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“The Soviet Trace” in the Development of General Theory of Law (A.S. Pigolkin’s Theoretical-Legal Concepts)

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The article is devoted to the research on the influence of legal heritage of A.S. Pigolkin who has a special place among the greatest theorists of the Soviet and Russian law. The research into Pigolkin’s scientific-practical work gives a unique example of strong connection between theoretical researches and following practical recommendations many of which have successful application.

Keywords: legal heritage, legislative equipment, law-making.

A great number of problems facing modern Russian legal policy require appropriate scientific conceptualization; it is impossible without native theoretical heritage. In this connection the question about the influence of Soviet jurisprudence on modern Russian science of law is worth of notice. On the one hand special researches dedicated to the analyses of Soviet jurisprudence are not numerous. On the other hand Russian jurisprudence still uses many conclusions and theses worked out as universally recognized in Soviet time. First of all, it refers to theoretical ideas dealing with the definition of law, its system, nature of legal norms, law-making, law interpretation and enforcement, and others.

Modern theory of law is directed to research on the questions of law-making, law

enforcement, legality, etc. All these questions used to be in Soviet legal science. Russian legal science is sure to be under the influence of the Soviet heritage; the main law categories and concepts are used by modern scientists as well, for example, the definition of law, systematization and law interpretation. On the other hand, it is necessary to agree with N.N. Voplenko who believes that modern law is deideologized, new ideas such as social justice, constitutional states and etc. are becoming more and more actual in our society (Voplenko N.N., 1991).

Unfortunately, the question of influence of Soviet legal science on modern law isn’t investigated properly, and we can’t say definitely that many concepts, conclusions, regulations are used as they were developed by Soviet scientists.

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If we address to the most outstanding and famous law theorists, we can draw a conclusion that their regulations weren't invariable. So, in 1957 the outstanding scientist-jurist N.G. Aleksandrov wrote that "the Soviet socialist legality assumes that the whole activity of all the bodies of the state is based on steady and exact execution of the Soviet laws and resolutions of the Soviet government, on strict observance of the rights of citizens" (Aleksandrov N.G., 1957).

In 1974 he used the term "legality" in two meanings – in wide and narrow. Legality in a broad sense meant a way of people's behavior which the state demands and which consists of absolute observance of the laws (and bylaws) issued by the state which all persons (citizens) and the organizations must follow. Legality in a narrower sense acts as a principle of the government activity and is that all the bodies of the socialist state carry out their imperious functions in a strict law framework, strictly observing the rights of citizens and their public organizations" (Aleksandrov N.G., Kalinychev F.I., Mitskevich F.I., Nedavniy A.L. and others, 1974).

If in the first case it was a question of understanding legality as steady abidance by the rules of law, but later the concept of legality was studied more and included lawful behavior of the state bodies and simple citizens. It was also pointed out that legality acts as a principle of activity (Representative lawmaking – Waldron, J. 2009). Such evolution of concepts, provisions and conclusions, allows us to draw a conclusion that the views of the Soviet scientists changed according to those realities in which they worked.

A.S. Pigolkin also treats legality as an exact and steady execution of laws and other regulations (Pigolkin A.S., 1971). Further some criteria of legality were used by such scientists, as N.N. Voplenko, N.V. Vitruk, A.S. Shaburov.

The Aleksandrov's talented pupil and outstanding scientist A.S. Pigolkin reworked his theories and theses several times. So, in 1968 he defined legislative equipment as organizationally-technical rules of expeditious and high-quality preparation of draft normative acts, ways of the correct and uniform modification and additions in normative acts, their full or partial cancellation, ways of the most perfect thought pattern of the legislator in enactments, its most rational structure, organizationally-methodical rules of translation of legal acts from one language to another one (Pigolkin A.S., 1968).

In 2000 the legislative equipment was treated by him as a system of creatively considered principles and rules (receptions) of registration based on practice of law-making which were the most perfect and expedient in their form and structure of the bills providing the fullest and strict form conformity of normative instructions of legislator's thoughts, availability and an easy visibility of the normative material, exhaustive coverage of adjustable questions, internal coherence and consistency of the legislative system (A.S. Pigolkin, 2000).

This definition should be considered to be more exact (When 'Plain Language' Legislation is Ambiguous – Sources of Doubt and Lessons for the Plain Language Movement – Barnes, J. 2010). The proposed conception of the legislative equipment includes not only receptions and methods of external registration of regulation draft formulation, but also rules of work organizations on their preparation (Constitutionalism in 3D: Mapping and Legitimizing Our Lawmaking Underworld – Corkin, J. 2013).

A permanent scientific search of the Soviet scientists is evidence that law is not a set mechanism but it is a living changing organism adjusted to the main vector of social evolution. It draws attention to the fact that the Soviet scientists' conceptions were changed, evolved,

nevertheless they were always guided by earlier researches and conclusions. It allows us to draw a conclusion on certain continuity of scientific provisions and conclusions.

Modern law schools also answer the purposes and tasks facing the society, define main directions of law development in the near future (Habrieva T.Ya., 2005). But as before, it falls under influence of the Soviet law schools which are a base for modern law.

So, if we address to the heritage of the outstanding scientist A.S. Pigolkin, we can see that his researches in the field of law theory are actively used by modern writers. His cycle of legally significant actions forming the mechanism of legal regulation is used by modern writers.

M.N. Marchenko treats the considered phenomenon as "influence", which is wider in its size, than "regulation" because influence includes both regulation by means of a certain legal norm, and other legal means and forms of influence on people's behavior (M.N. Marchenko., 2008). One of the structural elements in the mechanism of legal regulation is law-making. M.N. Marchenko defines it traditionally as a form of the state activity directed on legal norm establishing, and also their further improvement, change or cancellation, borrowing this concept from A.S. Pigolkin (Marchenko M.N., 2007). N.M. Yurashevich includes legal consciousness, legal culture, legal principles, law-making process in addition to legal regulation in the mechanism of legal influence (Jurashevich N.M., 2005). A.I. Bobylev emphasizes that the level of legal regulation mechanism depends not only on a legislation condition. It is important to practise passed laws (Bobylev A.I., 1999). Therefore the question of law realization mechanism is acute. The mode of legality demands observance and execution of legal norms precisely and implicitly by everybody (Global Constitutional Lawmaking – Sungjoon, C.H.O. 2010).

Modern writers are sure to use Pigolkin's theory about a triad of the legal regulation mechanism: law-making – systematization (codification) – law enforcement. These elements are interdependent and they are in permanent interaction that allows law to be always urgent. New norms demanding certain orderliness and then their practical applications are created in the law-making process. However practice directly influences the nature of new developed norms and often makes for changing legal norms or passing new ones (Vlasenko N.A., Nazarenko T.N., 2007). If there is no proper systematization of legal norms, first of all, there are difficulties in right application when it is unclear which norms should be applied and how to treat new norms (The Systematization of Law in Terms of the Validity – Yoshino, H. 2011); lack of accurate system of norms also leads to the situation when the norms which duplicate existing ones are passed, it causes chaos and poses certain problems. That is the reason why A.S. Pigolkin adverts to such characteristics as stability and consistency of law system.

The concept "bill text" (2003) follows the analysis of the legislative equipment and it is defined as logically and consistently stated content of normal legal establishment (Abramova A.I., Pigolkin A.S., Rahmanina T.N., Studenikina M.S., 2004).

The topicality of the subject studied by A.S. Pigolkin is caused by necessity of further research of the triad "law-making – systematization (codification) – law enforcement". Now there is still a discussion about adoption of the federal law on normative acts which would allow preparing normative act drafts with higher quality, to raise the level of law-making activity.

T.N. Radko sharing Pigolkin's point of view mentions one more feature: an established legal act must meet such requirements, as clarity, simplicity and availability. He uses Pigolkin's

judgment that "if a legal act is formulated more precise and popular, there will be less difficulties at its realization, its influence will be more effective and it will be most easily understood by a person who should follow it"(Pigolkin A.S., 1968).

Developing this concept, he writes that an unsuccessful term used in the legal act, an incorrect turn, a wrong phrase and a wrong punctuation lead to distortion of the true purpose of the legal act, so to numerous inquiries, misunderstandings; they cause the necessity of additional explanations, generate excessive discussions and wrong realization (Radko N.N., 2010).

Modern writers in many respects support the scientist's point of view and use his criteria at an assessment of legislative language. So, E.A. Yurtayeva writes that one of the problems needing legislative solution in the federal law on normative legal acts is a conceptual-terminological apparatus of the legislation (Yurtaeva E.A., 2006).

Questions of language culture of legal acts, unfortunately, are not studied well. But for Pigolkin's researches there are still few qualified manuals, containing recommendations of work on language of procedural documents (Pigolkin A.S., 1968), though there is an imperative need in such manuals. There is no doubt that one should pay more attention to language culture, especially in preparation of lawyers. We believe that they are questions of future researches which, undoubtedly, have to rely on Pigolkin's works that paid much attention to the problems of legislative language.

Modern scientists-jurists face a responsible task of theoretical comprehension of Pigolkin's Soviet heritage as a whole and his separate researches. We believe that experts in general theory of law and representatives of branch legal sciences have to combine their efforts. It allows to show the ways of influence of Pigolkin's theoretical and applied views on the general theory of law, legislative development and on legislative systematization.

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«Советский след» в развитии общей теории права (теоретико-правовые концепции А.С. Пиголкина)

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Статья посвящена исследованию влияния правового наследия А.С. Пиголкина, который занимает особое место в ряду крупнейших теоретиков советского и российского права. Исследование научно-практической деятельности А.С. Пиголкина дает уникальный пример неразрывного соединения теоретических исследований с вытекающими из них практическими рекомендациями, значительная часть которых имеет успешное внедрение.

Ключевые слова: правовое наследие, законодательная техника, правотворчество.
