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JUDICIAL INTERPRETATION OF LEGAL NORMS: THEORY OF THE ISSUE

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Abstract: *The objective of the article is to find optimal ways to develop the judicial interpretation of legal norms as a form of application (explanation) by courts of norms of current legislation. Justice is one of the most important security functions of the judicial power system in Russia and, according to the Constitution of the Russian Federation, is exercised in civil, administrative, criminal, and constitutional court proceedings. The inevitability of the existence of the judicial lawmaking institution implies the necessity to adjust the understanding of the principle of the separation of powers so that the lawmaking function is distributed among the legislative, executive, and judicial branches of power. The leading method of studying the problem is deductive, which allows studying the legal nature of the judicial interpretation of legal norms. The article concludes that the existence of discretion in the legal system is conditioned by several objective factors. These factors include the objective impossibility of regulation by the general norm of all individual legal relations; the existence of evaluative concepts, dispositive, and peremptory legal norms containing relatively certain or alternative sanctions; the existence of open legal lists, gaps in the law, and collisions of legislation. The thesis is argued that it is impossible to level out by subjective preferences one of such objective phenomena of legal regulation as legitimacy and law enforcement discretion. At the same time, legitimacy is a phenomenon of a higher order. In a sustainable democratic legal system, law enforcement discretion can function only in terms of legitimacy.*

Keywords: *Human rights; judicial interpretation; judicial precedent; jurisprudence; justice; legal system.*

INTRODUCTION

Historically, the institutions of judicial law and judicial hierarchy have been closely linked to the issue of judicial precedent and judicial lawmaking. The importance (and underestimation in Russia) of judicial precedent is because with the help of "free judicial discretion", a legal institution can be adapted to the changed circumstances without its legislative revision if it seems undesirable. With the help of "judicial law", it is possible to remove the contradiction between the protection of the interests of the "aggregate capitalist" (which is what the law as an act of the central authority is aimed at) and the interests of a separate monopoly in the specific conditions of place and time (Kurbanov and Gurbanov, 2019a). A precedent in the strict sense (judicial precedent) is an act of application of legal norms resolving a specific casus, containing the interpretation of normative acts in relation to the considered legal relations and having binding or recommendatory force in similar cases. The precedent in the strict sense is denied by the Russian legislation and the concept of interpretation. Even though Russian scientific and practical discussions are more and more focused on the prospects of the development of a precedent, it is more a question of the development of an interpretation precedent than of a precedent (Cross, 1985).

Neither the legislation nor the law operates on its own. It is realized by people who perceive normative prescriptions through their individual legal awareness. The same legal prescriptions may be interpreted in different ways, and the extent to which they are recognized and enforced depends on human characteristics. In legal reality, one is not dealing with a legal norm but with variants of its interpretation (Bogdanovskaya, 1993). Clarification of the content and meaning of any legal text is actualized in a specific legal situation when it is necessary to assess the legitimacy of actions and to find the best way to resolve legal contradictions. The process of interpreting a law can be classified by stages of interpretation, forms of interpretation, subjects of interpretation, and the extent of interpretation. In interpreting the legislation and the law, the ways of interpreting the legislation and approaches to interpreting the law play a significant role (Lebedev and Khabrieva, 2019).

METHODS

The methodological basis of the article is conditioned by the fact that the right is not a product of the state solely and does not coincide with the law, which is important but is only one of several sources of legislation. The law is the way and result of the interaction (communication) of people, generating subjective rights and obligations. The law is a system of norms in the formation of which the whole population of the considered society takes part. We can assume that the law is immanent to the culture of the corresponding ethnos, implying by the culture all the results and ways of life of people. The state as a structure (hierarchy) of public power finds itself in the hands of those who can seize power and holding it (David and Jauffret-Spinosi, 1998).

RESULTS

The existence of discretion in the legal system is conditioned by several objective factors, including: the objective impossibility of regulation by the general norm of all individual legal relations; the existence of evaluative concepts, dispositive, and

peremptory legal norms containing relatively certain or alternative sanctions; the existence of open legal lists, gaps in the law, and collisions of legislation (Krasheninnikova, 1982). The thesis is argued that it is impossible to level out by subjective preferences one of such objective phenomena of legal regulation as legitimacy and law enforcement discretion. At the same time, legitimacy is a phenomenon of a higher order. In a sustainable democratic legal system, law enforcement discretion can function only in terms of legitimacy.

To a certain extent, the concept of judicial law relates to the development of state monopoly capitalism and strengthening the position of the state and its apparatus. Some authors put forward the idea of judicial law as a kind of counterbalance to state power and bureaucracy. Referring to the principle of separation of powers, authors greatly exaggerate the relative independence of justice in relation to the legislative and executive spheres of functional activity as part of a single mechanism of state power (Cross, 1985; Dolinskii, 2003). The limits of judicial discretion, as a rule, are narrower and the limitations of judicial discretion are considerably limited. The application of a legal prescription at the discretion of the administration does not always lead to the duty to justify it. By contrast, the application of a legal norm at the discretion of a court or judge must be motivated in a court ruling.

DISCUSSION

The discussion about the prospects of a precedent in Russia cannot be constructive without dividing the research subject into the two above-mentioned classes of official interpretation acts. There is also a division into lawmaking and precedent-setting, normative and non-normative interpretation acts. In the mentioned classifications, lawmaking (normative) interpretation acts are considered as sources of law, they can include acts of authentic and delegated interpretations that contain clarifications and specification of the legislative establishment. The idea of judicial law is not new in its basis. It has its predecessor – "free judicial discretion". Such a demand was made at the turn of the 21st century by some movements of bourgeois jurisprudence, which claimed to be sociologically oriented. Their representatives (for example, G. Kantorovich, E. Erlich, G. Isei, etc.) are gladly remembered today by the newest adherents of "judicial law". However, there are considerable differences between "free judicial discretion" of the beginning of the 21st century and the newest "judicial law" with all their similarities. The requirement of "judicial law" now sounds much more radical than before; the scope of its use has increased significantly. What are the reasons for this?

As stated by the Constitutional Court of the Russian Federation in the Decision № 30-P dated December 21, 2011, the recognition of the *res judicata* significance of a court decision, being aimed at ensuring the stability and comprehensiveness of a court decision and excluding a possible conflict of court acts, presupposes that facts established by a court during consideration of one case, until they are refuted, are henceforth accepted by another court in another case in the same or another type of court proceedings, if they are important for the resolution of the case. Thus, prejudiciality serves as a means of maintaining the consistency of judicial acts and ensures the principle of legal certainty. According to the provisions of Article 106 of the Federal Constitutional Law of July 21, 1994. "On the Constitutional Court of the Russian Federation", the interpretation of the Constitution, carried out in accordance with the procedure established by law, is official and obligatory for all without exception. The legislation does not provide for the

possibility of revision by the Constitutional Court of the Russian Federation on the initiative of anybody of its decisions (Khabrieva and Lazarev, 2017).

CONCLUSION

Justice is one of the most important security functions of the judicial system in Russia and, according to the Constitution of the Russian Federation, is exercised in civil, administrative, criminal, and constitutional court proceedings. The inevitability of the existence of the institution of judicial lawmaking implies the necessity to adjust the understanding of the principle of the separation of powers so that the lawmaking function has been distributed among the legislative, executive, and judicial branches of power (Maksimov, 1995, Lebedev and Khabrieva, 2019). The emergence in the early 20th century of demands to "let loose" a judge reflected the mismatch between the needs of rapidly developing national and international legislation and many national legal systems and their legal principles and institutions. This inconsistency was sought to be overcome through the "free judicial discretion". With the help of "free judicial discretion", a legal institution can be adapted to the changed circumstances without its legislative revision if it seems undesirable. With the help of "judicial law", it is possible to remove the contradiction between the protection of the interests of the "aggregate capitalist" (which is what the law as an act of the central authority is aimed at) and the interests of a separate monopoly in the specific conditions of place and time (Prozorov, 2004). The precedent method of interpretation is based on the use of official interpretation acts containing the so-called precedent of interpretation. An interpretation precedent should be distinguished from a precedent in a strict sense.

RECOMMENDATIONS

The growing role of case law in modern Russia is an inevitable process. One of the main questions of juridical science now consists only in what legal (scientific, theoretical, and practical) mechanisms can help to make this transformation of the institute of judicial precedent from a theoretical topic of scientific discussions into a full source of Russian law. Courts consider and balance various arguments and interests, among which an important role is played by both formal dogmatic (literal meaning of the law, established scientific doctrines, system coherence, etc.) and political legal (fairness, ethics, economic efficiency, etc.) criteria when performing gaping lawmaking and interpreting the norms of the law. The court interprets the law under the influence of the interpreted norms itself and is a subject of the law enforcement process and a party to procedural legal relations. Another factor that determined the success of the concept of judicial law is the undoubted ideological influence of Anglo-American models on post-war Western European legal thought. The model developed where there was no codified law is transferred to completely different conditions, where the existence of the formed codified legal systems, traditionally different correlation of the sources of law, and lawmaking and law enforcement activities lead to the fact that such transplantation jeopardizes the principle of legitimacy (Lebedev and Khabrieva, 2019).

The precedent of interpretation is an act of interpretation of legal norms that has binding or recommendatory force for law enforcers. The subjects of formation of interpretation precedents are legislative and some executive bodies of public authority, as well as the highest courts of the state: The Constitutional Court of the Russian

Federation, the Supreme Court of the Russian Federation, and the Supreme Arbitration Court of the Russian Federation (until 2014). Decisions of the Constitutional Court of the Russian Federation are final and cannot be appealed. The legislator assumes that erroneous decisions can be taken by subjects of all branches of power, except one body of judicial power – the Constitutional Court of the Russian Federation. We believe that the absence of checks and balances in the legislation has led to certain distortions in the activity of the Constitutional Court of the Russian Federation, which has led to its sliding down to legislative activity (Kurbanov and Gurbanov, 2019a, 2019b).

Let us consider whether the term "freedom" can be used in this context. Freedom is a conscious necessity, i.e., a person's ability to act in accordance with their interests and goals, based on the knowledge of reality. In this sense, we may be objected: the court's discretion is not freedom, since any enforcer when making a decision based on discretion, is limited to certain limits set out in the law for discretion. Moreover, the court must proceed from the general guidance of the law and from the objective pursued by the legislator in this case, considering the manifestation of the specific circumstances of the case. The court is also guided by the principles of law, morality, etc. This is partially true, however, for more precise definition, we propose a new concept – normative freedom as determined by legal powers ability of a special subject of law (e.g., a judge) to act within the established legal norms and/or the law. The proper application of the principles of independence and autonomy of judges will help to strengthen and develop the normative freedom of discretionary judicial enforcement. Therefore, we can speak about the normative freedom of judicial discretion as part of the law enforcement discretion (Khabrieva and Lazarev, 2017).

Another factor that contributed to the dissemination of the concept of judicial law was the activity of justice. For example, in Germany, because of the establishment of constitutional courts along with ordinary courts, as well as administrative, financial, labour, and social justice, the judicial system became much wider than before. This gave rise to the idea of an increased role of the court in the life of society (Kurbanov and Gurbanov, 2019b). More importantly, over the years since the establishment of West Germany, its courts, especially the highest authorities, have repeatedly demonstrated "free" treatment of the existing legislation, which has been facilitated to a great extent by the legislation itself: a) a considerable number of flexible concepts and norms allowing different interpretations; b) the emergence of several compromise laws (reflecting the correlation of parliamentary forces), which can almost always be interpreted by the court in the necessary direction; c) the quantitative growth of the legislation, which leads to its peculiar "inflation" and opens up opportunities for judicial maneuvering.

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