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Dear readers,

I would like to present for your attention the second regular issue of the journal "Kazan University Law Review" in 2023.

The issue you are now holding in your hands contains articles on topical issues in the theory and practice of Russian and foreign law.

The issue starts with an article by Oleg Latynin, Chairman of the Twenty-First Arbitration Court of Appeal, Doctor of Legal Sciences, Associate Professor of the Department of Civil and Arbitration Procedure of the Crimean branch of the Russian State University of Justice, "The doctrinal and methodological basis of the law enforcement restrictions in the sphere of civil circulation". The author of the study considers the category of "restriction of the right", associated mainly with formal technical-legal means. It is pointed out that such analysis, taking into account the purpose and patterns of meaning formation, needs some rethinking. The researcher more clearly distinguishes its substantive aspects in the context of ensuring a proper balance between the interests of the citizen and society. Meanwhile, as it is pointed out, the unity of methodology, doctrine and judicial enforcement forms a certain specific triad, which has a certain heuristic potential for the study of existing mechanisms of judicial protection and their improvement in the conditions of modernization, globalization, and integration processes in the modern post-industrial world. As a visualization of this provision, the author proposes a kind of fractal. The formation of meanings in the legal sphere, which also has the features of a fractal, is of special scientific interest for the legal community within the framework of this study. Taking into account the fractal properties of law identified in the article, the author proposes to delve into the justification of the triad consisting of methodology, doctrine and judicial enforcement.

The issue continues with a study by Sergey Degtyarev, Doctor of Legal Sciences, Professor of the Department of Civil Law Disciplines of the Ural Law Institute of the Ministry of Internal Affairs of Russia, on the topic "The interaction of the tasks of preparing a case for trial with the court's judicial and evidentiary activities". The article considers and establishes the interaction between the proper fulfillment of tasks aimed at the judicial authority at the preparation of the case for trial; issues considered by the court in the court session; issues resolved by the court in the

deliberation room when making a court decision; the motivation part of the court decision and the grounds for its annulment. The author deserves special attention for consideration in the study of the tasks, the resolution of which is associated not only with the judicial activity of the court, but also with the evidentiary activity of all participants in the process: the task of determining the circumstances relevant to the case, in other words — the correct definition by the court of the subject of proof in the case; the task of determining the necessary evidence, as well as assisting in their collection to the parties who need it.

The next research is presented by a collective of authors: Arsen Balafendiev, Candidate of Legal Sciences, Associate Professor; Nail Khabibullin, Deputy Dean for Educational Activities, Senior Lecturer; Mukhammad Dzhami Ramadan, Degree Candidate of Legal Sciences of the Department of Criminal Law of the Kazan Federal University. In the article "The criteria of individualization of punishment: consideration in exemption from criminal liability and punishment and application of other measures of criminal-legal influence" the authors point out that the criminal law as a whole as a specific type and instrument of social regulation can be properly effective not only if its provisions are optimally regulated, but also if the latter correspond to its essence, considered both in terms of legal formulas, requirements of legislative technique, proper systematization and well-thought-out structure, and social phenomena and processes. This component, the researchers point out, is revealed by doctrine and allows us to monitor how successfully it is realized in the norms and prescriptions of the law. As a result of the present study, proposals on optimization of some provisions of the Criminal Code of the Russian Federation are formulated: the authors come to the conclusion about the expediency of exclusion of the sign of voluntaries in Article 75 of the Criminal Code of the Russian Federation, a different interpretation of the correlation and significance of various forms of manifestation of active repentance, changes in the wording of Articles 64 and 75 of the Criminal Code of the Russian Federation, legislative consolidation of broader formulations covering the whole variety of positive post-criminal behavior.

I am sincerely glad to present to you the study by Anna Kuznetsova, Cadet of the Department of Investigator education, and Sergey Melnik, Candidate of Legal Sciences, Associate Professor, Professor of the Department of Civil law disciplines of the V. V. Lukyanov Orel Law Institute of the Ministry of Internal Affairs of Russia, "The problem of regulation of digital inheritance in civil law". The authors of the study aim to consider the main problems of inheritance of objects related to digital rights in the framework of the legislation of the Russian Federation, due to the changes affecting all spheres of society in the process of digitalization and informatization of the modern world that have been taking place over the past decades. The authors point out that the development of clear and stable legal

mechanisms for the inheritance of digital rights is an essential task for modern societies seeking to ensure respect for the personal space and digital assets of each individual in the context of constant digital transformation. The absence of a legally regulated process of transferring digital rights from one person — the testator — to another person — the heir — creates contradictions, which creates certain problems in the law, which can only be eliminated by introducing a legally regulated procedure for this process.

The study on "The alcoholism of juveniles and young people as a deviantological problem: theory and basic concepts" presented by Yuriy Komlev, Doctor of Sociological Sciences, Professor, and Polina Alyukova, first year Master's student of the Department of Criminal Law and Process of the "TISBI" University of Management, is of great importance. The problem of juvenile alcoholism in Russia has been relevant for decades. A number of scientists have been dealing with this issue, conducting empirical studies. The article considers alcoholism from the point of view of deviant behavior; several definitions of the mentioned definition are given, as well as the main deviantological concepts are given. The authors consider the historical aspect of the problem of alcoholism in Russia. The article points out that all decisions of the supreme authorities on the issue of combating alcoholism had a legislative basis. It is pointed out that the history of alcohol consumption in Russia has its socio-political and socio-cultural specifics. Conclusions about the problem statement are made.

I am sincerely glad to present to you the study by Robert Izmailov, Candidate of Legal Sciences, Senior Lecturer, of the Department of Business and Energy Law of the Kazan Federal University, on the topic of "The legal coverage of business relations in the market of housing and communal services". The article is devoted to the legal coverage of business relations in the market for housing and communal services, which are characterized simultaneously by their complex and socially significant nature. It is proposed to define business relations in the market for housing and communal services as regulated by the norms of the law as complex property and organizational relations that develop in relation to the supply of housing and communal resources and the provision of housing and communal services. Business relations in the market for housing and communal services should be qualified as relatives. The objective criterion of cost estimation for housing and communal services allows us to talk about the property character of business relations in the market. It seems that the division of relations into basic and derivative is applicable to the sphere of housing and communal services. The peculiarity of a communal resource in entrepreneurial relations is the possibility of consumption. Business activity in the market of housing and communal services assumes the reimbursable character of the majority of relations, but at the same time, based on the objectives of the activities of individual subjects, the gratuitous character is also possible.

Finalizing this issue is a study by Lidiya Sabirova, Candidate of Legal Sciences, Associate Professor of the Department of Theory and History of State and Law of the Faculty of Law of Kazan Federal University, "The issues of integration in law: historical and theoretical analysis". The author of this study aims to form a comprehensive scientific view of integration in law as a part of legal integration in general. It is pointed out that the design and creation of new branches of law is carried out by means of communication of certain legal characteristics of legal institutions and legal aggregates, as well as specific legal norms. Integration processes, as a rule, create an individual sectorial legal regime, which includes a variety of ways of legal regulation functioning in interrelation with each other. Such an individual sectorial legal regime should be studied in more detail, as it is characterized by the presence of a single goal of legal regulation of social relations. From the historical point of view, legal integration began to develop from the moment when the state and law emerged, when national legal systems began to emerge. The author mentioned that, speaking about a particular society, one can see the connection with historical formation on the basis of its own cultural, national, territorial factors.

With best regards,
Editor-in-Chief
Damir Valeev

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Oleg Latynin
Chairman of the Twenty-First Arbitration Court of Appeal, Doctor of Legal Sciences, Associate Professor of the Department of Civil and Arbitration Procedure of the Crimean branch of the Russian State University of Justice

THE DOCTRINAL AND METHODOLOGICAL BASIS OF THE LAW ENFORCEMENT RESTRICTIONS IN THE SPHERE OF CIVIL CIRCULATION

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Abstract. *The category of "right restriction", associated mainly with formal technical-legal tools, taking into account the purpose and patterns of meaning formation, needs some rethinking. In particular, it is necessary to better emphasize its substantive aspects in the context of ensuring a proper balance between the interests of the citizen and society. In turn, we note that the unity of methodology, doctrine and judicial enforcement forms a certain specific triad, which has a certain heuristic potential for the study of existing mechanisms of judicial protection and their improvement in the conditions of modernization, globalization, and integration processes in the modern post-industrial world. As a visualization of this provision, we propose a kind of fractal. The formation of meanings in the legal sphere, which also has the features of a fractal, is of special scientific interest to us. Taking into account the fractal properties of law, as outlined in this study, let us delve into the reasoning of the triad consisting of methodology, doctrine and judicial enforcement. Judicial practice, represented as the third, lower tier of our imaginary triad, in this connection appears as a kind of empirical platform where impulses are simultaneously received "from above".*

Keywords: *law restraint, law enforcement, legal triad, methodology, doctrine, judicial law enforcement.*

In solving any intellectual problem, a moment of subjectivity is inevitable, expressed, in particular, in what way is chosen to achieve the goal in this particular case. In this study, which generally has a practical orientation, we proceed from the principle of unity of methodology, doctrine and judicial enforcement and, accordingly, we begin with an explanation of its substantive content.

We suggest that the unity of methodology, doctrine and judicial enforcement forms a certain specific triad, which has a certain heuristic potential for the study of existing mechanisms of judicial protection and their improvement in the context of modernization, globalization, and integration processes in the modern post-industrial world. As a visualization of this provision we propose a kind of fractal — a continuously rotating figure of an equilateral triangle in slowly pacing with corresponding names of vertices, all of which are clickable, and as a result, one can simultaneously get access to a variety of information on the current state of judicial practice as a subsystem of Russian law through hyperlinks. Just as the "one-stop-shop" platform optimizes the provision of state and municipal services, the principle of unity of methodology, doctrine and judicial enforcement, in our view, is the window through which the best prospects for a more complete, comprehensive and in-depth understanding of the Russian legal system and the trajectory of its development for the common good are opened.

In mathematics, a fractal is a self-similar figure. We deal with fractals whenever we observe multilevel objects consisting of parts similar to the whole. For example, a single branch of a tree, with all its knots and smaller branches, resembles an entire tree. Another example of a fractal is natural language. In the social aspect, it is nothing but an agreement on a certain fragmentation of the surrounding world into multilevel categories and assigning them verbal labels composed of a finite number of elements — letters and sounds. The depth and direction of thoughts depend on what fractals a person has learned, i.e., how he is able to search for, create, combine and scale meanings, combine separate sounds into words, combine words in sentences, paragraphs, and entire texts serving to express meaning[1]. The focus on the search for and realization of meaning is a fundamental human feature. At that, meaning is by no means a subjective category: a person does not invent it, but finds it in objective reality, expands and deepens it, or, on the contrary, stabilizes it in the process of making vitally important decisions[2].

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[1] *Kukushkin N.* Khlopok odnoy ladonyu: kak nezhivaya priroda porodila chelovecheskiy razum [The clap of the palm: how inanimate character gave birth to the human mind]. M.: ANF, 2020. Pp. 468–469.

[2] *Leontyev D. A.* Psikhologiya smysla: priroda, stroenie i dinamika smyslovoy realnosti [The psychology of meaning: the character, structure and dynamics of meaningful reality]. M.: Smysl, 2019 // [Electronic resource]: URL: https://lib.uni-dubna.ru/search/files/psy_leo_psy_smisla/1.pdf (date of address: 25.05.2021).

The formation of meanings in the legal sphere, which also has signs of a fractal, is of particular interest to us. We were finally convinced of the existence of fractal properties of law under the influence of the fundamental work of the judge of the Constitutional Court of the Russian Federation, Professor G. A. Gadzhiev[1]. Here is what he writes: "In all human communities, all peoples to a greater or lesser extent appear the same needs, expectations. One of them is the need for justice. It is this need that contributes to the fact that different peoples form approximately the same legal conceptual views"[2]. These include, inter alia, such universal legal concepts as the subject of law, the will of the State, objective truth, the rule of law, presumptions, fictions, legal relations, formal sources of law, etc. There are thousands of them, and all of them are ideal matter, intellectual constructions invented by mankind in order to find the right answer to any legal question posed. A person buying a house in real life is interested in the consumer qualities of the house, but in legal space he is interested in who is the owner of the property and what is the content of the state registration documents. In the legal conceptual space, the subjects and objects of rights and other phenomena "live"[3].

As G. A. Gadzhiev emphasizes repeatedly, the conceptual part of normative regulation developed objectively, as man realized that he lives in a society of his own kind, where it is not profitable to deviate from objectively necessary rules of joint existence, which, in turn, should not contradict either the physical or the spiritual layers of existence, existing in accordance with the inherently immanent laws. "Man only cognizes and recognizes the naturalness of the legal order that has arisen, just as he must recognize the physical or economic laws or the laws of thought. Legal constructions are not only created by the intellect of man, but are reproduced, discovered. Man, of course, has a creative beginning and, meeting objective givenness in the structure of society, develops objective givenness in the form of a legal concept, one of the most ancient"[4].

Therefore, legal thought leads to the realization that within the objectively existing real, embodied reality around us there is also a special reality — legal reality: an independent enclave, a specially created semantic field, self-sufficient, including for the resolution of legal conflicts by an impartial judge in a reasonable time[5]. All legal formulas meaningful in legal usage, such as "dignity of the

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[1] *Gadzhiev G. A.* Ontologiya prava: (kriticheskoe issledovanie yuridicheskogo kontsepta deystvitelnosti) [The ontology of law: (a critical study of the legal concept of reality)]. M.: Norma, 2013. 319 p.

[2] Ibid. P. 285.

[3] Ibid. P. 14.

[4] Ibid. P. 281, 287.

[5] Ibid. P. 8, p. 291.

individual", "economic freedom", "rule of law", etc. — are more than mere words. They accumulate the achievements of humanity's evolving legal reason and natural-law intuition, and behind the linguistic shell there is a vast, deep and multilayered legal meaning, sometimes called the "spirit of the laws"[1]. For the most rational resolution of legal disputes, it is important to correctly extract this meaning from a predetermined range of sources of law in a state of hierarchy, provided that the court's interpretation of the law is subject to the principle (idea) of certainty of law[2].

We emphasize: not to imagine, not to introduce a subjective element of arbitrary interpretation in the solution of a dispute about the right, attributing to the content of the norm something that is not there and cannot be — namely to extract. According to the explanatory dictionaries, to extract — means "to pull out, take out, choose, pull, separate the important, essential"[3] (V. I. Dal); to get from within, from the composition of something, make appear somewhere from the depths. In our case, this depth is the entire legal reality as a whole, in an objectively logical combination of statics and dynamics, a combination of formal-dogmatic representations of law with its other ontological representations. Everything that is "on the surface" of legal reality and observed directly through legal texts — norms, institutions, legal relations, the mechanism of legal regulation — is embodied in the "depth", due to such phenomena and processes as goal-setting, ideological content, legal genesis, legal formation, legal values and their perception, competence, and competence of jurisdictions, law mobilization and effectiveness of legal action, etc.

The subject who resolves a legal dispute has to appeal to both the surface and the underlying levels of legal reality, to combine and scale the legal meaning identified through the interpretation of norms and institutions from various branches of law. The thinking actions carried out in this case are in one way or another in a relationship of self-similarity with the processes of meaning-making, which in their time led to the invention of law as such, as an instrument of reconciliation of conflicting interests and maintaining the atmosphere of order necessary for the sustainable development of socium.

The confirmation of this we find from the positions of ontology of law, substantiated by G. A. Gadzhiev. As a result of the settlement of especially important for society legal disputes in a certain historical moment was found a balance of legitimate interests of subjects of legal life, then it was enshrined in the positive law,

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[1] *Gadzhiev G. A.* Op. cit. P. 7.

[2] Ibid. P. 191.

[3] Slovari.ru // [Electronic resource]: URL: https://www.slovari.ru/search.aspx?s=0&p=3068 (date of address: 25.05.2021).

and then has already been improved over the millennium. As for the rationality of the basic legal constructions and their common ultimate goal — the settlement of legal conflicts, they have remained and remain unchanged[1].

To illustrate these points, consider the following analogy. Biology teaches that the development of a multicellular organism begins with a single germ cell, which contains all the information necessary to build a complex multicellular body. For example, the human embryo originally contains the same germ cells as the evolutionary predecessors of humans — fish, reptiles, etc. Externally, a human embryo at 29 days old is difficult to distinguish from a river eel embryo at 36 hours old, but later the same germ cells in the human embryo develop not the gills that fish breathe, but very different organs — the neck and head fragments[2].

An analogy is seen in the fact that some "germ cells" exist in legal reality as well. Its point of origin is goal-setting. Since the conflict is an objective aspect of human existence, the very fact of people's life in specific conditions of existence already generates the problem of coordination of interests and prompts an active search for its solution. In the conscious striving to resolve conflicts is a single deep basis for the formation of meanings, which later unfold into a coherent, orderly system of ideas and perceptions, which can be called the legal conceptual space. In terms of goal-setting, both archaic and contemporary societies have a high degree of similarity, since everyone needs social order at all times. Another thing is that the realization of a common goal is determined by values, technical and legal possibilities and many other factors, not at all the same throughout the history of mankind. As a result, such strikingly different systems of legal regulation as archaic and modernized law emerge from the same "embryonic cell" of goal-setting.

Generalization of all the above provisions leads to the conclusion that the legal concept of reality is a fractal — a discrete semantic integrity, consisting of many systematically interrelated elements, in turn, formed from legal representations of lesser order, each of which is the result of the evolution of this or that ideological content, traced over a more or less long period of historical time. Accordingly, the depth of legal analysis also depends on what fractals are assimilated by the subject of knowledge of a legal phenomenon and how it can operate them in solving a specific practical problem, combining the different components of the identified legal meaning in compliance with the principle of legal certainty.

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[1] *Gadzhiev G. A.* Op. cit. p. 281.

[2] 200 zakonov mirozdaniya [200 laws of creation] // [Electronic resource]: URL: https://elementy.ru/trefil/21184/ Ontogenez_povtoryaet_filogenez (date of address: 20.05. 2021).

Thus, characterizing the mechanism of legal relations, P. P. Serkov says, in particular, that each rule of conduct is formed by the ideological content of not one norm, but a complex of norms. The burden of combining this content is borne by each element of legal relations. Further, "each such aggregate in each element of a legal relation "meets" the concreteness of the facts of the regulated situation and has an impact on the subjects of legal relations"[1]. To this indisputable thesis it remains only to add that the adequate identification of the ideological content of legal norms implies a sufficiently highly developed skill of combining meanings or, in another terminology, operating with fractals.

Here is another example. In fact, about fractals and the ability to combine the meanings extracted from the text of the norm, the judge of the European Court of Human Rights in 2003–2017. Kh. I. Gadzhiev, when he points to the non-identity of judicial lawmaking and legislation (italics below is ours — *O.L.*): "Judges […] are in need of interpretation, that is, they are faced with the need *to be creative*. Using methods of interpretation well-developed by the theory of law, judges apply the most appropriate of them to the case at hand, deriving *various meanings* from the applicable rule of law. They are *free* to carry out this process, but the first thing they are guided by is the *text of the law* and the *materials of the case*; the second is *common sense*. Thus, an important constraint in any interpretation is the *text of the law* itself and the *facts of the case*. The other serious element is the *ideas* that guide the judge, his *experience*, and *knowledge* of the same social expectations, *the ability to find the required balance* between the interests of the individual and those of society on the way to the goal pursued"[2].

Therefore, when applying to the court, the parties present their position and the materials justifying it, which are a combination of meanings derived from their own interpretation of the law, practice in similar cases, standard samples of procedural documents and, possibly, some other sources. The judge gives them a legal assessment, guided by the meanings extracted from the existing legal norms in the process of their professional interpretation. Next, the judge has to make a reasoned decision on the disputed issue, which this judge considers just, based on the meanings, values, and attitudes that have developed as components of his worldview. As a result, the administration of

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[1] *Serkov P. P.* Pravootnoshenie: teoriya i praktika sovremennogo pravovogo regulirovaniya. Ch. 2, 3: Ochertaniya pravovoy universalnosti. Ch. 3. Zakonomernost pravovykh zakonomernostey [The legal relationship: theory and practice of modern legal regulation. Part 2, 3: Outlines of legal universality. Part 3. Regularity of legal regularities]. M.: Norma, 2019. P. 1047.

[2] *Gadzhiev Kh. I.* Sudebnye doktriny i effektivnost pravoprimeneniya [Judicial doctrines and effectiveness of law enforcement [Judicial doctrines and effectiveness of law enforcement] // Zhurnal rossiyskogo prava [The Journal of Russian Law]. 2019. No. 6. P. 14.

justice becomes inseparable from the more or less successful processes of the generation of meanings (sense-making) within the legal conceptual space, and the corresponding thought operations are realized in the text of the judicial act, which reflects, among other things, the judge's qualifications and the entire professional and life experience.

On the basis of the above fractal properties of law, let us continue our discussion of the triad, which consists of methodology, doctrine and judicial law enforcement. It is known that the method of triad we are interested in was first substantiated back in the ancient era and until now is widely used in the humanities as a certain method of philosophical construction, a systemic tool of reasoning, organization and deployment of thought, it's structuring for the purpose of the most complete and comprehensive knowledge of systemic objects. The triad is a special type of deductive grouping, referring not so much to rows of terms or concepts, as to the very reality of open systems in need of ontological and epistemological research[1].

Note that the so-called trinitarian thinking, or "thinking in threes", is usually considered one of the features of archaic consciousness, the primary source of formation of abilities to abstract constructions of systemic type. As an illustrative example, we can give a variety of ternary symbols, firmly entrenched in the cultural heritage of mankind: three-headed mythical creatures, heraldic trefoils, tricolor flags and three-element armorial shields, trident, trident and many, many others — at one time the Celts alone invented over three hundred symbolic triads, which were given magical meanings for all occasions of life. At the same time, each triad was represented as a kind of "unwinding roll," allowing for the possibility of unfolding further, almost to infinity. The triad was characterized by complex interrelations of its components and was associated with the ideas of development, orderliness, and harmonious wholeness[2].

The triadic view of systemic phenomena implies, in particular, that the deployment of the triad occurs depending on which of its levels there is a tension that requires the restoration of the adequacy and integrity of the triad. For this purpose, aspects, attributes, and sides of other levels are selected and subjected to appropriate systemic changes. At the same time, the components of the triad are in relations between them more complex than hierarchical.

The upper in the triad is the primary system-forming, something that exists and gives existence to the middle and through it, already indirectly, to the lower. The bottom is a kind of malleable, changeable empirical material, and

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[1] *Vakulenko N. S.* Ierarkhicheskaya triada kak metodologicheskiy printsip [The hierarchical triad as a methodological principle] // Khristianskoe chtenie [Christian reading]. 2018. No. 2. Pp. 173–184.

[2] Ibid.

it can contain anything. In terms of content, the relationship between the triad components can be both formative (structuring) and destructive (destructuring). Structurization "from above" occurs when life, being and the possibility of endless changes are introduced into the system, which is realized thanks to the multivalence and flexibility of intra-systemic connections. Structurization "from below" is expressed in the tendency to legitimize, to give finality to the system, and to give unambiguity and simplicity to intrasystem connections. Destruction means the emergence of such changes, which by the principle of conditional interdependencies of the type "if — yes, then …; if — no, then …" violate the flexibility of the system as a whole, make transitions from part to whole and vice versa impossible[1].

Certainly, the above statements do not exhaust the logical-philosophical problematic of the triad as a universal algorithm of thought operations. Nevertheless, this information is enough to state that the triad has long ago proven to be a valid means of expanding the analysis and understanding of phenomena of the surrounding reality, discovering new focuses of attention and seeing these phenomena both at the deep level of their existence and in perspective. Under such circumstances, we do not see any obstacles to extrapolating this method to the study of systemic objects of the legal sphere, which have fractal properties.

Therefore, methodology, doctrine, and judicial enforcement, taken as a triad, represent different aspects of modern Russian judicial practice, and each member of the triad mutually determines, creates, and develops the others. In our opinion, the trigger for the deployment of the triad, which determines the dynamics of changes at all its levels, are currently two interrelated circumstances.

Firstly, as the social relations become significantly more complex and the differentiation of interest subject to legal protection deepens, as well as the acceleration of the pace of updating legislation, it becomes more and more obvious that a purely formal application of norms and institutions of law, carried out in isolation from their ideological basis and, more generally, all values of society — does not fully meet the needs and challenges of the time.

Secondly, despite numerous reform efforts since the adoption of the Russian Constitution of 1993, it is the formal approach to resolving disputes about the law, adopted through Soviet practices and professional legal consciousness, that is inherited by the new cadres, and the preservation of this institutional inertia is predicted in the next two or three generations of Russian judges[2].

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[1] *Vakulenko N. S.* Op. cit.

[2] Sudebnye doktriny v rossiyskom prave: teoriya i praktika [Judicial doctrines in Russian law: theory and practice] / otv. red. V. V. Lazarev, Kh. I. Gadzhiev. M.: Norma, 2020. P. 312.

According to N. A. Kolokolov, "the Soviet legal system occluded itself in a purely formal approach to law"[1]. From modern positions this is rather a significant disadvantage than a virtue, although it is impossible to eliminate the formal approach, which is one of the facets of law interpretation, from judicial enforcement. Moreover, it is necessary, sufficient, and even very effective in the consideration of simple cases, initiated also for the sake of consolidation by the judicial act of a certain *status quo* of the parties. Uncomplicated cases are in the majority, as evidenced by court statistics. For example, according to the data of April 2021, about 77% of civil cases, 90% of administrative cases and more than half of economic disputes are considered by the courts in the mandated and simplified order[2]. Moreover, in the conditions of technological modernization, artificial intelligence can independently and fairly well cope with cases where there is no dispute as such.

At the same time, this does not mean that at present we can neglect the improvement of legal consciousness and the development of professional skills, which provide a broader approach to the administration of justice than pure formalism. It is true that it is not artificial, but rather a human intellectual resource in justice — a key component, without which the full protection of the rights and freedoms of citizens is not possible[3].

In this regard, we evaluate positively the appearance in the literature of arguments in favor of strengthening the interdisciplinary basis of the judge in the judicial process. For example, according to E. A. Fokin, "the judges' assessment of good faith or bad faith behavior without involving at least minimal psychological knowledge, as well as knowledge about the economy, market structure, specifics of business create the risk of a formal attitude to the dispute under consideration. Thus, as of today, the expediency of using interdisciplinary approaches in complex economic disputes is obvious, which together will allow considering the case as fully as possible. As a consequence, there must be a certain rethinking of the requirements for judicial candidates, who must have not only deep professional experience (not limited to

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[1] *Kolokolov N. A.* Pravo sovremennoy Rossii: istoki i sovremennost [The law of modern Russia: history and modernity] // Istoriya gosudarstva i prava [History of state and law]. 2014. No. 3. P. 39.

[2] *Momotov V. V.* Vystuplenie predsedatelya Soveta sudey RF na vebinare 18 aprelya 2021 g. dlya sudey gosudarstv — chlenov ShOS [Speech by the Chairman of the Council of Judges of the Russian Federation at a webinar on April 18, 2021 for judges of Shanghai Cooperation Organization member states] // [Electronic resource]: URL: http://www.ssrf.ru/news/vystuplieniia-intierv-iu-publikatsii/41745 (date of address: 25.05.2021).

[3] *Momotov V. V.* Vystuplenie predsedatelya Soveta sudey RF na plenarnom zasedanii Soveta sudey RF 25 maya 2021 g. [Speech by the Chairman of the Council of Judges of the Russian Federation at the plenary session of the Council of Judges of the Russian Federation on May 25, 2021] // [Electronic resource]: URL: http://www.ssrf.ru/news/vystuplieniia-intierv-iu-publikatsii/42229 (date of address: 25.05.2021).

work in the judicial system), but also substantive knowledge of, at least, human psychology"[1].

It is true that the named author immediately makes a reservation concerning the "noticeable signs of utopianism" of this idea for modern Russia, "especially in the conditions of the enormous workload of some Russian arbitration courts"[2]. With this, unfortunately, it is impossible not to agree. Nevertheless, we optimistically believe that this state of affairs is temporary. The processes of development in the system of administration of justice — just like any progress — cannot be cancelled, so there is no doubt that the situation described above will undoubtedly become a reality.

Once again, by virtue of his profession, a judge administers justice, that is, he renders a decision that would exhaust the legal conflict that has arisen and that would be fair. "The importance of making a judicial decision, the responsibility behind it — rightly notes Professor D. I. Dedov, acting judge of the European Court of Human Rights for the Russian Federation — puts it on the same level of importance as a survival decision, since such a decision has consequences in the long term for the human community as a whole"[3].

As a consequence, the exercise of state powers to resolve disputes about the law involves a high and intensive intellectual load. Judicial interpretation of the rules of law, the development of judicial legal positions, judicial discretion, judicial argumentation is, on the one hand, the functions of the independent administration of justice, and on the other — the thinking functions. Professional judgments of a particular judge, ideas about the meaning and content of those or other legal prescriptions, formulated in the course of legal assessment of the circumstances of the case, further somehow become part of the overall intellectual contribution of the judiciary to the development of the legal system, as well as society as a whole, as fair justice is a necessary condition for the well-being of citizens and the prosperity of the state.

It is clear and unquestionable that not every interpretation can deserve the highest legal authority and acquire a binding character. However, in any case, both judicial interpretation and judicial discretion in assessing the circumstances of the case and elaborating the position of the court are an integral part, even if not directly visible, but nevertheless very important and responsible work of the judge, namely, the process of intellectual search aimed at resolving a particular dispute of law. We believe that it would not be an exaggeration to say that the productivity of

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[1] Sudebnye doktriny v rossiyskom prave: teoriya i praktika [Judicial doctrines in Russian law: theory and practice] / otv. red. V. V. Lazarev, Kh. I. Gadzhiev. Op. cit. p. 275.

[2] Ibid.

[3] *Dedov D. I.* Op. cit. p. 600.

such a search, its results, ultimately determines the minimization of risks of formal attitude to the case under consideration, as well as the degree of effectiveness of the judicial defense in general[1].

"It seems that such an approach cannot be supported since it does not consider the realities of modern social and legal development", believes V. V. Momotov, and we fully agree with this point of view[2].

V. V. Momotov supports it, in particular, by referring to the positivist theory of G. Kelzen, within the framework of which initially there was no doubt that the law is a totality of legal norms, including those contained in judicial acts, and any court decision creates a new norm, arising from a more general rule of law and specifying it[3].

For his part, let us add that G. Kelzen also writes about the fallacy of an absolute identification of law with law. The law does not contain a ready-made right, which has only to be expressed by means of a judicial agreement, i.e., in a judicial decision. "The function of the so-called pleading", argues G. Kelzen, "is far more constitutive; it consists in law-making in the proper sense of the word. If we have a specific fact that must and will be linked to a specific legal consequence, this link is made first and foremost through a judicial decision. A judicial decision is therefore an individual legal norm, an individualization, and concretization of a general or abstract legal norm, a transfer of the ongoing process of rule-making from the sphere of the general into the sphere of the individual"[4].

Therefore, the formalist approach, at a minimum, is a simplification, and at a maximum — even some distortion of the original content and essence of the positivist doctrine.

In fact, the development of social relations, especially so dynamic as in the modern era, objectively exceeds the dynamics of the development of normative-legal regulation. In the conditions of rapid scientific, technological, informational, socio-economic and other progress of society, interactions between different actors become significantly more complex and differentiated, so that there appears something fundamentally new, not known to the current legal regulation. Conflicts

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[1] *Dedov D. I.* Op. cit. p. 30.

[2] Ibid.

[3] *Momotov V. V.* Tolkovanie pravovykh norm Verkhovnym Sudom Rossiyskoy Federatsii v kontekste sovremennoy pravovoy sistemy [Interpretation of legal norms by the Supreme Court of the Russian Federation in the context of the modern legal system] // Gosudarstvo i pravo [The State and Law]. 2018. No. 4. P. 33.

[4] *Kelzen G.* Chistoe uchenie o prave: vvedenie v problematiku nauki o prave [The pure doctrine of law: an introduction to the science of law] // Rossiyskiy ezhegodnik teorii prava [Russian yearbook of legal theory]. 2011. No. 4. P. 460.

arising in this connection inevitably turn into specific judicial disputes, and therefore, "judges are not only able, but also obliged to identify the applicable rules of law and correctly interpret them in relation to the relevant situations"[1]. Thus, the judge's professional thinking and the intellectual functions derived from it, such as judicial interpretation, judicial discretion, and judicial reasoning, are now much more demanding than ever before.

The choice between formalism and other possible approaches to the administration of justice, the interpretation of legal phenomena and the legal system as a whole is nothing other than the practical implementation of the top element of the triad we discuss, namely the methodology. Some issues of methodology will be the subject of our further consideration, but now, in order to avoid duplication of information, we will only refer to the opinion shared by us D. I. Dedov, who considers the most relevant methodological task of modern jurisprudence the identification of priority interests. As an alternative, the named author indicates the search for the balance of private and public interests and derived from it practical methodology of proportionality and legal certainty. In addition, the economical methods of law analysis, widely used in the practice of American judges, are mentioned[2].

It is also noted that dialectical materialism, which guided Soviet scientists in their research and to which "some Russian scientists continue to devote their articles", does not give us a point of reference for solving the specific problems of modern jurisprudence. There is no doubt that knowledge about the movement from the abstract to the concrete or about the unity and struggle of opposites remains a part of our cognitive arsenal and scientific picture of the world, but today we cannot do without this knowledge, or we need a new view of it from a different viewpoint[3].

In this regard, D. I. Dedov puts forward a hypothesis about the productivity of a new but useful method of integrating scientific knowledge from different spheres of scientific activity[4]. Given that society is a systemic form of human existence and law is a reflection of these systemic factors, it is possible to consider as necessary for the knowledge of law even those studies, the subject of which seems far from the law in its everyday understanding. The integration of knowledge "makes it possible to tie the law to life"[5].

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1 Ibid. P. 32.

2 *Dedov D. I.* Op. cit. p. 5, 6.

3 Ibid.

4 Ibid. P. 9.

5 Ibid. P. 8–10.

However, the system of views and approaches presented in the methodology manifests itself at the next levels of the triad — in doctrine and judicial law enforcement. Being practice-oriented, it is aimed at finding ways to "bridge" between the general (abstract prescription of a legal norm) and the individual (concrete life case subject to legal solution)[1]. There is also a possible contamination of doctrine and judicial enforcement — judicial doctrine, the main feature of which "is that it is derived empirically, through the application of legal norms by the court to specific legal relations, using various methods of legal interpretation and legal reasoning, and requires the court to possess the necessary level of lawmaking technique to exercise judicial discretion in order to fairly resolve the conflict of the parties to the litigation by legal means"[2].

Each of the judicial doctrines has substantive and formal content and, in general, is an ad hoc adaptation of legal theory to solve the problems of the prompt response of the judiciary to social and economic processes relevant to society at this stage of its development. In addition, taking into account the fractal properties of law, judicial doctrine can be presented as a certain semantic concentrate, the result of inductive and deductive grouping of legal ideas suitable for the resolution of a particular legal conflict on the principles of legal certainty and justice.

As an illustration, we can cite the currently widely known judicial doctrines in the field of taxes and fees, including on the interrelated issues of taxation and civil turnover — for example, the presumption of good faith by the taxpayer, the doctrine of "lifting the corporate veil" and some others. It is noteworthy that judicial doctrines are formed mainly in those areas of legal regulation that emerged or received a new impetus for development in the post-Soviet legal field with the establishment of the separation of powers in Russia, the transition to a market economy, and the construction of an open society. We find the explanation primarily in the fact that the creation of judicial doctrine is influenced not only by the correct establishment of facts, but also by the degree of theoretical and legal development of the issue to be resolved by the court. We believe that much more important factors in the formation of judicial doctrine are the potential for judicial independence and the level of judicial discretion allowed by law.

Concretizing the mentioned triad "methodology — doctrine — judicial enforcement" in the aspect of the interrelations of its elements, we get approximately the following.

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[1] Sudebnye doktriny v rossiyskom prave: teoriya i praktika [Judicial doctrines in Russian law: theory and practice] / otv. red. V.V. Lazarev, Kh. I. Gadzhiev. Op. cit. p. 11.

[2] Sudebnye doktriny v rossiyskom prave: teoriya i praktika [Judicial doctrines in Russian law: theory and practice] / otv. red. V.V. Lazarev, Kh. I. Gadzhiev. Op. cit. p. 22.

The general premise, the basis for the specificity of our triad and sine qua none of its development is the idea of social order generated by the conditions of social life, corresponding to the fundamental human desire to live, to continue the family, to transform the environment to meet their needs, to develop, and to strive for the best. Further, the reflexive attitude toward the problems of coexistence in society gives rise to the goal-setting we have already mentioned: to find a way to resolve conflicts that endanger the social order. This goal-setting gives the initial meaning to the activity unfolding in this direction, in the implementation of which, in turn, new meaning connections arise and new meaning centers are formed; from them again come meaning connections of the second, third, and more orders, and so on to infinity, in the perspective of "humanity as a civilization of law"[1]. In a particular law enforcement situation, the task is to correctly find the meanings necessary in a given case and combine them appropriately, making a legitimate and justified decision.

In our opinion, the most complete explanation of these processes is possible in a philosophical plan close to Aristotle's entelechy — the doctrine of act and potency, of the reality and finality of everything, as well as of what leads from a potential state to actual existence and keeps it in being[2].

By the purposive cause of a thing, it is meant that this thing contains its purpose in itself, i.e., it is created for itself, is purposive from the beginning, already at the moment of creation. Social order appears to us as such a thing. It is necessary for order, it is expedient in itself, as such, and all the rest are only concomitant circumstances in certain historical conditions. Objectively, the orderliness of life is necessary and important for all, that is how man is organized. However, the existence of a common target cause does not exclude, but rather presupposes the existence of methodological differences, i.e., the difference in how this goal can be concretized in the context of current tasks and what the ways of its realization are.

Thus, for example, the Russian pre-revolutionary newspaper "Poryadok" (Order), published in St. Petersburg since January 1, 1881, under the editorship of M. M. Stasiulevich, set the task of introducing the idea of legal order into the consciousness of society and declared that in an educated society "without a clear

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[1] The term was proposed by V. D. Zorkin. See, for example: *Zorkin V. D.* Chelovechestvo mozhet vyzhit lish v forme tsivilizatsii prava [Humanity can survive only in the form of a civilization of law] // [Electronic resource]: URL: http://rapsinews.ru/publications/20210 518/307050383.html (date of address: 25.05.2021).

[2] *Boroday T. Yu.* Entelekhiya [Entelechia] // Novaya filosofskaya entsiklopediya [The new Encyclopedia of Philosophy]. T. 4. Pp. 444–445. M., 2001 // [Electronic resource]: URL: https://iphlib.ru/library/collection/newphilenc/document/HASH019 4d86f3ba748084f864994 (date of address: 20.05.2021).

and freely formed consciousness of each person of his rights and his duty" such an order is impossible[1].

A more recent example is the difference in the content of the goals of legal regulation, which D. I. Dedov points out: according to the Constitution of the Russian Federation, the foundations of the constitutional order are morality, health, rights, and legitimate interests of others, ensuring national defense and security of the state; according to the Treaty of Rome on the establishment of the European Union — improving the quality of life, environment, level of competition, and preservation of cultural values. Noting the mismatch of reference points, as well as the fact that the implementation of EU values limits the efficiency of the economy, D. I. Dedov sees inconsistency here, indicating that "we do not fully and clearly understand our values, and the current concepts of legal theory do not provide us with any algorithm for understanding this"[2].

It turns out that from the methodological, upper level of the triad, we logically move to the middle, doctrinal level. The search for ways to solve a problem relevant from the point of view of legal regulation inevitably leads to the development of new theories that can, in turn, improve methodology and optimize practice, i.e., from the middle level to influence both the upper and lower levels of the triad. It is at the doctrinal level that the process of extending the meaningful connections originally embedded in goal-setting itself takes place. Thus, having set a goal to build a certain socio-normative system or subsystem, we must fully realize what values we will be guided by. These values will form the point of reference in the spread of meaning from the leading meaning structures to the more particular ones, which are deployed as we solve a specific research or practical task.

A good example of the multidirectional development of the accumulated semantic experience at the doctrinal level can be found in attempts to rethink the Soviet legal heritage, which contains a lot of positive potential[3]. Its objective assessment, free from any bias, is possible only if we delve into both the essence

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[1] Rossiyskiy liberalizm: idei i lyudi [Russian liberalism: ideas and people] / pod obshch. red. A. A. Kara-Murzy. T. 1: XVIII–XIX vv. M.: Novoe izd-vo, 2018 // [Electronic resource]: URL: http://www.rusliberal.ru/books/Ros_Liberals_ch_I-1912.pdf (date of address: 20.05.2021).

[2] *Dedov D. I.* Op. cit. p. 4–5.

[3] Sovetskoe yuridicheskoe nasledie: chto my pereosmyslivaem? [Po itogam mezhdunarodnoy konferentsii "Pereosmyslenie sovetskogo yuridicheskogo naslediya. Nash put k pravu", NIU VShE, 12 oktyabrya 2017 g.] [The Soviet legal heritage: what are we rethinking? [On the results of the international conference "Rethinking the Soviet legal heritage. Our Path to Law", National Research University Higher School of Economics, October 12, 2017]] // [Electronic resource]: URL: https://pravo.hse.ru/news/ 210843118.html (date of address: 20.05.2021).

of Soviet practices and the current legal situation at the macro level, i.e., at the concept level[1].

Further, judicial practice, represented as the third, lower tier of our imaginary triad, is a kind of empirical platform where impulses are both received "from above", from the first and second levels, and transmitted to the same levels "from below upwards", thus giving the triad a cyclical closure. Conditioned by the goal of an effective mechanism for resolving legal conflicts, methodological research leads to the development and improvement of doctrine, as a result of this contamination, judicial doctrines and legal positions are formed, but when life outstrips the dynamics of legal regulation, it is at the level of judicial practice that the demand for new methodological and doctrinal developments appears.

The outlined mutual transitions between the levels of the triad are periodically repeated, which is consistent with the character of social dynamics. As P. P. Serkov correctly mentions, social life by definition has no internal stability, as it is filled with numerous, diverse, and spontaneously arising interests. In response to the threat of chaos appears legal regulation — the purposeful, conscious, and formalized activity of society, the implementation of which requires not only static but also dynamic tools of coordination, harmonization of the complexity of social existence on the terms of justice[2].

Notice that all the above theoretical provisions somehow mention goal-setting as a conscious orientation of activity to create effective legal forms of social conflict resolution. Purposefulness is the root cause of meaning-making in the legal sphere, the "germ cell" of legal reality, as well as a determinant of the unity of methodology, doctrine and judicial enforcement.

Meanwhile, the emphasis on the teleological aspects of the implementation of justice implies some change in the interpretation of legal restrictions. Usually they are considered in the public-law plane, used as a sectoral jurisdictional tool, a technique of technical-legal consolidation of prohibitions, the establishment of formalized boundaries of legal freedom of subjects, and the demarcation of the space of choice of permitted options of behavior.

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[1] Sovetskoe yuridicheskoe nasledie: chto my pereosmyslivaem? [Po itogam mezhdunarodnoy konferentsii "Pereosmyslenie sovetskogo yuridicheskogo naslediya. Nash put k pravu", NIU VShE, 12 oktyabrya 2017 g.] [The Soviet legal heritage: what are we rethinking? [On the results of the international conference "Rethinking the Soviet legal heritage. Our Path to Law", National Research University Higher School of Economics, October 12, 2017]] // [Electronic resource]: URL: https://pravo.hse.ru/news/ 210843118.html (date of address: 20.05.2021).

[2] *Serkov P. P.* Pravootnoshenie: teoriya i praktika sovremennogo pravovogo regulirovaniya (Ch. 2, 3) [The legal relationship: theory and practice of modern legal regulation (Parts 2, 3)]. M.: Norma, 2019. Pp. 86–87.

At the same time, the formula of Part 3 of Article 55 of the Constitution of the Russian Federation does not exclude the possibility of a broader and universal, teleological understanding of right restrictions, because the conditions of restriction of human and civil rights and freedoms are designated in the Constitution of the Russian Federation as constitutional goals of legal regulation and formulated as priority values subject to legal protection.

In such a case, right restrictions appear not just as a technical-legal tool, but as one of the fundamental ideas that form professional legal consciousness. We agree that it "should be as stable as the formula "twice two is four", where the symbols denoting numbers are created by man, but represent an undeniable truth within the framework of everyday reality, accessible by simple observation"[1].

For judges, the stability of professional legal consciousness is especially important. As rightly noted by V. V. Momotov, "law is not natural science. A judge cannot be neutral and free from subjective value judgments in a judicial dispute, even if he tries to treat the essence of what is happening "without anger and partiality". In the real social fabric, there are subtle processes of spiritual life that do not assume an unambiguous connection between cause and effect. It is in law that social practice is molded, which means that in order to understand the legal mechanism of a legal dispute, the judge needs to look at it through a social and human prism"[2].

As it seems to us, the teleological interpretation of legal restrictions corresponds to the idea of the common good, which consists in the fact that restrictions on the freedoms of a particular individual are legitimate when this restriction will give positive results for society as a whole, including this individual. That is, he must understand and recognize that the restrictions on him are ultimately for his own good[3]. The next presentation will be devoted to the development of a teleological interpretation of right restrictions.

Based on the principle of unity of methodology, doctrine and judicial enforcement discussed above, let us formulate a few final theses of general character.

The realization of the right of citizens to judicial protection and the improvement of the quality and efficiency of justice are primarily issues of

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[1] *Dedov D. I.* Op. cit. p. 7.

[2] *Momotov V. V.* Elektronnoe pravosudie v Rossiyskoy Federatsii: mif ili realnost [vystuplenie predsedatelya Soveta sudey RF na zasedanii Kluba imeni D. N. Zamyatnina 26 maya 2021 g.] [Electronic justice in the Russian Federation: myth or reality [speech of the Chairman of the Council of Judges of the Russian Federation at the meeting of the D. N. Zamyatnin Club on May 26, 2021]] // [Electronic resource]: URL: http://www.ssrf.ru/news/vystuplieniia-intierv-iu-publikatsii/ 42272 (date of address: 20.05.2021).

[3] Ibid.

increasing the professional legal consciousness of judges, because justice is not reduced to a formal technical function, but is a complex intellectual activity: the process of implementation of meanings laid down by a solid cultural and legal tradition and adapted to the specific tasks of the current day in order to fairly resolve disputes over the legitimate interests of individuals and legal entities.

As such, meaning-making in the exercise of justice does not contradict the principle of legal certainty and is not a manifestation of any law enforcement selectivity. On the one hand, it is subject to the general laws of human thinking activity, on the other hand, it is subject to the equally objective laws of creation and functioning of the legal conceptual space. The element of subjectivity is introduced only due to the different qualifications of judges, different degrees of mastery of skills of extraction, and the combination of meanings in compliance with the requirements of legal certainty.

The starting point of meaning formation in the implementation of justice is general goal-setting — a conscious focus on the search for a mutually acceptable compromise in conflicting legal situations. Further, the range of development of meanings and the depth of their comprehension in each specific case are reflected in the results of judicial interpretation of legal norms and the degree of validity of judicial legal positions.

The category of "right restriction", associated mainly with formal technical-legal tools, in view of the purposefulness and regularities of meaning formation, needs some rethinking. In particular, it is necessary to better emphasize its substantive aspects in the context of ensuring a proper balance between the interests of the citizen and society.

The results of relevant research in the future could serve as a basis for the creation of judicial praxeology. We present it, hypothetically, in the form of a certain judicial "grammar of action" (the term of the founder of praxeology T. Kotarbinski) — a system of theoretically substantiated practical recommendations and algorithms for the adoption and presentation of judicial decisions, which in the future could minimize judicial errors and increase the legal protection of citizens and legal entities.

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THE INTERACTION OF THE TASKS OF PREPARING A CASE FOR TRIAL WITH THE COURT'S JUDICIAL AND EVIDENTIARY ACTIVITIES

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Abstract. *The article considers and establishes the interaction between the proper fulfillment of tasks aimed at the judicial authority at the preparation of the case for trial; issues considered by the court in the court session; issues resolved by the court in the deliberation room when making a court decision; the motivation part of the court decision and the grounds for its annulment. The author deserves special attention for consideration in the study of the tasks, the resolution of which is associated not only with the judicial activity of the court, but also with the evidentiary activity of all participants in the process: the task of determining the circumstances relevant to the case, in other words — the correct definition by the court of the subject of proof in the case; the task of determining the necessary evidence, as well as assisting in their collection to the parties who need it.*

Keywords: *stage of civil proceedings, preparation of a case for trial, aims and tasks of civil proceedings, aims and tasks of the stage of preparation of a case for trial, subject of proof in a case.*

The stage of preparation of a case for trial is mandatory in all processes, referred recently as the so-called "civilistic"[1] process: civil proceedings, arbitration

[1] See more: *Zagidullin M. R.* O soderzhanii ponyatiya "tsivilisticheskiy protsess" [On the content of the term "civilistic process"] // Zhurnal Rossiyskogo prava [The Journal of Russian Law]. 2020. No. 5. Pp. 120–130; *Ganicheva E. S.* K voprosu o soderzhanii ponyatiya "tsivilisticheskiy protsess" [To the question of the content of the term "civilistic process"] // Obrazovanie i pravo [Education and law]. 2022. No. 4. Pp. 134–140.

proceedings, administrative proceedings. Realization of the stage of preparation of a case for trial is associated by the legislator with the performance by the court of certain tasks to achieve the nearest procedural aim at this stage. It should be pointed out that all these aims and objectives are set by law just before the court, because the parties to the case in this, previous and subsequent stages, have only their own, independent aims and objectives, conditioned by personal interests, and not always coinciding with the above-mentioned aims and objectives of the legislator and the judiciary.

The general aim of civil proceedings in general and court proceedings in particular, in our opinion, is to eliminate the legal conflict in society, about which it was initiated and conducted. In order to achieve this general aim, the court needs to fulfill the tasks standing before all civil proceedings (Article 2 of the Code of Civil Procedure of the Russian Federation, Article 2 of the Arbitration Procedure Code of the Russian Federation, Article 3 of the Code of Administrative Procedure of the Russian Federation)[1]. In addition to the general aim, procedural theory and legislation formulate the nearest (local) aims covering the actions of the participants at each of the distinguished stages of civil procedure (more precisely, civil procedure in its broad sense), first — for the stage of initiation, preparation and trial, covering the consideration of the case in the court of first instance and being mandatory in any civil case (except for accelerated types of proceedings of consideration of the case — for example, order, simplified). Despite the proximity in content of the terms "aim" and "task", we consider it necessary to clarify that the aim is a generic concept in relation to the task. Therefore, the achievement of the aim, a more general term, is possible through the solution of each of the separately taken tasks (a generic term).

However strange it may seem, the immediate procedural purpose of the stage of preparation of a case for trial, formed in scientific theory and reflected in the educational legal literature, is enshrined only in more "recent" existing procedural codes — the Code of Administrative Proceedings of the Russian Federation and the Arbitration Procedural Code of the Russian Federation — and in general, is not available as legally defined in the Civil Procedural Code of the Russian Federation.

Article 132 of the Code of Administrative Court Procedure of the Russian Federation, following Part 2 of Article 133 of the Arbitration Procedural Code of the Russian Federation, establishes that preparation for court proceedings is

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[1] See more: *Degtyarev S. L.* Realizatsiya sudebnoy vlasti v grazhdanskom sudoproizvodstve: teoretiko-prikladnye problem [Realization of judicial power in civil proceedings: theoretical and applied problems]. — M.: Volters Kluver, 2007. — 364 p.

mandatory for each case and is conducted *in order to ensure the correct and timely consideration of an administrative (arbitration) case.*

However, the tasks standing before the court at the stage of preparation of a case for trial in administrative proceedings, on the realization of which depends on the achievement of the above-mentioned procedural aims, are not available in the Code of Administrative Proceedings of the Russian Federation. But all these tasks are fixed in the Civil Procedural Code of the Russian Federation (see Article 148) and in the Arbitration Procedural Code of the Russian Federation (see Article 133), but, once again we emphasize, are absent in the normative field of the Code of Administrative Court Procedure of the Russian Federation. Whether it is a mistake or a deliberate "ingenious" choice of legislative technique on the part of the legislator in relation to legal phenomena of the same order — aims and objectives at the stage of preparation of a case for trial, in relation to the Civil Procedure Code, the Arbitration Procedure Code and the Code of Administrative Proceedings of the Russian Federation, it is difficult to say, but the possibility of application of procedural law by analogy allows the law enforcer, and first the court, to overcome these difficulties within the framework of the Civil Procedure Code and the Code of Administrative Proceedings of the Russian Federation.

The tasks of preparing a case for trial are themselves formulated in Article 148 of the Civil Procedure Code of the Russian Federation as follows:

1) clarification of factual circumstances relevant for the correct resolution of the case;

2) determination of the law to be followed in resolving the case and establishment of the legal relations of the parties;

3) resolving the issue of the composition of the persons involved in the case and other participants in the process;

4) submission of necessary evidence by the parties and other persons participating in the case;

5) reconciliation of the parties.

It should be pointed out that the importance of the tasks performed by the court at the stage of preparation is difficult to overestimate, because, strange as it may seem, we meet them repeatedly throughout the civil process. For example, the tasks formulated in Article 148 of the Civil Procedure Code of the Russian Federation, become at the stage of trial issues that are discussed within the framework of the ongoing court session, because without their resolution it is impossible to consider and resolve the case on the merits.

In the future, they also become issues that are discussed by the court in the deliberation room when making a court decision: "When making a decision,

the court evaluates the evidence, determines what circumstances relevant to the consideration of the case are established and what circumstances are not established, what are the legal relations of the parties, what law should be applied in this case and whether the claim is subject to satisfaction" (see Part 1 of Article 196 of the Civil Procedure Code of the Russian Federation).

After that, we find their reflection in the motivation part of the judgment: "The motivation part of the court judgment shall specify:

1) factual and other circumstances of the case established by the court;

2) the conclusions of the court arising from the circumstances of the case established by it, the evidence on which the conclusions of the court about the circumstances of the case and the arguments in favor of the adopted decision are based, the reasons on which the court rejected this or that evidence, accepted or rejected the arguments of the persons involved in the case in support of their claims and objections;

3) laws and other normative legal acts, which the court was guided by when making a decision, and the reasons why the court did not apply the laws and other normative legal acts referred to by the persons participating in the case" (Part 4 of Article 198 of the Civil Procedure Code of the Russian Federation).

But this is not all, in the case of appealing a court decision to a higher court instance, they (tasks on preparation of a case for trial) can become grounds for annulment or modification of a court decision — see, for example, Article 330 of the Civil Procedure Code of the Russian Federation. Similar is the case with the tasks of preparing a case for trial in the Arbitration Procedure Code of the Russian Federation and in the Code of Administrative Proceedings of the Russian Federation, although they are not emphasized in the latter, as noted above.

Two tasks deserve attention, the resolution of which is associated not only with the judicial activity of the court, but also with the evidentiary activity of all participants of the process. This is the task of determining the circumstances relevant to the case, in other words, the correct determination by the court of the subject of proof in the case. The second is related to the first — the task of determining the necessary evidence, as well as assisting in its collection by the parties who need it.

First, the presence of the first task under consideration allows us to conclude that the court is an active subject in evidentiary activity, along with the plaintiff and the defendant.

Secondly, the obligation of the court to actively participate in evidentiary activity, primarily in the correct determination of the subject of proof in the case,

indicates the absence of pure adversarial character in the model of administration of justice in civil cases in the Russian Federation. Along with the proclaimed and increasingly implemented principle of adversarial character of the parties in the evidentiary activity, the element of the court's obligation to correctly determine the subject of proof in the case, allows us to speak only about a mixed model of civil proceedings in Russia (simultaneously there are elements of both adversarial and investigative model).

Thirdly, the failure of the court to correctly determine the circumstances relevant to the case (the subject of proof in the case), threatens the court with unfavorable consequences. As such unfavorable consequences may be the annulment of the court decision under Paragraph 1, Part 1, Article 330 of the Civil Procedure Code of the Russian Federation, where "the grounds for annulment or modification of the court decision on appeal are: incorrect determination of the circumstances relevant to the case".

Therefore, from the conscientious fulfillment of tasks by the court at the stage of preparation of the case depends on not only the achievement of the immediate procedural aim — timely and correct consideration of the case, but also guarantees the issuance of a correct court decision that meets the requirements of legality and validity, as well as the active participation of the court in the evidentiary activity at its stage of formation of the subject of proof in the case. Moreover, all this is carried out under the threat of annulment of the court decision, in case of improper fulfillment by the court of the tasks we are considering.

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THE CRITERIA OF INDIVIDUALIZATION OF PUNISHMENT: CONSIDERATION IN EXEMPTION FROM CRIMINAL LIABILITY AND PUNISHMENT AND APPLICATION OF OTHER MEASURES OF CRIMINAL-LEGAL INFLUENCE

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Abstract. *Criminal law as a whole, as a specific type and instrument of social regulation can be properly effective not only if its provisions are optimally regulated, but also if the latter correspond to its essence, considered both in terms of legal formulas, requirements of legislative technique, proper systematization and well-thought-out structure, and social phenomena and processes. This component is identified by doctrine and allows monitoring how successfully it is realized in the norms and prescriptions of the law. Individualization of punishment in criminal law is presented as a necessary stage in the process of its selection and appointment, at the same time it serves as a manifestation of an important function, consisting in the establishment and restoration of justice in social relations. Meanwhile, in recent times, more and more often specialists are becoming a question about the expediency of developing such a toolkit for all measures of criminal law influence*

without exception, because the rule of systematic dictates uniformity in their application; and the lack of unity of views among scientists in the interpretation of the socio-legal essence of various institutes of criminal law causes a wide dispersion of positions on various issues in law enforcement practice. Although it can be argued that the above-mentioned criteria at the time of preparation of this article are well enough worked out in terms of systematization of legislative material, legal technique of prescriptions (character and optimality of wording), and the degree of differentiated influence on the type and amount of punishment in strict correlation with the character and degree of public danger of certain objective circumstances, both related to the criminal act and the personality of the perpetrator; but whether they are applicable to other measures of criminal-legal character. The analysis of the problem from the stated perspective leads to the conclusion about a common basis, a fundamental prerequisite, on the basis of which all criminal-legal constructions are formed without exception — in the socio-legal aspect it is a noticeable reduction of public danger, and in the legal aspect — a set of legal provisions, appropriately enshrined in the law, acting as a basis for appropriate decisions and providing legal consequences of actions that demonstrate such a reduction or complete loss. At the same time, a number of criminal-legal measures as a key parameter contain other social and private-legal needs, for the satisfaction of which they are enshrined in the law — while the focus on public danger does not lose its significance in this case, but turns out to be only one of the important social characteristics. As a result of the present study, proposals on optimization of some provisions of the Criminal Code of the Russian Federation are formulated: the authors come to the conclusion about the expediency of exclusion of the sign of voluntaries in Article 75 of the Criminal Code of the Russian Federation, a different interpretation of the ratio and significance of various forms of manifestation of active repentance, changes in the wording of Articles 64 and 75 of the Criminal Code of the Russian Federation, legislative consolidation of broader formulations covering the whole variety of positive post-criminal behavior.

Keywords: *criminal punishment, criteria of individualization, legal character, criminal-legal impact, measure of criminal-legal impact, mitigation of punishment, exemption from punishment, exemption from criminal liability.*

Legislative differentiation and individualization, related to the sphere of law enforcement, are rightly fundamental in their importance in terms of the tasks defined for those or other institutions of the law, which represent the legal tools and objectives — not only of classical criminal liability, but also of all other measures of criminal law influence. The long evolution of criminal law has led to a number of difficult requirements, compliance with which is able to ensure

and affirm justice as the ultimate benchmark of any social regulator. The doctrine systematizing them, first, singled out in separate groups those that have to do with the personality of the perpetrator, separating them from another group — reflecting the features of the committed act; and the circumstances of the objective plan, — thus underlining the special character of the opposite, subjective. Of course, in general, their classification and subsequent systematization are much more detailed, but there is no need for a detailed study of this aspect of the problem within the context of this research.

However, the latter becomes highly relevant in connection with the ongoing discussion on measures of criminal-legal influence — as a clearly defined trend, one can note the recognition by many authors as such not only those that have traditionally been covered by the content of classical criminal responsibility, but also exemption from it, release from punishment, conditional conviction and other measures of criminal-legal character, and even voluntary renunciation and circumstances precluding the criminality of the action. The problem of improving these institutions continues to be among the important, priority ones for the legislator, for practice, and, accordingly, for science. Currently, there is an active discussion not only about the essence of the mentioned and some other criminal legal institutions and their optimal regulation, but also about the social purpose and tasks they are aimed at solving, respectively — and their effectiveness. It should be noted that even in the terminological aspect this issue has not found an acceptable solution, not to mention the essential aspect — the form, content, social and legal character and influence on the regulation of individual provisions or criminal legal institutions. Some authors consider not only acceptable, but also correct the use of the nomination "measures of criminal-legal character", combining all the above-mentioned, others, on the contrary, consider more appropriate the category of "impact", combining the entire named totality with the phrase combination "measures of criminal-legal impact"[1]. Taking into account that, according to the rules that guide the basic sphere for these relations — philosophy — the name must be directly connected with the content, we believe that reasoning about terms is impossible without expressing one's position about the essence; in this connection it should be underlined that the given legislative formulations do not coincide not only in scope and content, but also in meaning — the first one implies a purely legal plane (the character of these measures), the second one — both social, and criminal-legal, and penal-executive, and in some cases criminal-procedural.

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[1] *Chuchaev A. I., Firsova A. P.* Ugolovno-pravovoe vozdeystvie: ponyatie, obekt, mekhanizm, klassifikatsiya: monografiya [The criminal-legal influence: concept, object, mechanism, classification: a monograph]. — Moskva: Prospekt, 2015. P. 27.

The use of all the listed criminal-legal measures, since it is regulated in one way or another in the Criminal Code of the Russian Federation, should be conditioned by some legislative prescriptions and regulations — based on their social purpose, legal content, procedure, and grounds for their use. At the same time, it is obvious that both from the position of a common for all, optimally thought-out approach and on its basis of systematization of the grounds for the use of all criminal law measures, and from the point of view of formal logic, the grounds for application, criteria of individualization and provisions on differentiation and unification of all the mentioned measures should be uniformly regulated. The answer to this question can be obtained by the researcher, taking into account their character and studying the legislative material presented in the Criminal Code of the Russian Federation.

The fact that in the criminal legislation the purposes of punishment and criteria allowing its individualization are fixed, is traditional, habitual, which is associated with the recognition of it (punishment) as the only criminal-legal form of state influence practically at all stages of development of this sector of law. Whether criminal responsibility is exhausted only by punishment or it is possible to talk about the presence within its framework of other forms of influence that are not punishment — such a discussion, which was very active in the doctrine, ended with the adoption of the current Criminal Code of the Russian Federation — due to the fact that the legislator reduced the list of punishments and transferred some of them to the category of other measures of criminal-legal character; the latter, not being punishment, significantly expanded the scope of criminal responsibility. At the same time, it would be a mistake to claim that these measures were previously unknown to domestic criminal legislation — in the process of drafting the current code, they were only systematized differently, and in more detail.

Nevertheless, the literature underlines that the criteria in question, as well as the objectives and grounds, have generally always been regulated in relation to the penal system[1]. At the same time, it is also noted that the lack of guidelines deprives other measures of proper productivity (effectiveness)[2].

The criteria individualizing responsibility/punishment are enshrined in Articles 60, 61, 62, 63 of the Criminal Code of the Russian Federation and some others. Some of them relate to the committed act, others — characterize the

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[1] *Sundurov F. R.* Nakazanie i alternativnye mery v ugolovnom prave [Punishment and alternative measures in criminal law] / F. R. Sundurov. — Kazan: Kazanskiy gosudarstvennyy universitet im. V. I. Ulyanova-Lenina, 2005. P. 71.

[2] *Balafendiev A. M., Kalimullina Ya. L.* Osvobozhdenie ot ugolovnoy otvetstvennosti v svyazi s deyatelnym raskayaniem [Exemption from criminal liability in connection with effective remorse] / A. M. Balafendiev, Ya. L. Kalimullina. — Kazan: Izd-vo Kazan. un-ta, 2017. P. 52, 138.

personality of the perpetrator. Given that the legislator has generalized all the circumstances that in one way or another reflect the social danger (of the crime and the personality of the perpetrator), we can come to the conclusion about their commonality with the criteria on the basis of which the law differentiates responsibility — not only in the Articles of the Special Part of the Criminal Code of the Russian Federation, but also in the General Part — in the regulation of parole from punishment, exemption from criminal responsibility, etc., as well as in the articles of the Criminal Code of the Russian Federation.

In the view of the issues under consideration, those that underlie the mentioned differentiation and those that relate to the criminal act are of no interest, since they have already formed the basis of the relevant legislative decisions. Consequently, we can only talk about those criteria that relate to the personality and characterize its social danger (increase/decrease, loss) and, in some cases, its dynamics in general.

In connection with the obvious unity of the character of other measures of criminal-legal character with punishment, since all of them are closed on punishment as the main measure of criminal-legal character and serve as an auxiliary tool, are applied as a supplement to punishment and are oriented to achieve the same goals that are defined for punishment, there is no doubt about the above-mentioned criteria — all of them also act as individualizing means — exactly to the same extent as for punishment, remaining within the framework of criminal responsibility.

As for the measures of influence applied outside criminal responsibility, the situation is somewhat different. It is not necessary to speak about coercive measures of medical character due to their specificity, as well as about coercive measures of educational influence applied in the case of exemption from punishment, as well as in general about the institution of exemption from punishment — these provisions of the law do not imply going beyond the limits of criminal responsibility — only those that are deprived of punitive, repressive charge remain outside its framework[1]. These include exemption from criminal liability, voluntary renunciation and circumstances precluding the criminality of the act. The latter, due to their specificity, cannot be considered together with all the above-mentioned — they assume a positive social orientation and do not bear harm to society, entailing the application of criminal law measures; they are recognized by the legislator as non-criminal with all the similarity to the acts prohibited by the criminal law. The other two have their own peculiarities of regulation, act as measures of criminal-legal

[1] *Ramazanov E. R.* Utrata litsom obshchestvennoy opasnosti kak osnovanie osvobozhdeniya ot ugolovnoy otvetstvennosti: Dis. … kand. yurid. nauk [The loss of public danger by a person as a ground for exemption from criminal liability: dissertation of candidate of legal sciences]. — Kazan, 2022. Pp. 25–26.

influence, are deprived of the features inherent in criminal liability and possess by their nature an essential, significant in criminal-legal terms peculiarity — voluntary refusal to cease criminal actions and is not associated with a change (reduction) of public danger, and exemption from criminal liability contains different, sometimes opposite in its socio-legal essence provisions and should be considered in more detail and not as a criminal offense.

Voluntary refusal is also considered by some authors by its legal essence as a type of release from criminal responsibility[1]. Despite the small number of scientists justifying this position, it is this position, as it seems to us, most correctly reflects the character of voluntary refusal.

The characteristic features of the criminal law branch include its retrospective orientation and regulation of social relations exclusively in the negative aspect (legal consequences of a crime in the form of criminal liability), at the same time it contains norms that essentially consist in the call for the transfer of the legal relationship that arose in connection with the commission of a crime to another plane, the continuation of these relations between subjects positively. From these positions, the "block" of legal provisions regulating *exemption* from criminal liability in connection with active repentance (the other legal consequences of active repentance, for example, provided for in Articles 61, 62 or 64, are of a somewhat different plan), reveals a genetic unity with the essence of voluntary refusal — the same socio-legal charge is embedded in the legislative provisions on exemption from criminal liability in connection with active repentance and refusal to hold a person criminally liable in connection with the pre-crime offense.

Their unity lies in the social content reflected in both institutions[2]. The law contains a prescription not to bring a person to criminal responsibility in the case of voluntary refusal, takes criminal law as a regulator of social relations into the background (or rather, the negative component of the criminal law). Society dictates that social relations should be formed positively, building up, strengthening, and not depleting the potential inherent in them by their nature. Such relations are the guarantee of stability of the social organism as a whole. Accordingly, the interaction of subjects positively is a fundamentally important task, which is ensured by social norms (including legal ones); the embodiment of which are the two mentioned criminal-legal institutions — they are focused on the stimulation of positive behavior

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[1] *Kruglikov L. L., Vasilyevskiy A. V.* Differentsiatsiya otvetstvennosti v ugolovnom prave [The differentiation of responsibility in criminal law] / L. L. Kruglikov, A. V. Vasilyevskiy. — SPb.: Yuridicheskiy tsentr Press, 2003. P. 197; Ugolovnoe pravo Rossii. Obshchaya i Osobennaya chasti: uchebnik [The Criminal Law of Russia. General and Special Parts: textbook] / pod red. V. P. Revina. — M.: Yuridicheskaya literatura, 2001. P. 54.

[2] *Tarkhanov I. A.* Pooshchrenie pozitivnogo povedeniya v ugolovnom prave [Encouragement of positive behavior in criminal law]. Kazan: Izd-vo Kazanskogo un-ta, 2001. P. 119, p. 192.

(the only difference is in the stages: in one case — in the process of committing a crime, in the other — immediately after its commission).

There is often an opinion that voluntary refusal excludes criminal liability[1], although rarely any of these researchers believe that voluntary refusal is close to the circumstances precluding the criminality of an act, provided for in Chapter 8 of the Criminal Code of the Russian Federation. It is obvious that the institute of circumstances precluding criminal liability is not inherently related to voluntary refusal. All these circumstances are not recognized by law as a crime, i.e., they are varieties of lawful behavior. They are socially useful or at least neutral, initially non-criminal. When characterizing a voluntary refusal, the phrase "excludes criminal liability", as we understand, means only a pre-determined in the law refusal to bring a person to criminal responsibility, if he at any time during the commission of a crime voluntarily and finally refuses to commit it further. This is exactly what the law contains: in case of voluntary refusal a person, according to Part 2 of Article 31 of the Criminal Code of the Russian Federation, is not criminally liable, except in cases when the committed actions actually contain a different corpus delicti (Part 3 of Article 31 of the Criminal Code of the Russian Federation).

Some authors still write that the basis for *not bringing* to criminal responsibility in the case of voluntary refusal is the absence of corpus delicti in the behavior of a person who voluntarily refused to complete (commit) a crime[2]. Objecting, let us pay attention — in all cases of incomplete criminal activity there are no *all* signs of corpus delicti. And in the case of preparation for a crime, the person does not even begin to commit a crime — in his actions there are no signs of corpus delicti at all. Nevertheless, if there is an unfinished crime, the person who committed it is subject to criminal liability. Consideration of the issue of inconsistency of the provisions of Chapter 6 of the Criminal Code of the Russian Federation (when there are no all signs of corpus delicti of a crime) with the prescriptions of Article 8, which establishes a single and only basis for bringing to criminal responsibility — the commission of an act containing *all* signs of corpus delicti of a crime, is beyond the scope of this paper. But voluntary refusal, and there is no doubt about it, is a kind of incomplete crime, a person in case of voluntary refusal is not subject to liability at all not because what he has committed is not a crime. Therefore, it follows that

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[1] *See, e.g.:* Ugolovnoe pravo Rossii. Chasti Obshchaya i Osobennaya: 8-e izd., pererab. i dop. [The Criminal Law of Russia. Parts General and Particular: 8th edition, revision and additions] / Pod red. A.I. Raroga. — M.: Prospekt, 2016. P. 248; Ugolovnoe pravo Rossiyskoy Federatsii. Obshchaya chast. Konspekt lektsiy [The Criminal Law of Russia. Parts General and Particular: 8th edition, revision and additions] / Pod red. L.V. Inogamovoy-Khegay. — M.: INFRA-M, 2002. P. 92.

[2] *See:* Rossiyskoe ugolovnoe pravo. Obshchaya chast [Russian criminal law. General part] / Pod red. V.N. Kudryavtseva, A.V. Naumova. — M.: Yurist, 1997. 202.

the institution of exemption from criminal responsibility in general is characterized by norms-incentives designed to stimulate the transfer of behavioral guidelines and socio-psychological attitudes of persons who find themselves in the field of criminal-legal influence in a positive, useful for society direction. Consequently, no matter what kind of release is considered, such a component can be seen in the essence of each of them.

Meanwhile, public danger — its loss/significant reduction — as a legal feature is enshrined in Article 75 of the Criminal Code of the Russian Federation, which precedes all types of release; in this case, the criteria of individualization, it would seem, should be taken into account, they allow establishing a change in the public danger of the perpetrator. However, the indication of its loss, as follows from the literal interpretation of this norm, is not enshrined as a feature of the "corpus delicti of release", i.e., one of the conditions, but as a ground for release. It should be taken into account that it is not in formal-legal terms, but in material (socio-legal) terms.

However, practice follows a different way — court rulings on exemption from criminal liability often contain indications that the perpetrator has ceased to be socially dangerous, while rulings denying exemption almost always contain references to the social danger (both of the deed and the person who committed the crime). This approach was formed as a result of the official position of the Plenum of the Supreme Court of the Russian Federation, indicating in Resolution No. 19 of 27.06.2013 (as amended on 29.11.2016) that public danger refers to the circumstances to be established. The Plenum, while elaborating a legal position, left without attention the fact that public danger is already taken into account by the legislator in the regulation of the institution in question (in this case — the issue of its loss or significant reduction), which confirms the specificity of the disposition of the specified norm; moreover, it should be taken into account that the signs of criminal-legal constructions cannot be amorphous, abstract, they have a concrete character and are properly clearly expressed, the same circumstance is a category of sociology and for the law is excessively evaluative.

Moreover, the socio-legal character of the institution in question does not imply the impact of the classical plan — dispositive in character, the norms contain above all other incentives or threats a *call* to change the format of relations with the state with appropriate legal consequences, which implies the possibility to refuse and demand the continuation of the legal relationship in the usual manner — the completion of the preliminary investigation and the transfer of the case to court with the intention to achieve release on rehabilitative grounds (acquittal on acquittal). Release in connection with reconciliation with the victim is designed primarily to solve the problem of early restoration of the harm caused by the crime and positive relations in the collective, traditional — within a settlement, where

many generations have formed a common history, etc.[1], i.e., for the proper release on rehabilitative grounds. In other words, for the proper safeguarding of private interests. Amnesties are often used to solve very specific social and state problems — for the purpose of national reconciliation, to relieve overloaded with tension places of imprisonment, as well as public-incentive, associated with anniversaries, holidays, and so on[2]. Actually, the same regularities are observed in terms of satisfaction of public interests — for example, exemption from criminal liability on the special ground provided for in Article 275 of the Criminal Code of the Russian Federation is not associated with the reduction of public danger of the perpetrator (or loss), it is designed to prevent further damage to the defense capability of the state. There are many such examples, but the above examples, relating to different spheres of legal relations, demonstrate that narrow in orientation imperative prescriptions of the legislator, regulating issues of responsibility, are focused on public danger (its change, dynamics), while other measures of influence are designed for a wider range of social relations and fulfill different social tasks. This means that with regard to them, science has to develop, and the legislator — to fix in the Criminal Code of the Russian Federation a system of objectives, taking into account their social purpose, grounds for application and peculiarities of regulation on the basis of a correct interpretation of their legal character and proper, deeply thought-out systematization in the law.

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THE PROBLEM OF REGULATION OF DIGITAL INHERITANCE IN CIVIL LAW

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Abstract. *The article aims to consider the main problems of inheritance of objects related to digital rights within the framework of the legislation of the Russian Federation, caused by the changes affecting all spheres of society in the process of digitalization and informatization of the modern world, which has been taking place over the past decades. In a situation where there are no clear legal norms regulating the inheritance of digital assets, problems arise with access to personal data of the deceased, management of electronic communications and preservation of the very digital heritage of a particular person. This not only impacts the privacy of citizens, but also has important implications for business and academic research, especially where the digital inheritance includes scientific data. The development of clear and steadily working legal mechanisms for the inheritance of digital rights is a crucial challenge for modern societies seeking to ensure respect for each individual's personal space and digital assets in the face of constant digital transformation. The absence of a legally regulated process of transferring digital rights from one person — the testator — to another person — the heir — creates contradictions and causes certain problems in the law, which can only be eliminated by introducing a legally regulated procedure for this process.*

Keywords: *inheritance, digital rights, property, legislation, civil law.*

The issues arising in the framework of inheritance still play a key role due to the fact that everyone is inevitably faced with the inheritance procedure. The process of digitalization, which has been taking place in society for several decades, is affecting more and more spheres of public life, including the legislative sphere. In the context of this phenomenon, it is worth mentioning the emergence of a separate institute of civil law — the institute of digital rights. Relatively recently, the Civil Code of the Russian Federation has introduced Article 141.1. "Digital Rights".

In accordance with the legislative definition of the term, digital rights are obligatory and other rights named as such in the law, the content, and conditions for the exercise of which are determined in accordance with the rules of the information system that meets the characteristics established by law[1]. Considering this term and determining some peculiarities of its application, it is worth disclosing the meaning of this norm. Digital rights are the rights of a person to access, use and create digital works, as well as access and use of electronic devices, communication networks, in particular the Internet, including accounts on social networks. In essence, these are extended universal human rights in relation to the needs of a society based on the informatization of life. In this context, the problem of regulating the grounds and procedure for inheriting digital rights in Russia is of particular importance. Almost every person has an account not only on social networks, but also on a particular digital device. But what consequences await an account in social networks or on a device of a person who has died?

Some social networks, including the social network VKontakte, allow an account to be given the status of "Profile of a deceased person", after providing a death certificate of the account owner. Social network Facebook has pushed the boundaries by allowing a person, while still alive, to appoint an "account keeper" who will manage the profile owner's page after death. Accounts on digital devices also have the feature of "inheritance". So, for example, Apple software allows you to give permission to a particular person to his Apple ID in the event of death. In a Google account, there is a "just in case" section, where the account owner will no longer be able to take any action with the profile after his death.

In our opinion, it is necessary to point out that in Russia there is no legislative regulation of the inheritance of digital rights, we believe that this is a huge omission on the part of the standard-setting bodies. Pointing to the presence of social networks, media, and Internet space in human life almost constantly, it seems reasonable to legislate the grounds and procedure of inheritance of digital rights specifically within the framework of the use of accounts in social networks.

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[1] *Matyukhin S. V.* GK RF. Grazhdanskiy kodeks Chasti 1, 2, 3 i 4 po sost. na 05.11.21 s tablitsey izmeneniy i s putevoditelem po sudebnoy praktike [Civil Code of the Russian Federation. Civil Code Parts 1, 2, 3 and 4 as of 05.11.21 with a table of amendments and a guide to court practice] / *Matyukhin S. V., Romanovskiy V. A.* — Iz-vo: Prospekt — 2023. — 1347 p.

Inheritance is the transfer of property and non-property rights from a deceased person to his heirs. Modern Russian inheritance law is based on the principles of universal legal succession — the transfer to the heir of the entire inheritance mass in an unchanged form as a whole and at the same moment. But what to do in the situation if the right to a digital object of civil law is not needed by the heir, or, obtaining it in the framework of inheritance is expensive for the person?[1]

In this context, certain adjustments should be made in order to fully understand the essence of this problem. In our opinion, the possibility of transferring rights by law should be absent, individuals should themselves take care of obtaining digital rights by heirs in case of their death. The reasons are that some people may simply be unwilling to transfer their social media account to their relatives in order to keep their online activities confidential. According to our opinion, by transferring their digital rights to a social media account, a person should be assured of non-disclosure of further personal information after their death, therefore, it seems reasonable to allow digital rights to be inherited only in the form of a person's will.

However, we believe that the transfer of digital rights after the death of a person to his heirs should be legislated, but it should be narrowed to certain limits, specifying: to limit the possibility of the method of transfer of rights.

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THE ALCOHOLISM OF JUVENILES AND YOUNG PEOPLE AS A DEVIANTOLOGICAL PROBLEM: THEORY AND BASIC CONCEPTS

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Abstract. *The problem of juvenile alcoholism in Russia has been relevant for decades. This issue has been dealt with by a number of scientists, conducting empirical studies. The article considers alcoholism from the point of view of deviant behavior; several definitions of the above definition are given, and the main deviantological concepts are given. The authors consider the historical aspect of the problem of alcoholism in Russia. The history of this addiction has deep roots: it originated in ancient Russia. The attitude to this kind of addiction was both negative and positive. Initially, scientists tried to identify the causes of alcohol addiction. The article states that all decisions of the highest authorities on the issue of counteracting alcoholism had a legislative basis. It is noted that the history of alcohol consumption in Russia has its socio-political and socio-cultural specifics. In order to clearly show the rootedness of the problem of alcoholism, the data of epidemiological studies were cited, which indicate the presence of alcoholism among the young population of the country.*

Keywords: *deviance, behavior, alcoholism, juveniles, young people.*

At the beginning, let us give a definition of deviant behavior in general. A number of scientists, especially: A. Yu. Egorov[1], E. V. Zmanovskaya[2], G. I. Makartycheva[3], explain to us that deviant, or deviating, behavior is a stable behavior of a person, deviating from the most important social norms, causing real damage to society or the individual himself, as well as accompanied by his social disadaptation. Also, in the literature the following definition of this kind of behavior is often found: deviant (from Latin deviation — deviation) behavior in modern sociology means, on the one hand, a deed, actions of a person, not corresponding to officially established or actually formed in a given society norms or standards, and on the other hand — a social phenomenon expressed in mass forms of human activity, not corresponding to officially established or actually formed in a given society norms or standards[4].

Ya. I. Gilinsky gave the following definition of deviant behavior: "Deviant behavior is a social phenomenon expressed in relatively massive, statistically stable forms (types) of human activity that do not conform to officially established or actually established in a given society norms and expectations"[5].

Systematic use of alcohol causes addiction, dependence, which spills over into a toxic disease, which is defined by the results of medical diagnosis as alcoholism. The consequences of this disease are mental and physiological disorders leading to disability and, in special cases, to death. People of all ages are susceptible to alcohol dependence. The most severe manifestation of alcoholism, detrimentally affecting the internal organs of a person and mental health, is "teenage alcoholism". Alcoholism is not only a disease, but also a form of negative deviant, self-destructive behavior — a complex social problem, as it has a statistically significant character and far-reaching social (isolation, degradation, disintegration of family ties, loss of employment) and legal (crimes while intoxicated, traffic accidents, traumatism) consequences.

At all times alcoholism has been and remains a serious problem of society and the subject of not only medical, but also socio-psychological, legal and deviantological research.

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[5] *Gilinskiy Ya. I., Afanasyev V. S.* Sotsiologiya deviantnogo povedeniya. Uchebnoe posobie [Sociology of deviant behavior. Textbook]. — SPb., 1993. — 167 p.

Let us consider the historical aspect of this complex problem. Speaking about the history of drunkenness in Russia, it should be pointed out that the cult of drinking appeared in ancient Russia. Such drinks were not supposed to be consumed on weekdays, but only on pagan holidays. In Christianity, the use of alcoholic beverages was already commonplace, people believed that wine made life brighter and more joyful, it is also worth pointing out that alcohol influenced the strengthening of religious feelings, which was used in the sacred service. Alcoholic drinks were prepared from various plants — it was grapes, apples; stronger drinks were made from grain. It is known that there were such local customs as making wine from milk, most often from mare's milk.

Earlier, before the 19th century, there was a negative attitude towards alcohol abuse, in particular, some religions criticized and condemned excessive drinking, but they did not regard it as an illness. Already at the beginning of the 19th century, with the development of medicine and the emergence of the possibility to study the quality of life and causes of mortality of the population, the attention of doctors was attracted by excessive use of alcohol: they began to regard it as a pathology, that is, as a fact of deviation from the norm. So, in 1804, a foreign scientist, T. Trotter[1] was one of the first to give a scientifically based definition of this illness. Following him in 1819, B. Kramer tried to do it, sharpening his gaze on the attraction to alcohol. In the same period, M. Huss in a study entitled "Chronic alcoholic illness" proposed the term "chronic alcoholism" and began to consider it as an illness that is accompanied by changes in the nervous system[2].

As for analyzing the causes of alcohol addiction, the scientist I. G. Pryzhkov was the first to try to identify them. In his essay "History of Russian taverns"[3] he collected a lot of historical material. The author argued that alcoholism spread because of the decrees of Ivan IV Grozny, which prohibited the manufacture of alcohol at home and introduced the concept of "king's taverns", which replenished the treasury, but in them, you could only drink alcohol without snacks[4]. Due to the bans imposed reduced the monetary allowance of the country. The main dawn of alcoholism came during the reign of Peter the First, he himself honored Bacchus and preferred strong drinks. As a result, the cult of drinking, thanks to decrees and free distribution

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[1] *Kannabikh Yu. V.* Istoriya psikhiatrii [The history of psychiatry]. — M.: AST, 2002. — 559 p.

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(one cup a day was given to builders, loaders, sailors), was further spread. The Emperor also introduced the possibility to engage in winemaking for the upper classes, maintaining the monopoly and providing profit to the state. This allowed to accelerate reforms in the country. But despite the decrees and orders on the free issue of alcohol, Peter the First attempted to regulate the issue of drinking: in fact, he encouraged and punished at the same time for immoderate drinking. But already during the reign of Alexander the Second, drunkenness in Russia became a mass phenomenon and a big problem[1]. Alcohol consumption per capita was 4.5 liters per year. In 1885, resolutions were adopted on the possibility of closing wine shops in rural settlements[2].

During the reign of Alexander the Third, the monopoly on vodka was restored. Alcohol began to be sold in state-owned shops for takeaway. This formed a new type of alcohol consumption — street drinking[3].

After the revolution in 1917, due to the dawn of moonshining and uncontrollable drunkenness of all segments of the population, there was a need to eradicate the possibility of making alcohol at home, but it was impossible to do this, because the people had a habit of drinking strong alcoholic beverages on holidays and weekdays. At the same time, the local authorities started anti-alcohol propaganda, drunkards were expelled from the Komsomol. Working youth also actively fought against drunkenness. But the lack of funds in the budget due to the loss of profit from the sale of alcohol in 1930 prompted the authorities to stop the fight against alcoholism. Public movements of alcohol opponents were banned, scientific initiatives of the struggle for sobriety were destroyed, societies against alcoholism were closed down, and anti-alcohol journals were discontinued[4].

Already during the reign of I. V. Stalin there was no excessive consumption of alcohol, only 1.9 liters per person[5]. During the war there was a decrease in alcohol

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[1] Oruzhie genotsida: samoubiystvo lyudey i ego mekhanizmy. Kniga 2-aya red. [The weapons of genocide: human suicide and its mechanisms. Book 2 ed.] — M.: Izd-vo "NOU Akademiya Upravleniya", 2008. — 136 p.

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consumption. However, after the war it increased. In 1950, the amount of alcohol drunk per capita was 1.58 liters, and in 1952 it was already 2 liters and further on upwards. In 1958, bans on the sale of bottled alcohol were introduced, but this only worsened the situation.

In 1980, with the connivance of M. S. Gorbachev, the USSR adopted prohibitionist anti-alcohol legislation — the "dry law". Vineyards were cut down en masse, alcohol production was closed, which could not but lead to moonshining and illegal production, which not always gave a low-quality product, which in turn greatly affected the health of the population. At first, the "dry law" led to a decrease in mortality and an increase in life expectancy, but low-quality alcohol often led to death. Public dissatisfaction matured in a society with established "drinking traditions", and budget revenues from the sale of alcoholic beverages decreased significantly. As a result, the reform was stopped in 1988.

In the period of perestroika and the subsequent "social anomie" — loss of value orientations and norms, according to E. Durkheim, many people lost their jobs, inflation devalued savings, rampant banditry and fear of tomorrow pushed people to leave, or even "escape from reality" with the help of alcohol. Under the conditions of anomie, various forms of retreatism developed rapidly, according to R. Merton. Among them: suicide, drug addiction, and, of course, alcoholism. Due to the high cost of alcoholic beverages, people began to use various chemical and psychoactive substances more often. Lack of control and participation of parents in the life of their children led to active vagrancy, the young generation was actively involved and forced to participate in various OCGs, in which one of the levers of control was the introduction of the fashion of drinking alcohol. As a consequence, teenagers began to use alcohol and psychotropic substances more actively.

As we can see, the history of alcohol consumption in Russia has its own socio-political and socio-cultural specifics. Later in the post-perestroika period, alcohol became even more entrenched in society. That is why, by the end of the XX century and the beginning of the XXI century, deviancy based on alcohol addiction acquired critical proportions. Data from epidemiological studies indicate that in 1990 6 liters were consumed, in 1992 — 14 liters, in 1994 — 18 liters, and in 2006 already more than 25 liters[1]. Starting from 1984-1990, the population aged 30 to 35 years suffered from alcohol dependence, while in 2006 already 20–25 year olds suffered from this disease. As we can see, there is a rejuvenation of alcoholism. This leads to early legal nihilism, committing crimes, sometimes with a high degree of public danger.

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[1] Lektsii po antinarkoticheskomu vospitaniyu [Anti-drug education lectures] / pod red prof. A. N. Mayurova. — M., 2007. 276 p.

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THE LEGAL COVERAGE OF BUSINESS RELATIONS IN THE MARKET OF HOUSING AND COMMUNAL SERVICES

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Abstract. *The article is devoted to the legal coverage of business relations in the market for housing and communal services, which are characterized simultaneously by their complex and socially significant nature. It is proposed to define business relations in the market for housing and communal services as regulated by the norms of the law as complex property and organizational relations that develop in relation to the supply of housing and communal resources and the provision of housing and communal services. Business relations in the market for housing and communal services should be qualified as relatives. The objective criterion of cost estimation for housing and communal services allows us to talk about the property character of business relations in the market. It seems that the division of relations into basic and derivative is applicable to the sphere of housing and communal services. The peculiarity of a communal resource in entrepreneurial relations is the possibility of consumption. Business activity in the market of housing and communal services assumes the reimbursable character of the majority of relations, but at the same time, based on the objectives of the activities of individual subjects, the gratuitous character is also possible.*

Keywords: *business activity, housing and communal services market, legal provision, mechanism of legal regulation, business relations.*

Business relations are the most important category and element of the mechanism of legal regulation of business activities in the market for housing and communal services. In science, the problem of these relations in the sphere of housing and communal services was studied from the position of maintenance of

residential premises and protection of citizens' rights, without taking into account the specifics of business activity in this area. The question of the legal character of such relations was considered exclusively in correlation with housing relations. Despite the multidimensional study of certain types of resource supply relations (water supply, gas supply, electricity supply, etc.), these relations have not been considered by anyone as complex phenomena.

The need to study the specifics of business relations in the market of housing and communal services is due to the need for a comprehensive approach to the considered sphere in the context of a significant complication of interrelations between the subjects of business activities in the market of housing and communal services.

Business relations in the market for housing and communal services are proposed to be defined and regulated by the norms of the law as complex property and organizational relations arising from the supply of housing and communal resources and the provision of housing and communal services.

One of the features of this group of business relationships that should be emphasized is the multiplicity of their objects. When analyzing business relations in the market for housing and communal services, we inevitably face the problem of their species diversity, especially since the proposed definition contains an indication of their complex character.

Proprietary legal relations are realized through the right of ownership and other proprietary rights to the objects of the housing and communal infrastructure systems, as well as the communal resource itself, which has specific properties as an object of civil law. The obligatory-legal relations in the market for housing and communal services include civil contracts and various types of legal liability provided by the legislation.

One of the most widespread in literature is the division of relations into absolute and relative. In absolute relations, only one person is known — the bearer of subjective right. All other subjects are compulsory. In relative relations, all participants are precisely defined: both persons authorized and persons obliged. Business relations in the market for housing and communal services should be qualified as relatives.

The division of relations into property and non-property ones is of certain interest within the context of this article. Property relations are of particular interest because, in our opinion, they mediate, to a large extent, social relations arising in the sphere of housing and communal services. Although the legal literature expressed quite the opposite opinion. Thus, E. V. Passek qualified the obligations to provide services as "non-property relations"[1]. In law, for the

[1] *Passek E. V.* Neimushchestvennyy interes v obyazatelstve [Non-proprietary interest in the obligation]. — Yuryev. — 1893. — Pp. 24–25.

differentiation of property and non-property relations, it is proposed to use an objective criterion, the category of "interest." This position seems to be true only partially. Indeed, the category of "interest" acts as an objective criterion for distinguishing relations, but the assessment of the positive result of housing and communal services is based on subjective criteria. Each person's perception of heat and cold is different: for one person, the offered heating is perceived as "hot", for another, "cool". Taking this into account, we could talk about the non-property character of relationships in the market for housing and communal services. In view of the legal character of housing and communal services as obligatory objects, such a criterion is not quite acceptable. Subjective assessment of the subject of business relations in the market for housing and communal services or the end consumer of the positive effect is not determinative. To overcome the differences in interests, the subjects have to refer to an objective criterion, the cost assessment of housing and communal services, which in turn allows us to talk about the property character of business relations in the market for housing and communal services. In addition, the qualitative characteristics are established not on the basis of the individualized needs or interests of persons served at their request but on the basis of objective criteria: average indicators, requirements of regulations, and legislation. The Rules[1] for the supply of communal services to owners and users of premises in apartment buildings and residential buildings define the norm of consumption of a communal service as a quantitative indicator of the volume of consumption of a communal resource, approved in accordance with the established procedure by the state authorities of the constituent entities of the Russian Federation, and used to calculate the amount of payment for a communal service in the absence of metering devices and in other cases.

The requirements for the quality of communal services are regulated by the Housing and Civil Codes of the Russian Federation, as well as special laws and other regulatory legal acts. In addition, public communal services are subject to the Law on Consumer Rights Protection. A significant role in the issue of quality and objective assessment of housing and communal services is assigned to the

[1] Postanovlenie Pravitelstva RF ot 06.05.2011 No. 354 (red. ot 28.04.2022) "O predostavlenii kommunalnykh uslug sobstvennikam i polzovatelyam pomeshcheniy v mnogokvartirnykh domakh i zhilykh domov" (vmeste s "Pravilami predostavleniya kommunalnykh uslug sobstvennikam i polzovatelyam pomeshcheniy v mnogokvartirnykh domakh i zhilykh domov") [Resolution of the Government of the Russian Federation of 06.05.2011 No. 354 (ed. of 28.04.2022) "On provision of communal services to owners and users of premises in apartment buildings and residential buildings" (together with "Rules of provision of communal services to owners and users of premises in apartment buildings and residential buildings")] // Sobranie zakonodatelstva RF [Collection of Legislation of the Russian Federation]. — 2011. — No. 22. — st. 3168.

legislation on technical regulation[1]. The need to comply with the requirements of the legislation on technical regulation is confirmed by judicial and administrative practice. The Supreme Court of the Russian Federation, in its Decision No. 309-ES21-2605[2], directly points out the necessity of taking all necessary measures by a business entity in the market of housing and communal services to provide consumers with communal services of proper quality in accordance with the requirements of the legislation.

Depending on the type of housing and communal resource, the transfer of which takes place, it is possible to distinguish another basis for the classification of relations in the market of housing and communal services. Thus, there are: relations on energy supply; relations on water supply and water disposal; relations on heat supply; relations on gas supply; relations on maintenance of common property and others. The expediency of the proposed division is due to the peculiarities of legal regulation of each type of relations, the specificity of housing and communal resource, the transfer of which is carried out within the framework of a particular type of resource supply or the specificity of the activity required for the provision of housing and communal services.

Classification of business relations in the market of housing and communal services and on other grounds is possible, which makes it possible to form a more complete idea of the legal character of these relations.

In civilities, the heterogeneity of civil-law relations in terms of their importance was pointed out by B. I. Puginskiy[3] when he singled out the so-called derivative obligations within the context of a composite one. It seems that the division of relations into basic and derivative ones is also applicable to the sphere of housing and communal services. The main relationships are those mediating the provision of housing and communal services and regulated by civil and housing legislation on business activities in housing and communal services. Derivative relations should include those that are of legal interest only if they cause the emergence

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[1] Federalnyy zakon ot 30.12.2009 No. 384-FZ (s izm. i dop.) "Tekhnicheskiy reglament o bezopasnosti zdaniy i sooruzheniy" [Federal Law of 30.12.2009 No. 384-FZ (with amendments and additions) "Technical Regulations on the Safety of Buildings and Structures"] // Sobranie zakonodatelstva RF [Collection of Legislation of the Russian Federation]. — 2010. — No. 1. — st. 5.

[2] Opredelenie Verkhovnogo Suda RF ot 01.04.2021 No. 309-ES21-2605 po delu № A60-7466/2020 [Decision of the Supreme Court of the Russian Federation of 01.04.2021 No. 309-ES21-2605 in case No. A60-7466/2020] // Dokument opublikovan ne byl (SPS "KonsultantPlyus") [The document was not published (reference legal system "ConsultantPlus")].

[3] *Puginskiy B. I.* Teoriya i praktika dogovornogo regulirovaniya: monografiya [Theory and practice of contractual regulation: monograph]. — M.: Zertsalo-M, 2017. — Pp. 162–163; *Puginskiy B. I.* Sostavnye obyazatelstva v grazhdanskom prave [Constituent obligations in Civil Law] // Vestnik Moskovskogo universiteta [Herald of the Moscow University]. — Ser. 11. — Pravo. — 2003. — No. 6. — Pp. 30–36.

or existence of the main relations. For example, derivative relations may arise between service organizations (Management Company, House of Association) and specialized organizations (e.g., contractor for current roofing repair). Such relations are conditioned by the necessity of the maintenance of the common property of an apartment building and the fulfillment of the obligation on maintenance and repair of such property to the end users and, as a consequence, are social in character.

The basis for the classification of relations in the market for housing and communal services is the type of object to which the rights are transferred when the subjects carry out their activities. The objects of rights that form the basis of classification can be communal resources and housing services. In this regard, the relations can be divided into two groups: relations in the context of which there is a transfer of the right to a communal resource (supply of resource) and relations on the provision of housing and related services. The specified classification assumes value for research on the efficiency of the mechanism of legal regulation in the market for housing and communal services, and the specified types of business relations in practice are difficult to separate. Thus, for example, relations on maintenance of common property are impossible without relations on electricity or water supply (lighting of the entrance or cleaning of common property of an apartment building, respectively). At the same time, depending on the situation, the way of apartment building management, the list of rendered services, and the system of interrelations between the subjects may differ.

According to the subject structure and established links, relations in the market for housing and communal services can be divided into three groups:

1) relations arising between business entities and consumers, in cases of direct interaction (resource-supplying, managing, and contracting organizations and consumers);

2) relations arising within the context of communal resource supply (resource-supplying organization and managing organization);

3) relations arising between managing organizations and contracting organizations for the purpose of maintaining housing stock (managing organization and contracting organization).

The complex character of business relations in the market for housing and communal services is not a reason to exclude them from the system of civil relations. The Civil Code of the Russian Federation provides for a number of complex relationships. Moreover, the regulation of individual relations included in the structure of the complex is carried out mainly at the level of special laws or by-laws. Thus, relations on capital repair are regulated by the Civil Code of the Russian Federation, the Urban Development Code of the Russian Federation, the Housing Code of the Russian Federation, special Resolutions of the Government of

the Russian Federation, and Orders of the Ministry of Construction of the Russian Federation. This example emphasizes the complex character of business relations in the market for housing and communal services. Thus, relations in the market for housing and communal services in this part are not an exception. The study of scientific works, normative acts, and law enforcement practice gives us reason to assert that not only individuals (consumers), as it was traditionally considered in the theory of Soviet Civil Law, but also legal entities (Management Company in the interests of the consumer) act on behalf of the serviced person.

The content, i.e., the rights and obligations of its subjects, is singled out as one of the elements of a relationship. As Yu. K. Tolstoy mentions that, recognizing subjective rights and legal obligations as the content of relations, it is necessary to determine the content of the rights and obligations themselves[1]. Based on the meaning of Paragraph 1 of Article 539 of the Civil Code of the Russian Federation, which defines the subject of the obligation, the energy supplying organization, in particular, and any other supplying organization, undertake to supply energy (resource) to the consumer through the connected network. That is, the subject of the contract is not only the actual actions of the supplying organization, but also the result — uninterrupted supply (for example, at any time the lamp is turned on, the light comes on).

The complex character of the norms governing resource supply allows us to identify the following responsibilities of the resource-supplying organization: to provide objects with resources in the agreed volumes and of appropriate quality; to maintain the resource supply regime (head, volume, voltage, pressure, etc.); and other interrelated responsibilities.

It seems that the content of relations of resource supply, by virtue of the legal character of any communal resource, cannot be defined exclusively through the transfer of ownership (transfer of rights of possession, use, and disposal). The admissibility of the application of the category "property" to certain objects of civil rights was disputed by G. F. Shershenevich. He, in particular, wrote: "The procedure for the emergence, transfer, and termination of proprietary rights is designed precisely for their material content, and therefore the extension of these rules to a completely different area may create an undesirable confusion of concepts in theory and practice"[2]. When G. F. Shershenevich considers the issue of property rights, his conclusion is applicable to such an object of civil rights as communal resources, at least to those types that we have previously defined as other property.

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[1] *Tolstoy Yu. K.* K teorii otnosheniy [Toward a theory of relations]. — M. — 1959. — P. 35.

[2] *Shershenevich G. F.* Uchebnik russkogo grazhdanskogo prava [Textbook of Russian Civil Law]. — M., 1995. — Pp. 254–255.

In business relations, communal resources are distinguished from traditional goods by the possibility of consumption. The communal resources supplied through the connected network can be measured in various absolute values (for example, the volume of water, the amount of heat energy, etc.). The absence of consumption on a systematic basis will entail a lack of interest on the part of business entities and the actual inexpediency of the relations themselves. Taking into account the social and end-consumer-oriented nature of the relationship, the systematic nature of the relationship should be understood as the supply of a communal resource for a certain settlement period, which is usually one calendar month. The lack of materially tangible form and substance does not allow us to talk about the real-law construction of possession and use of a communal resource.

The consumption of housing and communal services is carried out taking into account public interests, which does not contradict the general principles of civil law. Consumers have the right to use resources at their discretion in the amount necessary for normal life activities. At the same time, it is allowed to restrict their rights based on the interests of the state and society, for example, by establishing consumption schedules. The need to combine interests in the use of communal resources and the provision of housing services is due to the character of the origin of resources and their limitations. In this aspect, attention should be paid to the principle of reasonableness. This principle is characterized by the presence in the legislation of norms that allow combining simultaneously both the rights of persons served (consumers) and the interests of business entities in the provision of housing and communal services. In addition, the principle of reasonableness, in addition to the social character of the housing and communal services themselves, also implies public interest — the minimization of damage to the environment. Taking into account the special legal character of housing and communal services, it is not allowed to use civil rights on the part of business entities in the market for housing and communal services in order to violate competition or abuse a dominant position. The law on energy saving and energy efficiency improvement is aimed at the rational and careful use of communal resources[1]. It seems that the consumption of communal resources and the provision of communal services, taking into account the requirements of reasonableness, are able to ensure an increase in the effectiveness of the mechanism of legal regulation in the market for housing and communal services and the economy as a whole.

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[1] Federalnyy zakon ot 23.11.2009 No. 261-FZ (red. ot 11.06.2021) "Ob energosberezhenii i o povyshenii energeticheskoy effektivnosti i o vnesenii izmeneniy v otdelnye zakonodatelnye akty Rossiyskoy Federatsii" [Federal Law of 23.11.2009 No. 261-FZ (ed. of 11.06.2021) "On energy saving and on increasing energy efficiency and on amending certain legislative acts of the Russian Federation"] // Sobranie zakonodatelstva RF [Collection of Legislation of the Russian Federation]. — 2009. — No. 48. — st. 5711.

The business activity in the market for housing and communal services assumes the reimbursable character of the majority of relationships. As K. M. Arslanov mentions, differentiation in the regulation of contractual relations is possible in the presence or absence of gratuitousness[1]. The overwhelming majority of relations between subjects in the market for housing and communal services are mediated by compensatory contracts. But at the same time, based on the objectives of the activities of individual subjects, gratuitousness is also possible. So, for example, the purpose of the Housing Association is to ensure favorable and safe living conditions for citizens through proper maintenance of the common property in the apartment building and the provision of communal services, the solution of issues of use of common property, and other issues defined by housing legislation. Ensuring the above goal allows for gratuitous relations within the Housing Association or between the Housing Association and its members.

Therefore, it is proposed to define business relations in the market for housing and communal services as regulated by the norms of law as complex property and organizational relations formed in relation to the supply of housing and communal resources and the provision of housing and communal services. One of the peculiarities of this group of business relationships should be emphasized: the multiplicity of their objects. Business relations in the market for housing and communal services should be qualified as relatives.

The objective criterion, the value assessment of housing and communal services, allows us to talk about the property nature of business relations in the market for housing and communal services.

Depending on the type of housing and communal resource, the transfer of which takes place, we can identify another basis for the classification of relations in the market of housing and communal services. It seems that the division of relations into basic and derivative is applicable to the sphere of housing and communal services. The peculiarity of a communal resource in business relations, unlike traditional goods, is the possibility of consumption. The absence of materially tangible form and substance does not allow us to talk about the real-legal structure of possession and use of a communal resource.

The business activity in the market of housing and communal services assumes a reimbursable nature for the majority of relations, but at the same time, based on the objectives of the activities of individual subjects, a gratuitous character is also possible.

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[1] *Arslanov K. M.* Vliyanie momenta bezvozmezdnosti v grazhdanskom prave: k 100-letiyu so dnya zashchity doktorskoy dissertatsii A. A. Simolinym [The Impact of the moment of gratuitousness in Civil Law: to the 100th anniversary of the defense of the doctoral dissertation by A. A. Simolin] // Uchenye zapiski Kazanskogo universiteta. Seriya "Gumanitarnye nauki" [Scientific Writings of Kazan University. Series "Humanitarian Sciences"]. — 2016. — Tom 158. — Kniga 2. — P. 314.

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Passek E. V. Neimushchestvennyy interes v obyazatelstve [Non-proprietary interest in the obligation]. — Yuryev. — 1893. — 217 p. (In Russian)

Puginskiy B. I. Sostavnye obyazatelstva v grazhdanskom prave [Constituent obligations in Civil Law] // Vestnik Moskovskogo universiteta [Herald of the Moscow University]. — Ser. 11. — Pravo. — 2003. — No. 6. — Pp. 10–46. (In Russian)

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Shershenevich G. F. Uchebnik russkogo grazhdanskogo prava [Textbook of Russian Civil Law]. — M., 1995. — 556 p. (In Russian)

Tolstoy Yu. K. K teorii otnosheniy [Toward a theory of relations]. — M., 1959. — 88 p. (In Russian)

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THE ISSUES OF INTEGRATION IN LAW: HISTORICAL AND THEORETICAL ANALYSIS

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Abstract. *The author of this study aims to form a comprehensive scientific view of integration in law as a part of legal integration in general. It is pointed out that the design and creation of new branches of law is carried out by means of communication of certain legal characteristics of legal institutions and legal aggregates, as well as specific legal norms. Integration processes, as a rule, create an individual sectorial legal regime, which includes a variety of ways of legal regulation functioning in interrelation with each other. Such an individual sectorial legal regime should be studied in more detail, as it is characterized by the presence of a single goal of legal regulation of social relations. From the historical point of view, legal integration began to develop from the moment when the state and law emerged, when national legal systems began to emerge. The author mentioned that, speaking about a particular society, one can see the connection with historical formation on the basis of its own cultural, national, territorial factors.*

Keywords: *legal integration, system of law, systemic method of legal research, integration in law, branch of law, legal institute, norm of law.*

Introduction

One of the modern trends in law is the processes of globalization, which have various effects on domestic legal systems. Legal literature emphasizes the positive role of these processes in the improvement of national legislation and the negative aspects that may be associated with the loss of independence and uniqueness of legal regulation.

Integration processes in law are influenced by the history of development of legal norms, the political structure of the state, fundamental principles of law, functions of law, etc. These factors can be called determinants of integration in law.

Methods

The author used the following methods when carrying out the research: general scientific methods (analysis, synthesis, induction, deduction, system method), private scientific methods (historical-legal, method of legal modeling, method of legal prognostics, interdisciplinary method).

Results and discussion

Integration, which is carried out in any system, is seen as something unified and whole, and determines the processes of uniting the constituent elements of a particular system. The content of the system of law is in constant change, which is associated, among other things, with the development of social and economic relations in society.

Formation and creation of new branches of law is carried out by means of communication of certain legal characteristics of legal institutions and legal aggregates, as well as specific legal norms. The processes of integration are aimed in this case at the creation of an individual branch legal regime, which includes a variety of ways of legal regulation, functioning in interrelation with each other. Such an individual branch legal regime is characterized by the presence of a similar aim of legal regulation of these public relations, common or identical methods of legal regulation and means used for this purpose, as well as the characteristic of the legal status of the subjects of these public relations.

From a historical aspect, legal integration began to develop as soon as the state and law emerged, when national legal systems began to emerge. If we talk about a particular society, we can notice that historically it is formed based on its own cultural, national, territorial factors.

Another historical aspect of legal integration should be called the characterization of man as a biosocial being, as human communication with other people is the basis for the emergence of social relations. These social relations are subject to unified legal regulation, which characterizes the processes of legal integration.

From a historical point of view, taking into account the factors affecting the functioning of integration processes, the following significant stages of integration are considered: the stage of branch integration (1950s), the stage of primary

economic integration (creation of free trade association, customs union, common European market) (1960–1980s), the stage of formation of economic and monetary union (1990s), the modern stage (2000s)[1].

Each of these stages is characterized by certain features of the development of social relations:

1) saving of customs and trade barriers to free economic interaction;

2) elimination of such barriers through the creation of free trade association and common customs territory, creation of interstate and supranational authorities;

3) formation of the European Union as an international organization, creation of a common legal basis;

4) massive expansion of integration to various countries[2].

The research of legal integration is of particular importance when considering the system of law. In the monograph "The system of law: history, modernity, prospects" edited by Doctor of Legal Sciences, Professor T. N. Radko considers the issues of differentiation and integration of structural formations as the dynamics of the system of law[3].

In relation to integration processes in law, it should be noted that they are undoubtedly aimed at improving the quality of legal regulation, allowing to regulate as many social relations as possible. Conceptually, any dynamic processes in the system of law entail its confusion, the emergence of other, different from the previously existing, structural parts, such as norms of law, legal institutions, branches of law, inter-branch relations.

G. F. Shershenevich in particular said that the creation of law has its basis in differentiation, which occurs within the law, as well as in the integration of legal norms, reflected in the aggregation of legal norms into legal institutions[4].

A similar idea was expressed by S. S. Alekseev, who believed that law is characterized not only by the processes of integration, but also differentiation, which concretize normative prescriptions for a more fragmented legal impact[5].

We would like to point out another work, in which S. S. Alekseev's thought about specialization in law was developed. The monograph by V. L. Kulapov and

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[1] *Sologub V. I.* Sovremennye integratsionnye protsessy v Evraziyskom Ekonomicheskom Soyuze. Diss… kand. politich. nauk [Modern integration processes in the Eurasian Economic Union: dissertation of Candidate of Political Science]. M., 2019. P. 40.

[2] Ibid, p. 46.

[3] Sistema prava: istoriya, sovremennost, perspektivy: monografiya [System of law: history, modernity, prospects: a monograph] / T. N. Radko, D. M. Azmi, A. A. Golovina [i dr.]; pod red. T. N. Radko. — Moskva: Prospekt, 2018. — 256 p.

[4] *Shershenevich G. F.* Obshchaya teoriya prava [The general theory of law]. — M.: Izd. Br. Bashmakovykh, 1911. P. 508.

[5] *Alekseev S. S.* Struktura sovetskogo prava [The structure of Soviet law]. — M.: Yurid. lit., 1975. P. 52.

E. G. Potapenko researches legal integration, and in particular, special attention is paid to such a type of integration in law[1]. The authors consider national legal systems, as well as private components of national law, including legal institutions and branches, as the object of integration. They understand integration in law as "mediated by the legally significant activity of uniting the elements of the system of law into a structurally ordered holistic unity that has relative independence, stability, and autonomy of functioning, as well as maintaining the integrity and unity of the system of law, consistency, and interconnectedness of its structural parts"[2].

Issues of legal integration are often studied in the interstate sense. A. Ya. Kapustin[3] considered this phenomenon. The scientist points out that through integration processes, international law is refreshed and updated. International law reacts to integration processes in different ways: new legal formations can be created, which are subsequently subjected to previously unknown legal regulation; national legal systems adopt already known to international law instruments for legal regulation; or both ways are mixed.

Considering the law of European integration, we can distinguish such theories as: federalist theories, international legal theories, autonomous theories and related theories[4].

A. Ya. Kapustin considers various interstate associations that were created in the former Soviet Union: the Commonwealth of Independent States (CIS 1991), the Eurasian Economic Union (EAEU 1995), the Customs Union and the Common Economic Space (1999), the Eurasian Economic Community (2000) and others. The author concludes that Eurasian economic integration is not only the achievement of a new level of economic interaction, but also a significant unification of the legal systems of national countries[5].

Another work — dissertation research by T. V. Kulapova — is devoted to the study of domestic and international legal experience, where the problems of integration and adaptation are considered[6]. The researcher points out that

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[1] *Kulapov V. L., Potapenko E. G.* Teoreticheskie osnovy pravovoy integratsii: monografiya [Theoretical foundations of legal integration: a monograph]. — M.: Yurlitinform, 2011. — 184 p.

[2] *Kulapov V. L., Potapenko E. G.* Op. cit. P. 50.

[3] *Kapustin A. Ya.* Evropeyskiy Soyuz: integratsiya i pravo [European Union: integration and law]. — Moskva: Rossiyskiy universitet druzhby narodov, 2000. — 436 p.

[4] *Kapustin A. Ya.* Pravo evraziyskoy ekonomicheskoy integratsii v fokuse mezhdunarodnogo prava [The Law of Eurasian economic integration in the focus of international law] // Gosudarstvo i pravo [State and law]. — 2017. — No. 6. — Pp. 79–88.

[5] Ibid.

[6] *Kulapova T. Yu.* Vnutrigosudarstvennyy i mezhdunarodnyy pravovoy opyt: problemy integratsii i adaptatsii: diss. … kand. yurid. Nauk [Domestic and international legal experience: problems of integration and adaptation: dissertation of Candidate of Legal Sciences]. Saratov. 2014. 185 p.

nowadays interstate cooperation is one of the very important fundamental principles of international law, which is subject to universal application. International law is the main legal instrument for the settlement of interstate relations and cooperation of states, which are expressed in the activities of two or more countries, has as its purpose the solution of common global issues, saving sovereignty and national traditions. However, the adopted and formulated legal norms within the framework of interstate interaction will in any case affect the national legal systems[1].

D. E. Petrov's doctoral dissertation is aimed at studying the differentiation and integration of structural formations of the system of Russian law[2]. His work pays special attention to the relationship between the processes of differentiation and integration in law. He points out that a certain confusion of the terms "unification of legislation" and "integration in law" is associated in particular with the fact that in modern studies the term "unification of legislation" is used to refer to comparable processes in law. Therefore, the characterization of the processes carried out in the content of law is connected with a broad understanding of the term "unification of legislation". But these terms certainly need to be distinguished so that they are not used as synonyms.

Foreign legal studies consider mainly the issues of external legal integration. Most of the works are devoted to the integration of national legal systems into the European legal space. These issues have been addressed by such authors as: Barwick C. (2021)[3], Kidalov S., Vitiv V., Golovko L., Ladychenko V. (2020)[4], Dubchak S., Goshovska V., Goshovskyi V., Svetlychny O., Gulac O. (2020)[5], Bobkova A. G., Zakharchenko A. M., Pavliuchenko Y. M. (2020)[6],

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[1] *Kulapova T. Yu.* Vnutrigosudarstvennyy i mezhdunarodnyy pravovoy opyt: problemy integratsii i adaptatsii: diss. … kand. yurid. Nauk [Domestic and international legal experience: problems of integration and adaptation: dissertation of Candidate of Legal Sciences]. Saratov. 2014. P. 30.

[2] *Petrov D. E.* Differentsiatsiya i integratsiya strukturnykh obrazovaniy sistemy rossiyskogo prava: avtoref. diss. … d-ra yurid. nauk [Differentiation and integration of structural formations of the system of Russian law: thesis of the dissertation of the Candidate of Legal Sciences]. Saratov. 2015. 60 p.

[3] *Barwick C.* (2021). Legal integration and the reconfiguration of identifications: Material and symbolic effects of Brexit on British nationals in Berlin. Innovation: The European Journal of Social Science Research, 466–482.

[4] *Kidalov S., Vitiv V., Golovko L., Ladychenko V.* (2020). Legal regulation of waste management in Ukraine on the way to European integration. European Journal of Sustainable Development, 9(2), 422–430.

[5] *Dubchak S., Goshovska V., Goshovskyi V., Svetlychny O., Gulac O.* (2020). Legal regulation of ensuring nuclear safety and security in Ukraine on the way to European integration. European Journal of Sustainable Development, 9(1), 406–422.

[6] *Bobkova A. G., Zakharchenko A. M., Pavliuchenko Y. M.* (2020). Legal enforcement of state aid control in the field of healthcare: experience of Ukraine in the context of European integration. Wiadomosci Lekarskie (Warsaw, Poland: 1960), 73(12 cz 2), 2848–2854.

Marichereda V. G., Melnyk S. B., Borshch V. I., Terzi O. O., Lyakhova N. A. (2020)[1], Humeniuk T., Knysh V., Kuzenko U. (2019)[2], Pimenova O. (2019)[3], Cardwell P. J. (2019)[4], Leijon K. (2021)[5], Lampach N., Dyevre A. (2020)[6] and others.

The work of Barwick C. (2021) is devoted to the study of European citizenship. This issue is covered by the author in relation to the process of Britain's withdrawal from the European Union[7]. Similar issues are devoted to the article Cardwell P. J. (2019), where it is pointed out that the legal system of the EU is built on the principle of a single legal order, but the withdrawal of the UK from the European Union raises the question of the need for differentiation in various forms, but as an exception to the rule[8].

Pimenova O. (2019) explores the different models of legal integration used in the European Union (EU) and the Eurasian Economic Union (EAEU). The issue of the competence of the judicial bodies of these supranational entities is also raised here. In the article, the author concludes that there is an absolute priority of integration law over national legislation, as well as the fact that for all participants of integration relations the decisions of the supranational court are binding[9].

Quite a few works are devoted to specific issues of integration of the national legal system of Ukraine into the European legal space: article Kidalov S., Vitiv V.,

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[1] *Marichereda V. G., Melnyk S. B., Borshch V. I., Terzi O. O., Lyakhova N. A.* (2020). Organizational, regulatory and legal aspects of European integration of higher medical education in Ukraine: A critical review. Wiadomosci Lekarskie (Warsaw, Poland: 1960), 73(6), 1290–1295.

[2] *Humeniuk T., Knysh V., Kuzenko U.* (2019). The influence of European integration on optimization of the legal conditions of social policy in Ukraine. Journal of Management Information and Decision Sciences, 22(4), 541–554.

[3] *Pimenova O.* (2019). Legal integration in the European union and the Eurasian Economic Union: Comparative analysis. International Journal of Agricultural Management, 8(1), 76–93.

[4] *Cardwell P. J.* (2019). The end of exceptionalism and a strengthening of coherence? Law and legal integration in the EU Post-Brexit. Journal of Common Market Studies, 57(6), 1407–1418.

[5] *Leijon K.* (2021). National courts and preliminary references: Supporting legal integration, protecting national autonomy or balancing conflicting demands? West European Politics, 44(3), 510–530.

[6] *Lampach N., Dyevre A.* (2020). Choosing for Europe: Judicial incentives and legal integration in the European Union. European Journal of Law and Economics, 50(1), 65–86.

[7] *Barwick C.* (2021). Legal integration and the reconfiguration of identifications: Material and symbolic effects of Brexit on British nationals in Berlin. Innovation: The European Journal of Social Science Research, 466–482.

[8] *Cardwell P. J.* (2019). The end of exceptionalism and a strengthening of coherence? Law and legal integration in the EU Post-Brexit. Journal of Common Market Studies, 57(6), 1407–1418.

[9] *Pimenova O.* (2019). Legal integration in the European union and the Eurasian Economic Union: Comparative analysis. International Journal of Agricultural Management, 8(1), 76–93.

Golovko L., Ladychenko V. (2020) "Legal regulation of waste management in Ukraine on the way to European integration. European Journal of Sustainable Development"[1], Dubchak S., Goshovska V., Goshovskyi V., Svetlychny O., Gulac O. (2020) "Legal regulation of ensuring nuclear safety and security in Ukraine on the way to European integration"[2], Bobkova A. G., Zakharchenko A. M., Pavliuchenko Y. M. (2020) "Legal enforcement of state aid control in the field of healthcare: experience of Ukraine in the context of European integration"[3], Marichereda V. G., Melnyk S. B., Borshch V. I., Terzi O. O., Lyakhova N. A. (2020) "Organizational, regulatory and legal aspects of European integration of higher medical education in Ukraine: A critical review"[4], Humeniuk T., Knysh V., Kuzenko U. (2019) "The influence of European integration on optimization of the legal conditions of social policy in Ukraine"[5] and others. At the same time, the authors point out the direct influence of European legislation on the legal regulation of social relations within the country, and suggest ways to improve the national legislation in accordance with the standards and requirements of the European Union.

Some scientific publications of foreign authors are devoted to the study of jurisdiction of supranational judicial bodies, which is also considered as one of the directions of legal integration, including within the framework of the European Union. The correlation between the jurisdiction of national courts and the Court of Justice of the European Union is studied in the work of Leijon K. (2021)[6], where the author concludes that the most common behavior of courts is to support legal integration by referring politically important cases and expressing support for EU

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[1] *Kidalov S., Vitiv V., Golovko L., Ladychenko V.* (2020). Legal regulation of waste management in Ukraine on the way to European integration. European Journal of Sustainable Development, 9(2), 422–430.

[2] *Dubchak S., Goshovska V., Goshovskyi V., Svetlychny O., Gulac O.* (2020). Legal regulation of ensuring nuclear safety and security in Ukraine on the way to European integration. European Journal of Sustainable Development, 9(1), 406–422.

[3] *Bobkova A. G., Zakharchenko A. M., Pavliuchenko Y. M.* (2020). Legal enforcement of state aid control in the field of healthcare: experience of Ukraine in the context of European integration. Wiadomosci Lekarskie (Warsaw, Poland: 1960), 73(12 cz 2), 2848–2854.

[4] *Marichereda V. G., Melnyk S. B., Borshch V. I., Terzi O. O., Lyakhova N. A.* (2020). Organizational, regulatory and legal aspects of European integration of higher medical education in Ukraine: A critical review. Wiadomosci Lekarskie (Warsaw, Poland: 1960), 73(6), 1290–1295.

[5] *Humeniuk T., Knysh V., Kuzenko U.* (2019). The influence of European integration on optimization of the legal conditions of social policy in Ukraine. Journal of Management Information and Decision Sciences, 22(4), 541–554.

[6] *Leijon K.* (2021). National courts and preliminary references: Supporting legal integration, protecting national autonomy or balancing conflicting demands? West European Politics, 44(3), 510–530.

legislation, while national courts can regularly contribute to achieving a balance between EU integration and autonomy of member states. Research papers by Lampach N., Dyevre A. (2020)[1], Garben S. (2020)[2] are devoted to a similar issue. Speaking about the jurisdiction of supranational judicial bodies, it should be pointed out that separate issues are raised regarding the jurisdiction of the International Criminal Court (ICC)[3].

Attention should also be paid to the works devoted to legal integration on specific issues: in the field of environmental protection[4], in the field of business registration and entrepreneurial activity, trade and economic relations[5], in the field of migration policy regulation[6] and others.

Summary

The analysis of legal literature shows that legal studies devoted to legal integration or integration in law should be divided into two categories:

— authors to a greater extent consider the processes of internal integration and connect it with the study of the system of law,

— the other category of authors considers legal integration as external processes of unification and convergence of national legal systems of different states within the framework of international cooperation.

The separation of internal and external integration is essential for lawmaking and law enforcement.

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[1] *Lampach N., Dyevre A.* (2020). Choosing for Europe: Judicial incentives and legal integration in the European Union. European Journal of Law and Economics, 50(1), 65–86.

[2] *Garben S.* (2020). Collective identity as a legal limit to european integration in areas of core state powers*. Journal of Common Market Studies, 58(1), 41–55.

[3] *Fon N. N. A.* (2019). An "African justice": Legal integration and the emergence of an African judicial system. Journal of Asian and African Studies, 54(4), 485–497.

[4] *Rehbinder E., Stewart R.* (2020). Environmental protection policy: Legal integration in the United States and the European community. Environmental protection policy: Legal integration in the United States and the European community. Pp. 1–350; *Metz F., Angst M., Fischer M.* (2020). Policy integration: Do laws or actors integrate issues relevant to flood risk management in Switzerland? Global Environmental Change, Volume 61, March 2020, Article No. 101945.

[5] *Pázmándi K., Pétervári K.* (2019). Regional trends-integration challenges-various legal models of business registration in the EU member states as a competitive factor. DETUROPE, 11(3), 283–296; *Glazatov M. V.* Subsidii v zakonodatelstve otdelnykh stran — chlenov VTO i integratsionnykh obedineniy: sravnitelno-pravovoy analiz [Subsidies in certain WTO — members and integration associations' legislation: Comparative legal analysis] // Gosudarstvo i pravo [State and law]. — 2021. — No. 4. Pp. 120–130.

[6] *Poli S.* (2020). The integration of migration concerns into EU external policies: Instruments, techniques and legal problems. European Papers — A Journal on Law and Integration, 5(1), 71–94.

Internal legal integration is characterized by the fact that it is a direct process of existence of the system of law itself. Without integration processes, it would be impossible to carry out legal regulation. The reverse processes of differentiation in the system of law could not occur in a qualitative way, if it were not for the integration of structural elements of the system.

Conclusions

Legal integration within the system of law is aimed at connecting certain isolated structural elements, while existing each time at a qualitatively new level. This process, as a rule, is objective, but at the same time the existence of subjective factors is not denied, since the law is directly related to those social relations that it regulates. The legislator can regulate arising public relations in various ways, and the choice of this method can be regarded as a subjective factor.

External legal integration has been carried out since the emergence of the first states, and is a determining vector for the development of national legal systems, the creation of interstate associations and unions, as well as the harmonization of international law.

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