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LAW AS AN INNOVATIVE SYSTEM: THEORETICAL APPROACH

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The subject of the study is the extrapolation of the main provisions of innovation to the legal form of social existence. The purpose of the article is to disclose and systematize the key elements of understanding law as an innovative system.

Methodology. The methods of conducting this research include the formal logical method, historical and comparative legal methods, the method of systems analysis, the method of abstraction and the method of legal forecasting.

The main scientific results. Since the innovative paradigm of the functioning and development of society, as well as individual spheres of public life is all-encompassing, it is not possible to consider law as just a simple regulator of innovative processes. The authors propose to expand the concept of legal innovation in the direction of seeing in it a reflection of the paradigm of innovative development of law in general and the legal system in particular. In other words, there is a transition to a new phase of development of the systemic-structural, as well as synergetic approach to law.

The paper moves from considering the concept of "legal innovation" as one of the concepts in the family of concepts that reveal the process of updating the law, to considering the law as an innovative system in which the renewal of legal reality in the unity of its normative and technological aspects is placed on the basis of special mechanisms.

Achieving a common understanding of the content and structure of the legal innovation process, as well as the corresponding system, including subjects of innovative legal activity and an institutionalized ecosystem, should be supplemented in the future by modeling the segments of the legal innovation system inherent in lawmaking and law enforcement. Consideration of the relationship between innovation and tradition in law was continued in the formulation of the problem of balancing the innovation process, which means building a relationship between different innovations in the mainstream of synergy.

Conclusion. The development and perception of ideas of legal innovation, fueled by the ideas of law as an innovative system, can have a stimulating effect on the development and deepening of seemingly traditional concepts of law - libertarian, communicative, hermeneutic, etc. Indeed, the condition of the legal innovation process is the freedom of action of the subjects of the legal innovation system, which has legal limits. In turn, the innovation process in law is a special communication environment that requires not only its proper organization, but also study. In addition to the above, new subject fields appear for the application of the hermeneutic concept of law, since any legal innovation is a kind of project that requires understanding and interpretation.

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1. Introduction.

The impressive world of legal ideas is not static: it is constantly replenishing with new ideological complexes. Against this background, the substantiation of the idea of law as an innovative system acquires particular relevance. Such a paradigmatic idea, having the status of a doctrinal innovation, is the basis of a promising theoretical and legal approach to law. This idea and the corresponding theoretical and legal approach are not the result of a simple mechanistic extrapolation of an innovative paradigm to law, with all due regard for the limits of such extrapolation, but the result of generalizing a certain spectrum of regularities in the functioning of legal reality. In this case, a general pattern emerges. It consists in the fact that legal ideas, developing at the level of concepts and then theories, have not only the essential potential of increasing the knowledge about law, but also set the directions for its transformation based on the development and use of new legal and normative structures that consolidate new trends in social relations and give them legal design. In this regard, the purpose of the article is to disclose and systematize the key elements in understanding law as an innovative system.

2. Conceptual foundations for considering law as an innovative system.

In the process of intensifying intellectual activity in the format of an innovative system as institutional aspect of innovative processes, a need is formed to create an appropriate ecosystem, one of the elements of which is the legal environment, which, on the one hand, is designed to stimulate innovative processes, and on the other, to give them balance. The latter circumstance is very significant due to the riskiness of innovative processes. Therefore, the innovative development of society, accompanied by increased risks and uncertainties and at the same time the emergence of new opportunities for humans and society, makes its own demands on legal regulation.

The innovative subsystem of society, which is the object of legal impact, is a system of infrastructural objects and institutions that presuppose for their effective functioning an adequate influence from the law, promoting “an increase in the standard of living of individuals and society, solving social problems, ensuring competitiveness in the market and in interstate relations, increasing the effectiveness of reforms and transformations” [1, p. 10]. In the case of a timely and effective response of the law to the need for a balanced and effective legal regulation of social relations associated with the generation, dissemination and usage of innovations, it seems possible to talk about a new round of legal progress, manifested, on the one hand, in strengthening, and on the other, in the realization of the potential of the law based on the use of appropriate legal means. In this regard, one can point to an interesting doctrinal structure proposed by O.A. Gorodov, namely, legal innovation, which is understood as a system of legal regulation of innovative activity [2]. Indeed, law acts as the most important regulator providing the innovation process with a reliable regulatory framework based on the distribution and consolidation of rights and obligations of subjects of the innovation system in relation to a particular sphere of social activity – the economy, education, etc. [3; 4]. "It is law that should give normativity and formal certainty to this process, showing what is innovatively valuable from the standpoint of the existing state innovation policy" [5, p. 182].

Because the innovative paradigm of the functioning and development of society, as well as individual spheres of public life is all-encompassing, it does not seem possible to consider law as just a simple regulator of innovation processes. As is rightly noted in the literature, since law creates conditions for the development of innovation and ensures the innovation process, the latter in turn “influences the change and development of law in all its manifestations” [6, p. 266]. Indeed, the question arises not only about how to effectively use legal instruments in the technology “race” [1], but

[1] Law as a Basis for the Development of Innovations and Technologies (06/28/2024). URL: https://legalforum.info/programme/business-programme/5404/ (date of access: 08/01/2024).

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also about what they represent.

Recently, the idea has been formulated about the relevance of the paradigm of the innovative type of law, i.e. law that is capable of adapting to constantly and rapidly changing conditions, and also ensuring proactive regulation [7; 8]. In other words, law as a regulator of innovation processes itself must be innovative and is subject to innovatization based on its own logic of renewal in conditions when the production of innovations is put "on stream".

There is every reason to formulate a conceptual position that law, being a subsystem of an innovative society, itself represents an innovative system. In this case, the idea of law as an innovative system stimulates the emergence and development of an approach to understanding law, which involves the use of a new group of concepts that "capture" the existence of law as a condition and, at the same time, a subsystem of the innovative development of society. This approach can be argued as legal innovation in the broad sense of the term.

It is necessary to highlight several prerequisites for the validity of the existence of legal innovation in its broad sense, which claims to be a new approach to law. Firstly, these are methodological grounds. They consist in the possibility and expediency of implementing an "interdisciplinary graft", i.e. the dissemination – taking into account the necessary limits – to legal reality of models that reflect essential processes in other spheres of social activity. Secondly, the existence in law of objective innovation-like phenomena that allow us to go beyond the understanding of innovation in law as merely evaluative concepts and then use the concepts of *"innovation in law", "legal innovation"* as ontological concepts.

3. Legal innovation: an experience of categorization.

Such categories as "modernization", "reform", "improvement of legal regulation" have entered the conceptual arsenal of theoretical jurisprudence and legal policy[2]. Against the background of these statements, an unambiguous question arises about whether the transition to the use of an additional series of categories, such as "legal innovation", "innovation in legal regulation", "innovations in law", etc., is not an unnecessary multiplication of entities? Are they not synonyms for the fairly familiar concepts of "innovation" and "novella"?

According to the supporters of this series of concepts, "innovations in law, along with such categories as "modernization of law", "reform", "borrowing of law", "anticipatory lawmaking", are a structural element of the process of updating law and have a certain function" [9, p. 17]. At the same time, innovation is understood not only as a structural element of the renewal of law, but also as a form of this renewal. It should be agreed that the performance of a certain, and very significant function by a legal phenomenon called "innovation" can provide an objective basis for introducing the concept of "legal innovation" into the categorical series of jurisprudence. This opens up space for the implementation of work on clarifying the relationship of the content of this concept with the content of concepts that allow us to understand the structural process of renewal of law in the unity of its normative and ideological aspects.

There are two possible ways of categorization here. The first is to consider the concept of "legal innovation" as one of the concepts in the "family" of concepts that reveal the process of renewal of law. The second way is possible as a realization of the idea of law as an innovative system in which this renewal is based on special mechanisms. In this case, the concept of "legal innovation" in conjunction with the concept of "innovation process in law", which is correlated with the general concept of "innovation activity", becomes a key term explaining the mechanism of updating the law and at the same time endowing other concepts with additional meaning.

A similar substantive connection between innovation and the innovation process in law was

[2] Mechanism of innovative reform of law. URL: https://poisk-ru.ru/s26757t21.html (date of access: 24.07.2024).

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previously expressed by N.M. Kozhukhov, who sufficiently argued the introduction of the theoretical and legal category of "innovation in law" by specifying the concepts of "novelty", "innovation" and "innovation". Innovation in law is defined by him as a legal novelty introduced in the course of innovation into the law itself as a certain system, and innovation "as the process (mechanism) of creating, distributing, using a legal innovation, accompanied by a positive change in the state of legal regulation, which entails an increase in the quality of the legal system" [10, p. 67]. Innovation, presented in a wide variety of legal phenomena, is distinguished by its novelty and leads to changes in legal regulation, becoming the basis for solving complex theoretical and practical issues. Innovation is thought of not as a result, but as a process. From our point of view, the systematic nature of law is the basis for the systematic nature of this process, which is carried out at all levels of legal reality. Note that the literature states the deployment of the innovation process, for example, at the level of administrative legislation and the practice of its application [11].

As D.A. Pashkova accurately notes, "on the one hand, the expansion of the concept of innovation makes it possible to spread its use; however, such an expansion may become excessive and cover the meaning of concepts that are close in meaning" [12, p. 9-10]. According to the general theory of innovation, most clearly developed in economic theory, innovation in its generic sense is a product or process that is introduced into economic circulation. But innovation is not reducible only to products and services that have new properties, since innovation can also take place in the field of education, as well as in the field of management. In the latter case, these are new methods and algorithms for organizing social relations, as well as communication methods. Their development and implementation as a sphere of legal regulation presupposes the action of a complex mechanism of legal changes, starting from the stage of generating legal innovations and ending with their formalization, i.e. their transformation into current law.

Theorists of innovation and the innovation process provide a consistent classification of innovations, including radical innovations, improving innovations, adaptive innovations, etc. One should welcome the well-founded classification of legal innovations undertaken in legal innovation studies, which is being formed in the domestic theory of law [13; 14]. Quite interesting is the consideration of some legal regimes and regulatory technologies as legal innovations [15; 16]. Of course, this classification can be made more specific. As an independent variety, one can distinguish doctrinal innovations, i.e. new concepts, theoretical constructions, ideas, etc., which, in essence, are at the intersection of subject-legal and methodological-legal innovations [17, p. 30]. The criterion of dissemination and use is also characteristic of methodological innovations inherent in the constantly developing legal science [18].

The classification of innovations can be supplemented by their enlarged typology. For example, the division of legal innovations into endogenous and exogenous, genuine and imaginary, or pseudo-innovations may seem quite heuristic. Thus, if an innovation represents new algorithms of legal regulation that meet the prospective trends of social development, then a pseudo-innovation is characterized by insufficient justification. However, in some cases, concerns and even negative assessments may also be expressed regarding the use of certain innovations in law, for example, of a technical nature [19]. Therefore, the development of mechanisms for the flexible elimination of erroneous innovations, which implies their timely replacement with more effective innovations, is quite promising.

A number of legal innovations become elements of the current law. They can be called regulatory. It is quite obvious that in order for this kind of innovation to become possible, not only an ecosystem of relevant innovations is necessary (a set of conceptual prerequisites, the presence of innovative subjects, the functioning of public innovative legal consciousness, mechanisms for responding to objective needs for innovation, etc.), but also a sufficient degree of perception of this innovation by the legal regulation system as a whole.

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4. From legal innovation to legal innovation system: discursive analysis.

The legal innovation process, carried out within the framework of certain legal institutions, branches of law, the legal system as a whole, and especially at the level of the legal system of society, is based on the life cycle of specific innovations. This cycle is a kind of "cell" of the structured legal innovation process. Therefore, the general picture of legal changes that have an innovative nature is the result of the cumulation of life cycles of specific legal innovations. The implementation of the idea of law as an innovative system is intended to encourage scientific legal thought not only to develop a conceptual idea of the life cycle of legal innovation, but also ideas about the life cycle of various types of legal innovations, which will require the development of their specifically legal qualification. For example, an innovation is a way of changing the current law, but also new means and mechanisms of legal regulation. The emergence of new social relations not regulated by law, but implying such regulation, or regulated by it inconsistently, is the basis for generating legal innovations. The need for legal innovations also manifests itself in the case of an objective transformation of the content of regulated social relations.

All this should be supplemented by a systemic vision of innovative processes at various levels of law and, of course, individual aspects of the legal system of society, including the emergence of innovative moments in legal culture, legal consciousness and, of course, in legal ideology. The latter circumstance, in our opinion, is very significant. This is determined by the fact that law is not only a complex self-organizing, but also a reflexive system, implying an active role of legal consciousness both within the framework of evaluation procedures and within the framework of putting forward and substantiating various approaches, doctrinal constructions and, finally, legal ideas of various scales, which are an integral element of the development of law. Reflecting and expressing various needs of legal development in the mainstream of improving legal regulation, conceptual and theoretical constructions, in essence, create the possibility of an innovative type of process in law, becoming an important factor in law formation and norm formation. The idea of innovative law reflects the process of generating, securing and disseminating legal innovations as a targeted and organizationally ordered process, the engines of which are the subjects of legal innovative activity. In legal innovation in the broad sense of the word, these subjects are beginning to receive increased attention. In particular, they are considered as "collegial bodies, individuals, artificial legal intelligence endowed with competence to implement (assist in implementing) in the legal system the established forms of innovations in law, carrying out actions to preserve existing legal traditions and introducing innovative elements of both the national and foreign legal systems" [20, p. 53]. We believe that this definition has a drawback, since classifies artificial intelligence as a subject of innovative activity in law, whereas it is an auxiliary technical system, which is one of the types of digital technologies. In turn, the emphasis on the preservation of legal traditions deserves approval.

The initial theoretical platform for the implementation of the approach to law as an innovative system is the dynamism of the matter and spirit of law, as well as the factuality of legal progress. The approach to the process of updating the law from the point of view of the idea of an innovative system presupposes a mental allocation of links in the innovation process, lining up in a chain: development – testing –formalization – dissemination (diffusion) – application (use). In the literature, you can find a slightly different division. For example, E. Yu. Kuryshev identifies the following links: fundamental research of law – applied research of law – the emergence of an innovative legal idea – discussion of the idea – the introduction of an innovative legal idea into legal life [9, p. 20].

The identification of links in the chain of the innovation process in law, as well as the definition of the content and form of legal innovation, is debatable. Achieving a common understanding of the content and structure of the legal innovation process, as well as the corresponding system, including subjects of innovative legal activity and the institutionalized ecosystem, should in the future be supplemented by modeling the segments of the

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legal innovation system inherent in lawmaking and law enforcement.

5. The innovation process in law through the prism of the categories of new and old.

Considering law as an innovation system, which by definition presupposes a mechanism of conscious and organizationally ordered mechanism of innovation production, serves as a barrier to the idea that law is some kind of unbridled transformer. However, law is called upon not only to stabilize social relations that are changing quite dynamically – especially at present – but also has internal stabilizing mechanisms. One of such mechanisms is tradition, which can be briefly characterized as a mechanism for reproducing the main substantive parameters of legal regulation. Traditions can be attributed to the most important values of law, fixing the achieved level of stability and predictability of legal regulation. Within the framework of the relationship "legal innovation – legal tradition" there is a reflection of such a pair of dialectical categories as "new – old". However, legal tradition as an "old" is not always something outdated, which in turn should be replaced by "new". Tradition can be considered as one of the aspects of invariability in law, which is characterized by a high degree of flexibility. Therefore, it is hardly advisable to perceive the relationship between innovation and tradition in law as a binary opposition. The fact is that tradition is the limit and a kind of "stabilizer" of the legal innovation process, since it ensures the continuity of legal development [21; 22]. This largely predetermines the deepening of reflection on the phenomenon of tradition, but not so much in itself, as in its connection with legal innovations [23]. Moreover, in this context, the very idea of innovative development of law is in turn not a denial of the traditional idea of the development of law, but a further phase of its improvement, which, as D.V. Shcherbik convincingly shows, has undergone a long path of its formation, completed only in the twentieth century [24].

In the conditions of an innovative society, which assumes an innovative vector of legal development, the relationship between legal innovation and legal tradition becomes extremely topical, since new social relations can no longer be regulated by traditional means. However, the legal innovations being developed are characterized by a different range of consequences. Therefore, legal progress is carried out through the nomination and subsequent adoption or rejection of legal innovations. The latter can be enshrined in law as novelties, but there may be no complete clarity in their appropriateness and validity. In this case, it is necessary to talk about the relevance of forming institutional management of the legal innovation process, which is an integral part of the ecosystem of the corresponding legal innovation system.

6. The problem of balancing the innovation process in law.

Consideration of the relationship between innovations and traditions in law can quite logically find its continuation in the consideration of such an issue as the balance of the innovation process in law. In this case, the construction of a relationship between different innovations in the mainstream of ensuring synergy between them is actualized. In traditional terminology, this may mean achieving consistent legal regulation. In the context of implementing the paradigm of innovative law, it is a theoretical and practical problem, especially if legal innovations are put "on stream".

In this regard, it is appropriate to raise the question of *the degree of innovatization of law*, which are fundamental constants of the innovative system in law. It is clear that there cannot and should not be too many of them. The totality of innovative ideas and approaches should be subject to the criterion of reasonable sufficiency and validity. Note that individual or systemic "bursts" of innovative activity in law, leading to its transformation, do not yet mean the presence of an innovative legal system. The latter presupposes an appropriate institutional infrastructure within which the "conveyor belt" of legal innovations operates. Its speed in law should be moderate compared to the pace of the innovation process in the economic and scientific and technical spheres, where there is an "innovation race" characterized by a reduction in the life cycle of innovations. This can be justified by the fact that law should not only stimulate the innovation process, but should also stabilize it. Similar criteria should be presented to the management of innovation processes in law itself.

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An important aspect of the invariant core, which not only determines the degree of innovation, but also stabilizes the innovation process, in addition to legal traditions, are the principles of law, compliance with which is the most important factor in the legitimization of legal innovations. If we talk about the need to manage the innovation process in law, then, of course, it will be necessary to develop special legal principles that complement the existing ones. The functional purpose of the latter is that they will allow us to measure legal innovation with the needs that arise in social relations. In addition, they should prevent the fragmentation of the legal innovation process carried out in the branches of law, thereby providing a reliable basis for eliminating conflicts between the norms of various branches.

In the context of the paradigmatic idea of innovative law, new frontiers of understanding arise, including the possibility of the emergence of new explanatory schemes using the categorical series of legal innovation, for example, the concept of *exogenous legal innovation*, which is the opposite of endogenous legal innovation. The fact is that in certain cases, the corresponding legal means that have proven themselves well in foreign legal systems act as one of the sources of legal innovation. The risks associated with borrowing can be reduced in the case of realizing the potential of tradition, restraining the “innovation race”, which can lead to the undermining of the essence of law, and in some cases, as I.S. Yartykh shows, to the undermining of the traditions of the national legal system [25, p. 10]. An important mechanism for balancing innovative development with law is adaptation, which can facilitate the integration of a borrowed innovation into the national legal order without introducing a certain amount of dysfunction into it. It is quite clear that the risks are reduced if the exogenous legal innovation is borrowed from a foreign national legal order, which is characterized by similar legal traditions.

7. Conclusions.

The development and perception of the ideas of legal innovation, fueled by the ideas of law as an innovative system, can have a stimulating effect on the development and deepening of seemingly traditional concepts of law, such as libertarian, communicative, hermeneutic, etc. Indeed, the condition of the legal innovation process is the freedom of action of the subjects of the legal innovation system, which has legal limits. In turn, the innovation process in law is a special communication environment that requires not only its proper organization, but also study. In addition to the above, new subject fields appear for the application of the hermeneutic concept of law, since any legal innovation is a kind of project that requires understanding and interpretation.

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