

HYBRID LEGAL REGIMES: PROBLEMS OF EMPLOYMENT**Sergey Yu. Chucha***Institute of State and Law of the Russian Academy of Sciences, Moscow, Russia***Article info**

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The article is devoted to the study of a special type of special mixed temporary, including – on a limited territory, intersectoral (interdisciplinary) legal regime, forced to promptly form by the state in response to a threat of large-scale violation of the rights of citizens and state security that was not predicted in advance and not provided with regulatory legal means of counteraction, called a hybrid legal regime. A hybrid legal regime is a type of mixed, but the latter consists of ordinary and special regimes, territorially and temporally localized, limiting the rights of a relatively small number of citizens. The use of mixed regimes does not require prompt adjustment of the regulatory framework. Mixed regimes operate periodically, hybrid ones – one after another, intersecting in time at least by their individual elements. We can talk about a significant time period of hybrid legal regimes – until the completion of the processes of deglobalization and technological transition, stabilization of economic, social and political blocks and relations. A transitional legal regime can be hybrid if it meets the features identified in the course of the study. At the same time, the transitional legal regime for regulating labor relations, which ended in general with the adoption of the Labor Code of the Russian Federation, corresponding to the requirements of the market economy, was not hybrid. During the construction based on the Western model of legal regulation of labor in Russia, there were mistakes and deliberate deviations, but there was no legal and goal-setting uncertainty, legal norms were borrowed through the prism of the existing model or created taking into account local experience. In the modern transition, in the absence of final and intermediate verified models, it is necessary to quickly create or borrow rules from different regimes and quickly, without practical testing on a limited scale, use them in the constructed model. From this point of view, the hybrid legal regime, although outwardly similar to the experimental, but in essence, being forced to be applied in the absence of other (non-experimental) potentially effective sets of legal means, is not such. When developing basic sectoral federal laws in the context of hybrid legal regimes, it is necessary to carefully predict the results of their impact on public relations in the long term. It is advisable to avoid changing basic industry regulations by resorting to special legal regulation, and if this rule is not followed, be prepared to revise the rules introduced on an accelerated basis in the future. In the context of employment and social protection, the study made it possible to substantiate the conclusion that the foundation elements of hybrid legal regimes should be institutions based on traditional spiritual and moral values enshrined in the Constitution of the Russian Federation, which historically determined the emergence of labor law as an independent private-public sector, extending them to new forms of labor organization: institutions of labor protection, social insurance and social partnership.

1. Introduction

Our last year's publication in the journal "Law Enforcement Review" [1, pp. 44-52] was devoted to the specifics of ensuring and protecting social and labor rights in the 2020s. We identified a number of recurring characteristics in law enforcement and lawmaking during this period, which manifest themselves against the background of the avoidance of comprehensive legal regulation: acceleration of the creation of rules of conduct in the sphere of labor, employment and social protection by increasing the role of the Government, accelerating the lawmaking process, expanding regional rulemaking, giving greater legitimacy to the instructions of officials in comparison with documented acts. A detailed analysis of the specifics of law enforcement undertaken in the article revealed its hybrid nature, caused by attempts to ignore the application of special legal regimes, thoroughly and comprehensively developed by law - a state of emergency¹, martial law², etc., when elements of other emergency regimes are used to construct current regulation, but not systematically, while avoiding measures that entail a radical and total violation of civil rights and freedoms.

This analysis of the sectoral legal matter also allowed us to assume that the legal regimes formed in this way - aimed at countering the spread of the COVID-19 coronavirus [2, pp. 75-94], accompanying the implementation of the SVO, etc. [3, pp. 5-15; 4, pp. 5-14], can be called hybrid - assembled from various legal elements and not forming systems sufficient to achieve a long-term integration-entropy balance. Moreover, for such a design, elements of normatively enshrined special legal regimes are used, which, however, have

undergone a significant transformation - a self-isolation regime instead of mandatory quarantine measures [5, pp. 96-104; 6, pp. 105-115], special measures in the economic sphere instead of special economic measures established by presidential decree³; mobilization - but partial. Accelerated lawmaking at the same time clearly indicates the insufficiency of the array of norms created over decades to regulate the current agenda.

In this article we will try to abstract somewhat from the practical labor law and social protection issues of the current decade, defining their role as an illustration, and to focus our attention on the study of doctrinal problems of a special type of special mixed temporary, including - on a limited territory, inter-sectoral (interdisciplinary) legal regime, which is forced to be promptly formed by the state in response to a threat of large-scale violation of the rights of citizens and state security that was not predicted in advance and not provided with regulatory legal means of counteraction, which we call a hybrid legal regime.

2. Fundamentals of the Theory of Hybrid Legal Regimes

The historical process of formation of the category of "legal regime" in world and domestic science has been studied and, with varying degrees of specification, described in the literature. The foundations of reasoning about this phenomenon are found in the works of ancient and medieval philosophers [7, pp. 7-11], the conceptual understanding of the category of "legal regime" in domestic science can be traced in the publications of pre-revolutionary lawyers S.A. Muromtsev, L.I. Petrazhitsky, N.M. Korkunov, G.F. Shershenevich [7, pp. 11-17]. In

¹ Federal Constitutional Law of May 30, 2001 No. 3-FKZ "On the State of Emergency". Collected Legislation of the Russian Federation. 2011. No. 23. Art. 2277.

² Federal Constitutional Law of January 30, 2002 No. 1-FKZ "On Martial Law". Collected Legislation of the Russian Federation. 2002. No. 5. Art. 375.

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³ Federal Law of December 30, 2006 No. 281-FZ "On Special Economic Measures and Coercive Measures". Collected Legislation of the Russian Federation. 2007. No. 1 (Part 1). Art. 44.

its modern meaning, the study of the problems of legal regimes coincided in time with the beginning of the period of legal reform at the turn of the 90s of the twentieth century [8, pp. 245-267; 9, pp. 184-196; 10, pp. 171-172, 244; 11, pp. 9-17; 12, pp. 16-29; 13; 14; 15; 16; 17]. The legal regime was considered as a means combining stability and dynamism, allowing for a prompt response to emerging social problems and the elimination of failures in their resolution that arise as a result of the unpreparedness of conventional legal means.

A kind of result of a considerable number of scientific studies in this category and at the same time the foundation for subsequent ones was the definition of N.I. Matuzov and A.V. Malko: "the legal regime is a special regulatory order expressed in a certain combination of legal means and creating a desired social state and a specific degree of favorability or unfavorability for satisfying the interests of legal entities" [12, pp. 17-18].

Modern researchers also base their assertions on the theoretical foundation of N.I. Matuzov and A.V. Malko [14; 18], defining the legal regime as "a special procedure for the legal regulation of social relations based on a certain combination of legal means (including methods of legal regulation), guarantees and principles, creating advantages (or restrictions) for satisfying the interests of legal entities and aimed at achieving an optimal socially significant result" [7, p. 17], and a special legal regime as "a complex inter-sectoral systemic formation, the characteristic features of which are: the establishment by special legislation of special rules of conduct and life, expressed in additional rights, prohibitions or obligations; the presence of a specific target setting, conditioned by the essential features of the process, phenomenon, relations, exceptionally valuable for society and the state or posing a danger in atypical situations; flexibility of legal regulation, allowing for individual restructurings to implement a prompt response to

changed conditions of legal reality; a simplified procedure for changing the content of a special regime; locality of legal impact and special structuring" [7, p. 46].

Modern researchers, stating that "the ambiguity of the concept of "regime" testifies to its interdisciplinary nature" [17, p. 9], the development of atypical situations cannot be foreseen in detail at the level of special legislation, and at the same time the state is often required to take quick and decisive actions, do not provide an answer to the questions posed and not resolved by N.I. Matuzov and A.V. Malko: what were the legal regimes of "federal invasion or federal intervention", "regime of an extraordinary situation", "regime of rarefied legal space" or "special or special regime", unknown to the Constitution of the Russian Federation, but "tested" in pursuance of the "secret" decrees of the President of the Russian Federation in the mid-90s of the last century. The Constitutional Court of the Russian Federation, having recognized the decrees as acts not contradicting the basic law of the country, however, firstly, by no means unanimously - six judges expressed a dissenting opinion, and, secondly, without giving an assessment of the legal regimes actually introduced by these decrees⁴. N.I. Matuzov and

⁴ Resolution of the Constitutional Court of the Russian Federation of July 31, 1995 No. 10-P

"On the case of verifying the constitutionality of the Decree of the President of the Russian Federation of November 30, 1994 No. 2137 "On measures to restore constitutional legality and law and order in the territory of the Chechen Republic)", the Decree of the President of the Russian Federation of December 9, 1994 No. 2166 "On measures to suppress the activities of illegal armed formations in the territory of the Chechen Republic and in the zone of the Ossetian-Ingush conflict", the Resolution of the Government of the Russian Federation of December 9, 1994 No. 1360 "On ensuring state security and territorial integrity of the Russian Federation, legality, rights and freedoms of citizens, disarmament of illegal armed formations in the territory of the Chechen Republic and adjacent regions of the North Caucasus", the Decree of the

A.V. Malko note in this regard that "it is necessary to distinguish between the *de jure* regime and the *de facto* regime" [12, p. 26], and this is already somewhere close to the "regime of lawlessness" - "arbitrariness, ... lack of norms, that is, chaos" of V.D. Zorkin [19, p. 28; 20, p. 136].

It seems that we were dealing with the first large-scale (but not global and not even all-Russian) manifestation of hybrid law enforcement in modern Russian history, typical of transitional periods, when, in response to a threat that was not predicted in advance and not provided by legislation with the means of suppression, the state responded with a promptly formed special type of special mixed legal regime temporarily operating in a limited territory - a hybrid legal regime, simply because it could not help but respond and stop, albeit not as effectively as desired, a large-scale violation of the fundamental rights of citizens, including the right to life. The legal regime of the counter-terrorism operation⁵, which was later normatively enshrined, made it possible to transfer this hybrid regime to a series of normatively regulated special legal regimes, which can be applied in a comprehensive manner or in the necessary part when such circumstances arise.

Unfortunately, society is not able to foresee all challenges in advance, and even having predicted them, it is not able to adequately regulate the procedure, regulate a set of measures aimed at overcoming them, by legal norms. Moreover, the corresponding trend has acquired a global character. Hybrid legal regimes to counteract the coronavirus were urgently formed on a global scale, taking into account the often regional nature of rule-making, which is still

extended in certain entities⁶. Hybrid legal regimes to counteract the coronavirus, special measures in the economic sphere in our country were quickly formed, since the current legislation, ordinary and special legal regimes did not allow us to respond to modern threats. Hybrid legal regimes of property have already been formed to some extent abroad, allowing, on the basis of decisions or implicit actions, to limit the property rights of states and citizens. In the context of technological transition and deglobalization, with a high degree of probability, new challenges will be revealed, to which the pre-prepared regulatory framework and the corresponding potentially permissible legal regimes will not be able to respond. Humanity, as we see it, has entered a period of hybrid legal regimes, which may last for several decades, accompanying the ongoing global economic and social transformation.

A hybrid legal regime is a type of mixed regime, but a mixed regime consists of ordinary and special regimes, localized territorially and in time, limiting the rights of a relatively small number of citizens. The use of mixed regimes does not require prompt adjustment of the regulatory framework. Mixed regimes operate periodically, hybrid ones - one after another, intersecting in time at least by their individual elements. We can talk about a significant (several decades) period of hybrid legal regimes - until the completion of the processes of deglobalization and technological transition, stabilization of economic, social and political blocks and relations.

President of the Russian Federation of November 2 1993 No. 1833 "On the Basic Provisions of the Military Doctrine of the Russian Federation". Collected Legislation of the Russian Federation. 1995. No. 33. Art. 3424.

⁵ Federal Law of March 6, 2006 No. 35-FZ "On Counteracting Terrorism". Collected Legislation of the Russian Federation. 2006. No. 11. Art. 1146.

⁶ See, for example: Resolution of the Government of St. Petersburg dated 28.12.2024 No. 1256 "On Amendments to the Resolution of the Government of St. Petersburg dated 13.03.2020 No. 121" ["On Measures to Counteract the Spread of the New Coronavirus Infection (COVID-19) in St. Petersburg"]. Official publication of legal acts. URL: <http://publication.pravo.gov.ru/document/7800202412310007> (date of access 01.01.2025)

3. Some problems of employment provision in the conditions of hybrid legal regimes

As a way to respond to a historical challenge, new norms can prove to be a very effective tool exclusively in the hybrid period, but in the future, in a stable model, they can play a negative role in protecting the labor rights of citizens. Moreover, unfavorable future consequences become possible only as a result of the use of a controversial legislative technique - the introduction of new norms into the Labor Code of the Russian Federation, not limited to a temporary regulatory act, even an act of the Government of the Russian Federation that has received authority to regulate labor relations in special conditions. We are talking about the possibility of deviating from the usual restrictions on working hours and rest provided for by the Federal Law of July 14, 2022 No. 272-FZ "On Amendments to Certain Legislative Acts of the Russian Federation" that amended the Labor Code of the Russian Federation⁷.

At the same time, in the process of accelerated hybrid legal regulation, many norms are being created that are designed not only for a situational response in a specific transition period, but are also quite oriented towards a future stable model. Take, for example, the improvement of legal regulation of remote work, initially as a means of counteracting the spread of coronavirus, but more than effective not only in this emergency period, but also in the labor organization model corresponding to the upcoming technological order.

Hybridization of legal regimes is an objective response of states to the original global processes of transformation of technological, economic, social and interstate relations, with a high probability ensuring optimal legal regulation with the minimum possible temporary restriction

of the rights of citizens and organizations, allowing to avoid their absolutely total violation by the systemic introduction of special (emergency, special) legal regimes. For example, the Labor Code of the Russian Federation was supplemented by Art. 3517, regulating the procedure for suspending an employment contract with mobilized personnel. The changes concerned only three categories of workers⁸. However, the current legislation on mobilization and martial law also provides for other grounds for involving citizens in the performance of state tasks, temporarily preventing them from performing their labor function under an employment contract⁹. But what will we get as a result and what will the Labor Code of the Russian Federation be like if we reflect all the nuances of regulating labor relations during special periods in this industry-wide act? After all, mobilization and martial law will only take up a small part of its term, if they are used at all. Therefore, the relevant rules should be placed in a normative act that comprehensively regulates, among other things, labor relations in conditions other than normal, emergency situations, or another special act.

During periods of emergency, civil rights are usually limited. But if this is inevitable, then it is better to implement such a restriction in accordance with carefully developed in advance, and possibly tested on a smaller scale in an experimental regime [21, pp. 30-42; 22, pp. 64-73] legal norms so that the violation of rights is

⁷ Collection of Legislation of the Russian Federation. 2022. No. 29 (Part III). P. 5239.

⁸ Federal Law of October 7, 2022 No. 376-FZ "On Amendments to the Labor Code of the Russian Federation". Collected Legislation of the Russian Federation. 2022. No. 41. Art. 6938.

⁹ Part two of Art. 10 of the Federal Law of February 26, 1997 No. 31-FZ "On Mobilization Preparation and Mobilization in the Russian Federation". Collected Legislation of the Russian Federation. 1997. No. 9. Art. 1014; paragraph 4 of part 3 of Art. 18, Art. 101 of the Federal Constitutional Law of January 30, 2002 No. 1-FKZ "On Martial Law". Collected Legislation of the Russian Federation. 2002. No. 5. Art. 375.

objective and limited, based on fundamental rules, and not on arbitrariness, inevitable in the absence of high-quality legal regulation.

What fundamental rules can we lay in the foundation of legal regulation in order to preserve, and possibly increase, the achievements of mankind in the matter of fair regulation of employment, labor, production and social protection relations during the transitional period of dominance of hybrid legal regimes and as a result of it, when the principle of legality in extraordinary circumstances of transition does not guarantee this at all? It is necessary to especially highlight the institutions based on the traditional spiritual and moral values [24, pp. 111-119] enshrined in the Constitution of the Russian Federation, which are historically inherent in the legal regulation of labor. They could become elements of the foundation of fair regulation of social and labor relations, extending them to new forms of labor organization. These institutions are labor protection, social insurance and social partnership [25, pp. 57-66].

4. Conclusions

To summarize, the following doctrinal conclusions can be formulated.

1. Hybridization of law enforcement and legal regimes is a worldwide phenomenon, caused by the global transition to new technological structures, economic organization and industrial relations, with a simultaneous global process of deglobalization in the economic and political sphere with the division of the world political and economic space into separate blocks of states and transnational corporations.

2. Hybridization of legal regimes is an objective reaction of states to original and even unique global processes of transformation of technological, economic, social and interstate relations, with a high probability ensuring optimal legal regulation with the minimum possible temporary restriction of the rights of citizens and

organizations, allowing to avoid their absolutely total violation by the systemic introduction of special (emergency, special) legal regimes.

3. Society is not able to not only predict all challenges, but even having foreseen them, to adequately regulate their overcoming in advance by legal norms. Such a situation in the context of the global process of deglobalization is of a global nature.

4. Hybrid law enforcement in Russia is manifested in the acceleration of the creation of rules of conduct by accelerating the lawmaking process, increasing the role of the Government of the Russian Federation in the rulemaking process, strengthening the influence of acts of the Constitutional Court of the Russian Federation on law enforcement, as well as expanding regional rulemaking and giving greater legitimacy to the instructions of officials.

5. The legal regimes formed in this way - aimed at countering the spread of coronavirus, accompanying the implementation of the SVO, special measures in the economic sphere, etc., are hybrid - assembled from elements of different legal regimes. Moreover, for such a design, elements of ordinary and normatively enshrined special (special) legal regimes are used, which, however, have undergone a significant transformation - a self-isolation regime instead of mandatory quarantine measures, special measures in the economic sphere instead of special economic measures established by the decree of the President of the Russian Federation.

6. A hybrid legal regime is a special type of special mixed temporary, including on a limited territory, intersectoral (interdisciplinary) legal regime, forced to be promptly formed by the state in response to a threat of a large-scale violation of the rights of citizens and state security that was not predicted in advance and not provided for by legislative means of counteraction.

7. A hybrid legal regime is a type of mixed, but the latter consists of ordinary and special regimes, localized territorially and in time, limiting the rights of a relatively small number of citizens. The use of mixed regimes does not require prompt adjustment of the regulatory framework. Mixed regimes operate periodically, hybrid ones - one after another, intersecting in time at least by their individual elements. We can talk about a significant period of hybrid legal regimes - until the completion of the processes of deglobalization and technological transition, stabilization of economic, social and political blocks and relations.

8. A transitional legal regime can be hybrid if it meets the above-mentioned characteristics. For example, the transitional period of the formation of security legislation in the 1990s temporarily acquired the features of a hybrid legal regime in response to the events in Chechnya. At the same time, the transitional legal regime for regulating labor relations, which ended in general with the adoption of the Labor Code of the Russian Federation, corresponding to the requirements of a market economy, was not hybrid. During the construction of the Western model of legal regulation of labor in Russia, there were mistakes and deliberate deviations, but there was no legal and goal-setting uncertainty; legal norms were borrowed through the prism of the existing model or created taking into account local experience. Norms tested abroad did not need to be invented speculatively every time a problem was encountered. In the modern transition, in the absence of final and intermediate verified models, it is necessary to quickly create or borrow rules from different regimes and quickly, without practical testing on a limited scale, use them in the constructed model. From this point of view, the hybrid legal regime, although outwardly similar [22, pp. 64-73] to the experimental [21, pp. 30-42], but in essence, being forced to be applied in the absence of other (non-experimental) potentially effective sets of legal means, is not such.

9. When developing basic federal laws in the context of hybrid legal regimes, it is necessary to carefully predict the results of their impact on public relations in the long term. It is advisable to avoid changing basic industry regulations by resorting to special legal regulation, and if this rule is not followed, be prepared to revise the rules introduced in an accelerated manner in the future.

10. The period of global legal regimes in Russia and the world is due to a long process of global transformation of the economy and society, the final model of which, especially verified, as well as the timing of such transformation, have not been determined.

11. It is assumed that the formation of hybrid legal regimes will accompany the processes of deglobalization, change of technological structures and will determine the features of legal regulation for at least the next decades.

12. Strengthening the role of the Government of the Russian Federation in the context of hybrid legal regimes sets the vector for research into the labor and employment market, the production function of labor law, as well as the adoption of new national programs, federal and regional projects in this area.

13. In times of emergency, civil rights are certainly limited. But if this is unavoidable, it is better to implement such a limitation in accordance with carefully developed in advance, and possibly even tested on a smaller scale, legal norms so that the violation of civil rights is objective and limited in nature, based on fundamental rules, and not on arbitrariness, which is inevitable in the absence of high-quality legal regulation.

1. 14. In order to preserve, and possibly even increase, the achievements of mankind in the matter of fair regulation of labor, production and social protection relations during the transition period of

the dominance of hybrid legal regimes and as a result of it, when the principle of legality in extraordinary circumstances of transition does not guarantee this at all, the elements of the foundation of legal regulation should be institutions based on traditional spiritual and moral values enshrined in the Constitution of the Russian Federation, historically inherent in the legal regulation of labor and which actually determined the emergence of labor law as an independent private-public sector, extending them to new forms of labor organization: institutions of labor protection, social insurance and social partnership.

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