches upon the problem of attracting persons controlling the debtor in the light of the clause on the interpretation of paragraph 3.1 of Art. 3 of the Federal Law "On Limited Liability Companies", which was made by the Constitutional Court of the Russian Federation in the Resolution of May 21, 2021 No. 20-P. In particular, the Constitutional Court indicated that the conclusion made in the Resolution of the Constitutional Court of the Russian Federation related to the subject matter of this case cannot in itself be considered as excluding the application of the same approach to the distribution of the burden of proof in cases where another subject acts as a creditor, rather than an individual, the obligation of the company to which arose not in connection with the implementation of entrepreneurial activities by the creditor.
Illustrating the grounds for ambiguous interpretation laid down in such a phrase, the author concludes that a narrow approach is still preferable, when the clause is interpreted in favor of only such a creditor who is "another subject, the obligation of the entity to which arose not in connection with carrying out entrepreneurial activity". According to the author, such a conclusion is not only consistent with the idea of fairness in the distribution of the burden of proof in terms of the status of creditors, but is generally consistent with the general prohibition on taking advantage of unfair behavior.
Keywords: subsidiary liability of persons controlling the debtor, resolution of the Constitutional Court of the Russian Federation, bad faith, evasion of responsibility

Introduction

The ruling of the Constitutional Court of the Russian Federation (hereinafter — RF CC) in the case of checking the constitutionality of clause 3.1 of Article 3 of the Federal Law "On limited Liability Companies" (hereinafter — FL on LLC) in relation to G.V. Kapruk from May 21, 2021 No 20 (hereinafter — RCC No20-P) is being actively discussed by professional community.

The positions of the Constitutional Court exert significant influence on the law enforcement practice, especially if not only content of the norm, which constitutionality is checked, but also the main clauses of the civil right are interpreted in other way or even reinterpreted.

Particularly, very interesting is not only the main position of the RF CC and conformed with it issue an "reverse force of explanations": if they are extended to all the requirements, which are satisfied after acceptation of RCC No.20, or if they are to be applied after including into FL on LLC clause 3.1 article 3. Likewise, the clause of the RF CC is very interesting: it can be interpreted twofold and can expand or significantly expand (depending on interpretation) the application of the legal position of the RF CC.

This article is dedicated exactly to the clause in context of RCC No.20-P.

The Reason for appeal to the RF CC with a complaint and its subject

Remember, that the reason for appeal was the fact, that the lender (a natural person — a consumer) won the trial (in June 2017), got an executive act (in July 2017) with initiation of enforcement proceeding (in August 2017), but was not able to achieve the execution, because in Mai 2018 the debtor-company was excluded from the Register of legal entities as an invalid legal entity. Accordingly, the enforcement proceeding has been terminated in September 2018 (clause 1 part 1.1 RCC No.20-P.).

The lender didn"t give up and attempted to bring to subsidiary liability the persons, who controlled the debtor (hereinafter PCD), who were at the same time the director, the participants and the accountant, by virtue of clause 3.1 art. 3 Federal Law on LLC, which determines the following: "The exclusion from the unified state register of legal entities in the order, determined by Federal law on state registration of legal entities for invalid legal entities, entails consequences, provided by the Russian Federation Civil Code (hereinafter — CC RF) for the main debtors refusal to fulfill his obligations. In this case, if non-fulfillment of obligations (including, due to causing harm) is caused by the fact, that persons mentioned in parts 1-3 art.53.1 CC RF acted unfair or unreasonably, so on the lenders application these persons can be brought to subsidiary liability on the obligations of this company.

The lender the case in all instances, which were advocated by the Russian Federation Supreme Court (hereinafter — RF SC). The reasons for loosing were, according to the judges:

a. The plaintiff didn"t provided the proofs of the fact, that PCD initiated the withdraw of all the marketable assets from the companies property sphere. Accordingly the absence of the proofs obviously indicating unfair or unreasonable actions (or inactions) of the defendants doesn"t let to bring the PCD to the subsidiary liability;
b. "By itself, the fact of applying of the defendants in the arbitrary court for declaring the company bankrupt is not sufficient proof for declaring bad faith by implementation of economic activities". (clauses 2-5 RCC No.20-P)[1].

Applying for the RF CC, the applicant states that clauses part 3.1 Art.3 of the Federal Law on LLC doesn"t conform with Constitution of RF "in such a measure, in which they let the opportunity of avoidance of persons mentioned in clauses 1-3 Art. 53.1 RF CC from the subsidiary liability on the obligations of the company, excluded from the unified state register of legal entities in the order, determined by Federal law "On State Registration of Judicial Entities and Individual Entrepreneurs" for invalid legal entities" (the last paragraph part 1.1 2-5 RCC No.20-P) (hereinafter — FL on state Registration).

Determined by the RF CC constitutional-legal meaning of Clause 3.1 Article 3 FL on LLC

Finally the RF CC refused to consider the clause 3.1 Art. 3 FL on LLC unconstitutional, but detected its constitutional-legal meaning, which is public-obligatory and excludes any other meaning in law enforcement practice. It is also caused by the fact that the RF CC determined frequently, that in legal practice the constitutional interpretation of implemented clauses (Rulings from December 23th, 1997 No.21-P, from February 2nd, 1999 No. 4-p and from March, 28th, 2000 No. 5-P and others) has to be provided.

In particular, in Paragraph 1 part 4 RCC No.20-P the RF CC determined that clause 3.1 part 3 FL on LLC:

- "implies its implementation by the courts by bringing persons, who controlled the company excluded from the unified state register of legal entities in the order, determined by Federal law for invalid legal entities, to subsidiary liability on his debts according to the creditors claim — a natural person, before which appeared the obligation of the company not in connection with the implementation of entrepreneurial activity and the claims of a creditor have to be satisfied by court,
- According to the supposition, that exactly inaction of these persons causes the impossibility to fulfill the obligations to the plaintiff — the creditor of the company, until another is not proved according to the factual circumstances of the case".

In other words, the RF CC introduced the rebuttable presumption of unfair inaction of PCD with the aim of implementation of clause 3.1 Art. 3 FL on LLC by such type of creditors, as "creditor — a natural person before which appeared the obligation of the company not in connection with the implementation of entrepreneurial activity and the claims of a creditor have to be satisfied by court.

The essence of the RF CC"s positions

The examination of clauses 2-5 RCC No.20-P lets to emphasize two significant ideas, forming the main positions of the RF CC.

Firstly, the fail distribution of the burden is more important that the rules of bringing to the delict liability.

According to the RF CC, despite the fact that the provided in clause 3.1 Art. 3 FL on LLC subsidiary liability considers to be a kind of civil-legal liability with application to it of the main principles of delict liability and the rules of proving the delict (paragraphs 4,5 clauses RCC No.20-F) the priority is the fair distribution of the burden of proof.

It is caused by the fact, that "by applying to the court with an appropriate claim, the proving by the creditor of unreasonable and unfair actions of persons, controlling the exclusion of invalid legal entity from the register is objectively difficult. As a rule, the creditor has no access to the documents containing information about economic activity of the company, and has no

[1] Detailed about the implementation of part 3.1 article 3 FL on LLC and related practical issues see: Alekseeva U.S., Voskresenskaya E.V. Special Characteristics of Assigning of Subsidiary Liability on the Participant of Limited Liability Company in the Mechanism of Restoration of the Creditors Violated Rights. Leningrad Juridical Magazine. 2018. No. 1. Pp. 77-84; Gutnikov O.V. Development of Corporative Liability in Legal Practice. Magazine of Russian Law. 2021. No. 6. Pp. 48-65.

other sources of information about the activity of a legal entity and persons who control it. Accordingly, making demands of the plaintiff-creditor (especially is it is a natural person- -a consumer, but not to be restricted by this case), which are bound with proving of causing the harm by behavior of persons controlling the defendant, obviously entails inequality of proceeding opportunities of defendant and plaintiff, because the plaintiff is requested to provide the proofs, about which he can not know because of non-involvement in corporative legal relations (paragraphs 1,2 clause 3.2 RCC No.20-P).

Secondly, the creditors inaction doesn"t mean his indiscretion and bad faith.

If the creditors didn"t use the stated by law measures, which allow to prevent exclusion of the legal person from the unified state register of legal entities (USRLE) (clauses 3,4 Art. 21.1 RF FL on state registration), it doesn"t mean that they forfeit the right for compensation of losses according to clause 3.1 Art. 3 FL on LLC.

"Anyway, we can expect taking appropriate measures preventing the exclusion of a debtor company from register from professional participants of market, but we cannot came in legal regulation from using the mentioned measures by citizen, who are not subjects of entrepreneurial activity, it would be over-standing requirements for their reasonable and prudent behavior" (clause 3.2 RCC No.20-P).

Clause of the RF CC (paragraph 4 clause 4 RCC No.20-P) and reasons for ambiguity

"The conclusion, having been made in the Ruling of the Constitutional Court of the Russian Federation and related to the subject of considering the mentioned case, by itself cannot exclude implementation of the same approach for distribution of the burden of proving in the case when creditor is another subject, not a natural person, and the obligation before which appeared not according to the implementation of entrepreneurs activity by the creditor. Anyway, the federal legislator have an opportunity to add any changes in conformity with legal positions determined in this Ruling, to the legal regulation of subsidiary liability of the persons, controlling the legal entity excluded from the USRLE in administrative order.

It can be considered in different ways.

From one hand, it can be considered as admission by the RF CC of the fact of existence of a practical problem, which dimension goes beyond the subject of the claim, by which the RF CC is restricted. And this admission appeals to the legislator.

Supporting this approach can be mentioned, that the RF CC made such "hints" to the legislator earlier as well.

For example, in clause 3 Ruling of the Constitutional Court of the Russian Federation No. 1-P from 23/01/2007 "On the case of checking the constitutionality of clause 1 Article 779 and clause 1 Article 778 Civil Code of the Russian Federation in relation to the claims of the LLC "Agency of Corporate Safety and the citizen V.V. Makeev" the following has been concluded:

"So, the clauses 1 Article 779 and clause 1 Article 778 Civil Code of the Russian Federation, as not implying in the system of current legal regulation any relationships of paid provision of service the satisfaction of the requirement of the contractor on payment the award on the agreement or contract of paid provision, if this requirement is justified by the condition, making the amount of payment dependent on the courtsdecision, which will be taken in the future, cannot be considered to be contradicting to the Constitution of the Russian Federation.

It doesn"t except the right of federal legislator in accordance with particular conditions of legal systems development and in conformity with constitutional principles to foresee the opportunity of other legal regulation, in particular within the framework of especial legislation about the order and conditions of realization of the right for qualified legal assistance.

It has to be mentioned, that the legislator has reacted to this hint, although not very quickly, having confirmed the address of the appealing. So, the Federal Law No. 400 from 02.12.2019 supplemented the Article 25 of the Federal Law No. 63 from 31.05.2002 "On Lawyer Activity and Advocacy in the Russian Federation" with clause 4.1: "according to the rules, established by the Council of the Chamber of Advocates, the Agreement of legal assistance can include the condition, that the amount of principal"s payment depends on the result of the assistance, provided by a lawyer, with the exception of legal assistance on a criminal case or on a case on an administrative offence".

In such a way we cannot but mention the refusal character of RCC No.20-P, which accepts clause 3.1 Article 3 Federal Law on LLC not contradicting the constitution. This circumstance together with the limit of claim leads to a conclusion about significance of the rule of subsidiary liability against the debtor's administrators in the form it is determined. More so, the mentioned rule in the system of legal regulation is connected with clauses 1-3 Article 53.1 CC RF, which constitutionality wasn"t been questioned.

From the other hand, not to speak formal, the formulation of the clause gives a reason for its isolated interpretation, if we concentrate on the practice problems especially. More so, the appeal to the legislator has been formulated in one sentence, and the pointing to non-exclusion of the position, formulated by RF SC, and for other cases is formulated separately.

So, paragraph 4 clause 4RCC No.20-P begins with the statement, that the provision of fair burden of proof is important also for other creditors. At the same time, the explanation, which creditors are being meant, can be read in two ways. It is either *another subject at all*, which is being *opposed* to another natural person, obligation to which appeared not in accordance with entrepreneurial activity (option 1), or it is *another subject, obligation to which appeared not in accordance with entrepreneurial activity*; and such subject-non-entrepreneur is opposed to the natural person-consumer, which is mentioned in the ruling (option 2).

The first option of interpretation is more widespread than the first one, but both of them, in one way or another, create potential for changing an law enforcement practice in benefit to retreat from presumption of good faith of participants of civil turnover. Reasons for and against any of these options can easily be found.

"For" the first option. Beside the common consideration, that the other creditors don"t participate at corporative relationships and that"s why have difficulties in taking proofs of bad faith and unreasonableness of the persons controlling the debtor, analyzing the grammar structure of this statement cannot be left, that in the whole text of RCC No.20-P the following terminology is used: *"the creditor is the natural person, before whom the obligation of the company appeared not in accordance with the implementation of entrepreneurial activity by the creditor, and whose claims were satisfied by court*". In this meaning, another subjects is all other persons.

At the same time clause 3.1 RCC No.20-P purposely emphasizes, that professional participants of the market are subjected to increased requirements of discretion for the purpose of their rights protection.

"For" the second option. But if when drawing a parallel with rules of the Article 431 RF C (on interpretation of contracts), when in case of ambiguity of a literal text the whole document and its essential contest must be learned, the attention must be paid to the fact that the discussed norm by itself is constitutionally accepted, and the meaning detected by the RF CC is restricted to the complaints subject, the factual retreat from the rules of delicts proving (explicit exception from the common rule and principles of tort liability) is taken on motives of necessity of fair burdens provision, taking into account the differences in the stratus of the object of civil turnover and different strictness of demands, made to discretion, etc. At the same time, all the interpretations aren"t interpreted expansively, but the principle of interpretation in favor of a smaller commitment is implemented in the doctrine for the goals of interpretation[2].

In this way, insofar as particularly the fairness of distribution of burden of proof from the point of creditors status is highlighted by the RF CC, the second option seems to be more consistent despite of all "failure" because of ambiguity of formulations.

Conclusion

Time will reveal, if the clause, made in paragraph 4 clause 4 RCC No.20-P will exert any directly influence on law enforcement practice, so before any legal changes and amendments, and if so, in what a form .

However it have to be mentioned that enacting the presumption of bad faith, the RF CC directly demonstrates that at the court the controlling person can give explanations for reasons of excluding the company from the register and present evidence of good faith. The presumption of bad faith is practically implemented in such a case only, "if the defendant refuses to give explanations or if they are not sufficient, or to present to the court the documents, so the burden of proof of legality of persons, controlling the company, and absence of causal relationship between activities and impossibility of fulfillment of obligations for the creditor, — in all these cases the defendant would be blamed" (the last paragraph RCC No.20-P).

Being distracted from the question, in what extent it is reasonably to equate the good (bad) faith and (il)legality, and the evaluation of incompleteness of explanations, can be mentioned that this approach corresponds to the ruling of part 1 Article 1 RF CC on prohibition to benefit from bad faith, and the changing of legally determined burden of proof — to consider as imposing of negative consequences on the misusing party.

Such approach seems to be multipurpose and allows to estimate the situation comprehensive and to tend to the balance of interests of not only the creditors, but also the debtors ant controlling persons[3].

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[2] More detailed about principles of interpretation see, for example: Sosipatrova N.E., Burov A.U. Interpretation of civil legal agreements in Russian and foreign legal systems. [Electronic resource] URL: http://www.unn.ru/pages/e-library/vestnik/19931778_2018_-_1_unicode/17.pdf (date of access: 27.07.2021).

[3] More so, in the newest practice the idea of attentive attitude to the person, controlling the debtor, is being consequently implemented. In particular, clause 19 Review of SC practice No. 1 from 2021 (approved by the Supreme Court of the Russian Federation 07.04.2021) specifies, that the non-payment of the debt to creditor on the particular agreement as itself doesn't indicate the necessary bankruptcy of the debtor, and in this conformity this fact cannot be considered as absolute proof of their necessary referring of its head to the court with bankruptcy appellation (Determination No. 305-ЭС20-11412) [Electronic resource] URL: http://vsrf.ru/stor_pdf_ec.php?id+1949716 (date of access: 27.07.2021). This explanation restricts obviously the opportunities of creditors to take the persons, controlling the debtor (in particular the director) to subsidiary liability, if in spite of the debt on one deals, in general the company runs stably.

On the issue of Pre-Contractual Liability Qualification

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ABSTRACT
The article is devoted to the study of the problem of the protectability of literary works and their components, expressed in the application of the doctrine of the protected form and unprotected content of a literary work as the main concept in domestic legislation and judicial practice. Within the framework of this article, the distinguished legally significant elements under Russian law, the criteria for their protection are analyzed. The author analyzes the influence of the teachings of I. G. Fichte on the protected form and unprotected content on the provisions of legislative acts regulating copyright protection, as well as cases of granting legal protection based on the criterion of the author's creative work, for example, in relation to such elements of a literary work as the name and character.
Keywords: copyright, literary work, legally significant elements of a literary work, protected form, unprotected content

The current legislation uses the concept "literary work" without defining it and without highlighting of essential features of the copyright object. Basing the analyses of domestic scientists" research, it can be concluded that a work is an expressed in objective form result of the author"s creative action[1]. According to this definition it is obvious, that the conditions of the work"s protection, elaborated by scientists in the field of copyright, are rather wide and indistinct. The first of such conditions are the objective form of the work"s expressing (this "form" exactly is being considered in Part 3 Article 1259 Civil Code of Russian federation (CC RF)). The second condition is the creative part of a literary work, or, according to the legislator, "the author"s creative work". The division into constituent forms and contents is being explained in part 5 and part 7 Article 1259 CC RF through listing of legally significant elements of a literary work.

In the Soviet"s legislature there were no obvious division of a work into its constituent elements, so, the whole literary work was considered to be the object to be protected. The condition of counting of a work to the copyrights objects was originality and creative independence of considering object. It can be supposed that despite of absence of legal state of theory about protected form and unprotected content in the Soviets legislature, this doctrine was practically applied by understanding of the concept"s significance in legal science, and criteria, accepted by legislator for the legislative protection of the whole literary work, were valid for its constituent parts as well, considering additions of doctrinal researches.

Speaking about the period of copyrights forming in the Russian Federation, it is necessary to take attention to the expired nowadays Law of RF №5351-1 from 09.07.1993 "About copyright and related rights". In this law the doctrine of protected form and unprotected content is clearly traced. Turning to the text of the Article 6 of the mentioned law, previously the legislator can seem to form a norm of copyrights objects based on this theory with one reason only: using the terminology of J. Fichte — concepts of form and content[2]. But it is important to mention that either in this case, or in the current legislature the concept "the form" is being used in the other meaning, beyond the framework of the doctrine of protected form and unprotected content. The law means the objective form of the work, so its external form of expression. In reality, the parts 3 and 4 Article 6 of the Law show the influence of the doctrine about protected form and unprotected content. In these parts the legislator explains clearly the constituent elements, which aren"t legally protected as copyright"s objects, and stipulates, hat the part of a literary work, if it can be used independently and if it is a result of the author"s creative work, is also considered to be an object of the copyright"s object beside the whole work. The same approach is reflected in Part 21 Resolution of the RF Supreme Courts Plenum№15 from 19.06.2006 "About the questions, emerged at Courts while considering civil cases within the legislature about copyright and related rights": "copyright"s objects can include the titles of the literary works, phrases and word collocations, and other parts of work which can be used independently and are creative and original"[3].

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1 See for example Serebrovsky V.I. Issues of soviet copyright. Ed. P.E. Orlovsky. Moscow: Edition of USSR Academy of Sciences, 1956. P.30.

2 Fichte J. Beweis der Unrechtmaessigkeit der Buecgernachdrucks [Electronic resource] Berliner Monatsschrift. 1793. P. 443-482. URL: http://copy.law.cam.ac.uk./cam/tools/requests/showRecord.php?id=record_d_1793 (data of access 15/05/2021).

3 The Resolution of the RF Supreme Courts Plenum No.15 from 19.06.2006 "About the questions, emerged at Courts while considering civil cases within the legislature about copyright and related rights" [Electronic resource] URL: https://rg.ru/2006/06/28/postanovlenie/html (date of access: 16.08.2021).

So can be concluded, that since the Soviet"s period the domestic legislator accept the doctrine of protected form and unprotected content and implemented it in the law, mentioned especially significant elements of a literary work, which are not subjected to copyright protection, and elements, subjected to protection. It is easy to understand that the doctrine about protected form and unprotected content is nowadays still actual for Russian legislation. The approach, elaborated in the RF Law №5351-1 from 09.07.1993 "About copyright and related rights", is duplicated in the valid part 4 CC RF without any changes. Considering the legal state of work"s elements, the criteria of their protection are defined and approved in part 81 of the Resolution of the Supreme Courts Plenum №10from 23/04/2019 "About application of the part 4 CC RF"[4]. According to the mentioned norm, only these elements are endowed with the state "protected", which possess the high grade of recognizability when being used beyond or separately from the whole literary work. Beside this, if separate elements of a certain work can be considered to be an independent result of creative work and if they are expressed in objective form, they are also defined as protectable.

The acceptance of the doctrine of protected form and unprotected content by Russian legislation can also be explained with the fact that this doctrine has been adopted by some international treaties, in which Russia is also a member. For example, according to the Article 2 Convention of the World International Property Organization (WIPO), Copyright treaty, from December 20th, 1996[5], joining into force for Russia in 2009, the legal copyright protection extends to the form of expression, but not to ideas, principles, processes and methods[6]. Part 4 CC RF responds also to this conception, which is a practical realization of international law"s norm on the governmental level and includes the principles, mentioned in part 2 Article 9 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)[7]. According to the mentioned Agreement, not the elements of the content (principles, methods of work and research, concepts and ideas), but their specific embodiment are to be protected. Meanwhile the document doesn"t contain the definition of legally significant elements, leaving the legislator the right to define independently the criteria of protectability of particular parts of a certain literary work.

In such a way, the principle of the copyright"s protection of the form of the work only, in the framework of the doctrine of protected form and unprotected content of the literary work, defined in Russian legislation, can be explained by the taking part by the state in some international agreements.

The necessity of division of the literary work into form and content can be explained first of all by the complicity of protection of the whole work while occurrence of conflicts, bounded with copyright"s violation. Trying to solve this problem, the legislator purposely highlights judicially neutral elements of the literary work, and lets them outside the presumption of authorship, which is valid according the other elements of the work, for which criteria of their protectability are stipulated in relation to the whole work. However due to absence of clearness in criteria of division of the work into separate elements of form and content, the possibility of acceptance of these elements as objects of copyright with obligatory protection cannot be excluded. Taking into account the condition of creative character of copyright"s law, the elements of a literary work, along with independent and separated works, can be also accepted as independent result of creative work of the author, when their connection with the literary work is obvious, raises no doubts and if their application within another literary work could mislead the readers[8].Of course, such approach is possible not in all cases and can be implemented not to all literary work"s elements, but first of all to the topic, matter, materials, plot in art literary works and to principles, theories and concepts in scientific works.

Considering such issue as protectability of elements of a literary work, or, according to J. Fichte, constituent parts of a work"s form, the Russian legislator defines these elements in part 7 Article 1259 CC RF. The law considers a character or a title of a literary work to be protected by copyright parts of a work, if they can be defined as independent result of the author"s work and if they are expressed in objective form. However, this list of protected elements of the work isn"t exhaustive. A lot of researcher in the field of copyright law are developing the idea of protection of such elements as the plot, artistic style of the author, so — the language, in which the work has been written, and also typical for the author methods and means of creating of artistic images, quotations. For example, E.P. Gavrilov notes, that the following have to be related to the elements of the form of e literary work: language, artistic images and characters, sequence of narration (style of author"s narration), and to elements of content — topic, plot, ideological content and the concept of the work, as well as discoveries, actual circumstances, which were not have been made up and interpreted by the author[9].

According to A.P. Sergeev, if the title is original and reflects the artistic uniqueness of the author, it is legally protected[10]. Noteworthy, that in the literary study the title of the work is accepted as element of content of a literary work, but not as

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4 The Resolution of the RF Supreme Courts Plenum No.10 from 23.04.2019 "On Application of part 4 CC RF" [Electronic resource] URL: https://rg/ru/2019/05/06/postanovlenie-dok.html (date of access: 16.08.2021).

5 Convention of the World International Property Organization (WIPO), Copyright treaty, from December 20th, 1996 [Electronic resource] URL: http://publication.pravo.gov.ru/Document/View/0001201609160016 (date of access 16.08.2021).

6 Gorbunov A.A. The Problem of Identified Features of Non-Protected with Copyright Ideas in Context of Cultures' Development. Ex jure. 2020. No.3. P. 66.

7 The Agreement on Trade-Related Aspects of Intellectual Property Rights [Electronic resource] URL: http://new.fips.ru/documents/international-documents/soglasheniya/soglasheniye-po-torgovym-aspektam-prav-intellektualnoy-sobstvennosti.php (date of access: 16.08.2021).

8 See Rakhmilowitch A.V. The Title of a Literary Work as the Object of Copyright. Magazine of Russian Law. 2002. No. 11, P. 25.

9 See Gavrilov E.P. Originality as a Criterion of Copyright Protection of Objects. Patents and Licenses. 2004. No.6. P.47.

10 See Sergeev A.P. The Law of Intellectual Property in the Russian Federation. Textbook, the 2th edition. Moscow: TK Velbn P. 117–118.

consistent part of its form. Undoubtedly, considering the title of the work within the framework of law, its protection through copyright seems to be logical and fair decision of a legislator. But the discussion about the nature of a title (headline) of literary work and about its relation to elements of content or of a form is ongoing and the only solution of this issue is a deviation from J. Fichte"s concept and considering the title of a work not within the doctrine of protected form and unprotected content, but according to the criterion of creative work of the author.

The reason why the protectability of a literary work"s title is so acute, is caused by two important factors: the width of doctrinal discussions and a big amount of legal disputes devoted to the protection of titles of literary works (print medias and their sections and columns, literary text etc.) and their parts (poem"s lines, verses and prosaic abstracts). In the other words, it"s about legal protection as the title of a literary work, as their quotations as well. Considering related lawsuits of similar character, the courts conduct detailed analysis of a literary work and other elements of the work. Being divisible, the elements of the work are subjected to protection in such cases only, if they conform with creativity criteria[11].

So, any part of the work by itself, if it conforms with criteria of protectability, is by default a certain copyright"s object. However in this connection appears an other issue, related to the usage of the literary work"s title as a trade mark. In this case the title of the work is being used separately from the work and is protected as a trade mark, but not a copyright object. As an example can serve the dispute about the protection of the title, having been considered by the Federal Antitrust Committee of Moscow district: the result of this consideration was a conclusion, that the title of the literary work as a protectable part of the work is considered to be an object of the copyright protection only, but not the object of the registered trade mark protection[12].

There is another point of the nature of literary works protectability: the title is subjected to legal protection, if it is being associated by a reader with a certain work. Moreover, the author of this point A.V. Rackmilowitch supposes, that the application to the title of an creative criterion, including the criteria of originality and actuality, is a priori impossible while correct interpretation of the copyright law[13], because this criterion is rather evaluative, and it raises risk of an unfair decision due to wide range of judicial discretion variety. However the criterion of gained distinguishing ability, provided by the author, surpasses in our point of view the criterion of creativity according to the dispute about evaluation and doesn"t solve the problem of wide range of judicial discretion variety according such issues.

Speaking about the works main character as a protected element of a literary work — the verbal description of the character[14], so the artistic image like the title of the work are subjected to protection in such case only, if it is a result of the authors creative activity and can be used independent, so separately from the work, which element this character is. Developing this concept, can be clear that not all characters of literary works can be protected, there are a group of "classic" characters which are essential elements of every literary work in certain genre. For example, it"s impossible to imagine a classic Italian comedy (commedia dell"arte)[15] without such characters as Pierrot and Harlequin, like the Russian folklore is impossible without Leshy and other fictional characters, which appear in every Russian fairytale. Their acceptance as objects of copyright would be unfair towards other characters of a genre, in which such characters are defining. The key criterion is, that the character have to act not only as an ideological image, but also to be an unique expression of the authors idea. It also have to be mentioned that according to this principle, the legal protection is provided not only to main characters of a literary work, but also the characters of the second plan, on the condition that their character, describing of their appearance and actions as well the relationship with other characters are so detailed, that they are unique, original and provide possibility for independent usage, for example for adaptation if the work while creating an audiovisual work (screen version) or while using a character for commercial purposes.

There is an opinion, that in practice only the characters name is protected, but it is not true, because a lot of courts support the opinion that the character and its name are not equal. So, in 2005 the Arbitration Court of Moscow district took a decision, that in the dispute about registration of the trademark "Winnie" and violation of copyright for the character "Winnie the Pooh" not only the name "Winnie" would be protected, but also the other features of this character (appearance, character, actions) as features, making the character recognizable, well-known for consumers[16]. So, the concept "character" is not equal to the concept "Characters name" and can include a lot of constituent elements: appearance, features of character, actions[17].

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11 See Gavrilov E.P. Originality as a Criterion of Copyright Protection of Objects. Patents and Licenses. 2004. No.6. P.48.

12 The Resolution of the Arbitration Court of Moscow District from 29.01.2003 on the case No.ГК-А40/9147-02 according denominations "Sarkrov" and "Sarflex" [Electronic resource] URL: http://www.consultant.ru/cons/cgi/online/cgi?req=doc&cacheid=B3660281C1B2329B2D05DC0B47D72E46&SORTTYPE=0&BASEONDE=24&ts=4654037208409279845324087&base=AMS&n=25385&rnd=F0F1976B98DE2EF5090B18380C0F6DDD#1se0qmbdtz1 (date of access 15.06.2021).

13 See Rakhmilowitch A.V. The Title of a Literary Work as the Object of Copyright. Magazine of Russian Law. 2002. No. 11, P. 26-27.

14 See: The Comment to the Part 4 Civil Code of Russian Federation. Ed. A.L. Makovsky. Moscow: Statut, 2008. P. 54.

15 It's about mask comedy as a kind of Italian theatre of 16-17 centuries, which performances was created as improvisations. The characters of commedia dell'arte were typical masks (Pierrot, Harlequin, Pulcinella, Columbine), turning from one performance to another.

16 The Resolution of the Arbitration Court of Moscow District from 19.06.2003 on the case No.KA-A40/3146-03 [Electronic resource] URL: http://www.consultant.ru/cons/cgi/online/cgi?req.=doc&cachied=F4C8238A6EE4E280F42C1DE7F739E0A6%SORTTYPE=0%BASENODE=24%ts=4654037207547163128966781&base=AMS&n=29285&rnd=F0f1976B98DE2EF5090B18380C0F6DDD#apdsuok874 (date of access: 30.05.2021).

17 See: Sprigman Christopher Jon. Copyright and the Rule of Reason (May 5, 2009) [Electronic resource] Journal on Telecommunication & High Technology Law. Vol. 7, 2009. Virginia Law and Economics Research Paper No. 2009-03. URL: http://ssrn.com/abstract=1399522 (date of access: 15.05.2021).

One more considering protectable element is the language of a literary work, all typical for the author means and methods of creating of artistic images and means of expression. The language of a literary work unlike the other parts of a work is an internal form of a work, and its legal protection is based on the criterion of creativity. The language of the narration cannot be used by another author, if only it is not a quotation with indication of source of borrowing[18].

In such a way, the Russian legislation determines separately unprotected elements of the content and protected elements of the form of a literary work, because it is irrational to protect the whole work. CC RF determines that protected elements of a literary work are characters and the title of the work, at a sufficient level of creative component and at the possibility of their independent usage and recognition. The doctrine also determines a lot of other elements, which are worth being legally protected like separate parts of a work — for example, the language of the work, it is impossible to consider it as an element of content. The existence of wide court praxis reflects the low grade of legal regulation and absence of detailed regulation of this issue, what causes a lot of disputes and increases the risk of judicial discretion at their considering. It have to be mentioned that this research has theoretical character, but its results and conclusions imply the further modernization of the current legal system, namely elaboration of criteria of protection of literary works.

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[18] See Sergeev A.P. The Law of Intellectual Property in the Russian Federation. Textbook, the 2th edition. Moscow: "TK Velbn". P. 117–118.

Exercise of Civil-Law Rights: Categories in the Context of Their Digitalization

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ABSTRACT
With digital rights designated to the objects of civil rights in Art. 128 of the Civil Code, Art. 141.1 amended to include their legal definition, and a new wording of Art. 309 introducing 'smart contracts', the digital reform recently enacted in the Russian civil law has seen some major novelties. Needless to say, these accomplishments have challenged Russian civil law theorists. Discussions are underway to resolve both doctrinal and applied issues that had been more than obvious well before the legislative move which, according to one of the opinions, was an 'admissible' experiment. What remains now is to assess its viability. The author of this work set the goal to explore the way digital rights, primarily those that arise from 'smart-contracts', are (or can be) 'exercised'. This is a perspective where a fundamental gap between 'smart-contract' and civil contract emerges. In the author's view, efforts to overcome it by expanding the concept of subjective rights and the principles of contract law will not succeed. Since no proper verification of the interests of the parties to 'smart contracts', which are essentially a computer code, is available, and as the same refers to linguistic verification of their will, there is no way for 'smart contracts' to enter the domain of law. Digital 'contracts' are unapt to honour the principle of contractual equilibrium. The 'self-execution' of these contracts, as well as their inherent inability to be violated, are, if put in the civilistic context, their fatal flaw, and by no means a virtue. The article also shows that though instruments to ensure a relative irreversibility of rights are not unfamiliar to private law, they cannot serve as an excuse for such regime in contract obligations. That fixation of rights and transactions in digital form has become fully enshrined in the civil law is arguably the only compatible with its principles as well as much anticipated impact the digital reform has brought about.
Keywords: digital rights, tokens, smart contracts, exercise of rights, abuse of right

1. Introduction

Moving in line with the times, Russian legislation sooner or later had to cope with the next threshold — digital rights. This was caused not only by the new economic reality, the generally accepted name of which — the digital economy — reads as an argument for this transition, but also by the prevailing conviction in the country's leadership that domestic law needs appropriate transformations[1]. February 20, 2019 in the Message of the President to the Federal Assembly of the Russian Federation, the phrase sounded: "All our legislation needs to be adjusted to the new technological reality"[2]. The scientific component of the context of digital reform has become an ideological environment in which awareness of the phenomenon of "post-truth" and the risks it generates for verification procedures in the legal system leads to assumptions about the expediency of using technological models that eliminate the need to preserve both the requirement and the presumption of good faith[3].

The need to digitalize the legal support of the economy, and in the form of a system project, probably cannot be doubted by any Russian civilist. However, the most important question is which categories of civil law are in principle open to symbiosis with digital phenomena. Are we talking only about the urgent need to consolidate a workable regime of the digital form of the rights themselves, actions for their acquisition and implementation, as well as for the performance of duties, or should civil legislation absorb a new meaningful reality — to allow the existence of digital rights and digital contracts other than "ordinary" ones, which have long been called "smart contracts"?

Since the developers of bill No. 424632-7 have set themselves the task, as indicated in the explanatory note[4], to "settle relations regarding the use of crypto assets, primarily such as cryptocurrencies and tokens,"[5] they either did not put this

[1] Presidential Decree No. 203 of May 9, 2017 approved the Strategy for Development of Information Society in the Russian Federation for 2017–2030, and Decree No. 490 of October 10, 2019 approved the National Strategy for Development of Artificial Intelligence for the period up to 2030.
[2] Gabov A. V., Khavanova I. A. Crowd-funding: legislative registration of the web-model of financing in the context of legal doctrine and foreign experience. Bulletin of the Perm University. Legal Sciences. 2020. Issue. 47. P. 41.
[3] See Arkhipov V.V. Is Law Possible in the Era of Post-Truth? Law. 2019. No. 12. P. 68–69.
[4] Explanatory Note (State Duma Committee on State Construction and Legislation) to the Draft Law No. 424632-7 "On Amendments to Parts One, Two and Article 1124 of Part Three of the Civil Code of the Russian Federation (On Digital Rights)" [Electronic resource] URL: https://sozd.duma.gov.ru/bill/424632-7 (date of access: 27.06.2021).
[5] Konobeevskaya I. M. Digital rights as a New Object of Civil Rights. Bulletin of Saratov University New series. Series: Economy. Management. Law. 2019. Vol. 19. Issue. 3. P. 331.

question before themselves, or they gave a definite answer to it that satisfied them. However, this answer, as well as the constructions that were based on it created by the authors of the project, categorically did not suit the Council under the President of the Russian Federation for Codification and Improvement of Civil Legislation: "What is meant by digital rights in the Project is actually only the registration of traditional property rights, and of a completely different nature — property rights, binding rights, corporate rights, exclusive rights and even personal non-property rights (the latter — contrary to the provisions of the Project[6]). The bill underwent a paradigmatic revision, the result of which was embodied in Federal Law No. 34-FZ of March 18, 2019 "On Amendments to Parts One, Two and Article 1124 of Part Three of the Civil Code of the Russian Federation" (hereinafter the Law on Digital Rights). A short time later, Federal Law No. 259-FZ of 02.08.2019 was adopted "On Attracting Investments using investment platforms and on Amendments to Certain Legislative Acts of the Russian Federation (hereinafter referred to as the Crowd-funding Law). The first stage of digitalization in Russian law has been completed by Federal Law No. 259-FZ dated 31.07.2020 "On Digital Financial Assets, Digital Currency and on Amendments to Certain Legislative Acts of the Russian Federation" (hereinafter referred to as the Law on Digital Financial Assets). What exactly became known as "digital rights" and how the scientific community reacted to it will be briefly discussed later. In the introduction, the work should indicate the essence of the scientific problem that will be touched upon in it. And for this, it is important to point out that regardless of the reality brought by the digital reform in lex lata, the reality that the supporters of digital rights de lege ferenda have in mind, the civilistic doctrine may deny the ability to possess the properties attributed to it.

It seems that the Russian legislator was again guided by the vicious paradigm of the inadmissibility of deviations from the samples of the "civilized world". This kind of intellectual reflex that developed in the 90s of the last century, at the end of this period, made itself felt in the unequivocal denial of the ability of Russian law to organic development[7], but it steadily works in the current lawmaking. The rejected version of the Digital Rights Act was hastily replaced. Criticism "digital rights" and "digital contracts" some scholars "civilized world"[8], you can try not to notice.

The most important novelties of the reform were the inclusion of "digital rights" as objects of civil rights (Article 128), their legal object categorization (new Article 141.1) and an attempt to legitimize smart contracts in the new part of Article 309. The indication of the incompleteness of the last action is explained not only by the fact that the legislator did not dare to use the term expressis verbis, and the doctrine doubts both its conceptual boundaries and the right of the concept to exist, but also by the fact that even if de legelata is described in this norm, what could be agreed and accepted as a "smart contract" in one or another conventional meaning, the author of the work considers a "smart contract", or rather the reality arising on its basis, that is, allegedly contractual digital rights, as well as their implementation, unable to fit into the boundaries of the law of obligations and, probably, civil law in general.

Here I come to the definition of the subject of the work: as far as possible, avoiding participation in the discussion of the qualities of smart contracts and digital rights, which is already being conducted in the scientific literature[9], I would like to explore the problems of the implementation of digital rights. The aim is to show that digital rights arising through smart contracts do not correspond to the nature of subjective civil law, including those arising in a contractual legal relationship; these digital rights cannot be exercised in the same way as any subjective rights can be exercised; they cannot be changed and brought into a contractual balance; they cannot be violated, which perhaps gives the best evidence of their unsuitability for civil circulation. You will have to start the work by drawing the reader's attention to the most concise presentation of the theses of the theory of the exercise of subjective rights, which is presented in the works of the author.

2. Interest and subjective right. Verification of interest

A subjective right is always the legal embodiment of a private interest: in the case when the interest is absent or does not reach the appropriate level (due, for example, to its focus on benefits other than those to which the interest is directed, for the satisfaction of which this right is designed), it should not be recognized by the court. Subjective contractual law arising on the grounds established by positive law, i.e. imperative or not rejected by a dispositive norm, expresses an imputed interest,

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[6] Expert Opinion on Draft Federal Law No. 424632-7 "On Amendments to Parts One, Two and Four of the Civil Code of the Russian Federation". Adopted at the meeting of the Council on April 23, 2018 No. 175-2/2018. Page 3 [Electronic resource] URL: http://privlaw.ru/wp-content/uploads/2018/05/meeting-156-conclusion-2.pdf (date of access: 25.06.2021); hereinafterExpert opinion.

[7] "The conservative model of social development has no future in Russia, not because it is bad, but because of lack of continuity in the historical movement of the country and its legal system. [...] The organic concept of society, state and law can be realized only where respect for another person is associated with guarantees of freedom of expression and, at the same time, with possibility of protection from unlawful encroachment on a person by other people and authorities. (Chernokov A.E. The Future of Law (futurological notes). Spiridonov Conference: Actual problems of the theory of law. Issue 1–2.
Scientific editor I.L. Chestnov. St. Petersburg: Publishing House of the St. Petersburg Institute of Law named after Prince P.G. Oldenburg. P. 127.) The author's idea is clear: in view of the fact that Russia is deprived of all of the above, its legal system is completely incapable of evolution on the basis of self-regulation.

[8] See Kolber Adam J. Not-So-Smart Blockchain Contracts and Artificial Responsibility [Electronic resource] Stanford Technology Law Review. Vol. 21. Issue 2. 198 (2018). P. 198–234. URL: https://www-cdn.law.stanford.edu/wp-content/uploads/2018/09/Kolber_LL_20180910.pdf (date of access: 27.06.2021).

[9] Thus, the article will not touch upon the problem of attributing digital rights to objects of civil rights, but from the author's judgments, his agreement with those scientists who consider this a mistake should be clear.

which consists in a logical dichotomy and an actual dialectical contradiction with a real interest[10]. Subjective law, based on the condition of the contract formed by the will of the parties (deviation of the dispositive norm or arising in a permissive field), always expresses the real interests of the parties under identical terms of the contractual transaction[11].

Verification of the interest expressed in subjective law occurs in the first case on the basis of the presumption of conformity (uncritical deviation[12]) of the real interest from the imputed one, in the second — on the basis of understanding the contract as a balance of interests of the parties, where the interests of each party are assumed to be perfectly recognized by it, and any condition of the achieved balance is their ideal expression, which is identical to the presumption of any condition and the contract as a whole as an ideal expression of the common interest of the counterparties[13]. Verification must take into account the dynamics of the interests of the parties, which may lead to the adaptation of the contract to significantly changed circumstances (clausula rebus sic stantibus) or even to the termination of the contract if it is impossible to achieve a new balance; partial reconfiguration of the contractual balance also occurs by changing the regime of performance of obligations (suspension or refusal of performance, art. 328, exception on adimpleti contractus)[14]. Verification of the state of interest expressed in contractual subjective law should be carried out because of "hierarchically applied signification schemes"[15]. An obvious condition for performing such a reconfiguration of the contractual balance is to compare the results of the verification of the interest expressed in contract law with the semantic verification of the contract condition. The latter is divided into two stages: the first, which is referred to in the first paragraph of Article 431, is linguistic, the second, provided for in the second paragraph, certifies the correctness of judgments about the terms of the contract based on the environment of its conclusion[16]. In this work, we will need to address only the linguistic stage, and only within the limits determined by the objectives of the study.

3. Linguistic verification

No linguistic method of interpretation can be free from such a construction of the signifier (le signifiant), which uses the experience of individual word usage. In other words, the signifier is always set by the individual context. Dictionary values are nothing more than the values that are set by the most frequent word usage. In addition, in the contract, the context of words and expressions is formed conventionally — in the form of conditional meanings established by a formal or definitive protocol of interaction. This further reduces the value of dictionary meanings and, as a result, makes it unsuitable for the purposes of contractual law to translate contractual terms into computer program algorithms.

4. Impossibility of civil law verification of interests in a digital "contract"

Russian legislation in the form in which it came because of digital reform proceeds from the fact that digital law, and therefore the digital contract, are not in a legal, but a software environment (Article 141.1 of the Civil Code, paragraph 3 of Article 8 of the Law on Crowd-funding, paragraph 2 of Article 1 of the Law on Digital Financial Assets)[17]. It is noted in the literature that the term "digital rights" used in our legislation is genealogically unrelated to the public legal category of digital rights, which designates the so-called "new generation human rights"[18] in the relevant legal systems. The legislator originally was going to use this term instead of little use for our right idea "token"[19], both in the civil code and the Law on crowd-funding,

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[10] See Volfson V.L. Counteracting the Abuse of Law in Russian Civil Law. Moscow: Prospect, 2017. P. 10–26.

[11] Volfson V.L. Peculiarities of Abuse of Law in Contractual Relationship. Portal "Zakon.Ru" [Electronic resource] URL: https://clck.ru/RyGEB (date of access: 25.06.2021).

[12] The rejection criteria are described in the monograph "Counteracting the Abuse of Law in Russian Civil Law" and in many other works of the author.

[13] Volfson V.L. Peculiarities of Abuse of Law in Contractual Relationship. Ibid.

[14] See Volfson V. L. Relationship exceptio non adimpleti contractus and clausula rebus sic stantibus as ways to restore the balance of interests: theory and modern development. Leningrad legal journal. 2020. No. 4 (62). pp. 101–103.

[15] Volfson V.L .The language of dogma: bypass is impossible. The World of Legal Science. 2012. No. 6. P. 17.

[16] This sequence, indisputable for us and very important for law enforcement, unfortunately, did not even deserve to be mentioned in the Decree of the Plenum of the Supreme Court of the Russian Federation of December 25, 2018 No. 49 "On Some Issues of Application of the General Provisions of the Civil Code of the Russian Federation on Conclusion and Interpretation of a Contract".

[17] But there are differences. Paragraph 1 Article 141.1 of the Civil Code of the Russian Federation as amended by the Law on Digital Rights delegates to the information system the competence (the term of legislative technique, I believe, is appropriate here) to determine content and conditions for exercise of digital law, while paragraph 2 specially states that exercise of the right is possible only in the information system without turning to a third party; Part 3 Article 8 of the Law on Crowd-funding indicates that a "utilitarian" digital right should arise as such on the basis of an agreement concluded using an investment platform, i.e. an information system (due to the legal definition of the term in paragraph 1 part 1 Article 2), but at the same time, content and conditions for the exercise of utilitarian digital rights are determined by a person attracting investments (part 4 of the same article); in the Law on Digital Financial Assets for the purposes of adoption of this law, digital "rights" are treated only as tokens and crypto-currencies (clause 2 of article 1): issue, accounting and circulation of such assets — and they, by virtue of this definition, are digital rights — is only possible by introducing (changing) records in an information system based on a distributed registry, as well as in other information systems.

[18] Rozhkova M.A. Digital Rights: Public Law Concept and Concept in Russian Civil Law. Economy and Law. 2020. No. 10. P. 2–3.

[19] See Novoselova L., Gabov A., Saveliev A. et al. Digital Rights as a New Object of Civil Law. Law. 2019. No. 5. pp. 31–54; Rozhkova M. A. Cited Op. P. 11.

in which the concept "token investment project" gave place "utilitarian digital rights"[20]. However, in the final version of the Law on Digital Rights, in which there is a rejection of the idea of distributed registries, the latter turned, according to one opinion, into "any rights recorded in digital form"[21]. Other researchers, agreeing with this judgment in general, rightly, in our opinion, point out the presence of two essential predicates in the new legal regime: first, digital rights should be called such in the law, and, secondly, "they should be acquired, exercised and alienated on an information platform that "meets the criteria established by law"[22]. And although "the Civil Code of the Russian Federation does not establish technical requirements either for the information system or for digital rights proper"[23], at the same time it is obvious that these rights "should not exist in the digital environment autonomously, but only in conjunction with a certain information platform".[24] In the context of our work, it is this predicate of digital rights legitimized in Russian law, recognized and irreducible to form invariance that will be important.

In blockchain technology, transaction verification takes place through the efforts of so-called "miners" and with the help of time stamp technology (indicating the time of the transaction). Any operation entered the block receives a cryptographic identifier (hash), which is added to the header of the record of each subsequent transaction[25]. Interfering with the chain of records makes no sense because it would discredit the entire system. This creates a single "truth" of the blockchain, that is, verifies all transactions carried out, allowing not only to accurately, but also without the possibility of revision to determine the ownership of rights at each individual moment[26]. This verification method is based on the idea of the inventor of bitcoin Nakomoto about the need to use cryptographic code in distributed registries, which would create mutual trust without the need for external verification[27].

But such a modality of truth is provided exclusively by the hermetic or, as someone would say, "niche" modality of the ontology of digital rights, namely their stay in the field of work (and for verification purposes — in the field of meanings) of the information system, outside of which, according to the concept implemented in Article 141.1 of the Civil Code, as well as in paragraph 3 of Article 8 of the Law on Crowd-funding and in paragraph 2 of Article 1 of the Law on Digital Financial Assets, as already emphasized, digital rights do not have legal existence. And this being is incapable of being a true expression of the interests of the parties, especially in their variability, not to mention the applicability of the doctrine of clausula rebus sic stantibus, which is also recognized by supporters of the legitimation of smart contracts in civil circulation: A.I. Savelyev writes about the "significantly reduced adaptability of the terms of a smart contract to changing circumstances."[28] Such virtuality, and in the original meaning of this term, which is currently used to denote digital reality, inevitably generates other problems of legal implementation, primarily at the border of the transition to genuine reality, which has already been paid attention to[29]. In fact, the immanent understanding of the subject of property law for the continental family simply excludes the presence of legitimate digital counterparts for such a subject.

The described verification allows only to establish the fact of the operation, but it has nothing to do with the interest of the subject, and even more so with the assessment of his condition. Since, as already mentioned, subjective civil law is nothing more than a legally recognized private interest, and an assessment of the state of interest in the mode of a refutable presumption of its sufficiency is nothing more than a necessary condition for the exercise of subjective rights, because this is the only way to maintain the balance of contractual equilibrium, as well as to check this state for critical deviations (forming an abuse of law), insofar as these digital records are anything but subjective civil rights and certainly not that reality, which is open to testing for the preservation of contractual balance and signs of abuse.

Thus, verification of the interests of the parties is excluded by the essence of the so-called "digital contracts". In view of this, this technological reality is beyond the limits of contract law.

5. The impossibility of linguistic verification of the "terms" in the digital "contract"

There is no doubt that verification of the terms of a smart contract is incompatible with linguistic methods of verification (interpretation) of the contract, since a computer program cannot consider contexts, ideally it can work with individually

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[20] Gabov A.V., Khavanova I.A. Crowdfunding: Legislative Registration of the Web-Model of Financing in the Context of Legal Doctrine and Foreign Experience. Bulletin of Perm University. Legal Sciences. 2020. Issue. 47. P. 41.

[21] Konobeevskaya I.M. Digital rights as a New Object of Civil Rights. Bulletin of Saratov University New series. Series Economy. Management. Law. 2019. Vol. 19. Issue. 3. P. 331.

[22] Rozhkova M. A. Cited Op. P. 12.

[23] Akinfeeva V.V. Utilitarian Digital Rights in Modern Conditions of Economic Transformation. Perm Legal Almanac. 2020. No. 3. P. 401.

[24] Ibid.

[25] See Saveliev A.I. Contract Law 2.0: "Smart" Contracts as the Beginning of the End of Classical Contract Law. Bulletin of Civil Law. 2016. Volume 16. No. 3. P. 32–60.

[26] Ibid.

[27] Original: What is needed is an electronic payment system based on cryptographic proof instead of trust, allowing any two willing parties to transact directly with each other without the need for a trusted third party. Nakomoto S. Bitcoin: A Peer-to -Peer Electronic Cash System [Electronic resource] URL: https://bitcoin.org/bitcoin.pdf (date of access 27.06.2021).

[28] See A.I. Saveliev, Some Legal Aspects of the Use of Smart Contracts and Blockchain Technologies Under Russian Law. Law. 2017. No. 5. P. 94–117.

[29] Ivanov N.V. Implementation of Digital Rights under the Civil Code and the Crowd-funding Law. Portal "Zakon.Ru" [Electronic resource] URL: https://clck.ru/Vk9HQ (date of access: 25.06.2021).

specified word usage. Proponents of smart contracts believe that the programming language "causes an increased degree of certainty of such a contract and the absence of the need to apply traditional means of interpreting the contract to it"[30], but the arguments given show that this is not the case[31]. Unsuitability for the purposes of linguistic verification is easily visible when it is necessary to establish the meanings of words and expressions used in marginal linguistic conventions (non-dictionary meanings). Thus, the meaning of the expression "to recruit someone", which, despite the profanity, is obvious to competent speakers of modern Russian, if this expression in such a meaning (for example, to describe responsibilities for information interaction) is included in the contract, can never be understood correctly by a computer program, unless this usage is introduced into it. Once, at the beginning of the XX century, the word "call" was equally profane in the same meaning. Of course, this is just an example — by creating interaction protocols, the parties will try to exclude unclear and, above all, obviously non-normative conditions when writing a program. However, it shows that it is impossible to program an unambiguous meaning — linguistic verification is always contextual. The very presence of so-called README files accompanying programs already suggests that comments on the program, that is, clarifications of the values set by its source code, will be inevitable. Another good example is the expansion of the meaning of the English word vehicle far beyond the dictionary meaning in the famous case Garner v. Burr (considering the context of the interpreted norm, it was interpreted by the court not as a "vehicle", but as "any moving vehicle put on wheels")[32].

The absurdity of attempts to translate a contract into a computer language will be even less tolerable, because the obligations of the parties in a digital contract, for the purposes of its self-fulfillment, i.e. execution by a computer program, are formulated in the form of rules made dependent on the occurrence of not a moment in time (this would introduce even greater uncertainty due to consideration of counter-execution), but stipulated circumstances that may not have a model nature (and vice versa, express isolated cases)[33]. Since the probability of describing such circumstances through non-standardized vocabulary is objectively higher than the usual conditions of contractual interaction, the probability of linguistic deviations and, consequently, distortion of their meaning in a computer language also objectively increases.

The mode of terminological interaction, which is used in a computer program, should be called protocol: in it, the values expressed in the programming language are agreed upon in advance or are considered agreed upon. As already shown, such a language cannot be considered appropriate for the purposes of linguistic verification of the terms of a civil contract. However, if we imagine, as a working hypothesis, that the parties have agreed on such a protocol, if not with respect to each element of the language, but in the form of an agreement to consider all its elements as agreed, then this will create, albeit only in theory, and not in reality, legal civil turnover, albeit an extremely impractical instrumental verification of the "conditions". In this case, linguistic revision of the conditions will not be possible: no matter how the meaning in which the code element is used differs from the understanding of the corresponding condition (quite likely justified by the context) by the party to the transaction, the latter will have to be understood only in this meaning. It cannot be said that the logging of contractual interaction, especially in terms of information duties, would be foreign to private law. At one time in civil aviation, the requirements for negotiations between pilots and ground services acquired the form of a formalized protocol: after the largest disaster in the history of Tenerife in 1977, one of the reasons for which was the different understanding of the terms used by the dispatchers and the crew when leaving the aircraft on the runway, it was decided that the terminology used to issue a take-off permit and confirm the receipt and understanding of this permission, will be strictly fixed; in addition, a number of commands must be repeated by the addressee of the message[34]. This kind of protocol conventionalization of transaction values cannot but remind of the language used for data exchange between computers and for computer commands themselves. It also resembles the formalization of legal enforcement through publicly reliable instruments- such as securities, certificates of title, etc. Of course, this is explained by the need to ensure the irreversibility of the exercise of certain categories of rights (including the non-incompatibility of objections to them). But it will be shown below that in the civilistic sense, such irreversibility cannot be a universal regime, and becoming one, it will lead the described type of interaction beyond the limits of private law.

6. Irreversibility of rights as a defect of digital "contracts"

The inability to revise or cancel the terms of digital contracts is another irremediable defect. Strategy described above verification "transaction", i.e., transactions and their execution used in smart contracts eliminates "reversibility": outside

[30] Saveliev A.I. Contract Law 2.0: "Smart" Contracts as the Beginning of the End of Classical Contract Law. Bulletin of Civil Law. 2016. V. 16. No. 3. P. 45. Another problem of verification — the actual values expressed by means of a computer language — is impossibility of eliminating a program error and is recognized by A.I. Saveliev in a later work (Saveliev A. I. Some Legal Aspects of the Use of Smart Contracts and Blockchain Technologies under Russian Law, Law, 2017, No. 5).

[31] See also Kolber Adam J. op. op. pp. 214–223.

[32] See T. Endicott. Law and Language. Stanford Encyclopedia of Philosophy [Electronic resource] URL: https://plato.stanford.edu/entries/law-language/ (date of access: 27.06.2021). The author's analysis is presented in the work: On the Correct Meaning of the Word Vehicle [Electronic resource] Portal "Zakon.Ru". URL: https://clck.ru/Vjp8w (date of access: 27.06.2021).

[33] Saveliev A. I. Op. cit.. P. 46.

[34] The Tenerife Airport Disaster — the Worst in Aviation History [Electronic resource] URL: https://www.tenerife-information-centre.com/tenerife-airport-disaster.html (date of access 30.06.2021).

intervention in blocks of entries is impossible, since it would deprive "trust" entire chain of records; however, in case of an error in the program code revision transaction inevitable[35]. As already mentioned, this absolutely does not correspond to the nature of subjective civil rights both in their synallagmatic contractual dynamics and in the dialectic of imputed and real interests, immanent to the rights that arose because of the provisions of positive law.

To make clear the difference between digital contracts and a "regular" contract, they are often compared with contracts concluded through a vending machine. The computer program, after its launch, is completely independent in determining and directing the interaction of the parties, whereas the automaton is controlled by the will of the subject, and the automatism of further legal implementation -execution) is, of course, an imaginary, behind which lies the volitional actions previously agreed by the parties and made dependent on the occurrence of certain circumstances. Another visual comparison is with non-documentary securities. Digital rights are not rights at all, but, as already noted in the literature, a way of fixing assets[36]; according to one of the common points of view, non-documentary papers have the same nature. But in the case of digital "rights" arising from smart contracts, fixation is removed from the discretion of the subject[37]. This property gives smart contracts self-fulfillment, as well as immunity against violations. But the fact that for supporters of smart contracts progress, for us is an unambiguous sign of incompatibility with civil law.

The new version of Article 309 of the Civil Code, namely the second paragraph introduced into it by the Law on Digital Rights, in which the legislator allowed the fulfillment of obligations arising from a contractual transaction "upon the occurrence of certain circumstances without a separately expressed additional will of its parties aimed at fulfilling the obligation through the use of information technologies defined by the terms of the transaction", faced harsh criticism in the Expert Opinion (see also in the introduction to this work). So, in p. 4.5 Of the expert opinion, it was rightly pointed out that "no automated performance of the obligation exists in nature" and, further, that "by making a corresponding transaction, the terms of which provide for the production of performance through software or hardware, its party agrees to such a form of expression of its will in the performance of the obligation, and in some cases has an impact on this process."[38] As you can see, the category of "automated execution" The Council fits into a semantic space based on the principles and values of the law of obligations, where it would probably correspond to legal relations arising based on transactions made with the help of an automaton. The ideologists of smart contracts could readily object to this, referring to the differences already mentioned above between a smart contract and such transactions, but this difference — the irreversibility of execution due to the lack of control of the parties to the transaction — just takes smart contracts beyond the limits of the law of obligations and, in fact, rights in general. Obviously, being aware of such an objection, the authors of the conclusion give him a correct assessment in advance: "The rule of law cannot avoid attributing improper execution either with someone's will, or with chance or with force majeure. The limitation by the Draft of the possibility of protecting the rights and legitimate interests of the parties to the transaction in these cases does not comply with the Constitution of the Russian Federation and contradicts the principles of civil law"[39]. According to the conclusion of the Expert Opinion, the bill "cannot be supported for conceptual reasons"[40]. Unfortunately, the position of scientists did not prevent the adoption of the law, including Article 309, in the version submitted to the Council for consideration.

7. Abstractness of rights, known in civil circulation

Civil turnover has always, but especially with the development of the need for a current loan, needed tools that ensure not only the irreversibility of volitional acts, but also the non-incompatibility of certain rights of any objections. This is how securities arose, the rights of which have an abstract nature — no objections of the person responsible for the execution will be accepted if they are not related to the security or are not based on his relationship with the owner of the security. Nevertheless, the analogy with securities is inappropriate for attempts to justify the introduction of "smart contracts" into circulation.

Firstly, the recognition of abstract rights by the turnover is always aimed at special tasks, the solution of which is impossible without the indisputability of these rights. Such tasks and, consequently, the fixation of rights predetermined by them constitute a clear and very small minority in relation to other interests of the exercise of civil rights.

Secondly the right expressed in the paper retains independence from the ground of origin only insofar as it is not compromised by a conflict of the owner's intentions regarding this ground[41], which occurs when the owner knew that the ground may be missing or legally defective (Article 145). It is appropriate to recall that this rule also applies to non-documentary securities by virtue of clause 3 of Article 149.1. Thus, the similarity of the legal-object evolution of digital rights noted by some researchers with non-documentary securities cannot affect the problem of legal implementation: it is never

35 See A.I. Saveliev, Some Legal Aspects of the Use of Smart Contracts and Blockchain Technologies under Russian Law. Law. 2017. No. 5. P. 94–117.

36 Konobeevskaya I. M. Op. cit. P. 332.

37 This natural assimilation is discussed in many works. See, for example, Akinfeeva V.V. Op. cit. P. 401.

38 Expert Opinion. P. 10 [Electronic resource] URL: http://privlaw.ru/wp-content/uploads/2018/05/meeting-156-conclusion-2.pdf (date of access: 25.06.2021).

39 Ibid.

40 P. 14 Expert Opinion.

41 The conflict of intentions regarding the rightful grounds is expressed, according to the theory presented in the author's works, in the category of "bad faith". See, for example, Volfson V. L. Bad Faith as a Diagnosis of Abuse of Subjective Civil Law. Moscow: Prospect, 2019.

irreversible for a security, which ensures that it (and the rights arising from it) preserves the nature of a civilistic instrument. No civil rights can generate irreversible (programmed) implementation. Moreover, in a contractual legal relationship, due to the interactive environment it creates, there cannot be any absolute categories, except for those that express the legal constitutive features of the subject of description (for example, named contracts or the individuality of any immovable thing).

Thirdly, abstractness can only be a property of a unilateral transaction: a contractual transaction, because it represents the will formation of two subjects, cannot but include an agreement on a causa, that is, on a matrix of agreed interests that predetermines future interaction. Any contractual right expresses not only the autonomous interest of the rightsholder, but, again, the entire configuration of the interests of the counterparties, and brought by the transaction into a state of agreed harmony. However, smart contracts are not unilateral transactions — they are a bilateral interaction, and their ideologists would like this interaction to be considered legal. But from what has been said, the futility of this idea is evident.

8. Indisputability as a regime of rights arising by virtue of their registration

Indisputability is also characteristic of public-legal methods of fixing rights and statuses, including private-legal ones. The doctrine has different opinions on whether the system of registration of rights applied in Russia follows the principle of incorporation or the principle of opposability[42]. The first principle presupposes the complete indisputability of rights, the second one — their fixation, which would shift the risks of costs in case of long-term or critical encumbrances to the person who benefits from such encumbrances. However, both principles, regardless of the outcome of the discussion, do not exclude the reversibility of rights or encumbrances arising from the registration record. The principle of making allows the cancellation of the record itself, if the unfitness of the grounds for its commission is proved (for example, the invalidity of the transaction), with the principle of opposability, we are not actually talking about the task of overcoming the force of law (such is considered to have arisen by virtue of a transaction or other private legal fact, and not by virtue of registration); this paradigm only solves the problem of competition of rights, and the absence of the need for registration of a right or encumbrance for its occurrence is found in the possibility of not complying with the law on its registration — like a right from a security, in case of bad faith of the right-holder, his right will give way to a previously unregistered right or encumbrance[43]. On the other hand, from the fact that the principle of opposability proceeds from other grounds for the emergence of a right than its registration, it also follows that in the case of registration, a third person is not deprived of the opportunity to prove that he has a good faith belief in the absence of the fact of registration.

However, if you think of a digital contract as a set of rights protected from objections by registration, it would in any case turn into a public legal instrument.

9. The ability to be violated as the most important value of a subjective right

In sections 1 and 6, it was pointed out that smart contracts have a property in which their supporters see an irresistible argument in favor of their recognition by civil legislation, but which is the most vivid evidence of the absence of the phenomenon under discussion of a private law nature. The abyss separating the supporters and opponents of a smart contract along the lines of the other above listed and no less insurmountable contradictions is not as great as when it comes to violating the contract.

Digital "agreement" cannot be broken: previous activity performed in strict accordance with the "terms" (and in fact, as we have seen, expressed in computer code commands that have little in common with the private legal interests of parties); these "terms", bypassing the civil verification, including linguistic signification, will be executed "as is" without any possibility of opposing the objections to them (especially associated with the preservation of a balance of interests). It is not easy to violate a civil contract. Without the property of being violated, it does not exist. And the reason is deeper than the one indicated by efficient breach theory — the latter only denies the universalism of real execution. Violation of a contract is an action in contradiction with its terms, which, as shown above, are the essence of the expression of the agreed interests of the parties. Breach of contract is a category consisting in dichotomous unity with the category of proper performance, i.e. actions in accordance with these interests. Depriving a contract of the property of being violated is a denial not only of the possibility of its proper execution, but also of the fact that the contract has any connection with the interests of the parties.

10. Digital rights as a way of fixing rights

There is another important provision in the Digital Rights Act, which was not mentioned above due to the need to focus on the subject of research: those novels that cause disagreement, and not only by the author of this work. The changes in

[42] Kulakovsky V.V .Problems of State Registration of Ownership of Transformed Immovable Objects. Property Relations in the Russian Federation. No. 1 (196). Page 47–48.

[43] Clause 4 of the Information Letter of the Presidium of the Supreme Arbitration Court of the Russian Federation dated February 25, 2014 No. 165 "Review of judicial practice on disputes related to recognition of contracts as not concluded"; paragraph 2 clause 5 of the Decree of the Plenum of the Supreme Court of the Russian Federation dated December 25, 2018 No. 49 "On some issues of application of general provisions of the Civil Code of the Russian Federation on conclusion and interpretation of a contract".

Article 160 of the Civil Code are hardly capable of causing anyone's disapproval. They exclude from the rules on transactions the conditions of equivalence of electronic and handwritten signatures, which, in relation to a simple electronic signature, were determined by the regime of double delegation of law-making — in the former text of Article 160 of the Civil Code and in Part 2 of Article 6 of Federal Law No. 63-FZ "On Electronic Signature". Instead, to transactions made "using electronic or other technical means", which nowadays means, minus the statistical error, "using a computer program", the legislator applied the regime of subject identity, which could be called the principle of open (or unqualified) verification[44]: any methods, if they allow to reliably identify the person who expressed the will, are considered suitable by default, but qualified verification can be established by law. In addition to the benefits for turnover, this innovation is an important and necessary — and, in our opinion, the only one necessary in the Civil Code — an act of digitalization of civil legislation. If we extend the rules on transactions to volitional actions for their execution, which, as a general idea, is not unanimously supported by the doctrine, but which can be forcibly done with a special indication of the law in relation to digital form, we will get a legal regime of "digital rights", which, according to many civilists, they should have and which turnover needs: they will become ways of fixing rights and legal implementation.

11. Conclusion

Firstly, despite the sharp criticism that Bill No. 424632-7 was subjected to, which led to a fundamentally new definition of digital law in the Law on Digital Rights in comparison with its text, the provisions of the draft defining the legal regime for the exercise of these rights, through smart contracts, entered into the current legislation. The new Article 141.1 of the Civil Code delegates the competence to determine the content and conditions for the exercise of digital rights to a computer program; similar provisions are contained in the Law on Crowd-funding and in the Law on Digital Financial Assets. Taking into account the fact that at the same time the proposed revision of the second paragraph of Article 309 did not experience the impact of criticism from the Council for the Codification and Improvement of Civil Legislation, it can be argued that "digital contracts" appeared in domestic private law, and endowed with the property of self-fulfillment immanent for them and extolled by supporters. This circumstance expands the meaning of the remarks addressed in this work to digital contracts — this is not only a statement of the author's theoretical views, but also the judgments of de lege ferenda. Even if the introduction of digital rights is considered an acceptable legal experiment after A.V. Gabov[45], in our opinion, it is time to complete this experiment in terms of smart contracts.

Secondly, a smart contract, at least insofar as it means a computer program that is self-executing based on its code, is a digital, not a legal reality, because it does not represent an agreed expression of the interests of the parties in the terms of the contract. This conclusion is made, first, because it is impossible to verify the interests represented in self-executing code, and even more so changes in their state; further, the expression of interests in a programming language does not lend itself to proper linguistic verification. As a result, procedures for restoring contractual equilibrium cannot be applied to a smart contract, and the true will of the parties cannot be clarified.

Thirdly, the "irreversibility" of the terms of smart contracts, that is, their self-fulfillment, which implies the impossibility of their violation, is their fatal defect, since it exposes their irrelevance to the interests of the parties and, consequently, the purpose of the existence of civil law, which is a way of harmonizing equivalent interests.

Fourthly, the existence of smart contracts cannot be justified by the presence in private law of means ensuring that rights and legal implementation have the properties of relative irreversibility in cases where such irreversibility is objectively required by turnover.

Fifthly, digital rights, according to the opinion that has been repeatedly expressed earlier, are nothing more than a way of fixing rights and legal implementation, and therefore the changes made to Article 160 of the Civil Code by the Law on Digital Rights should be welcomed and considered the only novel of this Law that deserves to be preserved.

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[44] Previously, this regime, with slight differences, was used in the previous edition of paragraph 2 Article 434.

[45] V.A. Bagaev. As an Experiment, it cannot be Ddenied. The Codification Council Found out the Nature of Digital Rights [Electronic resource] Portal "Zakon.Ru". URL: https://clck.ru/VmrdS (date of access: 25.06.2021).

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The Image of Law Enforcement Bodies: Current State and Practices to Improve It

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ABSTRACT
In the current context of heightened economic and socio-political conflicts around the world, there is a crisis of confidence in the state institutions that provide public security. The authors of the article consider the problem of forming the image of law enforcement agencies in the Russian Federation and abroad as a way to increase confidence in the state system. An analysis of the current state of the Russian law enforcement system's image is presented as well as the analysis of some reasons for the negative attitude of the population towards employees of penitentiary institutions and the role of mass media in shaping the image of law enforcement agencies. The analysis of the current state of the law enforcement system's image is supplemented by a review of the results of studies of the reputation of law enforcement bodies in the US and European countries. Successful domestic and foreign practices of reputation enhancement and improvement of interaction with the population are analyzed, such as: informing on the activity and employees of law enforcement agencies in social networks, interaction with the population through specialized electronic portals and social networks, popularization of thematic books, films and TV series etc. The authors of the article proposed a set of measures to form a positive image of the law enforcement system, increase public confidence in the law enforcement agencies of the Russian Federation in the framework of the Center for Public Security and Law Enforcement Research at the North-West Institute of Management of the RANEPA.
Keywords: law enforcement, public safety, image, image improvement practices, media

Introduction

In the current context of aggravating economic and socio-political conflicts, special requirements are imposed on the activities of law enforcement bodies and human rights organizations. They are reflected in the shaping of the image of a particular department or organization as a whole, as well as its employees as representatives of a department or a human rights organization.

The analysis of the current state of the image of the law enforcement system and the search for best practices to improve its reputation are promising areas of interdisciplinary research in the field of maintaining public security. Analyzing the image of law enforcement bodies requires an integrated approach and taking into account various indicators that can directly or indirectly affect the image of both a particular agency and the law enforcement system as a whole.

The current state of the image of law enforcement bodies in Russia and abroad

The image of the law enforcement system means "an emotionally colored image of a law enforcement body, purposefully created and having a psychological impact on various social groups"[1].

As V.V. Mikhailova notes, "depending on how high and full-fledged the image of the authorities is, the decisions taken by the authorities will be supported by the population, which ultimately makes it possible to compare the image and social efficiency of the authorities"[2].

In Russia, according to the All-Russian Center for the Study of Public Opinion (hereinafter — VTSIOM)[3] as of 2021, the public assessment of the institution of law enforcement bodies demonstrates positive dynamics in a number of areas:

- the index of approval of law enforcement bodies has increased by 36 points since 2010 (from –14 to +22);
- the level of trust in the police in the regions has increased by 49 points since 2012 (from -26 to +23).

[1] Mikhailova V.V. Police Image as a Factor of Effective Dialogue between the Population and Authorities. Civil society in Russia: challenges of our time : collection of scientific works Ulyanovsk : Ulyanovsk State Technical University. 2016. P. 473–476.
[2] Ibid.
[3] Expanded selection of VTSIOM data: for the thematic issue "Trust" [Electronic resource] No. 7, 2021. URL: https:// profi.wciom.ru/fileadmin/file/nauka/podborka/rasshirennaya_podborka_dannyh_wciom_022021.pdf (date of access: 01.07.2021).

Also, according to the study conducted by the All-Russian Research Institute of the Ministry of Internal Affairs of Russia in 2020, there is a positive increase by 12.7 points in the assessment of the security of the population (from 38.4 to 51.1)[4]. Thus, one can observe a significant positive shift in the attitude of the population towards the law enforcement sphere.

At the same time, despite the positive developments, the absolute indicators of trust in law enforcement bodies are relatively low[5]. This is reflected in the approval index for the activities of public institutions, such as the Russian army, the judicial system and law enforcement bodies (see figure).

Based on the data presented in the chart, it can be noted that the Russian population as a whole positively assesses the activities of the Russian army, estimations of the activities of law enforcement bodies are more neutral, and the dynamics of the evaluation of the judicial system remains in a negative range.

The analysis of the reasons for the negative attitude of the population towards law enforcement officers is the subject of many studies. Thus, O. N. Yezhova and A. P. Semikina revealed that about 70% of citizens assess their level of trust in the employees of the penitentiary system as average and below average[6].

At the same time, respondents noted that they receive information about the Federal Penitentiary Service of the Russian Federation in 55% of cases from unreliable sources, such as the press, television and radio broadcasts, social networks, movies, rumors and conversations with friends[7]. A.V. Lyapanov noted that the negative attitude of the population and the mass media towards the employees of the penitentiary system may be due to the transfer of the public "stigma" of convicts to people working with them[8]. Researchers emphasize that stereotypical ideas about law enforcement officers can become persistently negative in conditions of social tension[9, 10]. These ideas can be reinforced by some informational confrontation between media representatives and law enforcement bodies[11].On the one hand, law enforcement officials may avoid contact with representatives of the press due to cases of inaccurate reflection of certain facts and, as a result, negative attitudes towards journalists. On the other hand, representatives of the media seek to detect injustice and bring it up for public discussion, and avoiding communication with them by law enforcement officials can be interpreted as concealing important and even sensational information[12], and any mistakes — as malicious intent[13, 14].

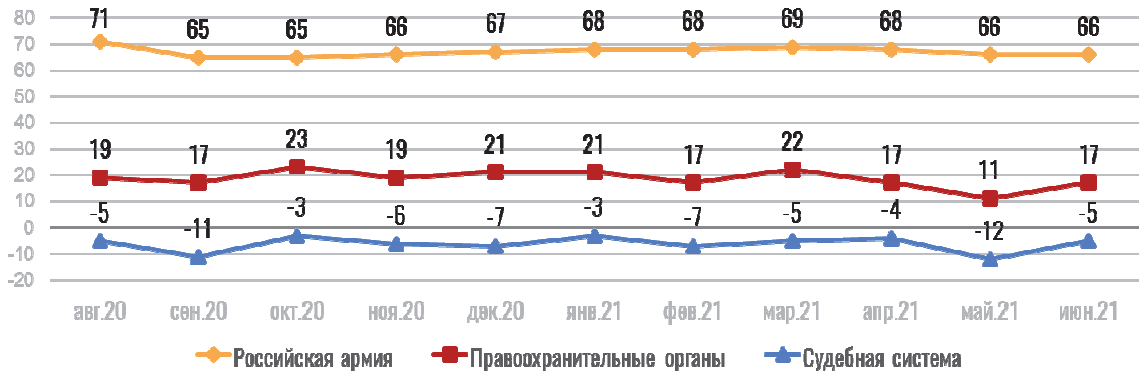

Fig. The Approval Index of Public Institutions According to Russian Public Opinion Research Center (VTsIOM) for August 2020 — June 2021 (◆ – Russian Army; ■ – Law-Enforcement Authorities; ▲ – Judicial System)

[4] Assessment of police activity in the Russian Federation in 2020 "Research Institute of the Ministry of Internal Affairs of Russia" [Electronic resource] 2020. URL: мвд.рф/publicopinion (date of access: 01.07.2021).

[5] Activities of public institutions. All-Russian Center for the Study of Public Opinion [Electronic resource] 2021. URL: wciom.ru/ratings/dejatelnost-obshchestvennykh-institutov (date of access: 01.07.2021).

[6] Ezhova O.N., Semikina A.P. Image of an Employee of Penitentiary System: Psychological Aspect. Bulletin of Samara Law Institute. 2020. No. 4 (40). P. 113–120.

[7] Ibid.

[8] Lyapanov A.V. Problems of Improving the Image of the Penitentiary System [Electronic resource] Bulletin of The Penitentiary System. 2014. No. 1 (140). URL: https://cyberleninka.ru/article/n/problemy-povysheniya-imidzha-ugolovno-ispolnitelnoy-sistemy (date of reference: 01.07.2021).

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[11] Ovsyannikova A.A. The Image of the Bailiff in the Media: Problems and Ways of Improvement. Bulletin of Enforcement Proceedings. 2018. No. 2. P. 98–115.

[12] Vasiliev V.L. Legal Psychology. Saint Petersburg : Piter, 2002. 291 p.

[13] Khamidova I.V. Conflict Situations in Relations between Mass Media and Internal Affairs Bodies, Their Causes and Consequences. Bodies of Internal Affairs and a Society in Russia: problems of Interaction in the Past and Present : Collection of Findings of Regional Interdepartmental Round Table (Ryazan, 21 May 2008). Edited by V.I. Chernyshov, N.M. Demko, I.V. Khamidova. Ryazan: Ryazan Branch of the Moscow State University of the Ministry of Internal Affairs of Russia. 2009. P. 4.

[14] Antoshkina K.P. The Image of a Bailiff in the Media. Bulletin of Enforcement Proceedings. 2017. No. 2. P. 113–127.

In the USA, public opinion on the activities of certain public institutions is regularly monitored. For example, the international analytical and consulting agency Gallup annually polls American public on the professions they consider the most ethical and honest. It can be noted that the image of the police is quite high — police officers are in the TOP-5 professions[15], although from 2016 to 2019, trust in them ranged from 50 to 60%[16].Since 2020 and to the present, the situation in the United States has changed dramatically, among other reasons due to the social movement "Black Lives Matter", which calls for the fight against violence on the part of law enforcement bodies[17]. The consequences of distrust in law enforcement bodies are diverse: an increase in the crime rate; tougher penalties; the refusal on the part of the population to report crimes and help investigators[18]; the refusal on the part of juries to charge or convict; the emergence of vigilante groups, etc[19].

In Europe, a global survey of public confidence in the police was carried out in 2014[20], which led to the following conclusions.

1. Global trust in the police positively correlates with trust in political and legal institutions.
2. Global trust in the police is closely linked to trust in its work and trust in procedural justice.
3. The ratings of the local police influence the opinion of the police in general.
4. The higher the social trust in the country — trust in strangers, in their justice and goodwill, the higher the trust of people in the police, in its procedural fairness, as well as trust in its work.
5. Dissatisfaction with the way the police has treated someone leads to a decrease in confidence in the procedural fairness of the police and to a decrease in confidence in its work.

Leading researchers of the image of law enforcement bodies note the need to use tactics of advanced management of the process of forming attitudes and assessments of the public[21], high-quality information about the activities of public institutions and the algorithm for appeals in emergency situations[22].

Analysis of domestic and foreign practices for improving the image of law enforcement bodies

The analysis of foreign practices of shaping a positive image of law enforcement bodies allows us to note their focus on "humanizing" a law enforcement officer. The public relations departments of the US police, together with universities, organize annual public opinion polls among local residents to assess their satisfaction with the local police and other law enforcement bodies[23]. The public is also solicited for suggestions on the ways the local police department can provide a higher level of service and a more positive perception of employees when interacting with local residents[24]. Social networks are actively used not only to inform about the activities of law enforcement bodies and for direct interaction with the community, but also to promote new law enforcement officers in the local media (biography, level of education and training at the academy, personal qualities, hobbies)[25].

Also, heads of law enforcement bodies tend to make frequent public appearances and attend public events to increase public trust and maintain a positive image of law enforcement officials[26].

In the United States, the practice of debunking myths about the police work, and what is happening behind prison walls, is successfully applied, aimed at increasing the transparency of the work of law enforcement bodies. In particular, the books

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15 Gullup's "Profession Ratings for Having Very High/High Honesty and Ethical Standards", 2016–2020 [Electronic Resource] URL: https://news.gallup.com/poll/274673/nurses-continue-rate-highest-honesty-ethics.aspx (date of access: 01.07.2021).

16 Gullup's "American's Ratings of Honesty and Ethics of Police", 1977–2019 [Electronic Resource] URL: https://news.gallup.com/poll/187874/americans-faith-honesty-ethics-police-rebounds.aspx (date of access: 01.07.2021).

17 Gingles D. Black Lives Matter. In: A Scientific Framework for Compassion and Social Justice. 2021. P. 38–44.

18 Muller C., Schrage D. Mass Imprisonment and Trust in the Law. The Annals of the American Academy of Political and Social Sciences. 2014. No. 1. P. 139–158.

19 Robinson P.H., Robinson S.M. Shadow Vigilantes: How Distrust in the Justice System Breeds a New Kind of Lawlessness. NY, Prometheus, 2018. 344 p.

20 Staubli S. Trust in and Attitudes towards the Police: Empirical Analyses for Europe with a Special Focus on Switzerland, 2014 [Electronic resource] URL: ttps://www.researchgate.net/publication/280317880_Trust_in_and_Attitudes_towards_the_Police_Empirical_ Analyses_for_Europe_with_a_Special_Focus_on_Switzerland (date of access: 01.07.2021).

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23 Some Solutions to the Reputation Crisis Impacting Policing. The e-newsletter of the COPS Office, 2016 [Electronic resource] URL: cops.usdoj.gov/html/dispatch/09-2016/reputation_crisis.asp (date of access: 01.07.2021).

24 Winkunle O. Image Management in the Nigeria Police Force: Prospects and Challenges, 2020.

25 Mayes L. Social Media and Community-Oriented Policing: Examining the Organizational Image Construction of Municipal Police on Twitter and Facebook. Police Practice and Research. 2020. No. 22. P. 1–18.

26 Some Solutions to the Reputation Crisis Impacting Policing. The e-newsletter of the COPS Office, 2016 [Electronic resource] URL: cops.usdoj.gov/html/dispatch/09-2016/reputation_crisis.asp (date of access: 01.07.2021).

"Doing Prison Work" by Alanie Crowley, "Media, Crime, and Criminal Justice" by Ray Surett and the autobiography "The Crime Fighter" by Jack Maple and Chris Mitchell are devoted to this issue.

In Estonia, the Ministry of Justice in 2008 approved the Code of Ethics for Prison Officers, which describes in great detail the various aspects of the work of employees of the penitentiary system[27]. The main difference from the Russian counterpart is a detailed description of what behavior can be considered corrupt, incorrect in communicating with colleagues and prisoners, unacceptable when interacting with the media and on the Internet, as well as the rules of conduct for employees outside working hours. In addition, since 2005, Estonia has been implementing the "Electronic Police" program, where a set of technical means is installed in each patrol car, which allows police officers to access all the necessary information[28]. In this way, the headquarters coordinates the movement and location of each employee in a real time mode. Also, any citizen has the opportunity to leave official requests, monitor the proceedings of his case, and pay fees on the official website of the Estonian police. As a result, in 2012 Estonia stated that the number of murders has significantly decreased, and confidence in the police has increased enormously[29].

In the UK in 2017, the Child Sexual Exploitation and Policing Knowledge Hub published a manual for law enforcement officers on the principles of police communication with children and young people so as to establish trusting contact with them and provide assistance as effectively as possible[30].

Strengthening the academic training of law enforcement officials with regular courses, such as on verbal and non-verbal communication, crisis intervention, de-escalation and stress reduction training, as well as on the effective treatment of people with emotional disorders, is a promising area of development for law enforcement personnel, which has a positive effect on public confidence in law enforcement system[31].

In Russia there also exist successful practices that contribute to a positive impact on the image of law enforcement bodies, such as:

a. news about the success of law enforcement officers in preventing crimes and catching criminals (headlines with the words: "saved", "helped", "returned to the owner", "thanked", "excellent job");
b. information about the activities carried out within the structure of law enforcement bodies to inform the public about their work (headings with the words: "awarded", "did a good job", "improved statistical indicators", "improved the situation");
c. coverage of events by official departments in social networks (Odnoklassniki, VKontakte, Instagram, Twitter, Facebook, etc.) in which it is very important to answer questions and comments from citizens, to be in direct contact with them[32].

In general, it is important to note that the availability, informativeness and clarity for citizens of the official resources of law enforcement bodies is an important factor in increasing trust in them.

Themed films and series are a powerful channel for shaping of images and role models of law enforcement officers. Among them, "Streets of Broken Lanterns", "Kamenskaya", "Cold Case", "Bellman", "Convict", "At gunpoint", "Trace" and many others. In such series, scriptwriters and directors try to reproduce the everyday life of a law enforcement body, forming the image of a "hard worker" — smart, resourceful, decent, principled.

Discussion

Shaping of a positive image of law enforcement bodies in perception of civil society is an urgent problem of the law enforcement system of many countries around the world. The existing practices of studying public opinion, creating the image of both individual employees and the entire law enforcement system as a whole using social networks and media platforms demonstrate positive dynamics of public opinion. Research and development of successful practices require a comprehensive solution, involvement of a wide range of experts and high-quality interaction of law enforcement bodies, the media and public organizations.

In order to implement a comprehensive solution to the problem of shaping a positive image of law enforcement bodies in 2021, the Russian Presidential Academy of National Economy and Public Administration has established a Centre for Public Security and Law Enforcement Studies. The Center organizes interaction between the Ministry of Internal Affairs, the Investigation Committee, the Federal Penitentiary Service, Interpol, Rosgvardiya (the Russian guard), the Prosecutor's Office, human rights organizations, as well as youth social and political associations.

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27 Code of Ethics for Prison Officers (Estonia) [Electronic resource] URL: www.vangla.ee (date of access: 01.07.2021).

28 The New Estonian e-Police System Is a Sight to Behold, 2017 [Electronic resource] URL: www.e-estonia.com (date of access: 01.07.2021).

29 How the Ministries of Internal Affairs were reformed in Georgia and Estonia [Electronic resource] Kommersant Power. No. 15. 16.04.2012. p. 28. URL: www.kommersant.ru/doc/1916117 (date of access: 01.07.2021).

30 Working Together to Enhance Police Responses to Child Sexual Exploitation and Related Vulnerabilities by CSE and Policing Knowledge Hub [Electronic resource] URL: www.uobcsepolicinghub.org.uk/hub-resources (date of access: 01.07.2021).

31 Some Solutions to the Reputation Crisis Impacting Policing [Electronic resource] The e-newsletter of the COPS Office, 2016. URL: cops.usdoj.gov/html/dispatch/09-2016/reputation_crisis.asp (date of access: 01.07.2021).

32 Tishchenko A.V. Confidence in the Police: Value, Factors, Prospects of Formation: thesis of Candidate of Social Sciences: 22.00.04. Adyghe State University, Stavropol, 2020. 214 p.

The main tasks of the Center include: 1) conducting research to find best practices of interaction between law enforcement bodies and human rights organizations in order to improve communication and cooperation between the police and civil society institutions by analyzing the role of both parties and making suggestions on how to manage interaction to ensure successful partnership; 2) inviting independent experts to conduct research, collect data and give recommendations on the use of analytical tools and techniques in the field of increasing public confidence in the law enforcement system; 3) creating and maintaining a system for monitoring effectiveness and quality control in the field of public security; 4) creating guidelines for law enforcement bodies and public organizations based on a thorough review of research literature, statistics and law enforcement practice; 5) implementation of programs of additional education and advanced training in the field of ensuring public safety and the quality of interaction between law enforcement bodies and public structures (formal and informal), taking into account international experience.

Conclusion

In order to increase the prestige of law enforcement bodies, a comprehensive solution is needed that will combine large-scale research of public opinion, creation of a forecasting model with an eye to the influence of various factors on the reputation of the law enforcement system and the formation of effective practices that promote public confidence in security and law enforcement bodies. Implementation of such a comprehensive solution is possible provided that effective cooperation is built between law enforcement bodies and the media, educational and public organizations.

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The Specter of Digital Rights

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ABSTRACT
In the article, the author examines the problem of the impact of technological changes on the legal regulation of public relations, namely the development of digital technologies, how significant such an impact turned out to be and whether, in this regard, significant changes in the principles and mechanisms of legal regulation are required. It is asserted in the article that the problem how to adapt existing legal forms in order to address inevitable changes in public relationships (does not matter what the cause of these changes is: the so called "digitalization" or something else) may be relatively easily resolved. What we need to do is to segregate those aspects of the factual side of relationships in question that should have legal consequences from the rest, that is from those aspects that may be ignored by law. In order to illustrate this thesis the author considers two examples: the semiconductor chip protection and the electronic signature as a way to identify an entity who expressed a will. The author comes to the conclusion that the existing legal instruments for regulating the emerging new factual relations are sufficient, but they must be used correctly. The author gives examples of such law enforcement within the framework of the article.
Keywords: possession vs. property, legal fact, semiconductor chip protection, electronic signature

Even some years ago, while discussing the issue of possible changes in law, which can be needed taking into account the changes in actual relations because of new technologies, the lawyers supposed confidently, that these changes could be significant. At the conference, taking place in North-West Institute of Management RANEPA on April the 28th 2021 "The Law and the State of the new informational Epoch: new challenges and new opportunities" you could notice, that "the pendulum made a swung in the other direction". The most participants doubted in necessity of significant changes. Although the representatives of the most radical point of view claimed, that all the necessary legal forms for new actual relations have already existed, their more conservative supporters believed that local changes would be enough.

However, as a rule, firstly — all the extremes are false and secondly –the question of the scale of changes isn"t considered to be so interesting. If the changes must have only local character, they have not to be exercised by intuition, but to be based on a methodological foundation. Unfortunately, this foundation hadn"t been discussed on the conference (if we don"t consider such a foundation as the problem of adaptation the law to the changing public relationship to be made up).

Rather interesting and in many ways consolatory reasoning of the law"s theory representatives about the opinion, that the fundamental and significant features of law could be "corroded" because of so called "digital transformation" of public relationships, cannot be considered as this foundation as well. The answer to the question "What will not change" says nothing about "how to change" things, which must be changed. However, there are no doubts that the new legal relationships must appear from the judicial facts, because there are no other basis for appearing (changing, termination) of legal relationships except of judicial facts.

From all said at the conference (precisely speaking, heard by the author of the article), the most interesting thing from the point of finding approaches, which could be used while "modernization" of the legal form of changing of legal relationships, is the observation by V.F. Popondopulo. The main idea is, that at the discussing of "digital transformation" of public relationships by lawyers, the practical side of the issue is being more precisely described as their legal side.

Eighteen centuries before Popondopulo, Ulpian said some similar ideas, when he took attention to the fact that possession hasn"t much in common with ownership[1]. Let us make more definite statement: we have to give up comparing practical issues with legal things, and so we"ll manage not only the digital, but also more other transformations, which can emerge in practical relationships.

But before to demonstrate how to use this thesis while regulation of rather new practical relationships, let"s check if we are really following this thesis at regulating the well-known relationships. Let"s consider two examples.

The Article 66.1 of Russian Federation Civil Code (further –CC RF)[2] states the property which can be passed by the founder into the authorized capital of the business entity. Tis article lists, what mandatory, intellectual and corporative rights can be such property and mentions along with them... the items. But from legal point of view, what mean the passing

[1] I.A.Pokrovsky. The History of Roman Law. Paragraph 58 [Electronic resource] URL: https://civil.consultant.ru/elib/books/25/page_40.html#86 (data of access 03.07.21).
[2] Civil Code of the Russian Federation. 1994. No.32. Article 3301 (Part first); CC RF, 1996. No.5. Article 410 (part second).

of a thing, an item? There are a lot of answers to this question. When you are passing your shoes into repairing workshop, you are actually passing an item as well, but it is obvious that the Article 66.1 means something other. Moreover, the precisely knowing of this article let us consider that from all the rights, which can exist according to an item, the ownership only can be passed. And despite this, we use the concept "item" or "thing" instead of the concept "ownership".

Considering the creation of legal entity, we can consider its liquidation. According to the Article 419 CC RF the obligation ends by the liquidation of a legal entity (debtor or lender), except of the cases when all the obligations of the legal entity are assigned by law or by other legal acts on another entity. Taking examples of some "cases", when the obligation doesn"t end through liquidation of legal entity, we can remember, first of all, requirements of compensation for harm to life and health (part 2 Article 1093 CC RF); or contract of gratuitous use (part 2 Article 700 CC RF). At the same time we don"t have to see statistics to state, that among liquidated legal entities the part of entities, who are obliged for compensation for harm to life and health is less than the part of entities, who have non-cash on bank accounts. And there are some reasons to presume, that this money however passes to somebody after liquidation. At this point if we remember that from legal point of view non-cash is considered to be an obligation of the right, there is a rhetorical question: why neither legislation, nor the Supreme Court of RF[3], nor the most commentators of the Article 419 CC RF remember it?

These considered examples are enough to understand, that the reproach by V.F. Popondopulo could be addressed to the whole legal system of us: regular mixing of practical and legal is its typical feature. While it is about the regulation of relationships according to usual objects, it could be done as if there makes no problems. But when instead of things and items we consider for instance cryptocurrency, it becomes much more difficult.

Now, let"s consider two other examples. There will be the examples of norms, which belong to regulation of relationships with usage of new technologies. At the same time, we will see, that while formulation of these norms was successfully managed to realize the first-year-student"s task from the faculty of laws; so, to detect among a lot of obligations these circumstances, which really has judicial and legal meaning and to endow them with the role of legal facts. And after that, to determine the consequences of these facts, specifying, which rights and obligations compile the content of law relationships, emerged from these facts.

Article 74 CC RF is devoted to semiconductor chips" protection. An semiconductor chip is several layers, and special areas are applied on every layer using specific templates. In other words, the result of the intellectual activity called "Topology of semiconductor chip" is the answer to the question, which areas have to be applied where for getting certain functionality. Persons trying to use the results of the intellectual efforts of the others, do the following: they acquire the needed chip, remove the layers one by one, do images of every layer and according to these images the templates they need. It"s easy to understand, that the described procedure of copying of chip"s layer by layer replicates the copying if a book page by page.

The describing of the practical side of relationship, described in the previous paragraph, let's form a notion: what are the interests of the creators of topology of semiconductor chip, and what are the ways of encroachment for these interests. As a result can be concluded, that content of the Article 74 CC RF (describing of legal side of these relationships) can be similar to the Article 70 CC RF, "Copyright". Indeed, getting to know the Article 74 CC RF, you"ll make sure that despite some differences, there are nothing there beyond copyright and common clauses if civil right. One significant difference is worth being mentioned: in the Article 74 CC RF regulates the situation of independent creation of equal topologies; and the copyright considers that there are no independent created but equal works.

The second example is norms, devoted to a competent digital signature. Like in the previous example, there wasn"t any reference into the physical chemistry, and in this example we don"t speak about advanced mathematics. The technology used here is based on a couple of unique interrelated keys: digital signatures key and digital signature verification key. Every of them can be considered as a sequence of symbols (although these are very big numbers). Using special means, a digital document and a digital signature key, one more unique sequence is possible to be created: a digital signature, which is impossible to create without a digital signatures key. Getting a digital document, a digital signature and the digital signature verifications key, you can check with some special means, if this signature have been created after signing a document with the digital signatures key, forming a pair with this key, or not.

According to the Paragraph 2 part 1 Art.160 CC RF, the requirement of having a digital signature is considered to be fulfilled, if any way have been used, which lets reliably identify the person expressed the will. The described in the previous paragraph method can be used for reliably identification of such a person, by compliance with two conditions: a) one person only can own a certain digital signatures key; b)every person, having got the certain digital signatures verification key, must have an opportunity to identify reliably the owner of the key.

In the Federal Law "About a digital signature" all mentioned circumstances have been reflected: availability of special means, having preset characteristics (Art. 12), the mentioned time aspect (Art. 11), the necessity to keep the digital signatures key secret (Part 1 Art. 10) , and the way of preventing the substitution of the digital signature verifications key (Part 2.1 Art. 15).If these requirements are compiled, have legal consequences, stated in part 1 Article 6 of the same

[3] See paragraph 41 Resolution of Plenum of the RF Supreme Court from 11.06.2020 No.6 "About any issues of applying clauses of Civil Code of Russian Federation about determination of circumstances". Bulletin of Supreme Court. 2020. No.8.

law: the information in digital form signed with digital signature is admitted to be a digital document and is equal to the document in paper form and signed with a handwritten signature, and can be applied in any legal relationships according to the legislature of RF, except of the case if the federal law or compiled with it legal acts states the requirement of necessity of forming a document in paper form only.

In such a way can be handled by regulating other relationships, in which new technologies are used. And first of all attention must be paid to the concept "legal fact", serving usually as binging element between practical and legal sides of relationships and at the same time an obstacle to their mixing.

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On the Issue of Distinguishing Individual and Group Training Activities in the Context of the Spread of the New Coronavirus Infection COVID-19

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ABSTRACT
The subject of the article is the issue of distinguishing individual and group training activities, the importance of which has increased in the context of the spread of the new coronavirus infection COVID-19. The authors consider the existing legal regulation in the field of organizing and conducting training events, as well as issues that arise in practice. Proposals are put forward to eliminate the existing "gaps" in the legislation.
Keywords: sports law, legislation on physical culture and sports, training events, COVID-19

In connection with the spread of the new coronavirus infection COVID-19 (hereinafter — COVID-19), the executive authorities of the subjects of the Russian Federation adopted regulatory legal acts establishing a set of requirements against the spread of COVID-19 during sport events. For example, in St. Petersburg by the Decree of the Government of St. Petersburg of 13.03.2020 No. 121 "On measures to counteract the spread of a new coronavirus infection in St. Petersburg" (hereinafter referred to as the Decree of the Government of St. Petersburg No. 121) holding sport events with a participation of more than 75 people is prohibited by the general rule[1]. Similar bans have been established in Leningrad and Novgorod regions, the Republic of Karelia[2] and in other regions of the Russian Federation.

However, some organizers of training events are trying to bypass these prohibitions by holding mass individual training events. There have been cases of individual training events involving hundreds of athletes, which do not contribute to the fight against COVID-19.

Let's consider the possibility of distinguishing individual and group training events.

There are no legal definitions of individual and group training events. The only legal act establishing the definitions of these terms is State Standard R 56644-2015 "Public Services. Fitness Services. General Requirements"[3]. According to the provisions of this act:

- group training is training conducted in a zone specially designated for group programs, in accordance with the training regime and group training program;
- individual training is training conducted in accordance with an individual methodology (plan) of classes and an individual system of preparation (training).

However, it seems that this act cannot regulate relations in the field of sports.

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[1] On measures to counteract the spread of a new coronavirus infection (COVID-19) in St. Petersburg : Decree of the Government of St. Petersburg No. 121 dated March 13, 2020. ConsultantPlus [Electronic resource] URL: http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=SPB&n=223690#023377044800001312 (date of access: 20. 02.2021).

[2] On measures to prevent the spread of a new coronavirus infection (COVID-19) in the Leningrad Region and the Invalidation of Certain resolutions of the Government of the Leningrad Region : Decision of the Government of the Leningrad Region dated August 13, 2020 No. 573. Electronic Fund of Legal and Regulatory and Technical Documentation [Electronic resource] URL: http://docs.cntd.ru/document/565516070 (date of appeal: 02/20/2021); Onthe introduction of a emergency regime: Decree of the Governor of the Novgorod region dated March 6, 2020 No. 97. Electronic Fund of Legal and regulatory and Technical documentation [Electronic resource] URL: http://docs.cntd.ru/document/565046123 (date of access: 20.02.2021); On the introduction from March 12, 2020 in the territory of the Republic of Karelia of a emergency regime for the management bodies and forces of the territorial subsystem of the unified State system for the prevention and liquidation of emergency situations of the Republic of Karelia : Order of the Head of the Republic of Karelia dated March 12, 2020 No. 127-R. Electronic fund of legal and regulatory and technical documentation [Electronic resource] URL: http://docs.cntd.ru/document/465423582 (date of access: 20.02.2021).

[3] GOST R 56644-2015 Public Services.Fitness Services. General Requirements: Order of the Federal Agency for Technical Regulation and Metrology dated October 14, 2015 No. 1564-art. Electronic Fund of Legal, Regulatory and Technical Documentation [Electronic resource] URL: https://beta.docs.cntd.ru/document/1200124945 (date of access: 20.02.2021).

The possibility of conducting individual and group training sessions is established by the requirements for ensuring the preparation of a sports reserve for sports national teams of the Russian Federation, however, there are no definitions of these events[4].

At the same time, cases of mass individual training events and competitions in the form of individual training have become more frequent, since these events do not fall under restrictions aimed at fighting the spread of COVID-19[5].

In our opinion, when evaluating these measures for compliance with the legislation, we should proceed from the following points:

1. The number of participants and coaches participating in the sport event. If a sport organization cannot ensure the availability of coaches in an amount sufficient to conduct a training event with each athlete separately, then this training is group training. Therefore, this event must meet the requirements set for the maximum number of participants in the event.

2. The content of individual training sessions. If the training programs compiled by the organizer of the training event contain the same tasks or tasks performed by the trainee at the same sports facility simultaneously with other persons, then these training events are group ones.

Holding mass individual training events that do not meet the above criteria and the Decree of the Government of St. Petersburg No. 121 is the basis for bringing the organizers of this event to administrative responsibility in accordance with the Administrative Code of the Russian Federation and the Law of St. Petersburg "On Administrative Offenses in St. Petersburg"[6].

However, in the case of simultaneous holding of several individual training events, it seems that the requirements set for the maximum number of participants in the event are not applicable, except for the unlikely case of participation in this training event of more than 75 people in accordance with the Decree of the Government of St. Petersburg No. 121.

In addition, we note that there is no definition of a training event in the current legislation. Based on the systematic interpretation of Federal Law No. 329-FZ dated 04.12.2007 "On Physical Culture", training is a sport event that includes theoretical and organizational parts, in order to prepare for sports competitions with the participation of athletes and coaches[7]. As stated in the doctrine, the training process is preparation for sport competitions[8].

Therefore, it is impossible to hold a sport competition in the form of a training event, since these are two different types of sport events[9].

Based on the above, we propose to include in Article 2 of the Federal Law "On Physical Culture and Sports" paragraph 33 in the following wording: "Training is a sport event carried out by an athlete in order to prepare for sports competitions independently or under the guidance of a coach.

A group training event is a training event held with the participation of athletes in accordance with the group program of training events under the guidance of a coach.

An individual training event is a training event held with the participation of an athlete in accordance with an individual training program under the guidance of a coach."

However, it seems more likely that this regulation will be included in the by-laws of the executive bodies of state power of the Russian Federation (for example, the rules of the sport "Orienteering" approved by Order of the Ministry of Sports of the Russian Federation No. 403[10] of May 3, 2017) or acts of sport federations. The inclusion of the proposed distinction will make it possible to bring persons to administrative responsibility in case of exceeding the maximum permissible number of participants in a sport event or to sports (corporate) responsibility in case of violation of measures to combat the spread of COVID-19[11].

Summarizing the above, we can say that the inclusion in regulatory legal acts of the definition of individual and group training activities is not only necessary in the context of fighting the spread of COVID-19, but also possible.

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Review of the International Scientific and Practical Conference "Third Baskin Readings. Law and State of the Information Era: New Challenges and Prospects" (St. Petersburg, April 28, 2021)

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ABSTRACT
In the review of the conference "The Third Baskin Readings. Law and State of the Information Era: New Challenges and Prospects" presents a summary of the main theses of the speakers on the problems of digitalization, the concept and protection of human rights and freedoms in a digital society, the role of artificial intelligence, transformation of law as such and other issues. The speakers generally concluded that there was no special change in the legal system for the needs of digitalization, concluded that law as a social phenomenon has a high degree of adaptability to changing conditions, and the use of new technologies should not affect the content of legal regulation as a whole. However, during the discussion, it is proposed to consider new signs of law, for example, "seriousness of law" in relation to the theory of the game. The participants come to the conclusion that the world is multipolar and at the same time there can be various structures of law and state, characteristic of different stages of socio-economic development of societies.
Keywords: digital law, seriousness of law, digital society, subjective rights, state and law

In April 2021, the North-Western Institute of Management of RANEPA and the Law School of the NWIM, facilitated by the journal Theoretical and Applied Jurisprudence, A.F. Koni Foundation for Support and Development of Historical Heritage, held another Baskin's Conference. It was timed to coincide with several anniversaries of the events relevant for the Institute. They are the centenary anniversary of Professor of the North-Western Academy of Public Administration and prominent lawyer Yuri Yakovlevich Baskin, in whose honor the conference was named, the twenty-fifth anniversary of the Law School of the NWIM and the thirty-year anniversary of the North-Western Academy of Public Administration, whose successor and heritor the Institute is.

The third Baskin Conference was devoted to issues of legal and state development in the post-modern (information) era. The institute has been focused on and engaged in these issues for many years, so there is no need to prove research and practical relevance of the conference topic. Digitalization driven by a range of global crises, among which is the ongoing pandemic, has profoundly affected every area of public life. This, in turn, dramatically affected the law, as the main social regulator that cannot stand aside from the main trends of social development, including global ones.

Therefore, the emergence of "digital economy" served as a trigger for transformation of civil law. New challenges facing the federal and municipal authorities facilitate the broadest introduction of digital technologies that optimized decision-making processes and opened the door to new institutions of constitutional, municipal and administrative law. Obviously, this large-scale transformation of branches of law in the digital era demanded conceptual reflection; that is why digitalization of the law and state attracted attention of both practical specialists in legal sciences and legal theorists. However, while opening new ways for development of the system of justice, digitalization poses challenges and threats to its stability. We witness emergence of new types of illegal behavior, such as cyber fraud, cyber terrorism, cyber espionage and more. The mechanism for counteracting these crimes is only being developed; it is still imperfect and, therefore, needs research and support.

No wonder that this conference has become an important event in scientific life and attracted attention of researchers from almost all legal sciences, as well as judiciary and legal practitioners. As part of the event, four panel discussions were organized, to cover all multi-profile issues of the conference: "Digital Transformation of the Law and State" (moderators:

Andrey Vasilyevich Polyakov[1] and **Nikolay Viktorovich Razuvaev**[2]); "Constitutional System and Mechanisms of Electronic Democracy" (moderator: **Sergei Lvovich Sergevnin**[3]); "Digitalization of Subjective Rights: Civilistic Dimension" (moderator: **Popondopulo Vladimir Fedorovich**[4]) and "Cybercrime: Issues of Counteraction at the Present Stage" (moderators: **Safonov Vladimir Nikolayevich**[5] and **Mordvinov Konstantin Vladimirovich**[6]).

This year, the Baskin Conference received the status of an international event, since it was attended both by scientists from various cities of Russia (St. Petersburg, Moscow, Voronezh, Saratov, etc.), and foreign colleagues from universities in Germany, Hungary, Ukraine and Belarus. It is also worth noting that by agreement between the Board of the NWIM and organizers of the St. Petersburg International Legal Forum, the video recording of the conference was posted on the Forum's website.

The vent was opened by **Vladimir Aleksandrovich Shamakhov**, Director of North-Western Institute of Management of the RANEPA, who welcomed its participants, emphasized relevance of the Baskin Conference as a platform for free discussions on topical issues, which raise the interest of both academic scientists and legal practitioners. In his turn, Deputy Director of NWIM for Research Affairs **Dmitry Evgenievich Mereshkin** remarked that presentations at the conference are filled with ideological agenda and wished the participants fruitful communication. The honorary guest of the event, **Tatyana Vasilievna Baskina**, shared her memories of the life and work of Yuri Yakovlevich Baskina, showing unique photographs and other documents from the personal archive.

Konstantin Viktorovich Aranovsky[7] made a report at the plenary part with a detailed overview of the main challenges facing the system of justice in the digital era. According to K. V. Aranovsky, it is difficult to define that what law and state is at the information era and what this era is like. The issue is very broad. The law doesn't really need to be transformed externally. It exists as an inherent institution in the social organism and has adapted to the changes to the extent that leaves no doubts that it is viable. Similarly, coerced transformation will not be needed if the law remains as such and if man does not renounce the law, which might be the most fatal and drastic thing to do.

A few years ago, at the St. Petersburg International Legal Forum, famous figures discussed how the law could cope with transformation of technology, took evidence for cases of liability for drone operations[8]. But the law has already had the solution to such cases. There is little room to the law to transform in this area, and transformation is rather a combination of events, being an adaptation of the reality to the rules that must still prevail if we insist of the principles of the rule of law. And any rule is a bilateral relationship with two parties participating. If someone rules or dominates, there is another one who obeys.

In this context, transformation of law cannot be treated as a scenario when men will dominate over the law. Of course, social and political philosophy, science, and even everyday consciousness has been actively operating another trend, which prevails in some cases — since the Enlightenment, people have been thinking that man can dominate over the reality and over himself thanks to the power of the mind. That is, mind is a dominant factor that can fix and restore everything. But this is a rather risky trend. Its origin rests on religious principles, however, religion poses certain limits on freedom of human will, and at a certain social period these limits perish.

This particular mistaken belief made a background of the French Revolution of 1789, the Jacobin movement, the guillotine; it is a well-known fact that development public law began with the fact that revolutionary courts were deprived of the right to control over other branches of power. The leaders of the French Revolution believed that the people, using the power of reason and common will, could make any decisions, while the courts, with their decrepit, senseless, viscous law, only hindered the triumph of enlightened intellect. Later Jacobinism was replaced by socialism, communism and other doctrines that remain in line with this trend. Looking back at the history of the last centuries, we must understand that digitalization is an objective factor of in the society, but as long as man exists in it, the law will also exist.

Another example, at the aforesaid forum[9] someone expresses concern about how we will cope with artificial intelligence, because to a large extent it exists as a self-reliant element, so what if we have to recognize its legal capacity, involve it in legal

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8 It refers to the well-known "free rider problem", which states that in production and provision of public goods to consumers, it is impossible to exclude who will use these public benefits for free, i.e. "free riders". Thus, benefits of public order and security, which is protected by the state at the expense of taxes, shall apply to the whole community, including those who evade paying taxes (for more details, see Ostrom V. The Meaning of American Federalism. What is a Self-Governing Society. Moscow: Arena, 1993. P. 189 et seq.) — editor's note.

9 St. Petersburg International Legal Forum — editor's note.

relations with rights and obligations, how we can control it. But in various systems of justice there are quite bizarre subjects, and in general, views on the subject of law, a participant in legal relations has been dramatically changing. Nevertheless, the changes neither abolish *res judicata* nor invalidate the principle of *pacta sunt servanda*; and basic principles of the rule of law are still in effect.

For instance, we attribute psychic abilities to a subject, especially if it is a private person. But if we refer to the phrase *habeas corpus*, which means "to have a body", we will see that in English law material abilities of a subject prevail in many cases. Therefore, in this sense corporate law survives and develops there easily. So, these hues, hints, transitions and flows between objects, things, subjects, participants and passive elements of the legal order are quite conditional. I don"t think that digital transformation can threaten the law. I believe that the law will easily cope with such phenomena, for instance blockchain. Maybe some elements will become irrelevant when the blockchain system can provide proof of transactions. Another thing is that we exist as social beings, and we know that along with the rule of law, seen as an impersonal beneficial ruling force that demands obedience, there is a power of reason, which is also beneficial, — the power of a dream.

Man cannot help having dreams and prospects of t the future, but the main thing here is that living through these states, we should not put too much emphasis of the dreams and prospects when the rules will cease being imperative, it is a very risky situation.

And these risks do not relate digitalization — the challenging issue of the era, they rather relate to everyday life, being entwined into it. For example, we are now debunking principles of limited liability, making liability omnipresent. Sometimes, supporting the ECHR, we agree that various procedural errors can be made, if the proceeding results in overall fair decision.

This supposition relies on the insightful judgment that is, it is based on a keen judge who, having no evidence or defected evidence, is so sharp that makes correct assesses and understands the essence of the case, perhaps even skipping the legal procedural requirements that the law requires. There are many risks of that sort now, in most cases they occur because man has been living well-to-do life for a long time, since he managed to relieve the burden of everyday obligations to meet his vital needs, since he got the blessings of civilization, so the temptation to feel omnipotent and omniscient has been growing. Some abilities, including caution and loyalty to the rules, also get crippled.

Of course, we should not exaggerate these risks should. On the contrary, in many respects, civilization has made man more loyal, more law-abiding, bondable. But anyway, we must understand that if we have unlimited authorities, we can destroy a lot. A person who has the benefits of law should protect them in any era, even if it is digital and full of mechanisms of electronic democracy.

At the panel discussion "Digital Transformation of Law and State", reports were presented by **Lukovskaya Dzhenevra Igorevna[10], Roman Anatolyevich Romashov[11], Vladislav Vladimirovich Arkhipov[12], Alexey Vyacheslavovich Stovba[13], Natalia Vladimirovna Varlamova[14], Vladislav Valeryevich Denisenko[15], Iya Ilyinichna Osvetimskaya[16] and Natalia Frantsevna Kovkel[17]**

D.I. Lukovskaya I will tackle two issues, modern postclassical theories of natural law and how these theories fit into the general tradition of the centuries-old theory of natural law. First of all, it concerns fairness. In Russia, we have historically used the category of truth, which blurs the boundaries between legal and moral principles; so natural law borrows legally significant principles from truth and justice, i.e. principles of reasonableness, proportionality, justice. In the early XX century due to criticism of the classical theory of natural law (ideas of dualism of natural and positive law, ideas of absoluteness, immutability of natural law imperatives), people began to consider if it is worth sticking to this term, or it is better to replace the term "natural law" with the term "politics of law".

Starting with R. Stammler, the theory of natural law with changing content was being replaced with the concept of propriety of law, which in the English language is called as the theory of justice[18]. In the second half of the XX century the issue of natural law was terminologically replaced by the issue of justice. At the same time, V.S. Nersesyants tried to reconstruct the general concept of natural law, outlined its universal principle and came to the conclusion that the universal principle of

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[18] See: StammlerR. The Theory of Justice. New York: The Macmillan Company, 1925.

natural law is the dualism of natural and positive law as parallel and opposing principles; in the theory of natural law positive law is just an emanation of natural law, and the theory receives its legal meaning only from natural law. This dualism of natural law as a qualifying criterion for all theories of natural law is recognized and approved by most modern researchers.

It should be pointed out that unlike many modern authors, Nersesyants relied on the fact that theories of natural law can be modernized. He believed that in the theories of the revived natural law the dualism of natural and positive law is partly overcome, while ideal criteria remain unchanged.

Duaalism used to be inherent in jus-naturalism. But let's stick to the opinion of J. Finnis, who criticized such dualism-based interpretation by G. Kelsen and G. L. A. Hart of the whole tradition of jus-naturalism, noting that dualism-based tradition is far from alleged denial of legality of unjust norms that do not correspond to natural law, except for revolutionary-anarchist theories of the XVII-XVIII centuries[19].

In the postclassical theories of natural law, where theories of dualism and imperatives are greatly criticized, qualifying factors of jus-naturalism are refuted in general. The balance of natural and positive law is presented as unity, ambiguity, dichotomy, two-component nature of law, its ontological structure, thereby overcoming the pure positivity of law; natural law is not beyond positive law, rather they are in mutual dependence (by A. Kaufman) or in balance (by R. Alexi). Obviously, natural law, being immanent to positive law, is no longer a normative legal system operating together with it, much less opposed to it, that is, such dualism is not typical of modern jus-naturalism.

But has this dualism been overcome? This question may arise, since one may ask whether dichotomy is another name for dualism, since postclassical theories of natural law still stick to the idea of the value priority of natural law over positive law. Let us consider discursive theories of natural law (for example, R. Alexi, J. Habermas): human rights — a new natural law — are treated as moral requirements addressed to a positive legal order, and serve as a criterion for evaluation of positive law. So can we say that dualism is not refuted in the newest version of jus-naturalism? In my opinion, such a conclusion is hasty.

First, it is supposed to integrate human rights into a legal system that meets criteria of justice, quoting Alexi — claims to have legal propriety. Secondly, and most importantly, in the context of this issue, human rights can exist only due to their relevance. If they are not justified in rational discourse, they do not exist. So the rights are still not introduced from the outside, they rather have a human communicative-procedural origin. So, the very dualism of classical theories of natural law has been overcome. However, the rational discourse assumes normative relevance of classical natural law principles (freedom, equality of participants in the discourse) as a basis for equality of human rights.

After all, normative arguments that establish, according to the formula of G. Radbruch[20], the threshold of extreme injustice, flagrant violation of human rights, allow us to state (beyond the formula assertion) that extreme injustice should not be and is not law. The idea of absoluteness, immutability of natural law imperatives is does not fall in line with the human dimension of natural law principles. Dynamism, processuality, historicity of the law have become the hallmark of all postclassical ideas about law, including those of natural law.

Yes, arguing with positivism, representatives of non-positivism, essentially natural law, based on the idea of justice, treat themselves as representatives of natural law theories, and, there is a good reason for that. There is no denying normativity of any tradition. In postclassical theories of natural law, tradition of classical jus-naturalism is still felt, because contractualists (J. Rawls, R. Dworkin) in one way or another adhere to moral universalism of the 18th century. The universal character of the idea of human dignity, equal dignity, is also evident in works of J. Habermas.

The idea of the rule of law as its critical dimension remains as a relevant idea of justice and legal propriety in the modernized natural law models. The test of justice offered by Kelsen to jus-naturalists confirms that natural law even in such version has critical potential inherent in the multi-variant tradition of jus-naturalism. This innovative succession has yet to be thoroughly considered, even if a positivist does not recognize relations between law and morality, like H.L.A. Hart.

A critical rethinking of natural and positive law as parallel existing, opposite systems still does not mean a fundamental break with tradition of jus-naturalism, after all, the tradition did not cease after Kant, who overcame naturalism of previous idea on natural law. So, in their postclassical version theories of jus-naturalism still remain theories of natural law. There are new reference points, but the tradition itself has not been interrupted.

R.A. Romashov Considering law as something inherent in man, as conscience, freedom, justice, we can come to a conclusion that indeed, law exists beyond time, but, I believe, that in this context it is not law. Law arises when legal technology replaces religious traditions and the state appears in its modern representation. I fully agree with K. V. Aranovsky that the state as a subject emerges sufficiently late, that is why the law considered as such also emerges late.

State and law are social-cultural phenomena that develop at a certain stage of human history and undergo transformations in their development, i.e. dramatic changes in form and content. But the essence of the state and law remains unchanged. Digitalization is as objective as growing and aging processes in a person. And the fact that a person does not want to grow old does not affect the picture. If we refer to abstract concepts of state and law, at a certain stage they turn into universal concepts. For instance, a polis is not a state. ***State*** is not a state. ***Kingdom*** is a state, being a hierarchical system relied

[19] See Finnis J. Natural law and natural rights. Moscow: IRISEN, Thought, 2012. P. 37, 46-53.
[20] See: G. Radbruch. Gesetzliches Unrecht und Qbergesetzliches Recht, Suddeutsche Juristenzeitung. 1946.

upon the ruler. There is no difference how this ruler will be called — prince, tsar, Central Committee of the CPSU, president, emperor, the key point here is that there is a hierarchy in which a certain person heads a certain system and serves as a direct actor.

So a state is an integrated form of social organization and, at the same time, a mechanism of public political power. When we talk about a state, we mean a specific mechanism for organizing society and power. Such a mechanism does not always exist. The state and law inherent in state did not always exist. In this relation, we talk about the unvaried essence, but variable forms of the state and law.

In terms of transformation of the state and law, there are two ways: fist is a linear transformation of the state and law, and we can compare their changes with transformation of as a person. Similar to a person who goes through certain stages during the life, but remains the same person, linear transformation means that the state and law, once having arisen, change in form, but remain in essence. For example, if we consider the Russian state, as recorded in the Constitution, as a state with a thousand-year history, this is a vivid example of a linear transformation. Such an approach is possible.

But if we talk about cyclical history, we mean that the state goes through certain cyclical stages in its development. Each cycle is finite. In terms of transformations, it is more logical to treat transformation of the state and law not as a linear history, as we still think, but as cycles. I support Alvin Toffler's wave concept[21], which speaks about three stages of transformation of the state.

The first wave is the agricultural culture, a traditional society with an agricultural or raw material system. The state, initially patriarchal and then bureaucratic, is similar to the family. Thus, the law in the family is a traditional law — the law of the fathers (the elder generation teaches the younger one, and the father can make any decision, regardless of whether it is traditional or not).

The second wave is the industrial culture, when traditional society is replaced by an industrial society and a national legal state. In terms of state of law, the state means order, technology, and in this case the state is equal to the nation. So, the state may be presented as a conveyor belt. A person invents a conveyor, but does not become its owner, rather a part of the conveyor. Here, law is a technological construction that is equally effective both in relation to the director of a conveyer company and an employee.

The third wave is the development of information culture, which means that the information society is somewhat changing the economic focus — commodity production is replaced by virtual property production. When we talk about intellectual property, it does not apply to a real object, and a traditional triad of possession/use/disposal does not work. In terms of state of law, we treat it as a national order based on the national language, national legal tradition in national law.

The state of law is replaced by a digital state, that is, an order based on digital technology, the national language is replaced by a digital code, and monistic dualism, with its idea that my state is right and other states are wrong, is replaced by a pluralistic view, when there is a large number of "right ways", each subject has its own "right way", which does not match "right way" of another subject, but still remains "right". The digital world is objective, but it does not displace the first or the second wave, which can coexist with each other.

V.V. Arkhipov The topic of my presentation is like "Claims of the Law to seriousness: a stale truth or an unobvious principle." I'd like to say a few words about law in terms of medial turn. The name of my report already states that there might be a new principle or sign of law, originating from the concept of seriousness, significance, play. The words "stale truth" correlates to a quote from the Dutch culturologist Johan Huizinga, who wrote in the fourth chapter of his "Homo Ludens": "At first sight, few things would seem to be further apart than the domain of law, justice and jurisprudence, and play. High seriousness, deadly earnest and the vital interests of the individual and society reign supreme in everything that pertains to the law"[22] Further on, the author draws an analogy between law and play, but concludes is that play can be a serious business.

How does that relate to the current state of our society? I think the most successful concept is the medial turn, which is being discussed in media philosophy. It suggests that nowadays, after various changes, including in language, we as a society become aware that our social reality does not only depend on language, but also on the media that transmits information, and on other actions with information — all that affects how we perceive reality. It turns out that we live in a reality, which we perceive only indirectly through different information products and technologies. Hence, it turns out that, being in this mode of information society, we are transferring direct communication and social reality in general into the information dimension, for which various kinds of simulacra are typical; and it explains, for instance, development of legislation on ***fake news*** not only in Russia, but also in Europe and other countries.

In fact, in our media reality we can see quite a lot of curious phenomena that, both at first glance and after a detailed analysis, make us think about what is absurdity in terms of making, interpretation and application of law. There are plenty of examples, they are not systemic and do not represent a system, but are of serious methodological interest — we need to understand what they can result in. For instance, application of rules aimed at countering terrorist activities to totally fictional situation of a computer game; although in that case the game had nothing to do with a recipe for making explosives, the

[21] See: TofflerE. Third Wave. Moscow: AST, 2004.

[22] Huizinga J. Homo Ludens. Attempts of Determining the Game Element of Culture. Articles on the history of culture. Moscow: Progress — Tradition, 1997. P. 85.

situation resulted in legal actions which did no limit access of children to this information, but rather involved classical, real-life anti-terrorist legislation.

Apart from that, we can find interesting examples in rules on blocking information on the Internet, which have already greatly increased in number and variety. It actually raises the issue — when these rules can apply to works of art, that is, fiction, and when they do not apply. Some twenty years ago, the sphere of the artistic and imaginary was isolated from the sphere of the serious, the real, and it did not present an issue of theoretical and philosophical reasoning. However, now that most of our communication is mediated by digital media, distinguishing between the serious and the fictional a serious problem for theory and practice, the main task of which is to avoid absurdity of interpretation and application of the law. Absurdity can occur in two ways: application of norms to the phenomena that are not serious, or application of the wrong norms to legal relations, the subject of which is serious in one sense, but fictional in another. So we can formulate a hypothesis that a classically formulated list of principles of internal morality of law by L. Fuller[23] can be supplemented by a claim to seriousness, which can be treated as a principle methodologically similar to R. Alexi's claims to correctness. In this context, we can say that a philosophical cultural concept of the game is usually opposed to seriousness, but this is a controversial statement, and here seriousness rather is opposed to absurdity. The message of the hypothesis is that seriousness in law is not a truism at all, but one of the fundamental principles.

A. V. Stovba It is undeniable that the digital era does not change much in legal regulation, since behind all digital transformations there is a human being, free, responsible, who can bears legal liability, has legal capacity, and no digital transformation will change that. So, what is changing? It seems to me that it is legal identity that is changing or getting blurred. First, if we talk about the superficial component, in the era of accounts, logins, pages, etc., it is difficult to distinguish a person from a digital image created for a certain purpose — for self-esteem in a social network profile as a way of social affirmation, or for becoming a member of a community. I would like to draw attention to another aspect, namely, to the fact that in the digital age with increasing number of not material or physical, but virtual social interactions, a new ethics of natural law arises.

Considering classical legal relationship, the rule of law exists as a symbolic textual image embodied in a co-present person. Let's consider, for instance, a situation when a person is on a desert island — all positive legal provisions do not annihilate, but lose their sense if a person does not interact with another person, which gives sense to all institutions of positive law. That is, a limiter of my actions is, first of all, the Other in his physical presence.

However, in the digital age, things are changing. And the question is whether the Other in the virtual presence can be such a limiter. We know that social media users are actively criticized for being rude, rude, violation of the rules of ethics, behavior, it is enough to read the comments under some topical news. The question arises, where law goes or what it becomes when we interact in the virtual, digital dimension? Especially that in terms of the pandemic, the rate of virtual communication is only increasing. And here we come to some ultimate principles of law. We know, for instance, that in ancient times, in a primitive communal system the main sanction was expulsion, when the violator of the customs accepted in society was simply expelled. It seems to me that in the digital age we have come to the same point — after all, now the most effective sanction is the so-called "ban", removal, exclusion from a virtual community. Such a sanction may be blocking of the page or deactivation of the account.

In this regard, the question arises whether we should introduce a parallel legal regulation, which, on the one hand, will be related to real physical interaction, and on the other — to virtual interaction. Of course, there can be a gray zone, such as digital fraud, where quite tangible resources are a result of digital interaction. And here the most interesting thing, is how much identity can be retained, how much the norm can be retained in the gray zone, whether it requires a separate legal regulation, its modification or a radical new regulation, since there is no physical presence that serves as a limited. All these questions require answers.

N. V. Varlamova I would like to support the position of Judge Aranovsky, who states that despite development of digital and other innovative technologies that significantly affect all aspects of social life, including development of law, law has its own special nature and regulatory purpose. And it remains despite all changes in the social life. In terms of human rights in the era of digital technologies, researchers have been actively discussing development of a new type of rights or, as they say, a new generation of digital rights. Most often, this group of rights includes the rights to access the Internet, to protection of personal data and the right to be forgotten or deleted.

But if we consider the aspects where these rights are recognized, protected and ensured in modern conditions, we can see that each of these rights is just a projection of traditional, long-known human rights on modern digitalized relations. The right to access the Internet, as it is formulated in documents of the UN and the Council of Europe, is primarily a modern way of exercising the right to freedom of expression, the right to access information, the right to freely disseminate information. The issue of protecting personal data, on the one hand, has become relevant in the digital age, since in order to use technologies, this data must be provided to literally everyone, but on the other hand, it is a long-standing problem of the right to respect for private life.

[23] See, for instance: Fuller L.L. The Moral of Law. Irisen. 2007.

And various attempts of doctrinal papers to separate the right to protection of personal data from the right to respect for private life results in a situation when the right to protection of personal data is regarded as a purely technical right and out of touch with its essential purpose. The right to be forgotten, to be deleted is a right that has also become relevant in the digital age, which means that individuals have a right under certain circumstances to force search engines to remove links to information that is correct, but to some extent defamatory or undesirable for a person, or, for example, lost its relevance.

On the one hand, this right has been updated due to development of the Internet, on the other hand, with development of information technology, as experts say, this right will again lose its relevance, since technical methods of blocking quick access to information are unlikely to remain effective. Also, we see that in the new generation, the very understanding of the right to privacy is blurred, losing its meaning. On the Internet, there are many things posted that for my generation seem at least strange. From my point of view, we should not try to justify emergence of new human rights due to development of information technologies, rather we should look at how human rights are enforced in the conditions of new digital environment, consider threats that this environment generates, technical opportunities it provides for enforcement of rights, restrictions it imposes on legal regulation of these rights.

The approach used, in particular, by foreign researchers dealing with digitalization of human rights and digitalization of measures to enforce and protect human rights, seems more fruitful to me, since we still remain within the framework of the old human rights that only require special protection, enforcement and attention to special aspects of their manifestation.

V.V. Denisenko I am convicted that law in terms of its ideology, is inevitably subject to transformation. Let us recall moments in history when a certain legal ideology or doctrine lagged behind social needs, which caused great upheavals. For instance, in the 19th century, when the doctrine of classical liberalism refused to change, it led to emergence of the most radical political movements, for example, anarchism, claiming that the state should vanish altogether. It happened because statesmen and lawyers could not leave aside the doctrine of none- regulation of private relations, although society had changed and the state intervention, the social state, had become imminent

The same applies to modern situation. Undoubtedly, the information age is the challenge that calls to transform the law. And law in different eras comes to a certain historical milestone, when it is necessary to change the legal policy, like nowadays. What exactly is changing? Circumstances are; there emerge problems of identity, seriousness, problems of action, effectiveness of law, its delegitimization. The modern state with social policy really regulates the majority of relations. In the last century, there has been an expansion of law, which entails over-regulation and juridification of society.

Society is fully regulated by legal norms. If we take the Russian legal system, it is very difficult to find relations that are not regulated by law. And at the same time, in the information society, there is a phenomenon of visualization of law, when most people treat law as a simulacrum. No wonder the classics of Soviet legalism now call law a simulacrum in their works. Of course, if we do not want to see the loss of legitimacy, we must implement the idea that in the information society modern legal policy cannot be based only on coercion and ideological influence, and legal systems must be associated with certain communicative procedures.

Accordingly, a positivism doctrine changes to a communicative paradigm. In practice, this means that in order to ensure the legitimation of law people participate in the so-called deliberative aleatory procedures, taking into account principle of formal equality. An example of the aleatory procedures can be amendment of the Irish constitution in 2018, when commissions were created for discussion, due to which all disputes were settled and there were no protests. The information society is a certain factor, a challenge, which nevertheless speaks of the need for changes in legal policy in the current period.

I. I. Ozvetimskaya The previous presenter states that we need new tools, aleatory mechanisms. But they already exist, we just do not use them. For example, there is a mechanism for discussing draft bills on the gov.ru website, but very few people use it. The question arises why we do not use these tools despite their availability. This is probably due to the loss of trust in the authorities, since in recent years the model of legal communication between the state and society has no longer been trusted. I would like to talk about this deformation in legal communication.

Considering that legal communication is the background of law, like human communication if the background of social life, effectiveness of law will depends on effectiveness and success of communication, so it is necessary to investigate deformations that occur in everyday life. Such deformations are usually associated with abuses of power. As T. van Dyck[24] claims, if management related to those in control and is directed against the interests of those controlled, we can talk about abuse of power. This is an illegitimate use of power, a violation of fundamental rights and values for the benefit of those in control, against the interests of other people, and, accordingly, it entails a violation of people's rights.

Therefore, in conditions of modernization, digitalization of public administration and interaction between the state and society, it is important to keep in mind that effective innovative management cannot work by relying only on bureaucratic mobilization and technocratic rationality. Without social potential in these processes, without development of communication,

[24] See, for example: Thön van Dyck. Language. Cognition. Communication. URSS. 2015.

creative competition, all these messages will be downgraded by various economic filters and social barriers. Therefore, modernization should focus on expanding the scope of principles of democracy, improving quality of social participation in managerial decision-making.

Legal communication can be replaced by pseudo- and quasi-communication. Pseudo-communication is defined as an unsuccessful attempt of a dialogue, that is, it did not end with adequate interpretations of communicative intentions. The message sent from one party was decoded in a distorted way by the other party, so communication did not achieve its goal. Quasi-communication is a kind of ritual action that replaces communication and does not involves any dialogue and or making a managerial decision. Quasi-communication is characterized by lack of information exchange and even desire for this exchange. It's quasi communication.

These types of communications make illusion of communication. The reason might be unwillingness to treat the other party as an equal subject. The state treats people rather as an object (one-way communication) or an unequal subject (asymmetric communication). But only when parties recognize each other as equal partners, it will be possible to build a genuine legal communication between the state and society, which will lead to a positive result, mutual understanding and other outcomes that deliberative democracy strives for.

N.F. Kovkel My presentation is called "Legal Communication in the Digital Age, When the Other Does Not Enter the Scene" with a clear reference to Umberto Eco"s famous essay "When the Other Enters the Stage"[25], written as a response to Cardinal Martini, in an attempt to reason the idea of universal nature of human ethics and law. Originally, the essay was called "What do disbelievers believe in" In this essay, U. Eco tried to find out semantic universals, which are the background of our ethics and law, and formulated them as follows: our body, its location in space and the presence of the Other. I think that digital communication is communication where the Other can disappear. In a digital world, we can communicate with bots, rather than with human beings, and this illusion of the Other, from my point of view, will significantly transform communication in the field of law.

Although someone cherishes optimistic hopes that nothing is changing, I am sure it is wrong. First, we may encounter usual problems of defaulted obligations in the field of law, inability to prosecute a person who we cannot find, or a person who we did not expect to be the other party. As far as human rights are concerned, there is a very disturbing and painful situation. In terms of semantics, we see a change in communication models. If we start from a traditional model proposed by R. Jacobson[26], this model loses the sender and the context of the message. The center of such communication is only the recipient, only the decoding person, and the accents are totally displaced. Moreover, no Other party in communication is offset by transparency of the only one actor in legal communication. Unfortunately, the information field makes us extremely transparent.

So, this is where the problem of exercising our right to privacy arises, and I would like to focus on it. Many discussions analyzed a concept of high-tech facilities to track each subject in order to prevent certain man-made disasters. We can say that in the digital world these facilities have already been created — each of us can be monitored during most of the day, we do not part with gadgets, and we are surrounded by technologies offered to us — from the smart city technologies, where we are under absolute control in urban space, to e-health technology with a electronic medical record which can be easily hacked.

What arise most concern is the way how the international community is responding to this situation. At a national level, we know that personal data protection laws and other legal acts are adopted, but in authoritarian and neo-totalitarian states these measures are not effective. The international community is also responding ineffectively to the situation, which can be evidenced by the UN Resolution No.A/RES/68/167 of December 18, 2013 "The Right to Privacy in the Digital Age"[27]. This resolution shows that the international community, stating sufficient nature of Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Political and Civil Rights, does not consider it necessary to develop norms of international law, even norms of soft law, in order to enforce this right.

On December 19, 2014, the Human Rights Council adopted a summary. They expressed some concern, but took no effective measures. In the modern world, we are witnessing an extremely inefficient system of human rights protection both at the universal, regional and national level. It especially relates to secrets of personal life, when many subjects do not even realize that their life is absolutely controlled. However, the measures taken by the Human Rights Council and other international bodies for protection of human rights are not effective. In the digital world, it is necessary to create a new system for protection of human rights and develop a doctrine of state sovereignty limited by human rights. Until we pursue this goal, we will not be able to ensure protection of human rights in the digital world.

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25 See: Eco U. When the Other Enters the Scene. Five Essays on Ethics. St. Petersburg: Symposium, 2000. P. 9-25.

26 We are talking about the six-factor model of sign communication by R. Jacobson, which includes the sender of the message (addresser), its recipient (addressee), the message itself, the communication channel, a set of means for encoding / decoding information and the context of the message (see: Jakobson R. Linguistics and Poetics, Structuralism: "for" and "against", Moscow: Progress, 1975, p. 198), — ed. note.

27 See: [Electronic resource] URL: https://undocs.Org/ru/A/RES/68/167 (date of access: 09/15/2021).

Among members of the panel discussion "The Constitutional System and Mechanisms of Electronic Democracy" were Istvan Hoffman[28], Revekka Mikhailovna Vulfovich[29], Aleksey Sergeevich Kartsov[30], Dmitry Aleksandrovich Lisovitsky[31], Nikita Sergeevich Malyutin [32], Lyudmila Borisovna Eskina[33], Anna Konstantinovna Soloviev[34].

I. Hoffman I would like to discuss the issue of transparency and control in the system of e-democracy and problems of trust in terms of decision-making procedures at the municipal level in Hungary. It is obvious that the main goal of the system is to make effective decisions. However, trust is a key element of efficiency. During the pandemic we could see that this postulate is true, because administrative measures were more effective in the countries where public confidence in the authorities is high. Ensuring trust is an important element of public administration and activities of government bodies, including for improved efficiency.

First of all, I would like describe municipal autonomies, because in Hungary municipalities are an independent level of the management and decision-making system. Independence and autonomy of municipalities is legally recognized in Hungary and enshrined in the Constitution, the Law on Municipalities and other normative acts. The Law on Municipalities specifies issues of local importance, subject of local legislation and decision-making powers of local authorities. In decision-making processes, Hungarian legislation pursues a traditional approach of publicity and openness. People are involved in decision-making by participation in municipal committees, including as external experts at public hearings, district meetings, local assemblies, etc.

The digital age provides new opportunities to involve people in decision making. First of all, it should be noted that Hungary has an extremely scattered municipal system. Most of municipalities in Hungary have a population of less than 1 thousand people, and only about 5% of municipalities with a population of more than 5 thousand people can be considered large municipalities. It poses certain restrains on application of new management tools, because the tools require resources. Small municipalities prefer using traditional ways of involving people in governance. The main new tool is social media, in Hungary most popular is Facebook, seconded by Instagram. Use of social media in public administration is developing not only in Hungary. For example, in Western Europe we can see cases when Twitter or TikTok is used. Even smallest municipalities have their own Facebook accounts.

It should be pointed out that municipalities have full autonomy and independence in decision-making, central authorities put no pressure on them. The only thing that the central authorities insist on is the increase in publicity of decision-making at municipalities. Recently, in order to improve decision-making the municipalities have ensures a digitalization reform with application of the so-called e-government (electronic decision-making system). Even the debates were organized electronically. Each citizen gets access to a certain system, where they can participate in decision-making, discuss and make proposals.

There are other forms how to attract people into governance by using digitalization tools. I would like to give an example of the system of Budapest — the largest municipality in Hungary (about 7 million inhabitants). Budapest introduced new forms of citizen involvement in governance, such as an electronic system of civil initiatives, where open discussions are held and personal data is protected. Discussions held in this system provide municipal governments with certain guidelines in terms of whether citizens support some decisions or not.

Another form of discussion introduced at the municipal level is electronic dialogues. It is a relatively new instrument of municipal government, even within Europe. The main characteristics of this new tools for citizen involvement in governance at a municipal level is an electronic form, direct participation of all citizens, not only stakeholders, interaction with stakeholders, bringing initiatives and discussing them. During the pandemic, most powers passed to the mayors' level, but despite receiving a wide range of powers, they tried to involve people in decision-making using these tools.

R.M. Vulfovich As our Hungarian colleague remarked, new electronic tools in a broad sense make economic, financial, social issues dramatically change their nature in the cities. I would like to give evidence from Germany, a regulated country, that is, with established, stable, effective legal system; even though it experiences certain difficulties and faces new challenges, it is more established than the young developing legal system of the modern Russia. I am going to discuss the concept of a smart city, i.e. a city that should be managed and function better, effectively involve

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citizens in solving all problems by using digital technologies, it is a digital city where reality is supposed to be more ordered and, accordingly, legal regulation will be enforced better, so the system of law will be improved.

Naturally, even a possibility of solving problems in this way needs regulatory support. And this is where we start to face the problems. Because both Hungarian and Russian legal systems are young, they are still being transformed. On the other hand, they can easier incorporate new norms, including digital processes and procedures, than in a stable German system.

Berlin, the capital of Germany, is not only a land by the legislation, but also a municipality, since it is allowed to combine federal and municipal powers in one system of authorities. The city is surrounded by the so-called metropolitan region. Currently, cities in any country are large agglomerations that include many municipalities, and it takes powerful tools to coordinate all actors with powers in accordance with constitutional documents and legislation. In this area functional problems are not uncommon. For instance, the whole territory has a single transport system, that is, all mobility issues must be uniformly resolved within this territory, and legal regulation must be appropriate, otherwise integrity of the system will be impaired, mobility will not be effective.

Thus, in Berlin digital tools are in more demand than in small municipalities, where people can meet in person, get together, discuss the problems and come to some solution. In the metropolitan region, it is simply impossible to do so. Therefore, digital democracy creates a whole range of new opportunities. The most important issues of Berlin, according to its residents, are: migrants, housing, education, transport, crime. All elements city are closely interconnected. There emerges a digital citizen, whose behavior, values, needs and expectations change, for example, ideas of convenience begin to include participation in digital formats, including through social media and other options. So, the urban environment is assessed more rationally, because, on a special portal they can report a problem in real time. Of course, it requires digital literacy, which creates problems of digital inequality. It will take some efforts, both individual and public to overcome this problem.

Most cities have their own smart city development strategies, and all of them focus on citizens and their participation in the life and management of the city. A digital city is very diverse. Unfortunately, quality of life cannot be always improved though digital means, because mobility can improve if it is digitally supported, but if there are not enough vehicles, or they are expensive, or the traffic in of poor quality, a digital support can do little to improve the situation. The very concept of a smart city is a concept of modern urban development, and theoretically it should be based on a comprehensive digital structure, rather than on separated elements. The responsibility of municipalities is to create this infrastructure.

There are four German cities that lead the process. They are all municipalities. They are (Hamburg, Cologne, Munich, Darmstadt) the largest cities in Germany, Berlin is not among them, since Berlin after the merger of West and East Berlin, found itself in a difficult financial situation, which still cannot be overcome. And this is where the problem arises — digital formats require resources prior to improvement of legislation. For instance, in order to launch the Multifunctional Centers in St. Petersburg (a previous stage in improving public services) we had to amend twenty-three laws of St. Petersburg.

Naturally, new formats create both opportunities and risks. I would like give evidence from Singapore, which has reached great success in pursuing the smart city policy, but its system is not democratic. And no matter how strange it may seem, in an authoritarian Singapore version it is much easier to introduce digital environment, everything being introduced from above. Meanwhile protection of personal data remains one of the main issues and threats of the digital city. We must bear it in mind. Also, a digital infrastructure must be comprehensive in order to be operable, since a few “smart” bus stops, etc. will not create a “smart” city.

A.S. Kartsov In my opinion, e-democracy makes a certain ever-increasing impact on the constitutional system. We need to figure out what this impact is and how the constitutional system and the mechanism of e-democracy relate to each other. There are obvious pros and cons here. As for advantages, they include: increased accountability, comfortable environment, increasing creativity of the public management influenced by fresh ideas penetrating through membranes of e-democracy. If we talk about the constitutional and legal level, the prospect is optimism in terms of constitutional identity, because intensive electronic surveys of electronic democracy can be treated as verification of whether values, attitudes are an integral part of national and constitutional identity, and results could be taken into account by the Constitutional Court when it identifies enforceability of a decision made by an interstate body in terms of constitutional requirements and identity.

So, further on, it might be possible to expand the evidence base for the constitutional normative control thanks to electronic surveys. We interpret constitutional identity similarly to the Constitutional Court of Germany in its decision on the Lisbon Treaty of 2009, by emphasizing the external aspect — there are basic principles, primarily in terms of guaranteeing human rights, which are above all, even above international obligations, therefore international law must recede if there is a conflict between integration law, supranational obligations and fundamental principles of the legal system, related to protection of human rights.

However, in European legal thought, constitutional identity is also interpreted in an internal aspect, namely as supra-constitutionality, that is, not only limitation of supranational subjects that try to affect law enforcement or national regulation, but also limitation of a legislator and its powers, based not only on the text of constitutions, but also on constitutional identity, which sets a firm limit of rule-making activity. In this regard, e-democracy can consolidate efforts,

since it is possible to create a software environment allowing constant comparing and monitoring every public-power action of elected officials and their election programs or public promises.

Apart from that, it is possible to track compliance with all procedural requirements when making public decisions and actions. Perhaps, it will be possible to create a bot for each voter, authentic to their political preferences, with personal data of the voter protected under the token algorithm, the bot will notify the voter about actions of all officials or those whom he voted for, with an option to respond to these actions in case of discrepancy between what was promised and what was performed through the so-called negative vote (social rating system assessing activities of rulemakers, sometimes called electoral credit).

Even now, by going to the website of the State Duma, you can get comprehensive information about how a certain deputy voted. If this deputy is a single-mandate member, they are given a certain number of points depending on the number of conditional votes that can be withdrawn. To a certain extent in can be compared with withdrawal of a general power of attorney in private law. When reaching minimal trust points, the deputy loses his mandate. Of course, the principle of a consolidated mandate and secrecy of voting is breached, but it does not seem critical, since they are only means to prevent pressure on voters and a deputy. While collective influence of voters on a deputy cannot be considered pressure, since mechanisms of direct democracy are primary against the mechanisms of representative democracy.

Representative democracy has a subsidiary nature against direct democracy, that is, inferior in cases when direct democracy can be implemented. We must bear in mind that the Russian Federation has a republican form of government, not elective monarchy; therefore expansion of direct democracy cannot be limited by references to prerogatives of a representative body, status of deputies and separation of powers. But there are a large number of e-democracy risks, namely whether the tools of e-democracy will add to the inventory of imitative democracy, whether another pole of e-life will — repression and incessant invasion of privacy — will emerge, and much more.

D.A. Lisovitsky For several years I worked as a full-time legal analyst in the Statutory Court of St. Petersburg. It is a body that resolved cases under of the Charter of our city, but at the same time it was presumed that the Charter has aspecial legal immediate relation to the Constitution of the Russian Federation.

Therefore, before resolving the case, we must identify the relation between the Charter and the Constitution, in fact, how constitutional meanings are reflected and developed in the Charter. To do so, the legal analysts used legal technologies (legal databases with search algorithms). First, they determined a similar legal situation, as close as possible, then the principle(s) that the Constitutional Court uses in this case, and then established conditions for operation of these principles. As a result, a concept was formulated.

So, application of technology by an algorithm, they, in general, formed a model of a court decision. It should be pointed out that the Statutory Court did not have a lot of cases and specialists could spend lots of time on such analytical work. If there were time pressure, of course, these manipulations should have been performed much faster, using algorithms and processing relevant data as much as possible. So, automation must be upgraded. In general, most of the statutory, constitutional courts in the Russian Federation, legal researchers who prepare scientific developments and practicing lawyers work on the same principle.

To upgrade automation, first of all, we need databases and principles of their construction to speed up and complicate processes of information processing. We also need processing technology. For instance, the National Strategy for Development of Artificial Intelligence (AI) for the period up to 2030 formulates the concept of AI as a set of technological solutions that makes it possible to imitate human cognitive functions, including self-learning and search for solutions without a predetermined algorithm, and to obtain, when performing specific tasks, results at least comparable to results of human intellectual activity. Neural networks are one of types of machine learning, which are designed, among other things, for self-learning, identifying patterns, generalizing, etc. We already have software products, for example, Interpreter (forecaster of court decisions), Case Strategy Technology (forecast that even takes into account the personality of the judge), Watson, analytical programs Lexis, Sutyazhnik, Legal Bot, and utility programs that provide communication between the court and participants in the process, storage of information, case management, etc., which use, among other things, cloud resource mechanisms.

Thus, we are already using certain resources. So, there remains one issue: possibility of algorithmization. Algorithm is based on compliance of the search mechanism with logic of the researched material. What is algorithmization based on, if we talk about creation of such algorithms both by man and program? First, it is a methodological significance of decisions of the Constitutional Court as the background for application of an approach formulated by the Constitutional Court in the court decisions. Further, it is a normative-doctrinal nature of decisions as sources of law, that is, the doctrine is not only a result of practice analysis, but also a background for practice development. And, finally it is judicial doctrines, creation of which is being discussed, that is, "principles, concepts derived from interpretation of constitutional and legislative norms, formed as a result of several cases similar in nature. Judicial doctrine is both a legal principle and a court cases solving principle (method), that is, a typical approach"[35].

[35] See: TariboE. B. Judicial Doctrines and Practice of the Constitutional Court of the Russian Federation. Law and Politics. 2005. No. 2. P. 118-122.

If at theoretic level we can easily ollect all segments: a large database, technologies and a system or better say mechanism of algorithmization, in practice we face some difficulties. For example, if we consider the principle of maintaining confidence in the law and actions of the state — the Constitutional Court gives different conditions for its operation, depending on the situation. In one case, we are talking about introduction of compensatory mechanism, in the other case, introduction of a time period that allows adapting to new conditions, in the third case, on the contrary, the goals of legal regulation are analyzed, as a result of which it is concluded that the principle has not been violated. So what level of automation is acceptable and necessary in constitutional litigation? The question is still unanswered.

N. S. Malyutin My presentation is called: "Digitalization and False Challenges to the Science of Constitutional Law". I have a good reason to speak about it at the conference. Indeed, when we talk about jurisprudence, we must understand that, like any human science, being detached from natural laws, it is often prone to scientific populism. And we see such populism in our national scientific discourse, especially when it comes to new trends, such as innovation, digitalization. We see that as soon as the word "innovation" appeared, everything became totally innovative. The same situation is with "digitalization".

Undoubtedly, development of technologies raises certain challenges, including issues for legal science, since there are new forms of provision, implementation, and use of any legal instruments. But is it right to say that we see development of new contents of traditional universal constitutional and legal institutions that have already been developed in the doctrine? I doubt it. I want to emphasize three key problems of false challenges of digitalization. They are: digital constitutionalism, digital constitutional rights and digital or e-democracy.

For example, some studies now, including national ones, claim that we are entering the era of digital constitutionalism. But what is it? If we stick to the traditional Western European concept of constitutionalism, we can say that it is a regime where power is limited by real operation of the constitution. In fact, the idea of digital constitutionalism means transformation of the core values of constitutionalism, i.e. disclosure of the content of these values.

In general, discussion about digital human rights looks somewhat marginal, because practically it seems strange to treat digital constitutional rights as an independent block. Is it correct to say that freedom of expression on the Internet, in terms of its dogma, is different from freedom of expression in a newspaper or at a public event? It is the form of presentation or expression of this opinion that has changed. What are the main threats here? First, science considers a false subject as distinguishing digital rights as an independent category; it poses threat since it mediates an increased activity of A legislator in the field of regulating these pseudoscientific ideas. A legislator actively regulates the area of digital relations, thereby invading the fundamental rights, arguing that this is a new category of rights that requires new regulation. And this excessive regulation area creates a dramatic threat to the content of universal rights, which are enshrined in constitutions.

The second problem, which is derived from the first, is that by creating false scientific content for the category of digital rights, we blur the essence of existing universal rights, and this entails a third problem — impossibility of using ordinary guarantee mechanisms that the constitution enshrines, in particular, for these new rights. Because the state can say that these are not personal rights, but special digital ones, and guarantee mechanisms of the constitution are applied to them in a different manner.

In terms of digital e-democracy, digital environment is actively and efficiently implemented only in an authoritarian society. It happens so because the very problem of a constitutionalization of digital democracy indicates that we talk about instrumental restriction of fundamental human rights, first of all, we see in practice, when digital forms and methods of exercising rights do not become an additional guarantee, but rather replace traditional ways of exercising rights. It poses serious questions, since in this case it is only the state that influences exercise of rights, which, in general, does not correlate very well with the ideas of traditional democracy and traditional law as a limiter of freedom of the state in relation to human rights.

L. B. Eskina We have heard a lot about the digital world, but let us not forget that there is a non-digital world where a rather large part of people remains. The people are the main subject of power under the constitution, so, the digital world is only a part of the society. A significant part of people is outside the digital world. In this regard, I would like to draw attention not only to a positive effect of digitalization, but also to negative aspects that cannot be ignored. Of course, the digital society is a certain state where use of technology is increasing in all spheres, but technologies are just means to improve, simplify, and make social processes more economical, while the goal is the society itself and conditions for its existence.

Therefore, we should not exaggerate importance of these technologies; they are only an applied part of social processes, that is, development of economy, law, etc. Undoubtedly, they simplify and speed up processes, for example, a dialogue between the man and the state, legal proceedings and other processes, which include legal relations. But there emerges an issue of atomization of society. Society is differentiated into people who have and do not have access to technologies, not arbitrary, but objectively, due to education, lack of technical means in certain places and material problems.

Involving people in the digital world requires money, and financial differentiation in our society is very strong, not everyone can afford to buy facilities and spend money on their maintenance. Therefore, when the state promotes the process, it must support the process and take into account that it cannot be administratively pressed. For example, when shifting

to distance education or remote work, you must provide people with appropriate instruments. Many people are excluded from technologies due to age, education, wealth, health, etc. The second problem is that use of technologies can threaten individual freedom. A person is the main value, so the use of technologies should not lead to derogation of rights or their limitation, which we now witness.

Nowadays, society is ready to recognize that the right to personal communication integrity, privacy, personal, family secrets has an illusory nature. In this regard, it must be understood that digital technologies should not take power over a person or limit their freedom. The state must ensure clear understandable terminology. For example, people have different ideas of what e-democracy is. In fact, it is not an independent phenomenon, but a very broad correlation to a whole complex of phenomena. The basic terminology should be reflected in the legislation.

Moreover, when I was looking for the laws existing in this sphere, I found many of them for various sectors, they partially regulation the relations in question, but there is no basic legislative approach. Meanwhile, we need not only special norms, but also constitutionally significant principles, which will also be enshrined in the fundamental law. For example, suffrage is a technology, and there is a basic law with basic principles relating to suffrage. This law must define what principles the state should be guided by when using technologies to ensure the rights of citizens. The most important thing is not to forget about the person, the constitution, fundamental rights and freedoms in the race for digitalization. The law remains unchanged. Digitization does not change its essence.

A. K. Solovieva I would like to consider several problems related to the pandemic, namely powers of the constituent entities of the Russian Federation to establish restrictions in order to counter the spread of a new coronavirus infection. The issue of digitalization has collided with the issue of human rights, and the pandemic has exacerbated this problem by several hundred thousand times more. All countries have felt it, and each country got its own, sometimes sad experience. Russia has its own way of counteracting the spread of infection, which, in particular, includes decentralized decision-making on the issue. Each region can take into account its own problem, specifics and introduce its own measures. But, unfortunately, the regions acted according to a pattern, and in March we witnessed a wave of legal acts that approved restrictive measures related to coronavirus. The response of the citizens was administrative claims to the court. And almost all courts of the constituent entities faced administrative claims challenging legality of restrictive measures introduced.

Of course, citizens did not approve of wearing masks, social distancing, or restricted movements. In December the Constitutional Court tackled this issue in relation to the decision of the governor of Moscow region. The courts of general jurisdiction confirmed that orders of executive authorities are constitutional and legal. Citizens challenged these orders, referring to Article 55 of the Constitution of the Russian Federation and to the fact that the orders were introduced by the executive power[36]. Indeed, arguments that the courts of general jurisdiction relied upon are judgment-based. It took complex logical conclusions to conclude that the right to adopt such acts is associated with federal laws on emergency situations, on sanitary and epidemiological welfare of people and other laws. This right of governors was not directly enshrined anywhere. The Constitutional Court also had to apply various criteria of proportionality, extraordinary nature of the situation, need for a quick response to the situation. In such a situation, we should not have a set of judgment-based arguments, but rather a clear list of measures that governors could apply in specific situations to avoid diversity and discretion of measures in different constituent entities.

I would like to highlight the second problem generated by use of digital tools. To control the restrictions, a lot of digital measures were used. Of course, Moscow became a pioneer: digital passes, social monitoring, determining of geolocation. Other constituent entities followed closely. In April, twenty-one constituent entities of the Russian Federation applied digital passes based on the Stopcoronavirus.Governmental Services federal platform. Thus, digital means have become a serious limitation of the rights of citizens. The citizens experienced new digital burdens. Although Moscow compensated for these burdens — and handed over a device if a person did not have it, still, people had to learn how to use this device, adapt to it, etc. In this regard, a question arises how to limit the use of digital control means by the constituent entities of the Russian Federation.

The third problem is administrative liability for failure to comply with all digital burdens. They began to apply administrative liability in an automated manner. Automated decisions were taken, issued by robots that fixed geolocation in case of violation of the self-isolation regime. The question arose, whey an automated decision about civil liability was adopted without human participation. And a huge number of erroneous decisions were made. So, an automated act is already a means of bringing digitally to justice. I believe that the government should develop firm principles to limit use of digital technologies and reserve the right for a person to refuse to use technologies, because it is our right to use or refuse these technologies.

[36] The conflict arises here because in accordance with paragraph 3 Article 55 of the Constitution of the Russian Federation, rights and freedoms of a person and a citizen may be limited by federal law only to the extent necessary to protect foundations of the constitutional order, morality, health, rights and legitimate interests of others, ensure defense of the country and security of the state, and according to the applicants, mandatory masks wearing in public places prescribed by laws of the constituent entities of the Russian Federation contradicts this paragraph. See more: [Electronic resource] URL: https://m.dp.ru/a/2020/05/19/Hot_odin_umnij_nashjolsja (date of access: 15.09.2021), — ed. note.

Among speakers at the panel discussion "Digitalization of Subjective Rights: Civilistic Dimension" were Oleg Yuryevich Skvortsov[37], Georgy Viktorovich Tsepov[38], Vladimir Leonovich Volfson[39], Elena Nikolaevna Dobrokhotova[40], Andrey Yuryevich Bushev[41], Natalya Yuryevna Rasskazova[42], Elena Nikolaevna Abramova[43], Alexander Evgenievich Molotnikov[44].

O.Yu. Skvortsov In my presentation, I would like to touch upon legal and ideological issues of online arbitration. A virtual sphere now dominates and has already penetrated into dispute resolution and protection of subjective rights. It has been twenty-five years since the American Arbitration Association held its first trial and made a decision in online arbitration. What issues emerge here? I can formulate two groups of issues of theoretical and legal nature, which influence or require clarification in the ideological nature. Now that online arbitration has taken root in our lives without any regulation, all arbitration institutions functioning now use technology, online litigation, data protection, all procedures, but there is an uncontrolled development of delocalization of arbitration.

The idea behind delocalization of arbitration is that arbitration is treated as a mechanism not controlled by national legal orders. And here we come to ideological issues, the problem of finding regulation of this phenomenon. In recent years, there has been a wide discussion about relationship between international and national legal orders, which has primacy. In Russia, this discussion overcame all approaches based on unification and harmonization of legal systems. The past year shows that we are making a choice in favor of national legal orders. In the foreseeable future, world countries will not merge into a single nation, state, etc. it is evidenced by the amendments introduced into the Constitution of the Russian Federation in 2020[45].

Online arbitration conveniently matches delocalization of arbitration, affording to abandon regulation of national legal orders. New problems emerge, such as place of arbitration, (despite its seeming insignificance, place of arbitration plays a great role, as it ensures possibility of challenging or enforcement of decisions), and some other points related to execution of the arbitration decision. So far, neither doctrine nor national legal orders explains how to treat arbitration in terms of place of proceedings. This allows ignoring the New York Convention of 1958, allows avoiding national legal orders, manipulating international, conventional law. Any state will eventually be forced to regulate online arbitration, which so far remains outside regulation.

The second group of problems is related to the fact that online arbitration corrupts internal arbitration for the same reasons, allowing manipulation over jurisdiction, tools of arbitral awards, and we need regulation in this sphere, too. I doubt that in the context of ideological confrontation between countries and regions of the world, it will be possible to find conventional solutions to this issue. What will it mean in practice? Perhaps, at the first stage, online arbitration will develop uncontrollably, then there will be a stage of searching for prohibitions, and only then there will be a stage of searching for regulation and international legal mechanisms.

G.V. Tsepov I would like to remark that recently federal laws have been adopted that regulate digital rights and relevant relations. We are talking about the Civil Code of the Russian Federation, in 2019, digital rights were included in civil rights[46], the Federal Law on Crowd Funding[47] and the Federal Law on Digital Financial Assets[48]. Digital rights were considered as objects of civil rights, together with non-cash funds and paperless securities and classified as property rights.

Indeed, digital rights have developed the idea of non-certificated security, and these objects of rights are very similar generically. In accordance with Article 128 of the Civil Code, digital rights are obligations and other rights, which content and conditions for exercise are determined by the rules of the information system that meets the legal criteria. Digital rights have the following characteristics:

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45 It refers to amendments into the Constitution of the Russian Federation approved by the popular vote on 25.06.2020 — 01.07.2020, primarily Article 79 of the Constitution of the Russian Federation, which states that Decisions of interstate bodies adopted under international treaties of the Russian Federation in the interpretation opposing the Constitution of the Russian Federation, shall not by subject to execution in the Russian Federation. — ed. Note.

46 See: Article 128 and Article 141.1 of the Civil Code of the Russian Federation (as amended by Federal Law No. 33-FZ of March 9, 2021). Law Code of RF. 1994. No. 32. Article 3301; 2021. No. 11. Article 1698.

47 On Attracting Investments Using Investment Platforms and on Amending Certain Legislative Acts of the Russian Federation: Federal Law No. 259-FZ dated August 2, 2019. Law Code of RF. 2019. No. 31. Article 4418; 2020. No. 31. Part 1. Article 5018.

48 On Digital Financial Assets, Digital Currency and on Amendments To Certain Legislative Acts of the Russian Federation: Federal Law No. 259-FZ dated July 31, 2020. Law Code of RF. 2020. No. 31. Part 1. Article 5018.

1) need to define obligations and other rights as digital by law;

2) content and conditions of digital rights are determined by the rules of the information system;

3) exercise, disposal, encumbrance of a digital right is possible only in the information system without a third party;

4) unless otherwise prescribed by law, the holder of a digital right is a person who, in accordance with the rules of the information system, can dispose of this right;

5) assignment of a digital right under a transaction does not require consent of the person bound by this digital right.

Special laws introduced special digital rights. The first is a group of digital financial assets, which include rights, including monetary claims, rights under equity securities, rights to participate in the capital of a non-public joint-stock company, right to demand assignment of equity securities, these rights are supported by a decision to issue digital financial assets. Another category is digital utility rights, right to the transfer of items, right to demand transfer of exclusive rights to results of intellectual activity and (or) rights to use them, right to demand performance of works and (or) services. Utilitarian digital rights do not include right to demand property, the title to and (or) transactions with which is subject to state registration or notarization.

Comparing legislative acts, we can find contradictions; for instance, in Article 128 and Article 141.1 of the Civil Code of the Russian Federation. Article 128 classifies digital rights as objects of civil rights, while Article 141.1 states that obligations and other rights are recognized as digital rights. Thus, the question arises whether property rights, rights of obligations can be objects of civil rights. And here we have same problems that the civilists face in relation to the nature of non-certificated securities.

Another issue emerges: what is meant by digital law: is it the obligation right or another right considered by the information system. The wording of legislative acts has significant contradictions. For example, according to the law on digital financial assets, digital financial assets are digital rights, including monetary claims, possibility of exercising rights under equity securities, right to participate in the capital of a non-public joint-stock company, etc. However, the same law in other norms states that rights, certified by digital financial assets pass to their first right holder as soon as they are entered into the information system, etc. That is, in fact, digital rights are understood as rights that certify something.

One more issue to be discussed: can a digital right exist in an information system. If we consider the law on attracting investments by using information platforms, paragraph 7 Article 8 of the law has the following wording: emergence of a utilitarian digital right, its implementation, disposal, etc. is only possible in the investment platform. But subjective civil law is a measure of possible behavior of an authorized person enforced by law. Subjective civil law is an element of the legal system, and it can only be fixed by the informational legal system, but by no means emerge.

The next issue to understand is what is meant by exercise of digital law. Mind you, in accordance with Article 141.1 of the Civil Code implementation of digital law is only possible in the information system without a third party. In this context, taking into account general concept of exercise of civil rights, exercise of a digital right should be treated as actions of an authorized person, which means that an obligation can be fulfilled by the debtor outside the information system. It is important, because, among other things, utilitarian digital rights involve transfer of items, etc., which, in principle, cannot be done within in an information system. There are other problems with exercise of digital rights, for example, how exercise corporate rights to participate in the general meeting of shareholders of a non-public joint stock company and vote at it. Theoretically, we can imagine that the general meeting will be held through an information system, and voting — by filling in certain electronic forms, but is it really what the legislator had in mind?

Finally, there is the issue of who the third party is, and whether the information system operator is a third party. What will happen in case of death of a bound person, or a reorganization / liquidation of a bound legal entity, can assignment of debt be allowed, what will happen fter damage or destruction of the information system. And finally, a few more questions. If there is a digital right, then can there be digital obligations and a digital legal relationship? If there is a digital law, then can there be a “letter” law, how appropriate is the term “digital” in this case and what is meant by it? A digit is a system of signs, like letters, a digit is an ideal object. What is the essence of digital law? Probably, we can conclude that the idea behind the so-called digital law is fixation of subjective civil law in an information system that allows automatic data processing (however, this definition is not enough, since any scanned contract could be considered a set of digital rights and obligations); therefore, fixation should be made by cryptographic methods.

I think that it is also necessary to distinguish between digital rights and assets, a digital asset is an intangible asset, its existence ensured by cryptographic methods, for example, digital currency, and a digital right is a subjective right that exists not in the information system, but in public legal consciousness, and this is a subjective civil right, a fixation method provided by cryptographic methods.

V.L. Volfson: Indeed, some problems do not have solutions in legislative novels or doctrinal proposals that accompany these novels. In terms of implementation of civil rights, I rely upon the fact that if subjective rights arise from positive legislation, they arise as a result of the so-called imputed interest. This imputed interest is kind of a counterpart of real interest of participants in legal relations. This raises the issue of abuse of civil law.

As far as contractual legal relationship is concerned, the origin of subjective law is different. It arises due to balance reached by the parties to contractual interaction for their own interests. The main thing, as always in civil law, is a private interest that needs to be expressed and protected. Let’s consider how the category of interest is implemented in laws

or doctrines that accompany the discourse of digital rights. Let's start with fixation or verification of digital rights. It is well known that in the blockchain system they are fixed by efforts of miners, using the time stamp technology, and then there is a sequence of entries in which each new entry has a unique cryptographic identifier "hash".

So, it is considered that verification has taken place, i.e. a record that, from the point of view of supporters of digital rights, is not only a perfect identifier, but also brings out irreversibility, since nothing can be changed, any interference compromises the entry. Apart from that, there is a kind of mathematical notation which helps to solve a specific problem. So, we see that digital rights in this context have properties of a specific verification using mathematical notation, their value is a mathematical formula itself, and the most important property is that they are irreversible and cannot be changed.

We can compare it with the classical theory of interest, since interest is a dynamic and human category, and it is the same in contract law. The principle of *Pacta sunt servanda* is relative, and there are ways to overcome contractual terms both by using the doctrine of changed circumstances, beyond the will of the parties, and by more private methods, like by refusing or suspending counter performance. These are dynamic categories that are difficult to take into account, because they are based on dynamics of the changing interests of the parties.

Another issue that arises and is directly related to verification of a changing interest, is a linguistic problem. We understand that a contract is a fully agreed, identical will of the parties, the will of the party expressed in the contract based their personal understanding of that interest is in contractual terms. This ability to recognize and express interest makes a linguistic problem in terms of comprehending these means of expression. According to supporters of digital rights, Article 431 of the Civil Code is not applicable in this case, since digital rights can have a mathematical expression and, therefore, philological methods of interpretation are irrelevant here.

I cannot agree with it, since linguistic analysis of the text is important, together with the contextual aspect of interpretation. For example, imagine an agreement where the parties used the word "dial" when describing a method of exchanging information, we, as native speakers, understand that this is vernacular, however, we understand the meaning of the word. But this word may not be verified by a program, which in this case is likely to fail.

One may also recall the famous British case of Garner v. Burr[49], in this case the courts analyzed the meaning of the word "vehicle", according to the law, a vehicle should not appear on highways if it had wheels not covered with tires. A tractor drove onto the road with a chicken coop trailer, which had wheels not covered with tires. The Court of Appeal recognized the police had acted correctly, and in the context of this rule, the chicken coop is a vehicle. These linguistic problems have no solution in the concept of digital rights.

E.N. Dobrokhotova Now we witness digitalization of not only economy, but of all spheres of public life, and the question arises — what about professions or systems where there used to be professional person-person communication, and now a program, a technical tool has appeared, and we meet a person only indirectly. Under these conditions, I would like to raise an important topic of the need for a serious change in approaches to the status of a teacher influenced by digitalization in education. We have different names for those who perform educational activities, now they perform it against digitalization of all spheres of life through information technologies based on digital environment, platforms; now even artificial intelligence is included here.

In education, we have teachers, educators, lecturers, tutors, there is a nomenclature of educationalists, which is still centrally approved, despite the market economy, which declares economic freedom and independence in self-identification and in choosing areas of employment, -legal forms and tools for self-identification. The pandemic provoked dramatic changes in employment. For example, at the end of the Soviet period, 70% of all people were employed in the sphere of hired labor, now out of 147 million of the population of the Russian Federation, only 71 million are employed at all, of these, about 30 million people are beyond the sphere of labor legislation[50] in the Russian Federation, according to the report of professor Khnykin at the Pashkov Conference. This data needs to be checked, because, according to Rosstat, there is combined employment, when people are both employees and work under a civil law contract.

In general, digitalization led to a massive outflow of people from the wage labor sphere to the self-employment sphere. There is no need to overdramatize the situation, because it is only an initial stage of the outflow. I do not think that the sphere of labor legislation and social security legislation will affect less on selection of forms of employment, types of professional self-identification, of a professional teacher, master, expert. Now in the nomenclature there is no position of a master, rather it is called now a workload operator, routine nature in and raising doubts about importance and necessity for unambiguous interpretation in terms of content of class activities of a teacher.

I would like to emphasize that even in higher education there is the term — scientific and pedagogical fellows. This generic category is not divided into scientific and pedagogical subcategories, but rather into researchers and faculty, in the latter there are, first of all, assistants who have very little independent work and low level of skill, independence and expert nature, as discussed above. It all applies only to professors, true experts, who even have independence in scientific research.

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[49] Garner v. Burr [1951] 1KB 31.

[50] See: Khnykin G. V. Social and Labor Rights: Position of the Legislator and Practice of Implementation. From Social Rights to Social Law (VII Pashkov Conference). Ed. A. V. Kuzmenko. St. Petersburg: Center for Social and Legal Technologies LLC, 2017. P. 169–170.

In their turn, associate professors, being actively involved in educational process, participate in research. And, at the same time, there are scientists who can participate in training sessions, which is a pedagogical activity.

In terms legislation on education, the status of a teacher should be rebranded, because Article 48.3 of the Federal Law on Education, states that the law traditionally speaks about teachers in a classical way, howevee, in fact this articles proves that there are various forms of attracting teachers. Can it happen that in an educational institution people working under contracts of a different nature (labor, civil law, service contract), have different responsibilities against students? I guess not. Their mastery and mentorship rely on usurpation of academic rights and freedoms, formally assigned to the teaching staff, but in fact usurped by an educational institution, which greatly limits possibilities and freedom of choice of distance learning tools and software, which could have been installed and offered to teachers, despite the legal nature of their contracts.

A. Yu. Bushev In its attempt to regulate a sphere of relations, a legislator first of all must select terminology. This is where any discussion should start. Currently the legislation is in discord. Such concepts as digital and electronic rights are not separated, sometimes the law uses the phrases the term "owner of the right", and in some cases it is "holder of the right", which is closer to terminology of proprietary law. Previous present remarked that discussions around digital law are very similar to those that about non-certificated security.

I agree that in most cases digital rights are a new or special form of a right, right of claim, first of all. This is how the Civil Code defines the concept of digital law, and in special laws, digital assets are defined through various types of rights. Another group of digital rights is utilitarian digital rights and other rights. As for digital assets and utilitarian digital rights, I believe that to a large extent it is a special form of fixing the right, certifying the right, as happened with non-certificated securities.

I am sure that digital rights are not limited only to fixation. For example, digital currency, in my opinion, is a special, new object of civil law. It is not money, the law directly says this, it can be used as a means of payment, although other objects can be used as a means of payment, too; that is, there is nothing new in this respect, but how these rights arise and are implemented? If we analyze their characteristics, we can talk about a new phenomenon. Digital rights arise in an information system, on a certain platform, a distributed register system, when participants may not know who is who. And, perhaps, the most interesting thing is that Article 1 of the Federal Law on Digital Financial Assets, which defines digital currency, says that, apart from being an aggregate of electronic data, it is an aggregate which has no person liable against each owner of electronic data, except for the operator and (or) operating system nodes.

So, we have a phenomenon when there is no bound person, but digital currency, which is not a monetary asset, does not have a debtor (a government agency, another person in civil law relations). And I think we can talk about a new element that allows us to identify a digital currency as a specific object of civil law, a type of digital asset. I would like to point out that the list of types of digital assets is not exhaustive, legislation continues to develop, and it uses the wording "and other rights". Therefore, there may appear other similar phenomena, which can, at least conditionally, be considered as objects of civil law.

Hence, digital rights are a way of fixing an existing right in a new distributed register system, but at the same time, it is also a new object of civil rights in relation to certain of digital assets.

N.Yu. Rasskazova What is digitalization of rights? How to find the answer? Digitization cannot be confused with automation. Examples show that digitalization on the Internet, in common meaning is treated as automation, new technologies. We used to count on the fingers, then on abacus, calculators, computers, now new technologies have come. And what is changing for civil law? It seems to me that if we are talking about digitalization as the need to accept new technologies, we must agree that reaction of civil science to any new technologies is standard.

Firstly, regulation is supplemented in terms of obligations, for example, the law determines the place of obligations with virtual currencies. Secondly, new technologies have new risks of violating emergence and implementation of rights. In all these cases, the legislator must decide how to prevent these new risks. Such methods may include contractual terms, administrative prohibitions, guarantees of consumer rights, etc. Guarantees can also include distribution of losses that arise due to new technologies, liability issues, method of assigning risk to a specific person, insurance, collective funds. And the last thing is creation of new requirements for standards of bona fide behavior.

We all understand that what we now call digitalization is a new kind of automation that entails depersonalization of relations, and this objectively reduces trust, while bona fide is behavior that restores trust. As usual conditions change to reduce trust, or, perhaps, on the contrary, increase trust in some area, we must create a new standard of bona fide behavior. I don't think that the legislator faced fundamentally new challenges, as they say. It is a completely natural process of following a general progress. I cannot deny that at some point, quantitative changes are so significant that we must speak of emergence of a new quality. A good example here is digital law, new law of obligations, with its characteristic of no debtor.

The issue here is whether it resembles right to things, because strictly speaking, in relation to things, there is no one who owes us. Do not prevent me from using the thing, and I will exercise my right, here it is the same. But how to avoid risks of violation of rights that have been evolving for centuries in relation to things? We need to think about it. And if the legislator does not overload the normative material with far-fetched novels, and exaggerate the problem of emergence of new objects, nothing terrible will happen, civil law will continue to develop, guaranteeing rights of citizens, protecting bona fide participants in the turnover and protecting stability.

E.N. Abramova On January 1, 2021, the Federal Law on Digital Financial Assets came into force, we expected that the legal regime described therein would be formed and defined. But as a result, analysis of the norms in this law does not provide an unambiguous conclusion either about the legal nature of digital currency or about the legal regime applicable, since the legislator described the digital currency very obscurely. Norms allow us to interpret digital currency both as information and as property at the same time, although these two things fall under totally different legal regimes. The legislator in its legal positive sticks to an informational approach, since the legal definition of digital currency tells treats it as a set of electronic data: a digital code or designation. This definition coincides with definition of information in the federal law on information — data in electronic form.

Definitions of the subject are also very similar both in the Federal Law on Information — information owner and in the Federal Law on Digital Financial Assets — electronic data owner. Thus, we can conclude that digital currency is information, according to the legislator. However, despite these directly stated terminological arguments, reading the rest of the law, we see that the legislator used a trick: although officially defining digital currency as information, it is considered more as property than information.

First, the definition emphasizes that there is no bound person in relation to digital currency. Should it be information, such issue would not arise, because with regard to information, we would not even think about any bound person. We know an object in civil law, which implies a bound person — it is a property right, which, in accordance with Article 128 refers to property. That is, the legislator understands that digital currency is property (it is not clear, however, what kind, of property; there are disputes about it, and digital currency reminds an object of property rights, although there is no physical object, but still there is something quasi-property). Secondly, the definition uses various turnovers not applicable to information, but perfectly suitable for property, for example, a stable combination as transfer of digital currency from one owner to another.

Information can be distributed, we can allow or restrict access to it, etc., but it is real and other rights to some objects that pass from one subject to another, and not information. It can be remarked that the legislator applied a transformational approach when stating that digital currency, not being property in general, in some cases turns into property for the regulation purposes, for example, for bankruptcy law, enforcement proceedings, etc. Such situation is impossible for civil law, an object cannot transfer from one class to another, and it is extremely incorrect and unreasonable to apply two different legal regimes to the same object depending on the situation. It seems that the legislation on digital currency still needs to be developed and modernized, since at this stage it is not sufficient.

A.E. Molotnikov I would like to ponder upon state regulation of certain areas of the digital economy. We can see that at every new round of scientific and economic development people talk about trigger words that stir up the minds and interests of students, teachers and entrepreneurs. Now we are talking about innovative economy, venture entrepreneurship, previously about scientific and technological revolution, etc. Recently the ecosystem has become such a trigger word. Economists and practitioners began to use it, Sberbank even made a proposal on the need for state regulation of ecosystems developing in Russia.

What is meant by ecosystems and what areas of regulation can be applied to it? It is a vivid example of transition of business from transnational to global. There are no companies that work between two nations, continents, now companies operate everywhere. It contributes to development of technology, digitalization. And in this regard, we see how various companies that started their business in a small niche, one way or another come to creation of an ecosystem that would cover not only their original direction in a certain segment of the economy, but rather maximum of elements related, among other things, to credit institutions.

For example, Facebook started as a social network, now it owns other platforms, and is trying to introduce its own currency together with the largest banks. Amazon, a site where you can order books, has become a serious competitor for retail chains, and it is trying to introduce its own infrastructure in terms of monetary operations. Sberbank enters the delivery and taxi market. Yandex enters the banking services market. We see how global corporations arise, which begin to control all spheres of life of people, other businesses and, in some areas, even the state. And in this regard, we see that public legal entities, states around the world are beginning to respond to ongoing phenomena. I think that this respond is a natural process of business development, as previously the state did not put any obstacles or provided necessary regulation to restrain this impulse aimed at expanding into various markets.

Now we can see two key approaches to regulation of these systems: Chinese and American. From the Chinese point of view, we can take the Alibaba Group as evidence, the Group was banned from issuing at the end of last year, and China decided that no matter what the system is called, if it is within a structure related to financial transactions, all operations should be regulated on the basis of principles and rules that apply to financial institutions. In this regard, China is now penalizing key companies associated with ecosystems, and is trying to regulate them.

The second approach is American. Here we see take evidence from the largest companies (Google, Apple, Facebook, Amazon), so far no measures have been taken against them yet, but we see how the Americans are trying to find appropriate directions for regulation through filing lawsuits (the Trump administration has filed a lawsuit against Facebook related to acquisition of WhatsApp, and the Joe Biden administration is not going to withdraw this lawsuit yet) and in relation to government regulation, attempts are being made to separate these companies using antitrust laws.

Now, some lawyers who represent Columbia University support the practice popular at the beginning of the 20th century, when huge railroad conglomerates were divided based on theoretical reasons; the same way new US lawyers are trying to regulate financial ecosystems through antitrust law. Law must be applied in order to regulate these large global ecosystems.

Among participants of the discussion panel "Cybercrime: Issues of Counteraction at the Present Stage" were **Vladimir Nikolaevich Safonov, Tatyana Alexandrovna Badzgaradze[51], Dmitry Nikolaevich Zhidkov[52], Anton Sergeevich Gorshkov [53], Oleg Georgievich Kuznetsov[54], Vitaly Vladimirovich Tkachenko[55], Sergey Sergeevich Malitsyn[56], Alexander Alexandrovich Popov[57], Alexey Viktorovich Korotkov[58], Tatyana Nikolaevna Dronova[59], Oksana Ivanovna Lepeshkina[60]**.

The speakers discussed various scientific and practical issues in terms of digitalization of law and order. In their presentations the speakers focused on: dynamics and countering cybercrime; issues of investigation of crimes committed with the use of information and telecommunication networks; characteristics of legal regulation in information protection and prevention of crimes in computer information; interrelation of computer and ordinary crimes; characteristics and features of detecting crimes committed electronically against minors; identification of dubious financial transactions related to commission of crimes in information and telecommunication technologies; interaction of telecom operators and competent state bodies in detection and investigation of crimes committed by using communication and information technology; property crimes using IT technologies; issues of qualification of theft with the use of information and telecommunication technologies; fraud using electronic means of payment.

During the discussions, the conference participants unanimously came to two conclusions. Firstly, digitalization of the legal order, along with progressive trends, can pose serious threats to stability of society, and law is an effective tool to prevent these threats. That is why, in the changing social reality, special efforts must be taken to improve and develop law (primarily subjective rights). Secondly, despite all dramatic changes, the essence of law remains unchanged, since man remains a holder of personal and social freedom, which must be provided and protected by law at the new stage of historical development.

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THEORETICAL AND APPLIED LAW
2021. No. 3(9)

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FOUNDER
Russian Presidential Academy of National Economy and Public Administration (RANEPA)

PUBLISHER
The North-West Institute of Management, Branch of the Russian Presidential
Academy of National Economy and Public Administration (RANEPA)

Certificate of registration of mass media
EL no. FS 77-77212 of 08.11.2019

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Signed for publication on 27.09.2021.
The minimum system requirements are a CD-ROM device and software for reading pdf files.
Website of journal https://www.taljournal.ru
The data volume is 2.6 MB.
Circulation (number of media) 60 pcs.

The layout was prepared by the Publishing and Printing Center of the North-West Institute of Management of the Russian Presidential Academy of National Economy and Public Administration
199004, St. Petersburg, Vasilievsky Island, 8th line, 61.
Phone: (812) 335-94-97