

Value of Legal Regulation in the Context of the Challenges of the XXI Century

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ABSTRACT

Under the condition of the development of high technologies, the fourth technological revolution and global pandemic modern society faces new challenges that transform social communication and determine the revision of values in general and the value of legal regulation as an effective means of the management of society. The purpose of the research is to consider the value of the regulatory potential of positive law as a response to existing challenges. The research object is social relations arising in the process of legal regulation. The research subject is the value of legal regulation as the solution to the emerging problems which modern society faces. On the basis of materialistic dialectics, logical, systemic-structural, functional, formal-legal methods are used. In this research according to the analysis of modern legal literature, it is concluded that at the present time, the scientific legal community is in search of optimal legal means of the regulation of social relations that arise and develop under the influence of technological transformation. Moreover, there is an urgent issue of the relationship between legal and other types of regulation of modern communication. At the general theoretical and sectoral levels of legal science, one of the key issues is the issue of values. While, on the one hand, the debate is also about the values that modern law should reflect, and on the other hand, it is about the value of the regulatory capabilities of the current law. The research allows concluding that the demand for positive law will only increase, in view of the special role of the state in the modern period, since only effective management through legal regulation will allow adequate resistance of modern challenges, based on the most important values of society. The task of modern legal science is to develop the necessary recommendations for the subjects of law-making and law enforcement in order to ensure optimal ways of the regulation of public relations. The study of the value aspect of legal regulation is necessary and promising, in respect to the formation of a new legal order in society, corresponding to an unprecedented change in modern society.

Keywords: law, legal regulation, value of law, value of legal regulation, positive law

1. INTRODUCTION

The modern state of society is characterized by dynamism and permanent crises caused by various factors. Industry 4.0, Hiteth, Legalteth, robotization, digitalization, the transition to a remote form of communication in connection with Covid-19, pose new challenges for humanity that determine a change in attitudes towards existing values. As K. Skinner notes: "Nowadays we are experiencing the 4th great revolution and the 5th is coming in the near future. Thus, every revolution brings truly revolutionary changes to the exchange of money and values" [1].

As a part of this research, the author makes an attempt to answer the following three questions. The first question is what modern challenges does modern society faces today and which of them necessitate the transformation of legal regulation. The second question is what social values receive priority and require special legal mediation. The third is what the value of the law itself is in the era of

cybercivilizations, in which, as noted, the time has come to reconsider the views on the organization of human life on earth [2].

Of course, modern society faces the challenges, the essence of which was very precisely defined by Professor V.V. Lazarev, who wrote that implicit challenges contain a demanding beginning, the challenge must be answered and the challenges presuppose immediate reflection, the determination of tactics and behavior strategy [3]. Tactics and strategy are especially important in the process of legal regulation, determination of its value orientations, limits and combination of various interests.

2. MATERIALS AND METHODS

The object of this research is social relations arising in the process of legal regulation. The subject is the value of legal regulation as the solution to the emerging problems which modern society faces. The research purpose is to consider the value of the regulatory potential of positive law as a response to existing challenges. In order to

achieve this purpose on the basis of materialistic dialectics, such general scientific research methods as a logical, systemic-structural approach are used, since legal regulation is an integral part of the legal system, which affects all other elements.

The functional method is used in the form of a causal relationship between the challenges and values of modern society, and also the functional relationship between legal regulation and social relations. The formal legal method is used as a private scientific method of legal science necessary for the analysis of regulatory legal acts.

3. RESULTS AND DISCUSSION

Studying the problems of the development of future technologies, M. Ford notes that the harsh reality is that if we do not pay due attention to the consequences of technology development and do not adapt to them, we can find ourselves in a situation of “ideal storm”, when three trends will simultaneously affect us: growing inequality, unemployment caused by automation and climate change. They will develop almost in parallel, in some cases reinforcing each other [4]. The the list of challenges proposed by the author is undeniable.

Joi Ito and Jeff Howe write: “As artificial intelligence progresses, machines may well integrate with our bodies, homes or vehicles, markets and judicial systems, creative enterprises and politics. We, people as a society, are already much wiser than as its individual representatives. We are a part of the collective mind. Continuing to integrate with our networks and our society, machines become “extensions” of our mind, creating a single extended intelligence with us”[5].

Considering these statements, the relevance of the relationship between an individual and collective becomes obvious. Individualism in its traditional liberal sense no longer corresponds to the new technological realities and social communications. Hence there is the need to respond to this export of time: the search for an optimal combination of legal regulation of the collective and the individual. At the same time, the interests of society as a whole prevail. Individual freedom is limited for the good of society, reflecting the collaboration of natural and artificial intelligence.

The opinion of the Russian scientist A.V. Minbaleeva, examining the limitations in the process of legal regulation of digital economy, believes that “robot challenges” and “robot threats” raise the issue of the need for legal regulation of a number of relations arising from the use of artificial intelligence and robotics. The author writes that the analysis of legislative initiatives of different countries testifies to the setting of tasks by states both to solve individual problems, the most pressing issues in this area, and to globally determine the prospects for system analysis and regulation of artificial intelligence in various spheres of public life, as well as ensuring the security system of an individual, society and the state from possible threats of artificial intelligence beyond human control [6].

As a result, we can state that the global problems of civilization, formed in the previous century, such as the threat of nuclear war, global warming, poverty and others, in connection with the development of technologies in the 21st century are increasing. In addition, the modern society faces such challenges that determine existential risks. The very existence of man since his birth is associated with technology. Today the issue of bioethics, human life and death is extremely relevant problem.

The dialectic of technological revolutions leads to the fact that, along with the undoubted benefits for society, they also create certain problems. A vivid illustration of this statement was the news about the trial in which an American reproductive specialist, illegally, fraudulently, became a donor 50 times and, accordingly, a father of 50 children, while the court be put a father with many children on parole for a year for “Obstruction of justice” [7], due to the lack of appropriate norms for such a case.

The solution was paradoxical, however, natural in the context of the development of assisted reproductive technologies (ART), which not only helped families to find a long-awaited child, but also created an opportunity for abuse in this area. As noted by A.T. Bonner, who studied in detail the problem of ART in Russia, a very important social institution of artificial insemination requires all-round state support, as well as improvements and detailed legislation [8].

It is necessary to note that the main of the key problems of modern legal regulation is its underdevelopment of the dynamics of social relations. At the same time, we believe that this process is natural, in view of the rapid change in the situation, which requires, on the one hand, the speed of decision-making through law, and, on the other hand, caution, since the practice of excessive and thoughtless legal regulation devalues law as a value.

In this regard, the opinion expressed in modern legal literature about the existence of the precautionary principle, which in general normative terms is a particular manifestation of the greater issue of preventing harm, which, as A.V. Prokofiev notes is reasoned by the peculiarities of the modern stage in the development of mankind [9].

It is natural to revise the existing value guidelines at such twists. Moreover, undoubtedly the order of values is changing and what seemed most valuable yesterday is devaluing today. In addition, in foreign literature it is quite rightly noted that today, the question of the competition of values in the legal system arises more than ever, in particular, foreign researchers note the following: “The starting point is with the obvious observation: legal systems, like political systems, rarely focus on single values looked at in isolation from one another, but rather aim to reconcile competition among those values. This competition often plays itself out at the sharp end of concrete disputes via conflicts between competing basic rights. The right to freedom of expression competes with the right to privacy; an employee’s right to equal treatment competes with the employer’s right to efficiently manage its property, etc.” [10].

Speaking about the competition of rights, we believe that this problem has become especially relevant in the context of Covid-19. When this virus spreads, the most valuable right is the right to life. It undoubtedly negates all other rights. In addition, quarantine, self-isolation, remote mode of working created new problems that need to be addressed through legal regulation.

Considering the ongoing changes, Professor A.V. Kornev writes that scientists are concerned about the preservation of traditional systems of social regulation based on certain values. The scientist notes that at the center of this system is the law, which replaced religion, which in turn replaced myth. Law is associated with such values as justice, equality, humanism, solidarity, freedom and they can be perceived and transmitted only by a person and no machine can replace him [11].

The analysis of the legal literature led to the conclusion about various aspects of the consideration of law and values [12]. The values of the law itself, its role in modern society [13] and its influence on various spheres of public life [14] are studied. For example, the laws which are related to the legal regulation of same-sex relations, in particular, in the European Union. The authors studying this problem came to the following conclusions: "At the country level, progressive regulation of homosexuality was associated with greater approval of homosexuality. This underscores the potential role of the legal system in combating prejudice. Of course, more liberal attitudes and national policies may have mutual causal effects on one another. Coleman's (1990) boat hypothesis suggests a feedback loop in which country level characteristics shape individual attitudes, which, in turn, affect behaviour that influences the country-level characteristics. Thus, progressive laws may promote positive attitudes toward homosexuals that promote positive behaviour that feeds back to progressive laws. In many European countries, however, progressive changes in laws regulating homosexuality have taken place as a response to directives of the European Union and may not reflect attitude change within the country [15].

Since the population of the planet is rapidly getting younger, the problem of legal regulation of the labor of older people becomes especially relevant. In the legal literature special attention is paid to this issue, for example, the relationship of law to social values is considered, and how laws can permit, require, or restrain certain activities, involves how laws, such as the Age Discrimination Act [16].

It is necessary to note that in modern society the value of the right to realize one's abilities to work is increasing. The employment problem is reasoned by several factors. However, of course, the main one is the emergence and development of weak and strong artificial intelligence. Thus, for example, I.A. Filippova notes that the speed of introduction of artificial intelligence systems into production has generated problems in the regulation of new processes within the framework of existing labor relations. In addition, the author emphasizes, that there is a need to regulate changes in the world of work associated with the ongoing replacement of workers by robotics that

can increase productivity labor and reduce the costs of an employer [17].

The researcher L.A. Chaldaevea, studying the risks of digital economy, writes about the need for due attention to situations related to the formation and implementation of social risk, which is accompanied by the increase in unemployment. At the same time, the author focuses on the most vulnerable position of two categories: these are persons of pre-retirement and retirement age and highly qualified specialists. The first ones may be transferred to low-paid positions or work on a reduced day. The second ones will have to occupy the jobs remaining as a result of the transition from traditional to digital technology of the organization of the production process and jobs that do not correspond to their qualifications [18].

There is no doubt the consolidation in the National Strategy for the Development of Artificial Intelligence for the Period up to 2030 in this context is justified, approved by the Decree of the President of the Russian Federation dated 10.10.2019 No. 490 "On the Development of Artificial Intelligence in the Russian Federation" as the first of the main principles for the development and use of artificial intelligence technologies, protection of human rights and freedoms: the protection of human rights and freedoms guaranteed by Russian and international legislation, including the right to work, and providing citizens with the opportunity to acquire knowledge and acquire skills for successful adaptation to digital economy. Thus, we can say that the state is aware of the challenge which the Russian society faces - the release of a large number of working-age citizens pointing out the right to work and focusing on the need for measures to adapt the population to new living conditions.

As a result, the questions of the features of professional legal activity arise. For example, the industry media platform Law.com, which has over 18 online awards from the US, national and regional legal publications, has a dedicated LegalTeth page. In one of the publications, the features of legal activity in the context of the development of digital technologies are vividly illustrated: "In 1970, the Federal Rules of Civil Procedure (FRCP) was amended to mention data compilations under Rule 34, a watershed moment in the discovery of "documents and things". "For the first time, Rule 34 (a) allowed the discovery of "any designated documents or electronically stored information stored in any medium from which information can be obtained directly or, if necessary, after translation by the responding party into a reasonably usable form". While then, the amendment might have been a subtle acknowledgment of the role computers were beginning to play in the everyday practice of law; it's hard to imagine that anyone could have predicted the outsize presence data now commands - and its role in litigation.

Fifty years after the FRCP's first nod to the rise of big data, managing complex litigation and its associated discovery data is becoming increasingly challenging. For one, the volume of data - from cell phone records, text messages and emails, to video recordings and more - is rising exponentially. At the same time, innovation around technologies to automate processes and help manage the

volume continues to explode, as does the number of legal tech service providers. While utilizing legal technology is no longer a choice for corporate legal teams, it's easy to become overwhelmed by questions around what technologies to use, when to use them and how to best use them"[19].

Similar platforms exist in Russia, for example, Platforma Media is a resource about legal business, new technologies, innovations and investments [20]. It is necessary to note that the existence of such platforms has become possible only due to the development of information technology.

We believe that, the development of artificial intelligence causes emotional and intellectual ambivalence among modern lawyers, since, on the one hand, it is really a competitor of natural intelligence, and on the other hand, it is an excellent means of the increase of the efficiency of their activities. In any case, in order to be a successful lawyer, one needs to have deep and systematic theoretical knowledge, be engaged in profiling, networking and possess skills in modern digital technology.

It is necessary to note that legal activity such lawmaking and law enforcement includes three aspects: socio-political, intellectual-willed and legal and technical. There is no doubt that the legal and technical aspect of the activity will be replaced by robots, intellectual and willed - only partially and in case of a high level of technology development. However, the socio-political aspect can be replaced only in the most daring futuristic forecasts. In any case, considering any type of professional activity, it should be emphasized that if 30 years ago competition in the labor market was only between people and their ability to work, today it is becoming more severe in the triad: "man - man - artificial intelligence".

This determines the special value of employment, the possibility of realizing one's abilities. Therefore, without a competent state policy implemented through legal regulation, it is impossible to ensure the necessary balance on the labor market in any sphere.

Studying the value of legal regulation, it is possible to come to the conclusion about its relevance. Although, it is probably a truism and a contradictory attitude to law in a positive sense: on the one hand, we want freedom, and on the other hand, security, we want to realize our individual desires and want to be in society, we want artificial intelligence to make our life comfortable, but at the same time not encroach on our place in society. In our opinion, these contradictions, determine the value of legal regulation. Only the law, establishing certain boundaries of our existence and the order of our interaction will contribute to our well-being.

I.S. Barzilova notes that the value of law as a certain social form lies in the reasonable organization and reform of the entire system of social relations, its protection from self-destruction, ordering and regulating this system as a whole; it allows defending and most freely satisfying the interests of the state, society and individual persons [21]. This opinion is shared by Professor S.Yu. Kashkin. He notes that it is the law that should become the mechanism that is designed to regulate the still emerging complex

conflict of relations between a person and the artificial intelligence created by him [22].

We share the opinion of V.N. Zhukov, who writes that the meaning and role (and hence the value) of positive law are very significant. First, positive law is that immediate empirical level at which a person encounters law as an external coercive system. Many researchers say that law exists in the form of a norm of consciousness or a norm of actual behavior, but the norm as a fact of external coercive force proceeds precisely from positive law [23].

This statement is especially relevant in the context of a shift in emphasis in the value dimension of modern society, which determines not only property differentiation, but also the division associated with the person himself, his competitiveness and readiness for constant change in order to meet the requirements of the modern world. As a result there is the demand for heteronomous influence on the subject, which is legal regulation. S.N. Bondar is currently writing about the special division of society. Bondar, who notes that the essence of a digital society is not only predetermined by its technological characteristics, but it remains under the influence of specific social actors, the power capabilities of which are associated with the use of new technological advances can lead to even greater inequality.

Moreover, digital divide itself is associated with relatively new aspects of this problem. For example, technological inequality, which consists in unequal access to new technologies, including in the field of medicine, education, and, as a result, the social stratification of society deepens [24] is added to the well-known manifestations of economic, social and territorial inequality.

The dialectic of inequality determines the intensification of contradictions, which can lead to the aggravation of social confrontation. In this regard, legal regulation should become the main means of the differentiation of interests arising from the digitalization of society.

In this context, the conclusion of Yu.A. Tikhomirov is obvious, according to which law is the value of society, reflecting the historical memory of the people and the achieved legal state and aspiration for the future [25].

We should note that more than ten years ago, the outstanding Russian jurist S.S. Alekseev wrote that the high position of law in the life of society presupposed the preservation and strengthening of fundamental (enduring, eternal) legal values, the maximum use of all the wealth of legal culture, all accumulated by mankind achievements in the field of legal guarantees and legal means, legal mechanisms ensuring the actual implementation of legal ideals and values in order to ensure a strictly legal order, including primarily on issues of state coercion.

According to Professor S.S. Alekseev, the first place among such ideals and values is occupied by the principle of legality. At the same time the scientist emphasized that the understanding that, while ignoring these legal values and orders, the whole society reopens again, perhaps, the most terrible misfortune and curse in people's lives - an orgy of violence, arbitrariness and anarchy [26]. These words sound relevant in modern conditions, when society really stands on the edge. The events in the United States

[27] are a vivid evidence of the dangerous state in which society is now, and the task of the state is to prevent social explosion through the right to minimize such conflicts.

4. CONCLUSION

To conclude with, we should note that in the modern period of development of society, legal regulation as a purposeful activity to determine the optimal communication of modern society requires the necessary value orientations, both traditional and innovative. We suppose, that freedom, justice, equality, humanism are fundamental values, but in a society where robots are already claiming their rights [26], more and more viruses are spreading, people's way of life is deformed, remote communication is opposed to live, there is a need for another, new understanding of freedom, justice, equality and humanism and their reflection in legal regulation.

Modern changes are so rapid and unpredictable that not only a person is in a confused state, but also the state, which finds it difficult to unambiguously determine how and what to regulate through the law. As a result, the time of "regulatory sandboxes", "regulatory guillotines" has come - a special time, which determines the development of innovative legal regulation both from the point of view of its substantive understanding - what to regulate, and from instrumental positions - how and what means to regulate, but in any case it is necessary to regulate.

The transformation of modern society as a whole and of a person, in particular, under the influence of new technological possibilities, determines the changes in the value perception of the relationship between freedom, security, family, employment, and, of course, law, in this case in its positive understanding.

We believe that the demand for positive law will only increase, as well as the role of the state, since only effective management through legal regulation will allow adequately resisting modern challenges, based on the most important values of society. The task of the modern legal science is to develop the necessary recommendations for the subjects of lawmaking and law enforcement in order to ensure optimal ways of the regulation of public relations.

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