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PHILOSOPHY

PHILOSOPHY OF LAW

LEGAL SCIENCE

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Philosophy. Philosophy of law. Legal science.

The book is devoted to some actual problems of philosophy and philosophy of law. It discusses the problem of monism-pluralism in philosophy and philosophy of law, criticizes philosophy of postpositivism and postmodernism, and invites to return to dialectic as a universal global methodological basis of scientific cognition.

On the basis of dialectics in the book deals with law. It explores the subject of philosophy of law, ontology and epistemology of law, methodology and content of law, legal consciousness and its deformation, problems of legal science and their solutions, legal progress and etc. It substantiates the theory of comprehending study of law. It proposes new ideas and suggestions.

Monograph is addressed to researches in the field of philosophy and philosophy of law, lawyers, teachers, postgraduates, students, and also to everyone who are interested in problems of philosophy and law.

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INTRODUCTION

Represented monograph continues series of our works on philosophy and philosophy of law.

Law is inconvincible without the philosophy. From philosophy comes the concept of law, legal being, state, justice. The majority of philosophers, beginning from ancient times, in their works necessarily anyway were dealing with questions of law, legal regulation of social relationship, legality. Enough to say, that at the origins of dominant in contemporary Russia the theory of natural human rights were such philosophers as B. Spinoza and J. Lock. Earlier, in the USSR, as a leader philosophy was another one, in accordance to which, the right have a very different content: according to V.I. Lenin the right was understood as a will of ruling class, built in the law.

Wherein it is needed to admit, that until now neither philosophers nor lawyers didn't come to even more or less general understanding of law. It is also influenced by philosophy – already contemporary philosophy with her characteristic indeterminacy.

That's why this philosophical-legal research we began with consideration of actual problems of philosophy. And based on formulated conclusions appealed directly to law and philosophy of law.

Furthermore, in book special attention is paid to the contemporary legal education. Proposed solutions to the questions.

Working on the monograph, we conducted in Russia and abroad a number of sociological researches about law, legal progress, legal consciousness and its deformation. The results of the research we think will be interesting to professionals.

We would like to express our gratitude to the famous scientists and statesmen D.A. Kerimov, V.V. Korabelnikov and A.A. Korolkov for attention to our work and its positive assessment.

We hope, that this book will generate interest among specialists in philosophy and philosophy of law, lawyers, teachers, postgraduates, students, and also among everyone who interested in problems of philosophy and law.

S.I. Zakhartsev

V.P. Salnikov

CHAPTER I

PHILOSOPHY: PARTICULAR PROBLEMS

§ 1. The problem of monism-pluralism in philosophy

Relationship of many citizens of Russia to the USA and European countries is internally contradictory. This contradiction related to that these countries, traditionally perceived as enemies of Russia encroach on its integrity, independency and wealth. However, the majority of our citizens sincerely believe, that western countries are more developed economically, technically, socially and scientifically. In other words, Russia is still far away to the West. The slogan: “Catch up and overtake America!” – know all the citizens of Russia since childhood. And the slogan by itself is meaningless, because it isn’t really clear what catch up, according what indicators, where and the most important why?

Nevertheless, indicated contradictions contribute the attempts of Russia of taking over western culture, values, education, technical achievements, experience. Such processes periodically affecting all spheres of life, art and science.

At the end of XX centuries indicated processes were directly affected philosophy. Western and soviet philosophy has always significant differences. Let’s name some of them. The soviet philosophical school was based mainly on materialistic platform. In western philosophy there was a variety of interweaves of idealism, positivism, anarchism, utopianism, etc. Domestic philosophy was directed to achieve results. Western philosophers were oriented more on impossibility knowing the truth, but also had a greater focus on human, knowing him and his actions. Domestic philosophy has monotheoretical character, and western agitate for pluralism. These differences became the basis for various areas of the world philosophy of the XX century, most of which, was interweaved with the most interesting ways in philosophies of sciences.

Speaking objectively, both western and soviet philosophers have reached great heights in the XX century. A lot of works have been prepared, that have left an appreciable trace in philosophical thoughts of humanity. Wherein soviet

specialists came from that, that the world is knowable. Indicated message, which was based on dialectic method of cognition, was a platform of soviet philosophical thought. Western thinkers, in contrast to dialectical monism, worked on pluralism of ideas.

Nowadays to Russian philosophers available all foreign scientific works. At the same time, foreign scientists can fully familiarize with achievements of soviet scientific school.

What happened as a result? Ideas, which were put forward by foreign scientists, were in demand in Russia. However, absorption and leveling works of Russian thinkers, with refusal of previous settings, contrary to expectations of some western scientists, don't happen. On the contrary, philosophical problem of the relation of monism and pluralism as competitive philosophical ideas was escalated. About this problem we also wrote in works on philosophy of law¹.

In 2010 in Saint-Petersburg were held traditional philosophical readings. Among published articles of philosophers we really liked the work of V.P. Ogorodnikov, devoted to the indicated question.² We are solidary with V.P. Ogorodnikov, taking into account that for the content of this book the problem of monism-pluralism in philosophy have a special significance, so let's stay on it more detailed.

As you know, pluralism (lat. pluralis – plural) – philosophical point of view, according to which reality consists of many independent beings not forming absolute unity. Pluralism is atomism (understood in the absolute sense) and monadology. It is believed, that the term “pluralism” has its origin from H. Wolf. Contemporary western philosophy, rejected any monism, is pluralistic on its own. It recognizes many independent, often separate beings, determined entities and “layers of existence”³.

¹ *Zakhartsev S.I.* Law and truth // The world of politics and sociology. 2012. № 9. P. 146-152; *Zakhartsev S.I.* Some problems of theory and philosophy of law. M., 2014.

² *Ogorodnikov V.P.* Monism and pluralism as competitive ideas in philosophy of science // Philosophy of science: perspectives of development. Saint-Petersburg, 2010. P. 160-164.

³ *Philosophical encyclopedic vocabulary.* M., 2003. P. 345-346

Monism (from greek – «monas» – uniqueness) – is a doctrine about unity. H. Wolf called monists primarily those, who only recognize one main substance¹. How V.P. Ogorodnikov writes, monism claims that variety of origins, reasons, bases of any development caused by itself system synthesis, in which the system-center is one such basis, reason and etc.²

Ideas of pluralism have become very popular in western philosophy in XX century. Becoming a common ideology of idealistic – subjected philosophical schools (structuralism, existentialism, hermeneutics and etc.) as a result they eventually logically merged into philosophy of postmodernism.

Ideology – methodological bases of pluralism are:

- indeterminism – denial of certainty, doctrine about the existence of conditions and events, for which there is no reason or it couldn't be specified. In other words – absolutisation of eventuality;
- nominalism – absolutisation of unitary;
- anomologism – denial of reasonable patterns and relations.

V.P. Ogorodnikov writes absolutely true that application of indicated postulates to different subject areas gives the following varieties of pluralism:

- ontological pluralism – postulation of independency, non-subordinate variety of substrate and substantial origins of objective world.
- epistemological pluralism – absence of existence of objective truth, an attempt to justify equality, “equal verity” of different, even controversy points of view on one and the same moment of reality.
- methodological pluralism – an attempt to justify the equality of any cognition methods.
- sociological pluralism – an idea of equality, standing in a row with different factors of social development.
- axiological pluralism – postulation of the equality of evaluation criteria of human values, until approval the plurality of these values.

¹ *Philosophical encyclopedic vocabulary* M., 2003. P. 274.

² *Ogorodnikov V.P. Monism and pluralism as competitive ideas in philosophy of science // Philosophy of science: perspectives of development. Saint-Petersburg, 2010. P. 160.*

- logical pluralism – is a principal lack of any adequate to the world system of logic.

- political pluralism – uses basic concepts of sociological pluralism to justify the ideas of plurality of different political doctrines and the process of their practical implementation (reality of political actions).

In practice, indicated postulates lead to: political disorientation; “reconciliation” of science and mysticism; equality of monism with political and ideological totalitarianism and pluralism, respectively – with democracy; to the justification of equal rights of different experiments: vital, scientific, mystical as well as to valuable – “praxeological” pluralism; justification of individualism and selfishness in public life and practice; justification the idea of truth equality one and the same phenomenon – “epistemological” pluralism; absence of dialectical methodology – “methodological” pluralism and etc.¹

We will focus on ontological, epistemological and methodological pluralism. This choice was due to the fact, that ontological pluralism is a basis for any other kinds of pluralism. The confrontation of epistemological and methodological pluralism and monism we are interested in the first place from the point of view of the philosophy of law.

Ontological pluralism, how noted V.P. Ogorodnikov, incompatible with data of contemporary science. The facts, which were received by a contemporary science, evidenced – that material world in all its manifestations, at any level of organization – physical, chemical, biological and sociological – monist. There is no any system, which couldn’t represent subordinated and coordinated unity of elements. Postulated pluralism the absence of subordination between elements means the lack of connection between them, i.e. the lack of system.²

Among this equitable conclusion, is particularly important mention of social monism. The fact that, for a long time in philosophical literature, felt a kind of secret controversy of natural and human (social) sciences. Furthermore, were

¹ *Ogorodnikov V.P. Monism and pluralism as competitive ideas in philosophy of science // Philosophy of science: perspectives of development. Saint-Petersburg, 2010. P. 161.*

² *Ogorodnikov V.P. P. 162.*

expressed opinions that if the material world (or even so – the world studied by natural sciences) is regulated, social being, social society is quite unknowable, pluralistic by the study, equal from its point of view and etc.

But social being is also subjected to the laws and also strictly subordinated. It is need to admit, that in all times of existence of human and humanity, society has never been completely pluralistic and absolutely equal. There wasn't not only in slave system, but also nowadays. In the socialist system there was a command-administrative system, privileges for separate citizens. Due to formally declared equality, in fact there wasn't. In capitalistic world people aren't equal in economic rights, because they have different economic opportunities, different social status. The question about if it is possible an "ideal society" with absolutely equal rights and opportunities, is under discussion. But to assume it logically, there isn't. Such conclusion inevitably follows from the fact, that even if artificially create equal rights and opportunities, someone want to use such opportunities, someone don't want and someone couldn't. As a result, soon people will have different opportunities, what will lead to different rights, to different living conditions.

In society within the framework of the state there is no several equal and equilibrium centers of decision-makings. In Russia, attempted in 1990 to generalize in the Constitution of the Russian Federation all the best experience of liberalism in the whole world, whatever with the principle of separations of powers is strictly established, what, when and how much may make each of the branches of government. As a result, taking into consideration mentality, appeared a presidential republic, where the last (and the most important) word is still after the president. There is the same clear subordination and organization in every developed country (about undeveloped there is no need to talk about). To the extent, that if you want to go out to the demonstration and to express public your opinion – you are welcome, but before it is necessary: to coordinate with authorities time and place of demonstration; to declare amount of police participants; to coordinate slogans, which don't contain calls to violence, Nazism, fascism; to take measures to ensure safety of participants of demonstration and etc.

If it will be non-completion of these conditions – administrative or criminal responsibility from the side of authorities. So, that's why it is said, that democracy in the first place – it is hard and brutal compliance of law and only in tenth place – freedom of speech and lifestyle. This freedom is only allowed till the moment, when it isn't affecting another person and furthermore the first persons of society and their interests. It is involuntarily thinking that soviet people have been vainly forbidden to visit capitalistic countries, to get acquainted with their way of life, with existence in global and everyday sense of this word. If we immerse ourselves in the existence of inhabitants of European countries, we could easily see, that it is very modest (already compared with contemporary Russia), economical, strictly defined with frames in the form of laws and structured. Wherein, it is strike the eyes economic difference between the majority of popularity and a small stratum of elites (economic, political, spiritual), which basically determines the life in the country.

It is very naive to put a sign of equality between pluralism of opinions and western democracy. By pluralism it is necessary to consider, that such opinions may be: illegal (for example, calls to violence, to fascism), isn't valid, intentionally false, unethical and immoral. In western democracy pluralism of opinions have strictly defined frames and strictly responsibility for going out from these frames.

In other words, it is necessary to admit the obvious fact, that society is a non-equilibrium system.

Concept of pluralism, by definition, tied with metaphysical interpretation of the process of determination. Pluralism is based on the judgment of the almost endless amount of qualitatively one-typed, the same determinants of any event, which are implied as "equal". This gives an opportunity to come to the conclusion about the uncertainty of all processes, impossibility until the end to know the reason of this or another event.

Such approach, as it was correctly noted by researchers, in fact, is identical to indeterminism and is the philosophical and methodological basis of the subjective idealism. Pluralism of determinism conceals in it the indeterminism and

subjective idealism, because it gives an opportunity to choose arbitrarily the position, from which all concrete relations could be represent as nondeterministic. It is known, that a similar technique is used by positivism (including postpositivism) in the justification of agnosticism¹.

Such conclusion, in fact, means the plurality of ideology. If it refuses from the single, all-embracing concept of determinism, so, respectively, there couldn't be the single concept of ideology. And in all these plurality, it is possible to reach the point of absurdity and outright irrationality, to put forward awkward doctrines and ideas, to justify mysticism, coincidences and etc. And all such descriptions will be considered as equivalent, because from the leading and trailing refuse.

Of course, all this is going against science, scientific requirements, to which we have already got accustomed. The task of any science is law-finding, revealing its essence. Irregular, completely random is unknowable, because to know could only what is repeated, reproducing common. To know means to understand, to reach sensual-single, specifically shaped reflection of the subject, to the abstract significantly-common in a certain class of objects – to concepts². It isn't necessary to prove the importance of concepts in logic of thinking.

Here it is important accurately and clearly distinguish, what is meant. We are not talking about, that there couldn't be different opinions in science, different points of view. On the contrary, as it known, the truth sometimes is installed in the dispute. We are talking about undermining of the approach to forms and laws of thinking. Not about, that to observe, to identify scientifically and to define accurately pattern. But about that, as some philosophers consider, identifying patterns – is an empty work, because they don't give real knowledge and they aren't patterns in their origin. Talking about the pluralism in this case is also as absolute singular and in fact, uselessness of argumentation of received conclusions (as science – it is either anarchy or individual logic). Exactly these cases were

¹ *Ogorodnikov V.P.* Monism and pluralism as competitive ideas in philosophy of science // *Philosophy of science: perspectives of development*. Saint-Petersburg, 2010. P. 163.

² *Ibid.*

meant and tried to prove by K. Popper, P. Feyerabend, T. Kuhn and other representatives of postpositivism and postmodernism.

Their philosophy and its falseness, the essence of which is to move away from generally scientific bases, it is necessary precisely to understand and to evaluate. Not all Russian philosophers, as we think, have been able to sort out in this problem. For example, R.A. Zobov writes: “As in the classical and in the non-classical science a number of human qualities remain beyond its consideration. On this background, is increasing interest to all sorts of “absurd ideas”, i.e. ideas that clearly don’t fit into the frames of classical theory, but often give results, which allow having a fresh look at certain problems. Increased interest in absurd ideas in non-classical science contributed to the expansion of the scientist’s consciousness. The rejection from a certain stereotypes was perceived much easier, than in the frames of classical science”¹. Then, stood up on the positions of K. Popper, R.A. Zobov writes, that laws, which are laying as the basis on particular sciences are limited. Any provision is scientific insofar, as it is refutable (principle of falsifiability). So, named specialist is coming to conclusion, - all laws are coexisting alongside one another and any of them can give a preference².

To bring out, named by R.A. Zobov “absurd ideas”, that don’t fit to represented contemporary, scientific picture of world, could anyone. *The question isn’t in ideas, but in their check and evaluation exactly with a scientific method.* Ideas of S.P. Korolev about launching a person into space, for many in that period seemed to be sick fantasies. Furthermore, the announcement of the first flight of a person into space, firstly believed not all physics – so impossible, in principle, was seemed such idea. And indeed, the wider scientist thinks, not shaming to go beyond the frames of known world picture, the more productive quite often his work. But – it is necessary to remember and to understand! – ideas and thoughts of a scientist should be checked and implemented by a scientific method: strictly from the point of view of used methods of cognition; logical, with a possibility of

¹ Zobov R.A. Philosophy of science and human problem // Philosophy of science: perspectives of development (methodology of applied science). Saint-Petersburg, 2013. P. 158.

² Ibid: P. 159.

verification by other scientists. Exactly here, there is a principal difference between monism from pluralism, which allows, that for inspection of ideas could be used any methods of cognition, to inspect them not necessary and not always possible, as the truth is still not understandable (or each researcher has their own).

From this philosophy authors of this work have seen published in scientific-sounding statements of the reasoning about that Yuri Gagarin was an alien and he wasn't killed and "returned to himself". As a check of such absurd (already without quotation marks) ideas were outlined arguments about multidimensionality of spaces, civilizations and etc.

That's why it is very important not to destroy science, approaches to science, and principles of building of scientific knowledge. And to remember the words of A. Einstein, that science is directed for the cognition of the world, serving the Truth, obtaining true knowledge. To this aimed its methods of cognition, which according to above mentioned can be considered as scientific. So, actually, think a significant part of scientists.

Here occurs a question: if monism is possible in philosophy? Historical experience convincingly demonstrated, that no, it is impossible. Philosophers are very different; they look very subjectively on the being. No wonder, that any book on philosophy it is customary to begin with a detailed consideration of the history of philosophy. Truly philosophical ideas and view are eternal, they are often coming back to humanity in some modified form, are developing, don't forget. Historical experience of humanity has already accumulated a lot of similar ideas. There could be no monism in philosophic thought at least because of the eternal conflict between idealism and materialism.

However, monism is possible and necessary in philosophy of science and in science, achievements of which convincingly testify about monistic of the world. It is necessary to emphasize one more again, that monism doesn't imply the impossibility of different and controversy ideas. Different, almost controversy and even absurd ideas are needed. But monism involves a strictly scientific evaluation, which is made, of course, on the basis of monistic scientific methodology.

Thus distinguish clear boundary between science and non-science. Philosophers (or people, who are trying to be them) can put forward any ideas, to the extent, that the Earth is flat, keeping on three elephants or soon will fly to the Earth's axis. Such reasoning – their right. But to check out such ideas is necessary through rigorous scientific methodology, which by definition should be monistic. Otherwise, during pluralism of scientific methodologies and approaches, we could come to conclusion about the correctness of indicated reasoning.

Here is specifically brought obvious examples. But they were objectively in history of thinking about the world, being and the role of the human in it.

Nowadays, during pluralism of ideas impose also pluralism of scientific methodologies. Wherein, what is very important (!), they are mutually beneficial to each other. So, the thesis about a priori impossibility of the world's cognition contains in it almost any philosophy, almost any methodology and epistemology or generally the lack of them. After recognition of the world's unknowableness by and large making methodology and epistemology meaningless. From such positions science don't need them, because as a result they won't be able to bring nothing. But such approach gives full freedom to the separate philosophers for creativity. And to all – from philosophers to supported them scientists, – well. Only such efforts, unfortunately, isn't productive. As their conclusion will be approximately like this: yes, we haven't known nothing. And then putting forward original ideas about uselessness of epistemology. This, in particular, was “famous” R. Rorty. He substantiated, that epistemology – is a genetic disease of European philosophy. From the indicated American philosopher accrue to science and to truth. R. Rorty, as you know, considered claims of science to the true, authentic knowledge unjustified. Wherein, according to R. Rorty, the truth – it is something “that, we need to believe in”, rather than “accurate image of reality”¹. There is opinion, and it seems to be objectively enough, about, that for the propaganda of

¹ See works of R. Rorty: *Philosophy and the mirror of nature*. Princeton, 1979; *Consequences of Pragmatism*. Minneapolis, 1982; *Philosophy in History*. Cambridge, 1985; *Contingency, irony, and solidarity*. Cambridge, 1989; *Philosophy and Social Hope*. New York, 2000.

slogan about “death of epistemology” R. Rorty has done as much, as no other thinker of the second half of the XX century.

But as far as this position is productive from the point of view of his own life, his own scientific work? If it necessary to do scientific research, in order strive to prove, that this work by and large will lead to nothing? Maybe it is better try to prove, that the work is really necessary for understanding the world and life, strive to this and don't be offended by a science, even if as a result dreams will not be realized? That's why, it seems, that interest to postpositivism and postmodernism disappears, and philosophers and scientists will be considered again possible and necessary obtaining of true information.

In this way, in the philosophy of science, like in science itself, it is necessary a desire to know the world; focus on Truth, completeness and objectivity of knowledge. This goal can be achieved with the help of monism and methodology of cognition.

But what kind of monism? This monism can be dialectic, dialectical method of cognition.

Many years in the USSR dialectical method was considered as a universal, general scientific method. After expired period, using named method as main, soviet science (and this is objectively) made a significant breakthrough in development. Achievements of soviet scientists in the field of physics, chemistry, mathematics, aerospace and etc. don't need to be mention. Dynamically developed and humanitarian disciplines, including law. Furthermore, the approach to dialectics as general scientific method satisfies absolutely everyone.

Disintegration of the USSR and followed after that radical changes, curiously enough, significantly affected methodology. So, the method of dialectics was subjected to obstruction, appeared statements, that there is no universal and general method of philosophy. Some of them went further and announced that named method in fact represents a road to nowhere. And some experts came to a paradoxical conclusion that a truly philosophical thought in the USSR didn't exist.

As a result, Russian philosophers were divided into several groups. The first group consistently continues to defend dialectical method as general method of science¹, other group proposes to treat it on a par with other scientific methods², and finally the third one, due to various reasons, tries to subvert the importance of dialectics for science³.

Stated above requires shortly return to the content of dialectics, to evaluate its meaning again. According to Hegel's philosophy, under dialectics was understood a usage of regularity in science, which is concluding in the nature thinking, and at the same time, this regularity on its own. According to Hegel's opinion, dialectics is movement underlying as a basis in all as truly spiritual reality, and at the same time – movement of humans thinking, which in speculative plan participate in this movement absolutely and all-embraced. All movements flow due to "reasonable" laws of dialectics. The law of moving thinking is also a law of moving world⁴. This understanding of dialectics became a basis for formulation and justification of different dialectical directions (including Marxist-Leninist dialectics).

One of the main subjects of study is the development. Dialectics – a philosophical doctrine about the most general regularities of development of nature, society, thinking and cognition.

Development, in its turn, is impossible to imagine without dynamics, movement and change. Such changes aren't of a single character, but complex and systematic. Consistency changes mean change of quality, that's why development is characterized first of all with qualitative changes.

These qualitative changes aren't disorderly. They occur in a system and therefore imply a presence of interdependence between previous and further changes, their continuity. In this regard, formulate a reasonable conclusion about existence of direction in changes and respectively, in development. Wherein,

¹ For example., *Rusavin G. I.* Methodology of scientific cognition. M., 2009. P. 8.

² About this see.: *Philosophical encyclopedic vocabulary*. M., 1997. P. 266.

³ See., example.: *Sadovskiy V. N.* Karl Popper, Hegel's dialectics and formal logic // *Questions of philosophy*. 1995. №1. P. 139-148.

⁴ *Philosophical encyclopedic vocabulary*. P. 134–135.

development from the philosophical point of view, including systematic qualitative changes and direction, is an irreversible process. The irreversibility of changes understood as the appearance of qualitatively new opportunities, which didn't exist before.

Thus, in general initial sense, development – is directed, irreversible qualitatively changes of the system.

If it necessary to consider the specifics of dialectical concept of development, above mentioned definition could be extended by indicating to the internal mechanism of development, connected with internal contradictions¹.

As development widely understood as one of the main basis of dialectics, what is dialectics for science? Apparently, all.

Development of a scientific knowledge is considered constant change, movement and dynamics of knowledge. In the dialectical development discloses such compulsory properties of scientific knowledge as objectivity, accuracy, certainty, consistency, logicity, verifiability, theoretical and empirical validity, practical utility. Complex of these properties define and guarantee objectivity of scientific knowledge. Exactly dialectics is a method, which is vitally necessary for every science.

It could be given a famous Hegel's quote: "Cognition is moving from content to content. First of all this translational motion is characterized by the fact, that it is starts with simple certainties and that following after them are becoming richer and more concrete. In fact result contains its beginning, and the motion of the last one enriched him with some new certainty. The general constitutes the foundation; that's why translational motion shouldn't be accepted for some flow from some other to some other. Concept in its absolute sense is kept in its otherness, general – in its isolation, in judgment and reality; at what stage of further definition raises above all mass of its previous content and not only nothing

¹ Alekseev P.V., Panin A. V. Philosophy. M., 2005. P. 434.

loses as a result of its dialectical translational motion and leaves nothing behind, but carries with it all acquired and enriched and compacted inside itself”¹.

Without development science is dead. Without constant implementation based on dialectics of the functions of cognition, explanation, heuristic, forecast and practical implementation any theory will cease its existence. First of all she will stop in its development, soon it will be foreshadowed her noticeable lag from the vital needs, and then she will go into otherness. However, objective (again dialectical) world development of knowledge can force to get back to the forgotten history, but this process is really labor-consuming and costly.

At the present time is known a lot of general scientific methods. However, on closer examination it turns out, that in their application there is dialectic. Even if we take such compulsory method of science as systematic approach and here is also clearly trace change and development. The system isn't constant. She is developing and changing minimum in two directions. The first direction – division into smaller subsystems, a certain ornateness of a system; the second direction – is opposite, consisting in consolidation of subsystems, their merger and incorporation of part into the whole. In other words, the system is also dynamic in its development and requires cognition exactly from the dialectics point of view. On this method we intentionally drew our attention because in a variety of academic and dissertation works in a legal science, he try to be extolled as “universal” and “basic” for other scientific methods.

Beside the principal of the development, in dialectics it is decided to distinguish the principal of material unity of the world and principal of general connection and mutual conditioning of phenomenon.

The principal of material unity of the world implies, that all available real world is ordered, represents a system, not a chaotic mass. This principle is expressed also in the real existence of different forms of substances, including social form, which is characterized person and society, their interaction. In development and material unity of the world important place take interaction.

¹ *Hegel G. W. F. Comp.: in 14 t. M., 1937. T. 5. P. 34.*

Dialectics is based on the idea of general connection, which, on its turn, implies mutual interdependence of phenomenon. Connection is a relation, and the basis of each relationship is interaction. Hence is come an idea of interdependence as a necessary addition to the idea of general connection, together they express those fact, that in the world, in the real being there is no single phenomenon, which anyway wouldn't be connected with other phenomenon¹. For example, social-economic changes, observed in Russia at the end of XX century, lead to a change of relationship to property of individuals and legal entities. Du to such changes was restored the institution of private property. A change in one object or phenomenon necessitates a change in another object. The restoration of a private property in law, from the one side, determined the elimination of collective rights, from the other side, demanded serious changes in other areas of law. In the economy: lead to implementation of new economic models and, consequently, the inevitable refuse from old rules of leading economy. In politics of the restoration of private property in Russia lead to the strengthening the role of the Russian corporations in a world politics, which resulted as a change in the balance of political forces and etc.

As know, the main laws of the dialectics are:

- the law of unity and struggle of opposites;
- the law of mutual transition of quantitative and qualitative changes;
- the law of refuse the denial.

The law of unity and struggle of opposites indicates to the existence of different forces and tendencies, and these forces are simultaneously in a unity and opposition one to another. In other words, dialectics connects the development in all areas of a real world with the contradictions inherent to any phenomenon, process and object. Dialectical contradictions are wearing internal character; in a constant competitive interaction of driving forces phenomenon are change and,

¹ *Philosophy* / under editorship: V. P. Salnikov. Saint-Petersburg, 1999. P. 302.

consequently, develop¹. Internal unity and contradictions of connections inside the science, their constant understanding, competition of opinions ultimately determines its scientific development. In this sense, indicated law is the methodological basis for other scientific laws.

The law of mutual transition of quantitative and qualitative changes derived from the law of unity and struggle of opposites and generally could be formulated so: quantitative changes of an object, phenomenon, gradually accumulated, multiplying, at a certain stage lead to a change of quality of this object. Objectively observed in XX century interest in atomic physics, realization of several researches in this thematic, has gradually lead to qualitative improvement of knowledge. The named law equally applies as to other sciences and also to scientific methods.

The essence the law of refusal the denial in that it examines development in the form of changeable of each other levels (steps, grades) connected with each other in such a way, that every next level of development is a denial of previous one.

The main dialectical categories are: the whole and a part, separate and general, reality and opportunity, structure and elements, theoretical and practical, content and form, purpose and means, reason and effect and etc. For example, a demand of the regulation of concrete social relationship is the reason of publication of legal norms. The publication of norm is the effect of regulation necessity of indicated relations. Or: a specific act of a person is the reason of the application of legal norms. The application of norm, as fixed in it consequences, is the effect of a person's action.

¹ Internal dialectical (so-called «vital») contradictions should be distinguished from the formal-logical contradictions. Formal-logical contradictions are taking place also when about one and the same object (or subject), in the same time, in the same sense, express opposite judgments and inferences. For example, in 2009 was expressed the opinion about the elimination of corruption in the authorities of internal affairs, and almost simultaneously was talked about increasing number of facts of corruption among employees of the authorities of internal affairs. In this case we are not talking about the logical contradiction within system, but about the violation of the formal logic, i.e. about logical contradiction, a distortion of the truth. From the logic point of view, it is obvious, that the truth could be only one from indicated thoughts. Philosophical sciences require avoiding formal-logical contradictions.

According contemporary situation in the science in the part of dialectics very accurate said an academician V.S. Stepin, in the opinion of which many scientists should pay attention: “In the early 90th years, after disintegration of the USSR, appeared evaluated judgments, according to which, there were no achievements in our philosophy, that it was teared off from the world philosophical thought and it is necessary to start all from the very beginning. Such kind of judgments could meet even in philosophical books and encyclopedic vocabularies of those times. They were purely ideological phenomenon, arising in the line with the sweeping criticism of soviet era. What was considered to be positive in soviet era, automatically announced as negative, a sign “plus” replaced by a sign “minus”. But such statements, however, don’t require any serious thinking; don’t hold criticism during referring to the real facts. It is significant, that the famous American historian of science, professor of Massachusetts technological University (Boston) Lauren Graham his fundamental research of the historical development philosophy of science of the USSR ended with general conclusion about that, this area of research in the country is “impressive intellectual achievement” and “universality and the degree of elaboration of the dialectic-materialistic explanation of nature has no equal among contemporary systems of thought” ¹².

Dialectics was and there is a universal scientific method not because it was ideologically advantageous to a concrete government, but due to objective reasons. Somehow “forgotten”, that many famous pre-revolutionary philosophers also relied on dialectics as a universal scientific method. For example, B. N. Chicherin long before the creation of the USSR wrote, that without dialectics there is no philosophy.

Yes, in the USSR, dialectics was really a dominant philosophical theory as in science, and also in teaching. Other philosophical concepts were considered critically one-sided and not always complete. So, of course, shouldn’t be. However, this doesn’t detract from the value of dialectics. Complementing

¹ *Graham L.* Natural history, philosophy and sciences about human behavior in the USSR. M., 1991. P. 415.

² *Stepin V. S.* Philosophy of science. General problems. M., 2008. P. 85.

absolutely accurate statement of V.S. Stepin, sadly we have to admit, that significantly achievements of soviet philosophical thought, including dialectic, unfortunately aren't demand enough nowadays. This, unfortunately, impoverishes contemporary science.

The methodology, as you know, doesn't tolerate pressure from the side and aimed at obtaining so-called impersonal and intersubjective scientific knowledge. Methods that she studies, aimed at fixation of objective knowledge, without any admixture of subjective, individual factor and especially – without admixture of ideology. According to opinion of T.G. Leshkevich, contemporary methodology – the most persistent, resistant to changes sphere, aimed at the study of methods of scientific cognition and ways of organizing activities¹.

Here, furthermore, is important to understand, that even with a critical approach exactly to Marxist-Leninist dialectics shouldn't reject dialectics in general or minimize its enormous value. Wherein is need to be taken into account, that dialectical method also developing and changing, that's why approaches to its content could be dogmatic. This again finds expression of the principal of dialectics as a constant development and change.

P.V. Alekseev and A.V. Panin in this context wrote, that along with the politicized and ideological model of dialectics (which is reflected in the works of V. I. Lenin and I. V. Stalin), in the frame of dialectical materialism, possible another model of dialectics – humanistic – dialectical. In can be consistent connected in it the principles of materialism, dialectics and humanism, and dialectics itself can reveal its versatility in relation to nature, society and humans spiritual world².

Indicated scientist wrote many times interesting work about dialectics. But according to them, recent publications helped them to see in dialectical materialism different, and in political sense – opposite directions and more clearly than previously decide on the positions of really comprehensive dialectics.

¹ *Leshkevich T. G. Philosophy of science. M., 2005. P. 107.*

² *Alekseev P. V., Panin A. V. Philosophy. P. 446.*

Supporting this idea in general, it is necessary to draw attention again, that dialectics doesn't exclude the opposite judgments. But it is important to verify them scientifically. In other words, freedom of opinions shouldn't destroy the unified methodology of cognition, which is universal for all¹.

In such circumstances, evaluating the position of the present time dialectical method of cognition, we come to the conclusion that he will long remain as a universal method (methodological basis) for philosophy, philosophy of science and other disciplines, including philosophy of law.

Still we are amazing people, we have amazing state. Nowadays to everyone – in Russia, and in the West – it became obvious, that soviet system of secondary and higher education was one of the best, if not the best in the world. She brought her fruits, was raised prominent scientists, which isn't only not inferior to western, but in many aspects exceeds them. Nowadays system of education reformed, as a result in our country we voluntarily depart from such ideas and achievements that we had. While western scientists accepting with pleasure soviet-russian achievements of science, they are used and achieved successes.

This happens in almost all scientific fields, including jurisprudence. For example, a famous American lawyer G. Berman on the basis of three competing, from his point of view, schools of law (legal positivism, theory of a natural law and historical school of law) suggests create integrated jurisprudence². But it is significant, as noted I. Y. Kozlihin, another: students of G. Berman his main merit see not in that, he suggests "to connect three competing schools", but in the dialectical method of studying history of law. "Integration of three main schools – it is just one of the moments of Barman's integral jurisprudence; furthermore and it is even more importantly, that proposed reconciling them dialectical method", - stated in one of the articles of collection devoted to the work of G. Berman. Here is

¹ V.G. Budanov, describes contemporary stand of philosophy of science and synergetic, named what he saw as philosophical theatre (See: Budanov V. G. Methodology of synergetic: principles, technologies // Philosophy of science: perspectives of development (methodology of applied sciences). Saint-Petersburg, 2013. P. 47). We would like, that different thoughts don't turn out philosophy into the theater of absurd.

² See: *Berman G. Faith and law: reconciliation of rights and religion*. M., 1999. P. 341-363.

given another example of using dialectical method for obtaining the whole, i.e. the integral vision of law¹. That's it was we are trying to give up, for some reason is actively used in the world.

This example shows another. Repeatedly undertaken by contemporary philosophers of law attempts to create some integral² theory of law, in which to combine the best from other concepts of law (legal positivism, theory of a natural law and historical school of law) actually means attempts of creation a mutually acceptable unified theory of law. But if such unification succeeds, that will mean that integral theory of law will be accepted and recognized by almost all specialists. And therefore, it entails monism in the philosophy of law. Scientists, proposing another theories and concepts of law, have to check their proposals and with integral theory. But the most interesting is that such monism no longer frightens the current supporters³ of the pluralism of scientific view and methodologies. That is, currently available pluralism of legal theories and concepts its role isn't justified.

In other words, for science must always be a somehow landmark, a reference point, a trait – from which starts comparison and measurements. Landmark, which is accepted by all to start their researches and evaluation of received results. If it won't be so, pluralism turns out fast to subjectivity and unscientific.

Such conclusion shows once more, that all people and nature as a part of vital nature always striving for order, certainty. Taking us out of the dialectics and in fact not proposing anything in return, scientists themselves became hostages of the situation, because even when making discoveries or major scientific achievements it is difficult to justify and even to describe.

Dialectics implies the possibility of the world's cognition and accordingly, situated in it phenomenon and processes. Moreover, the provision of dialectics,

¹ Quote according to: *Kozlihin I. Y. Integral jurisprudence: discussed questions // Philosophy of law in Russia: history and contemporaneity: materials of the 3rd philosophical – legal readings in memoriam acad. V. S. Nersesyants. M., 2009. P. 251.*

² In number of sources - integral.

³ In Russia a problem of creation of integral theory of law involves, mainly, specialists of Institution of state and law of the Russian Academy of Science.

including in terms of cognition, significantly enough, argumentative developed and tested. This, in particular, she is positively differs from the variety of other philosophical theories.

As you know, discussions about that, if the world is knowable or not, continuing, probably, as much as the philosophy exists. For example, in the western philosophy nowadays is widely spread a point of view about impossibility of total (absolute) cognition of world. According to the opinion of supporters of these views, cognition is rejected as the limitations of scientific knowledge, and the infinite multidimensionality, multilevel of the object of knowledge. For example, has become a different, the author's point of view of the concept of “constructive empiricism” B. van Fraassen about that no one theory is no absolutely verified, completely determined by the empirical facts. R. Rorty went further and suggested in fact, to refuse from the epistemology.

However to stand on the point of view, that the world is unknowable, is simple. With this approach, you can put forward any ideas, to refuse obvious and even doubt in its own existence. That, of course, can be “proved”: because, a person, perceive the fact of his existence subjective (and, ironically – is it a real fact?). But how productive is such approach? And how honest he is to life in general and to science – particularly? How was already noted, to stand on the position of agnosticism or utopianism minimum isn't productive even to his own life.

And dialectics, at the present moment is seems to be not only a universal, but the most valuable method of cognition of the world. Of course, cognition is going slower, as it would like. However, there is a forward movement.

One of the most perspective ways of further improvement of dialectics as a universal method we see in the convergence on its basis of philosophical concepts of Russia and the West, and further – in the East. Nowadays, is actively taking place the convergence between Russia and the West. Unity of scientist's efforts will result in increasing in the number of philosophical works, and lately, according to dialectical law of qualitative-quantitative changes, will develop into

fundamental works, which are not affected by ideology and conjecture. Then, similar processes in unity on the basis of dialectics of philosophical schools will start between Russia and the East.

In conclusion, we allow ourselves a variety of assumptions. Of course, philosophy doesn't overcome the problem of monism-pluralism. She is, like a faithful companion of philosophical researchers, will longer be around. However, objective lifetime, being, further scientific discoveries will make primarily focus on monism, which is connected with dialectics, as the most clear and developed methodology. Dialectical method of cognition will be methodological basis in philosophy of science. It seems to us that interest in postpositivism, postmodernism as a majority of such doctrines, will end relatively quickly. People generally and scientists particularly, always tended and tend to cognition of the world – to a true cognition, to the knowledge.

§ 2. The role of personality in the methodology and the role of researcher's fate in formation of methodology and worldview

The study of pospositivistic philosophy, which some researches are considered to be “contemporary”, “new”, “important” and etc., made to think about its origins. It is talking not even about the origin of pospositivistic ideas as they are, but about that, why scientists, philosophers “suddenly” trying to abandon the existing knowledge and achievements, to all, to re-interpreted, but in the light of impossibility of cognition, to convince of the rightness of “new” interpretations? What is the reason of appearance of such radical views?

It seems, that in the basis on such processes could be either discoveries of science (objective reasons of refusal from the previous knowledge, experience), or drastic changes in personality (subjective, psychiatric changes), convincing scientist to see on all of this “differently”.

So, it was in the middle ages with the philosopher Abelard, corrected his philosophy. The same happened with Kant, who was stand at the second period of life in fundamentally different positions. There are also later examples.

There is a sense to focus attention on the personal reasons of formation of such philosophy. Wherein, it is necessary to stop on a two brightest representatives of postpositivistic philosophy, who formulated the most radical views: P. Feyerabend and K. Popper shortly examine their biographies and opinions about science.

It is known, that P. Feyerabend was dreamed to become a famous singer and scientist. But the fate decreed otherwise. P. Feyerabend was born in Vienna in 1924 in poor family. In 1943 P. Feyerabend at the age of 19 was admitted to the officers school, graduated as lieutenant and as a part of German-fascist troops was directed to fight against the Soviet Union. In the war against our fathers and grandfathers, being in the occupied territory in Russia, probably, distinguished by the courage and cruelty, which proved by medal the “Iron cross” and other

encouragements of command¹. However in 1943 was seriously wounded, was a disable till the end of life, couldn't move without pain, walked on crutches. In 1945, apparently, was hiding from the soviet troops, because as a fascist officer and a medal holder according to the laws of war he could be shot. He was immigrated abroad and lived for a long time far from his homeland – in the USA.

To become a scientist, to conduct experiments on his own, disturbed lately received proper education, hard illness and life, which was maimed by war. He couldn't commit discoveries in the science.

On the background of such shocks, was formed his specifically ideology on the philosophy and science, concluding into scientific pluralism, turning into scientific anarchism. According to Feyerband, pluralism must prevail not only in politics, but also in teaching². According to the ideas of pluralism and anarchism, Feyerband wrote, that development of science appears as a chaotic jumble of arbitrarily written theories, without any real explanations. Accordingly, development of knowledge involves proliferation of competing theories, mutual criticism of which stimulates cognition. Wherein, a success of any theory, don't connect with objective data, but with the skill of particular author of the theory "to organize" it. Wherein, according to the Feyerabend point of view, a scientist, who is seeking recognition and dominance of his ideas, has the right to use propaganda, psychological treatment, ideological techniques and etc.

Feyerabend defended the idea of equal rights of any methods of cognition. He write, that anarchism is an excellent cure for the philosophy of science cognition, so for those, who are inclined to limit himself by one universal method of cognition. According to this scientists point of view, philosophy couldn't successfully describes science in general, and as she couldn't develop a method of

¹ In Wikipedia and some other publications reflected opinion that Feyerabend didn't want to go to the war, he was against war and etc. However, we are more prone to believe other sources, and also that change of the worldview by different people take place rarely after that when tragedy occurred with them.

By the way, in the books of Feyerabend, we didn't find deep remorse for his action in the war in front of soviet citizens.

² See, example: *Feyerabend P. Against the method. Essay of the anarchistic theory of cognition*. M., 2007; *Feyerabend P. Selected works by methodology of science* M., 1986.

separation of the scientific works from other entities – myths. He claimed that there are no united, rigid criteria of scientific. And if it is so, there is quite logically consider connection of scientific facts with non-scientific. In other words: science, philosophy, religion and even magic – they are all good for cognition, all have independent value.

Further – more. Feyerabend puts forward a principle of continuity, oriented researcher on formulating of theories that are incompatible neither with well-grounded fact nor with tradition.

According to researcher of creativity of this scientist, Feyerabend was convinced, that the science regarding to her characteristics is a myth of XX century, however differs with much more aggressive in relation to other forms of cultural creativity, rather than any ideology of the past. The pathos of scientific convention is connected nowadays with power of the state, providing generous funding of the scientific researches, what inevitably harm the interests of alternative methods of capturing reality. Wherein, being a basis of government politic of education, science initially establishes necessary way of perceiving the world, forming a condescending towards mismatched with her standards models of the world. Such privileges of scientific discourse, according to Feyerabend opinion, should be abolished as inconsistent with the principles of democracy and humanism. Science must be separated from the state, as separated from him myth, art, folk medicine and etc. According to his conviction, “science is much closer to myth, than scientific philosophy is willing to accept. This is one of many forms of thought, produced by a person, and not necessarily the best of all. She is noisy, loud, immodest, but her in relation to other forms, obviously only for those, who have previously prepared to decide in favor of some ideology or for those who take it not thinking even about her possibilities and boundaries”¹.

There are a lot of such extensions in the philosophy of Feyerabend.

¹ Contemporary western philosophy / under editorship *T. G. Rymyantseva*. Mn., 2008. P. 756.

In terms of criticism shortly (but capacious) is necessary to note, that indicated philosopher didn't pay attention to sustainable trends of science development, but they are exist, didn't evaluate principle of development, and it is also take place to be. Finally, if you stand on his point of view, so it is logical to cancel any education (because it is based on the scientific, not a mythical or folk cognition). In fact, this dislike of Feyerabend to education and educated people could explain that higher education he received with hard physical pains, weak, humiliated defeated officer. Surely, it was embarrassing for so ambitious person, which apparently was Feyerabend. Discoveries in science, about which he dreamed, he didn't make.

Now what about biography of K. Popper (1902 – 1994). Popper was born in Vienna in quite a wealthy professor's family, he wanted to become an outstanding physicist or mathematician, graduated from the university, received the diploma of a teacher of mathematics and physics in gymnasium, worked according to the specialty, protected and got a degree, worked on the discoveries in the indicated sciences.

However, he was prevented by circumstances, namely: strengthening of anti-semitism in Austria. Popper didn't protect his homeland, ideals of justice, struggle against fascism and Nazism, and immigrated (or, maybe, run?) to New Zealand. In New Zealand Popper was for a long time "on the sidelines" and didn't have opportunity to carry out fundamental researches in physics and mathematics, or, maybe, he just failed to make important discoveries in physics or mathematics.

Under the influence of indicated circumstances is forming the philosophy of this scientist, which was he has developed and formulated, when he was already in England. The paradigm of his philosophical ideas was the conclusion that science is capable for real discoveries (not without it), but the science doesn't understand the truth. The growth of knowledge is achieved in the process of rational discussing, in which there is necessarily criticism of existing knowledge – hence is the name of the philosophical direction "critical rationalism".

Popper considered that no theory couldn't be confirmed finally, therefore, every theory, by its definition, has hypothetical character. In other words, theory is formed by and confirmed not by the laws, but by the plausible statements.

In contrast to the principle of verification, Popper has justified the principle of falsifiability (refutability principle of any statement). This principle helped the philosopher to interpret the process of learning as a part of the general theory of evolution. Scientific hypotheses and theories pass through peculiar "natural selection" by the way of criticism and attempt of refutation. Win more grounded and less controversial theories. However, according to Popper, they win only till the moment, when will be find more consistent, coherent theory. Hence the science is set historically variable ideas about the world, which are correcting by the method of trials and errors.

Popper fundamentally denies historicism of Hegel, Marks and history as a science. According to Popper, there is no unified history of humanity, but there is only a scattered set of history, connecting with different aspect of human's life, - and among them a history of political power. It is usually elevated to the rank of world's history, but...it is abusively for any serious concept of human's development. The history of political power, as philosopher thought, there is nothing like the history of international crimes and mass murders (including, that is true, some attempts of their restraint)¹.

Important in the philosophy of Popper is also thoughts about that people couldn't "create heaven on earth", therefore it is necessary to abandon from the search for miraculous formula, which turn our corrupted human society into the ideal community.

Looking critical at the Popper's philosophy, it is necessary shortly to note, the next one. Reduction by Popper the growth of scientific knowledge to the completion of theories, observations not quite fair, as it ignored the concept of truth, including the truth of the basic things (truth of facts of life, human breath, being in general and etc.). Furthermore, determination of fact which was not

Contemporary western philosophy / under editorship *T. G. Rymyantseva*. P. 562.

described by the theory doesn't mean the need to completely abandon from the theory. Mechanic of Newton, despite the presence of a large number of contradictory facts, is still actively and successfully used by scientists. Definition of V.I. Lenin that "right – is a will of ruling class, erected in the law", although not completely satisfied scientist, but still recognized as one of the edge of law. In addition to hypotheses, facts and observations there are a lot of economic, technical, political and other factors, which are also strongly influence to the growth of scientific knowledge.

Important and very fair comment in Popper's philosophy was made by the researchers of creativity of the indicated philosopher. They noted that ideas of the Popper's book largely coincided with the attitudes of political and ideological elites of the USA in those times. Popper's reasoning caused indignation even by pure historians of philosophy, which were engaged exclusively in the analysis of intellectual systems of the past. As a result was published a collective article, which reveals an amateur character of Popper's concept about discussed things. In particular, philosophy of H. Hegel was set out by Popper from the old popular book without recourse to the original texts¹. But there is a question: if a political immigrant came to England, took a position which was different from the official ideology? Of course, not. Otherwise – sending back, to the "second roles" in New Zealand.

In the context of biographies it can be observe a lot of philosophers of the XX century, who are refusing the truth, knowledge, science, professing general pluralism and etc. Almost all of them, firstly, suffer strongly from the objectively existing in XX century wars and cataclysms, secondly, were not always adequate behave in these cataclysms (we mean service to fascism, escape from the homeland and etc.), and thirdly, in their majority for the most part, didn't make scientific discoveries, to which certainly, they strived.

In the part of the second paragraph we need to pay attention, that the most famous soviet-Russian philosophers of law – D.A. Kerimov and S.S. Alekseev, -

¹ Contemporary western philosophy / under editorship T. G. Rymyantseva. P. 563.

being the same age as Feyerabend or even younger as Popper, were not emigrated from the country and not waiting, when the will be over, but honestly fought against fascism on the front line and were awarded by medals.

Now it is necessary, for comparison, to consider biographies of three other scientists of XX century, for example, A. Einstein, R. Oppenheimer, S.P. Korolev.

The choice of these scientists isn't occasionally. First, indicated people are also dreamed to become famous scientists. Secondly, the works of these scientists have philosophical character. Thus, A. Einstein was considered to be a famous philosopher, R. Oppenheimer dedicated a number of works to philosophical thoughts about peace and the fight for peace, necessity for strict international control over fundamental scientific researchers and arms race. S.P. Korolev, seemed not to be a philosopher and didn't write philosophical books. However, direction of his works in physics on the knowledge of the world, Space, Universe without any doubt allows taking him either to philosophers or to philosophers-practices. Ideas of S.P. Korolev brought him in life, about space exploration, flight of a person into space, "lunar program" and etc. convincingly testify, that he was a philosopher in science and in spirit. Thirdly, indicated people also have difficult fate. A. Einstein was forced to emigrate from Germany to the United States. R. Oppenheimer was suspended from the scientific activity because of sympathy for the communist party and the struggle for peace and non-proliferation of nuclear weapons. S.P. Korolev in 1930th was illegally arrested and sentenced to the prison for 10 years.

However, A. Einstein, R. Oppenheimer and S.P. Korolev not only dreamed to become famous physicians, but already become them, forever glorifying their names. They have never been disappointed in science; but on the contrary, saw the future in it, the way to righteousness, justice, cognition of the truth and the world.

As a philosopher, Einstein devoted part of his works to a strict criticism of positivism and postpositivism. His famous phrase: there can be no science, without faith in what, is possible to cover reality with our theoretical constructions, without faith in internal harmony of our world.

His famous to many people works and results, as well as all well-known works of R. Oppenheimer and S.P. Korolev, convincingly shows that the world, being isn't pluralistic. But the individual elements of being are not equal between each other, but interdependent and rigidly structured. Without rigid interdependence, structure and impacts on each other impossible to have nuclear explosion, controlled fuel burning, bringing ship to the orbit and etc.

There were no offences from the indicated scientists on the science, in contrast to K. Popper, P. Feyerabend and others. It could be putting forward no indisputable, but very believable hypothesis that the lack of individual discoveries in the concrete sciences led separate philosophers to so categorical conclusions about lack of truth in scientific knowledge, scientific anarchism. So, let's say, some kind of "revenge" to science for the individual failures. It is considered that if by indicated or other philosophers were made real achievements in concrete sciences (physics, mathematics, biology and etc.), it is unlikely that they will announce them untruly, anarchic, no logical and others.

It is known an expression that "being determines consciousness". On consciousness influence successes and failures, events and upheavals, life turns and fractures and etc. All this, without any doubt, reflected in human creativity.

Roots of behavior and humans convictions and this promise are checked already many times, they need to search them in the history of his life, and significantly – in the childhood and youth. It is necessary to clarify: certainly we don't have to absolute biographical factor; however we cannot agree that biography has a strong influence in the human's creativity and especially on his philosophy.

Science would lose the entire meaning, if doesn't pursue the truth; strive to the truth, wishing the truth. Exactly by the considering of the truth determine a special status of scientific knowledge. Without receiving of true (truthful) facts, it is impossible to achieve fair and correct decisions. This is especially true for legal disciplines. All people desire to have justice relations to them, striving to justice, which, on its turn, is possible to reach only having truthful knowledge.

This is again shows the importance of certainty in science and life, importance of dialectical method of cognition.

By philosophers of pospositivism and postmodernism, however, we don't exclude and other motive. The western world loves popularity. And especially there radical views, statements and actions rarely give fame, popularity, and also – as a result – a certain income. There – in the West – came up with different measurements of popularity, ratings, indexes, and also index of quotation of scientific works. A person scientifically will write some nonsense (for example, that in order to be a real philosopher, you may need to sit in jail) and he will be criticized, blamed – and therefore also quoted! – many specialists. It is possible from here popularity, interest to the activity, a certain income. In Russia previously it was impossible.

A similar idea was expressed by other specialists. For example, it is noted that the work of Feyerabend "Against the method" has become a significant scandal in postpositivistic philosophy and methodology of science, what in some extent, justified the high author's expectations. Composition was originally oriented on some shocking public opinion, providing a resounding success and forced to listen to the expressed position¹.

In conclusion we would like to say that works of P. Feyerabend, K. Popper, despite the criticism, deserve attention. They left their mark in philosophy and diversified philosophical thought. With their very controversial conclusions P. Feyerabend and K. Popper, how paradoxically it could be stimulated philosophical creativity and interest to it. Another question: whether to rely on the conclusions of above mentioned scientists?

It is quite possible to study myths, mysticism, and others. Their study could give interesting results. So, the authors of this monograph, together with psychologists and doctors, have conducted studies of the psychophysiological features of extrasensory. Also have studied possibilities of usage of extrasensory in solving crimes, searching for missing people in operational-search activity.

¹ Contemporary western philosophy / under editorship T. G. Rymyantseva. P. 756.

However – the main! – such researches were conducted scientifically, but not with the help of other extrasensory, healers, shamans and etc. Based on researches was formulated a scientific direction “extrasensory”, this name was started to use in legal sciences, directed for struggle with criminals (in criminal science, operational-search activity)¹. Global achievements either in field of psychology or in the field of criminal science, however, haven’t been received.

However, it is certainly not a reason to give up science and scientific knowledge. New researchers, based on this experience, will go further. The amount of researches will grow of course in quality: in a new scientific knowledge and results.

¹ *Zakhartsev S. I.* Science of operational-search activity: philosophical, theoretical-legal and applied aspects. Saint-Petersburg, 2011.

§ 3. Briefly about philosophy of science

Described in two previous paragraphs require to talk about author's vision of the philosophy of science, its objectives and content.

It is necessary to agree with V.S. Stepin that in XX century has turned philosophy of science into a specialized field of researches, requiring not only philosophical and logical knowledge, but also ability to navigate in a special scientific material. As named specialist writes, philosophy of science is developing with the science itself. It acts as a kind of consciousness of the science. The close connection of philosophy and science can be traced throughout history. In ancient times, when the science was only born, philosophy has already included in it separate scientific knowledge. With the spin-off from the philosophy of concrete sciences appears a new type of their relationship. From one side, philosophy, relying on the achievement of science, develops its ideas, principles and categorical apparatus, and from the other side – it is actively influence as the methodological basis on the processes of fundamental scientific discoveries, its interpretation and inclusion in the culture¹.

In general philosophy of science – a part of philosophy, studying concept, boundaries and methodology of science. Philosophy of science as a direction of western and Russian philosophy represented by a variety of original concepts, offering a particular model of science and epistemology development².

In soviet philosophy of science was existed a direction on cognition primarily natural and exact sciences. To humanitarian sciences was paid less attention. Furthermore, were considered statements about the fundamental and irresistible differences between natural and humanitarian sciences. Now such position is fairly reviewed. Philosophy of science, without any doubt, must study and research the knowledge of all sciences – natural, humanitarian – not making a priority to someone's side.

¹ *Stepin V. S.* Philosophy of science. General problems P. 11-12.

² *Nesterov A. I., Pekarskiy P N.* About methodology in philosophy of science // Philosophy of science: perspectives of development. Saint-Petersburg, 2010. P. 16.

As V.S. Stepin wrote about it, it is necessary to realize that cognition of socio-humanitarian sciences from one side, and sciences about nature – from another, having not only specific, but also general features, because it is a scientific cognition. Their difference is rooted in a specific of subjected field. In socio-humanitarian sciences subject includes a person in it, his consciousness and often acts as a text having humans meaning. Fixation of such subject and its study need a special methods and cognitional procedures. However, despite the complexity of the subject of socio-humanitarian sciences installation on the objective of his study and search for laws and regularities are compulsory characteristics of a scientific approach. Philosophical-methodological analysis of science, regardless whether it focuses on natural sciences or socio-humanitarian sciences, belongs itself to the sphere of socio-historical cognition. Furthermore, it is need to be considered, that strict demarcation between sciences about nature and sciences about spirit had its reasons for science in XIX century, but it is largely ineffective according to science in the last third of XX century. In the natural sciences of our days increasingly are starting to play researches of complex developing systems, which are having “synergetic characteristics” and include as its components a person and his activity. The methodology of research of such objects brings together the knowledge of natural cognition and humanitarian cognition, blurring the rigid boundaries between them¹.

It is necessary to join V.S. Stepin and some other researchers in that in the frames of philosophy of science it is legal to put a question about possibility of extension of the concept “scientific cognition” not absolutizing natural scientific installation as the only true. On this occasion, V.N. Mihailovskiy asks a question: “If the history and philosophy of science could be the same for everyone?” – and answers by himself: “Obviously, may be, if there is such a science”².

Based on the above mentioned, authors of this monograph, also consider themselves to the supporters of the “universal” scientific cognition, including the

¹ *Stepin V. S.* Philosophy of science. P. 9-11.

² *Mihailovskiy V. N.* Philosophy of science by the university education // Philosophy of science: perspectives of development. Saint-Petersburg, 2010. P. 21.

general consideration as natural scientific and also humanitarian sciences. Exactly so they are viewing the philosophy of science.

However this position isn't shared by all scientists. V.N. Mihailovskiy gives an example, that having earlier dominance of natural scientific methodology has led to significant difficulties of "teaching" disciplines of humanitarian sphere. For example, history. Although the achievements of history are widely known, however, the real basis of its success remains doubtful for many representatives of natural scientific knowledge. The point of view, that history is nothing more than a collection of facts and opinions in the absence of clear theoretical structure and the conventional methodology of research is remains widespread. The possibility of epistemological equality of history with the exact scientific disciplines isn't considered seriously. However, historians themselves believe that theorizing is inherent to them, but it isn't so formalized as in physics or the same disciplines. But philosophy of science should take into account that the scientific picture of the world, if it has holistic character, must include a person¹.

Given by V. N. Mihailovskiy example is typical not only for historical sciences, but also for pedagogical, sociological, legal sciences. In a natural scientific environment still conventional is a statement about the division of sciences for natural, and, respectively, "unnatural" (humanitarian). Such statements have already no basis in fact, but still are used, including some teachers during the lessons.

At the same time there are opposite examples. So, V.S. Stepin drew his attention, according to all the complexity of subject of socio-humanitarian sciences, setting for its objective study and searching for laws and regularities are compulsory characteristics of the scientific approach. This fact isn't always taking into consideration by the supporters of "absolute specificity" of socio-humanitarian knowledge. His opposition to natural sciences carried sometimes incorrect. Socio-humanitarian knowledge is widely interpreted: included philosophical essays, publicity, art criticism, fiction and etc. But correct statement of the problem should

¹ Ibid: P. 22-23.

be another. It requires a clear distinction of definitions like “socio-humanitarian knowledge” and “scientific socio-humanitarian knowledge”. The first one includes the results of scientific research in it, but isn’t boiling down to it, because supposed another, nonscientific forms of creativity. The second one is limited only by the frames of scientific research, which in this case, of course, has its specificity. Of course, this research isn’t isolated from the other spheres of culture, but it isn’t a basis for identification of the science with other, although close contacting with its forms of human creativity¹.

Despite the fact, it is necessary to agree completely with A.E. Nazirov that traditionally there is a division of philosophy of humanitarian and natural sciences, whereas in contemporary conditions it is important to examine the science as a holistic phenomenon of spiritual culture².

A.E. Nazirov in humanitarian sciences, according to analogy in natural sciences, highlights the levels of fundamental and applied researches, and also a level of developments (humanitarian technologies). The place of the last one, still in a significant degree is taken place by religious, occult-spiritual, meditative, extrasensory and folk-medical practices. However, we cannot agree with these scientists that in Western Europe in recent decades, people are more often appeal not to psychoanalysts, but to philosophers, which could endow their life with more long-term senses, rather than psychoanalysts³. Where A.E. Nazirov has received such information, he doesn’t specify.

For checking this approval, it was conducted a research of public opinion in German, Czech and Italian engineering companies. Such choice was made according to that in engineering companies, usually comes to work sufficiently educated stratum of the population, which seems, can go to the philosophers. It was interviewed one thousand people in each country. Furthermore, a similar study was conducted in the USA. And were received the results, which are completely

¹ *Stepin V. S.* Philosophy of science. P. 9-10.

² *Nazirov A.E.* Tasks of scientific interuniversity round table «Philosophy of science: perspectives of development» // Philosophy of science: perspectives of development. Saint-Petersburg, 2010. P. 5.

³ *Ibid:* P. 7.

contradict to the information of O.E. Nazirov. So, in the indicated environment, the most common are appeals to the religious leaders (in each country – about half of the respondents) and to extrasensory (approximately a tenth part of the respondents). Appeals to the philosophers in the indicated countries are rare, so are not widely spread. In this regard, it will be interesting to know, according what A.E. Nazirov has made such conclusions.

In order to open philosophical nature and scientific knowledge, as was already noted, it is necessary to use dialectics. Philosophy of science with its help is trying to find regularities of science, scientific thinking, and natural course of the formation and change of concepts.

A. I. Nesterov and P.N. Pekarskiy rightly pointed that philosophy of science with its search must discover the hidden logic of the development of scientific knowledge. Detection logic of science development means understanding regularities of scientific progress, its driving forces, reasons and historical conditions. However, named scientists write, that contemporary vision of this problem is substantially different from that was prevailed till the middle of the last century. First it was believed that in the science is going continuous increment scientific knowledge, steady accumulation of new scientific discoveries and increasingly accurate theories, creating as a result cumulative effect on the different directions of nature cognition. Now the logic of science development is considered to be different: it develops not only by the way of continuous accumulation of new facts and ideas – step by step, but also through fundamental theoretical changes. In one moment, they force scientists to redraw usually common picture of the world and rebuild their activity on the basis of fundamentally new worldviews. The logic of a slow evolution of science (step by step) changed the logic of scientific revolutions and catastrophic¹.

Specified categorical opinion requires clarifications. In dialectics there is well known to all the law refusing the denial. Specified law considers

¹ *Nesterov A. I., Pekarskiy P N. About methodology in philosophy of science // Philosophy of science: perspectives of development. Saint-Petersburg, 2010. P. 17.*

development, including scientific development, in the form of successive levels (steps, grades), connecting with each other in such way, that each next level is a denial of the previous one. Arising to a new level of development involves scientific discovery and the denial of the previous knowledge. This process wasn't interrupted or changed. Dialectics implies a permanent and compulsory development, which occurs also by changing previous knowledge to the new one.

If A.I. Nesterov and P.N. Pekarskiy mean the theory of scientific revolution of T. Kuhn and his supporters, it is need to remember that it was repeatedly and rightly criticized¹. Without repeating the criticism and recognizing the achievements of T. Kuhn, is necessary to state that he also didn't allow obtaining of a true science of knowledge.

As it was mentioned, it is necessary to proceed from the necessity of understanding and the possibility of science achievement of an objective truth. Any scientist - writes V.S. Stepin, - takes as one of the basic units of scientific activity is the search for truth, perceiving truth as the highest value of science. This setting is embodied in a number of ideals and norms of scientific cognition, which expresses its specific character: at a certain ideals of knowledge organization (for example, requirement of logical consistency of the theory and its experimental confirmation), in search of explanation of phenomenon, based on laws and principles, expressing essential connections of researched objects and etc.²

Such position allows specifying criteria of scientific knowledge. It is considered that system of scientific knowledge must meet the criteria of certainty, reproducibility, hatchability, verifiability by different subjects, consistency, completeness, logical consistency, simplicity and etc.

¹ Among critics we are especially like thought about specified theory of T. Kuhn, a Noble laureate, a famous physician *V.L. Ginsburg*. Specified scientist really concrete showed that Kuhn during thinking about "contemporary science" used old material, didn't consider contemporary achievements of the science, admitted antihistorical statements, on which he was built the theory. See.: *Ginsburg V.L. About physics and astrophysics: Articles and speeches*. 2nd edition M., 1992. P. 185-207. We notice that V.L. Ginsburg till the death was based on the dialectics as on the main scientific method of cognition.

² *Stepin V. S. Philosophy of science*. P. 116.

Scientific knowledge, as V.B. Markov writes, has always been considered a disclosure of the essence of being, stable and unchanging laws, and therefore was the bearer of the properties of truth, and also universality and necessity and all-embrace. Unlike opinions, which are considered to be preconceived, the theory – is a disinterested contemplation of the essence, it direct to the comprehension of the essence of being, and not to instrumental knowledge, which generalize practical experience. For Aristotle the sample of knowledge was not only the live wisdom, but the science that he defines as universal and evidence-based knowledge, based on a small numbers of universal statements – axioms. The truth for Aristotle is occur as property of knowledge and characterized as conformity to what is talking about in the utterance, to the objective state of affairs¹.

This book according to author's idea to a greater extent is dedicated to the philosophy of law. It is gratifying that specialists in philosophy of law are actively involved in the process of discussion on criteria and standards of scientific knowledge in field of jurisprudence². It is also expedient to support opinion, which was said by I.L. Chestnov that scientific criteria of jurisprudence (juridical theory) couldn't differ from the scientific criteria as they are. With this axiom will be agree any theorist of the law, even radical supporter of normativism and self-sufficiency, autonomy of legal system³.

This thesis is also very important because it clear shows the priority of the philosophy of science over other philosophical-specialized sciences (philosophy of law, philosophy of economic and etc.). Mission of the philosophy of science is connected with science studies, solving the question “what is science”, elaboration of common criteria what relate to science and what not. Philosophy of science is a basis for other sciences. It is necessary fully to support philosophers of law, who

¹ *Markov B. V.* Structural-functional and communicative methods to the analysis of scientific knowledge // *Philosophy of science: perspectives of development (methodology of applied sciences)*. Saint-Petersburg, 2013. P. 61.

² See.: Standards of science and homo juridicus in the field of philosophy of law: materials of the 5th and 6th philosophical – legal readings in memoriam acad. V. S. Nersesyants. M., 2011.

³ *Chestnov I. L.* Postclassical criteria of science of legal theory // *Standards of science and homo juridicus in the field of philosophy of law*. M., 2011. P. 62.

took place in workshops and readings in the recognition of the truth, criteria of scientific knowledge “the truth (adequacy, validity, reliability, integrity, unambiguousness) of researchable perception in the process of description and explanation of law as the embodiment of legal justice”¹.

However, I must say, that lawyers are so fond of strengthening of scientific standards and criteria that among them pointed out “conscious refusal of usage without necessity of having slang of “bird language” and charming metaphors for the formulation and discussion the newest scientific problems”.

Such scientific standard, firstly, isn’t understandable and secondly, subjective. From the point of “refusal from the charming metaphors” it turns out that it is proposed to refuse also from the famous philosophical beautiful statements of Socrates, Platen, Aristotle an etc. Why their deepest statements formulated in simple and accessible language, are not scientific? Are they going to harm to jurisprudence and its understanding? Unlikely. But from the other side, it discussed an exception from the standard “refusal from the usage without necessity”. However in legal researches isn’t enough subjectivity. The researcher will easily justify this “necessity”. As a result, such a standard occur, which in fact, solve the usage of slang and “bird language”. Finally, the term “bird language” is hardly can be named as scientific or legal.

However in general, the work of the lawyers is needed to be support. Philosophy of science can, will and must develop not only top-down (from philosophers to sciences), but also bottom-up – from specialists of concrete sciences to philosophers.

¹ *Grafskiy V. G.* It is early to make a point: instead of conclusion // Standards of science and homo juridicus in the field of philosophy of law. M., 2011. P. 159.

§ 4. Philosophy and global problems of humanity

In 2014 will end one-seventh of the XXI century. Summering up this short time interval, we can confidently say, that how it will emerge for the world of XXI century – nothing is known. That is, the global problems of being and survival, accumulated by humanity during the previous years and centuries, continuing to be extremely relevant.

So, there is still a threat of nuclear war and nuclear weapon. The confrontation between the USSR and the USA which took place in XX century led in XXI century to expansion of countries, which have nuclear weapons. Reduction of the number of countries, having such weapon, isn't expected. At the same time in XXI century subsided all the talks about reduction of the strategic nuclear forces. On the contrary, many countries are openly declared that they are testing new weapons systems – more powerful and effective. Wherein, to the reasons for the possible nuclear conflict can be added to the many already forgotten – war for the faith.

Applied new technologies are not removed, but on the contrary, increased the possibility of technogenic disaster, also including nuclear and military facilities. At the beginning of the century sank the nuclear submarine “Kursk” with nuclear weapon on the board and nuclear reactors. Then soon sank another Russian nuclear submarine. On the bottom of the ocean already lay six submarines with nuclear reactors (four soviet-Russian and two American). Soon we also saw ruinous and fatal nuclear catastrophe in Japan (Fukushima). It clearly showed, that all the world, including high technological Japanese, are not insured and anyhow protected from technogenic accidents. Let's think about how many nuclear facilities are situated in the USA, Russia, China and other countries? How many military industries not only with nuclear, but also with chemical, bacteriological and other kinds of weapon of mass destruction exists in the world? And in any moment a technogenic catastrophe can occur.

As we know, such accidents as with Fukushima don't go unnoticed. They are significantly worsening already disgusting ecological situation on the planet. Ecological safety is another global unsolved problem, which is staying before the humanity. That is all global problems of humanity are interrelated. Ecology, as it was already proved by specialists, is harmfully influence on health, lead to new diseases. Besides, the famous facts are reducing of the Earth's ozone layer, the problem of drinking water, clean air and natural food.

With ecological problem also connect the question of exhaustion of energy resources.

A separate problem is the overpopulation of the planet. Scientists are arguing according the optimal amount of population on the planet Earth. For example, it states that the maximum amount of people shouldn't exceed 1 billion people. Now the population of the Earth is already 7 billion people. According to forecasts, by 2025 there will be more than 8 billion. Overpopulation raises again the question: how people will breath, what eat and drink and how to keep warm.

New global threats to life on the Earth in XXI century are terrorism and drug addiction. The century began with terror attacks in the USA (skyscrapers were exploded). At the same time in Russia there were acts of terrorism in Caucasus. Other countries haven't also escaped from the threat of terrorism. As well as the dangers of drugs, which are flooded the whole human civilization.

But specified global problems – are the external side of threats hanging over the population. There are also internal, the content of which is no less dangerous. To these include the threat of continuing biomedical experiments and tests (cloning, transplantation of organs and also brain and etc.). Another threat is he observed informational violence over the human. Still is continuing to conduct experiments in the manipulation of consciousness. To separate threats refer increasingly common violations of the human rights, associated with total control over its movement and communication.

Between the human as individual and the humanity as a totality of people on the planet Earth are a community of people, generally, united in countries. It is

need to be said that countries themselves at the present stage are living through the crisis processes. The question in this case isn't about wars between them (what is dangerous, as already mentioned), but about the fundamental approach to the state, its rights and opportunities. For example, the problem of the social state. Nowadays many of the developed European countries are suffering from the inflow of migrants from the so-called undeveloped countries. Residents of undeveloped countries receive a tolerable unemployment compensation, they are assisting help and etc. – and all this at the expense of working, generally, native population of the country. Title population actually subsist these migrants. Wherein many migrants are not simply not willing to work, but even to adopt the culture and accepted rules of behavior in the country. About that, if it is necessary to have tolerance, equality and universal social guarantees are already openly discuss in Europe. A question rose about the establishment of limits of tolerance and universal social guarantees. A good example of the above said is the success of the book of German politician T. Sarrazin “Germany: self-destruction”¹, having nationalistic character. Only in Germany it was sold more than 1 200 000 copies of this book, what is more than much for the modern, generally not fond of reading population. Crisis of the social states has already begun. And where this crisis will lead, what will be with destroying countries and their citizens, would it be a new round of Nazism – is the question and at the same time the real threat to human existence.

Here are the global problems (threats) facing the humanity in the XXI century. Under the global in this case is understood that, they are:

1. deadly dangerous;
2. harmful for all the humanity, no matter in what the point of Earth;
3. couldn't be solved by the forces of one state (one nation).

There is possible at least two classifications of such problems. The first one allows dividing the problems as awareness of them among humanity:

- a) problems, which are already known to humanity;

¹ See.: *Sarrazin T. Germany: Self-destruction: translation from German. M. 2013.*

- b) unknown problems, which, in its turn, also possible to distinguish between threats, that can be assumed basing on the current realities, and quite unknown threats (for example, a threat of drug addiction has been regarded as a global problem of humanity relatively no longer ago, although the drugs have been known for a long time).

Another classification of global problems conducted on another basis. It is proposed to divide problems into two levels:

1. dependent from the human and humanity;
2. independent from the human and humanity.

To the first level refer already mentioned problems. To the second one could be referred:

- forces of Space;
- powers of Nature.

There are no doubt, that humanity and the Earth as a planet – is the part of the space system. To deny it, seems, pointless. As it is pointless to deny the fact, that the human know very little about specified system. And it is very naïve to think, that he doesn't depend on this system. The dependence from space implies impossibility of protecting from it. For example, humanity can nothing oppose to the collision with a large meteorite, which is capable destroying the Earth, destroy of the atmosphere, attenuation of the Sun and etc. Meteorite, which has fallen on Chelyabinsk in 2013, during the fall released the energy which is equal to 20 explosions of nuclear bombs in Hiroshima. I must admit, that the planet Earth and life on it, by definition and always vulnerable from the space forces.

Powers of Nature are also entirely unexplored by humanity. Reached, seemingly, the largest discoveries in physics, chemistry, biology, other sciences people still not able to predict floods, earthquakes and other natural cataclysms. Experience of XXI century again showed how the humanity is vulnerable from nature. It is enough to remember, that at the end of 2004 in Thailand tsunami instantly destroyed more than 200 thousands people. In fact, the powers of Nature

and its possibilities are not explored enough. And in fact, these powers always present a threat to humanity.

However, space forces and the powers of nature are not destroying the Earth yet. This is firstly, inspires optimism, and secondly, involves the special role of the Earth in the outer space.

However, the Earth and the civilization can be destroyed from the inside by the human.

And here occur a question: what undertake philosophy as the “science of sciences” in order to solve above mentioned looming problems, which could destroy the civilization? It should be recognized, that if something is undertaken, these efforts are clearly not enough. With this conclusion, likely, will everybody agree.

The reasons for unsuccessful attempts according to the solutions of mentioned questions are connecting with that philosophers at the present time lost authority and social influence. With this conclusion, probably, will agree many people. About decrease of the philosophers authority and their status would be discussed separately. But this reason is rather subjective and is largely connected with the main reason: with that, philosophers for the solution of this problems by and large having nothing to offer.

In sum: the crisis of being is coming, a problem of existence of being occur. And this crisis coincides with a crisis in a contemporary philosophy. As for the philosophy, nowadays, there is no more urgent problem, than the problem of survival of humanity in the future, or as it can be said, the problems of the future being.

Giving comments on the situation in the science, it is necessary to say the following.

Firstly, we need to recognize the incorrect way, according to which, to the solution of the global problems of the humanity are involved professional specialists from of particular sciences (physicians, chemistries, doctors and etc.), not combining their efforts. For example – the problem of nuclear weapon – it is

the problem not only physicians, but also other scientists (historians, political scientists, economists, ecologists, doctors and etc.). A problem as a complex, usually, isn't solved. The lack of the integrated approach effects on the quality of such scientific works. Particularly, bad and one-sided are forecasting consequences of that, if some of the risks for the humanity will be implemented. It is necessary not only clearly understand the danger of existing problem, but also see, what will happen during her breakthrough, on the basis of which, offer a concrete plan of actions.

In confirmation of these words we could give an example. In April 1986 has occurred an accident on the Chernobyl nuclear power plant. There were no ideas about what was happened, and scientist didn't have a concrete plan of actions for the liquidation of the consequences. Actions for the liquidation of the threats have been undertaken spontaneously. In March 2011 in Japanese Fukushima has occurred an accident on nuclear power plant. However, as 25 (!) years ago, scientists also were not ready for the accident. And actions for the liquidation of the accident having also spontaneous, not always thoughtful character.

Secondly, it is necessary to recognize the incorrect way of removing these problems through law, legal regulation and legal prohibitions. Few philosophers and philosophers of law thought about possibilities of law and limits of its capabilities. I must admit that the law isn't omnipotent¹. The rules of law are systematically ignored by states, when it suits them. A bright example is the USA and actions of this country in Yugoslavia, Iran and etc. Nowadays the world is multipolar, and each powerful country, which has nuclear weapon, in fact can make everything with the countries of so-called "third world". Other powerful countries can support or condemn such policy, but couldn't do anything in order to prevent possible nuclear war and as a result, catastrophe. The law theoretically can be an effective regulator of the peace on the Earth only in case of unipolar world. In this case, the dominant country can set up strict standards, which will be

¹ See about this: *Zakhartsev S.I.* Some problems of theory and philosophy of law. // under editorship *V.P. Salnikov*. M., 2014.

mandatory for everybody. However, unipolar world is possible only in case of absorption of one state to all others. Nowadays it is impossible only because a lot of countries have nuclear weapon. So, the USA practically absorbed the USSR, but appeared a strong Russia, which still having modern weapon, human and territorial resources and economical potential. Wherein in the confrontation with the USSR, the USA has overlooked the rise of China, India, Islam. And I must admit, that although powerful countries taking together standards of international law, which are directed on the saving of the peace, but also violate them if it is necessary. There is no doubt, that standards of law can effectively work only in that case, if the control over their execution is situated in the same hands. That why standards of international law relating to prevention of the global problems are having declarative character.

I need to say, that very often could be so, when people, don't know what to do, are trying to solve the question through that, they don't know, addressing to unfamiliar spheres of life. Many physicians, chemistries, economists and other scientists being in their mass as law-abiding people, sincerely think that by law can solve all the questions. That isn't so. The law isn't omnipotent and limitlessly in its possibilities.

We see the situation so. For the solution of the global problems isn't enough their general awareness, may be the depth of awareness. Nowadays in all states political regimes having elements of democracy, i.e. the power of people and population. When the population truly understand, will be aware of the horrible consequences, either people will force the authority to make concrete steps for solving problems or in states will come to power pacifists and humanists.

Furthermore, it should be compulsory teaching of global problems in secondary and high educational institutions. In fact, exactly in schools during the formation of personality by a person lays attitude to the world and his place in the world. Unfortunately, in schools are not taught the problems facing over humanity, and if they are taught, it is usually, perverted. So, the pride about your country is mixing with the idea of power and omnipotence of the country. In England, for

example, is promoting the struggle for the national interests of this Kingdom throughout the world.

In addition, it is important also attraction of public opinion to the global problems of humanity all over the world. It isn't happen. If in any of the state issue questions about environment, war, accidents, so the other countries are not promoting and analyzing them. Everything again depends on a few scientists in a concrete narrow specialty, in which they are trying something to solve.

Wherein, some physicians, biologists and other scientists considered that the Earth and humanity have already passed so-called point of no return and are moving to the destruction. The apparent overpopulation of the planet in combination with development and escalation of nuclear and other weapons of mass destruction, environmental pollution, continuing destruction of the ozone layer and other problems allows us to consider such conclusion as reasonable. And it is important to understand here that for the Earth's destruction and liquidation of life is enough the realization of any of the existing problems.

Such development of the events is quite possible and real. It is necessary to admit that, despite of expressed proposals of solving problems, it is loosely believed, that humanity and the leaders of the states will suddenly grow wiser, understand and all together taking all necessary steps in order to minimize risks of a possible catastrophe.

However, specified conclusion allows looking at the situation from the other side. After all, accumulated by people experience and well-known historical facts allow us to say that humanity has always survived – at any catastrophes and cataclysms.

There are a lot of examples. In case of appearing of incurable diseases is recently increased mortality, decreased population (till the acceptable level), and further invented necessary vaccine. While using deadly weapons and wars was again the reduction of the population, then wars stopped and invented anti weapon, allow restraining the enemy.

While overpopulation of the cities in the middle ages occurred starvation, which caused mortality, reduction of citizens till the acceptable level – and again life.

These things are obviously very cynical. But it is necessary also to think about it. After all, the overpopulation, the scarcity of food and raw materials and also lack of energy resources can be considered separately as individual global problems, and can be also as problems which are arising one from another. Lack of food and energy resources sooner or later will inevitably lead to the starvation or mass extinction of people. Extinction will be continuing until those limits, until people will be able again to feed themselves, to keep warm and to live further.

Or the destruction of the ozone layer and environmental problem will lead to the appearance of originally incurable diseases or mass mortality. Next, will be regenerated the ozone layer, forest and also will be invented necessary vaccine against disease.

Wherein, apparently, it is impossible to destroy the humanity simultaneously everywhere. Even assuming nuclear war, countries which are having this deadly weapon, are likely, will destroy each other, what will give the opportunity for development of Australia, New Zealand, the Franz Joseph Land, small oceanic islands. Where from again, maybe from the very beginning, will start humanity development.

Outlined gives opportunity to put forward *hypothesis of cataclysms and circulation of human life on the Earth*. Its essence is that the humanity with its actions reaches a certain frontier, after which, it is unable to be in a full composition on the planet. As a result of achieving frontier, occur catastrophes or cataclysms, affecting (sacrificing) absolutely the large part of the population on the planet. Then the survivors after cataclysms begin a new life. This life probably will start from the very beginning, because during catastrophes, undoubtedly, lost significant baggage of accumulated human knowledge, achievements, lost life experience. But solving the problems according overpopulation, restores the environment, energy resources. Then the humanity develops, reaches

overpopulation, violates ecology, invents deadly kinds of weapons, fighting, during the process of its activity reaches new frontier, occur cataclysm and then – a round of a new life, cleared from many invented technologies, experience, knowledge.

In confirmation of legality of this hypothesis we can say that despite the accumulated array of knowledge, scientists haven't be able to come to conclusion, where was formed the being and humanity on the planet Earth. It is states, for example, that the Earth exists already many millions of years. The sources here are deliberately not indicated for the reason, that, firstly, they are all contradictory and secondly, also are hypotheses. Assuming that the Earth was formed over millions, if not tens of millions years, as a result of occasional impacts of the forces of nature and space, arises a logical question about human population of the Earth. It is reasonable to assume that this population has been already, and perhaps, repeatedly.

To assume, that the world was created by the God, probably, isn't correct at all, because at the time of appearing of Jesus Christ, the being had been already on the Earth. The God – Jesus Christ, basing on faith, strongly changed the world and the being. But the world and life without any doubt had been already existed on the planet Earth. It is quite possible that the coming and resurrection of Jesus Christ is a new round of life of the humanity.

Wherein scientists are continue to find the obscure and unknown objects, which are not able to explain and even to say how old they are. There are specialists, which suggest extraterrestrial origin by the discovered objects. But maybe – there are terrestrial objects from the existed before on the Earth, but already destroyed civilizations?

And here is very important to set up the question: who has been destroyed these civilizations? We get only one answer: a human has destroyed himself.

It is necessary objectively to admit that all its life civilization constantly is destroying each other. In every century constantly is going on at least two terrible wars that dramatically reduce the population of the planet. Experience clearly shows that humanity, formed into the states, couldn't create for a long time. It

tends to destruction, murder and self-destruction. The fraternal folks of Russia and Ukraine, which together survived in a horrible World War II and had been for a long time in a structure of one state, in 2014 began to sort out relations and kill each other.

Judgment about that the humanity is going on or will be kinder, wiser, smarter isn't justified. Historical experience convincingly shows that to the human and humanity in addition to the virtues inherent envy, greed, aggression. I remember the great Russian thinker L. Tolstoy, who said, that there will be no wars, when inside a person instead of blood flooded water.

Unfortunately, self-destruction is one of the features of humanity. Why not assume that there have been several such self-destructions?

Judgments about that if any of the global risks of human existence will be realizing, sometimes can be found in the philosophical literature. V.S. Stepin writes that apparently, in the third millennium according to the Christian calendar humanity must realize a radical change to some new forms of civilized progress. Some philosophers and futurologist compare contemporary processes with the changes that humanity has experienced during the transition from the Stone to the Iron Age. This point of view has a deep basis, if we consider that solutions of the global problems imply a radical transformation of previously adopted strategies of human activity. It is necessary to revise the previous relation to nature, ideals of domination, focused on the power transformation of natural and social world, development of new ideals of human activity, new understanding of human perspectives¹.

This point of view is more optimistic, than stated in this work, although is also carefully indicates to the inevitability of cataclysms.

Thus, in this monograph we are putting forward for the discussion a hypothesis of cataclysms and circulation of human life on the Earth. Specified hypothesis of being on the Earth contains newness and highly relevant in the light of facing the humanity global problems. She is like any other version about being

¹ Stepin V. S. Philosophy of science. P. 104.

on the Earth, has weaknesses, which can be discussed. In fact, to the discussion about stated problem invoke the authors of this book.

We specifically placed here our theses about future being before reviewing philosophy of law. There is a conviction that ways of withdrawal looming in front of humanity problems with the help of opportunities of law is incorrect or at least, not complete. The law isn't omnipotent, but represents a complex social phenomenon, consideration of which will be discussed in the next chapters.

Chapter II

LAW: THE ORIGIN AND NATURE

§ 1. The subject of the philosophy of law

The question about what is philosophy of law and what is its subject, scientists haven't come to a common opinion.

According to the D.A. Kerimov opinion, philosophy of law, being one of the main directions of general theory of law, formulates the fundamental problems of dialectics, epistemology and logic of legal being, serving as the general theory of law and the entire complex of legal sciences¹.

S.S. Alekseev believed that the philosophy of law – is the science about law in human's life, in human being. According to his opinion, philosophy of law is presented as a scientific discipline, which aims to give philosophical explanation of law, its meaning and purpose, to justify it from the perspective of human being, existed in it the system of values². As specified author wrote, crucial meaning in the philosophy of law has it “philosophical core” – philosophical explanation of law, philosophical understanding of law, expressed in it values³. To some extent, about the same said Y.V. Tihonravov, given to the subject of philosophy of law very short definition – study about meaning of law⁴.

O.G. Danilyan and S.I. Maksimov write that philosophy of law firstly is identifying the sense of law, and also justification of understanding of this meaning. Wherein, according to their opinion, the subject of philosophy of law – is non juridical (limited) basis of law⁵.

V.S. Nersesyants provided a slightly different definition: subject of the philosophy of law – is law as the essence and law as the phenomenon in its

¹ *Kerimov D. A. Methodology of law (subject, functions, problems of philosophy of law)* M., 2000. P. 83.

² *Alekseev S.S. Philosophy of law.* M., 1998. P. 2.

³ *Alekseev S.S. The law: alphabet – theory – philosophy.* M., 1999. P. 395.

⁴ *Tihonravov Y. V. Basics of the philosophy of law.* M. 1997. P. 46.

⁵ See: *Philosophy of law / under editorship O.G. Danilyan* Kharkov., 2009. P. 8.

difference, relationship (match or mismatch) and in the desired unity. The same subject was further expressed by the scientist a little bit differently – right and law in their difference, relationship and in the desired unity¹.

G. I. Ikonnikova and V.P. Lyashenko, on the contrary, believe that philosophy of law explores the law not only as the essence or phenomenon in its difference, relationship (match or mismatch) and in the desired unity, but above all she is interested in the most general principles of legal reality and her cognition².

G.F. Pukhta wrote that positive law deals with already existed law and philosophical – with that should be³.

Y.G. Ershov believes that the philosophy of law should be considered as a science of cognitive and social bases of law⁴.

V.P. Malakhov wrote about that the subject of the philosophy of law is its essence⁵. Though in a more expanded definition, which was given in this work, he defines the philosophy of law somewhat different: philosophy of law – a set of basic methodological assumptions, which only make possible the understanding of law, meaningful self-unfolding of justice, direct formation and reproduction of legal life⁶.

Finally, O.E. Leist actually came to the conclusion, that philosophy of law – “is not a science, but an ideology, that seeks to lean on a scientific basis and justification”⁷.

Definitions of other philosophers of law are also different.

Furthermore, there are still existing two methods of studying of the philosophy of law. As S.S. Alekseev noted, this scientific discipline is built on two scientific planes (levels):

¹ *Nersesyants V.S.* Philosophy of law. M., 2011. P. 2.

² *Ikonnikova G.I., Lyashenko V.P.* Philosophy of law. M., 2013. P. 16-17.

³ *Pukhta G.F.* Encyclopedia of law. About science of law// History of the philosophy of law. Saint-Petersburg, 1998. P. 377.

⁴ *Ershov Y.G.* Philosophy of law. Ekaterinburg. 1995. P. 9-10.

⁵ *Malakhov V.P.* Philosophy of law. Ideas and proposals. M., 2008. P. 28.

⁶ *Ibid:* P. 10.

⁷ *Leist O.E.* The essence of law. Problems of theory and philosophy of law. M., 2011. P. 264-265.

- as a native philosophical discipline, considering the law from the perspective of a specific universal philosophical system or historic-philosophical developments.
- as an integrated philosophical-legal field of knowledge, when on the basis of certain amount of philosophical ideas carried out scientific study of legal material¹.

So, it was happened historically that philosophers of law – “came from the depth of philosophy” – has been traditionally based and based on the first scientific approach.

Philosophers of law, who have legal education, on the contrary, prefer the second scientific method and include the philosophy of law in the system of legal sciences. Hence the subject of the philosophy of law is determined by taking into account, that philosophy of law – a legal science, a part of general theory of law and etc.

The authors of this monograph, like almost all lawyers, firstly also adhere the second approach. But the more philosophy of law was parenthesized into jurisprudence, general theory of law, the more insistent and confident philosophy of law goes out from these frames, setting the questions, on which jurisprudence is unable to embrace.

It forced to rethink once more philosophy and philosophy of law, to assess the state of the philosophy of law from the position of modern day.

As you know, philosophy – is a special way of understanding and mastering the world. As a worldview, system of knowledge, it forms a coherent and valuable view about the world and humans place in it. It is considered to be that it is true, that philosophy goes out of the frames of concrete sciences. Furthermore, exactly from the depth of philosophy “were born” technical and humanitarian sciences, including jurisprudence. Philosophy gave the impact for the development of legal sciences and determined their direction. The basis for this development was thoughts of the philosophers about law. Starting from the ancient times, all

¹ Alekseev S.S. Philosophy of law. M., 1998. P 2.

philosophers, without exception, related in their works to the law, observed him either directly or implied as an important component of building the world and society. That how was generated self-direction in philosophy – philosophy of law.

This direction, we need to admit, was never the main – philosophy traditionally observed global problem of being, cognition, peace. And law invisibly (or visibly) was among these problems as an important way of regulation of social relationship. Objectively, philosophy was born legal sciences and not vice versa. And naturally, that exactly philosophers has formed and substantiated by XIX century philosophy of law as direction in philosophy, and later on - as a scientific discipline, intended for the formation of the worldview of the law, philosophical understanding of law, understanding of methodology of law.

V.S. Stepin has fundamentally researched this question and noted that since the middle of XIX century in the philosophy begin to form new approaches. There occurs a critical attitude to the classical ideal of the last and absolute true philosophical system. Philosophy aware of itself as developing system of knowledge, which, like science, doesn't end at any stage of its development by achieving of final and comprehensive picture of the universe. At the same time philosophy in this period began to pay attention on the specific of cognition and knowledge not only in the science, but also in other spheres of culture – art, morality, political and legal consciousness and everyday thinking, religious experience and etc. Checking its constructions by the way of constant reference to the real development of different spheres of culture, separate areas of philosophical knowledge begin to gain a relative independency. They constitutes as the special philosophical disciplines (ontology, theory of cognition, ethics, aesthetics, philosophy of law, philosophy of science and etc.)¹.

Thus, philosophy of law is considered to be connected scientific discipline among philosophy and legal sciences, but doesn't belong to the last one.

Philosophy of law isn't included in the general theory of law and indicates her directions of the cognition of law, methodology of law and formulates

¹ Stepin V.S. Philosophy of science. P. 13-14.

approaches and fundamental problems of law, searches for the ways of solutions. Then it turns out, that in the subject of philosophy of law included fundamental questions of legal being, essence of law, methodology of law cognition, values of law, awareness of law, logic of law, human's place in the legal relationship.

Here occur a tangible distinction of subject of philosophy of law and the general theory of law, because in the jurisdiction of philosophy of law includes understanding of the global fundamental problems of law and indication of methodological principles, benchmarks for the theory of law.

In fact, the purpose of the individual philosophical directions is exactly in that to become as peculiar "bridges", benchmarks for the theoretical sciences of all areas of knowledge (from economical and mathematical to the theory of law). Philosophy of law acts as a "bridge", connected link between "pure" philosophy and the theory of state and law as a main basis for all legal area of knowledge.

The circumstances, in which the philosophy of law lost some of its significance for legal sciences, are simple and clear. Philosophers, as it was already noted, considered review of the problems of law not the main direction of the philosophy, doesn't pay necessary attention. The initiative was intercepted by the lawyers, which became, of course, to consider the philosophy of law primarily from the legal positions. From this moment philosophical component was noticeably weaker. And philosophy on its own has become more like one of the segment of the theory of state and law.

However, approach to classification philosophy of law to the general theory of law at the present time isn't currently acceptable.

Firstly, this approach arise the problem of distinction of the subject of theory of state and law and philosophy of law. Attempts of distinction have intensified subjectivism in the theory of state and law. There were not enough systematic attempts "to raise eyes to the heaven" and lead out philosophy of law from the purely legal disciplines.

Wherein, *secondly*, it is important to understand, that philosophy doesn't tolerate the restrictions in the limit of one science. Placement of the philosophy of

law in legal sciences implies a restriction of this discipline within the general theory of law. That is, it is start going not about the philosophy, but about philosophizing in the limit of legal sciences. In this sense, philosophy of law loses its truly philosophical purpose.

G.F. Shershenevich, criticizing philosophers, wrote about that, they considering law, without going into specifics of legal realities¹. This is largely true. But in front of philosophers of law stand other, more global problems, requiring philosophical reflection. For example: the law and scientific-technical progress (law should promote, moderately regulate and somewhere hinder such progress, let's say in a part of biomedical experiments over the human); the law and truth (whether the law is necessary to seek establish the objective truth, receive real knowledge or it is enough for legal truth); the interaction of law and non-scientific knowledge; the law and extraterrestrial civilization; problem of formation of a single world legal system through the convergence of norms and etc. And of course: philosophical understanding of the correlation of law and freedom, law and justice, law and equality, legal values, legal progress and etc. In addition, exactly philosophy of law can objectively estimate the state of legal science and legal works.

The study of the philosophy of law the content of concrete legal norms and realities is making according to necessity, for the solution of above mentioned and other global tasks.

Furthermore, remark of G.F. Shershenevich refers to the beginning of the XX century, so to this time, when the philosophy of law has not be an interdisciplinary science, is only begin the formulation of scientific foundations and wasn't adequately "forearmed" by legal knowledge.

Thirdly, separate lawyers, even preparing the work on the philosophy of law, don't like and don't want to go out of the jurisprudence. That is, really philosophical and philosophical-legal problems are tending to consider strictly

¹ *Shershenevich G.F.* General theory of law. M., 1911. P. 15-16. Specified thought in one form or another has been repeated in his other works. See, for example: *History of the philosophy of law*. M., 1907. Republished: Saint-Petersburg, 1999. P. 20-21.

within the limits of legal disciplines, without going deeper and sometimes not loading in philosophy. This is by itself greatly impoverishes and “crops” research. But sometimes, this work can hardly be attributed to the philosophy of law, because it was written according the theory of state and law, history of political and legal doctrines, but not in the philosophy of law. In this case, philosophy becomes as closed gates, under cover of which could be writing in fact everything you want. But unfortunately, this is a way not to the direction of cognition.

The leading philosophers of Russia, apparently, has desire to connect to the problems of the philosophy of law. It is noticeable, at least according to the presentations at the round table of the Constitutional Court of Russian Federation, which was attended by the academician V.S. Stepin, A.A. Guseinov, V.A. Lektorskiy¹. Specified scientists have been set up questions in front of lawyers, having undoubtedly philosophical-legal character: the law and informational violence in the world, the law and private property, the law and experiments over humanity and etc. Whether the legal community actively turns on understanding of these problems? But the more it will immerse in it, the more obvious will be the fact that the issued questions having not so much legal, rather than philosophical-legal and philosophical character. This is again confirming the conclusion, that philosophy of law in the conditional hierarchy of knowledge should be placed over the general theory of law, and not inside it. The study of the philosophy of law inside legal sciences isn't correct.

In the modern legal dictionaries the condition of the philosophy of law reflected fairly objectively. So, in the dictionary under editorship A.Y. Sukharev and A.B. Barihin states, that philosophy of law – is a science about the most general theoretical and philosophical problems of jurisprudence and political science, for a long time acted as an integral part of philosophical systems. In the modern society, as it is written further, philosophy of law – is mainly the integral part of widely developed legal science; often the term “philosophy of law” is used

¹ See: Philosophy of law at the beginning of XXI century through the prism of constitutionalism and constitutional economics / under editorship V.V. Mironova and Y.N. Solonina. M., 2010. P. 11-27, 90-93.

as a synonym of general theory (general study) of law. However, since the end of XIX century philosophy of law is often understood more narrowly, as an autonomous discipline, distinct from the theory and sociology of law, aims to study not the applicable law, but the ideal spiritual principles, which are lying on the basis of law. The basic concept which is understood in such a way by the philosophy of law is “idea of law”¹.

Such reflection of the contemporary state quite clearly shows, that philosophy of law in the XX and XIX centuries increasingly moving away from the philosophy. Ideal spiritual principles, undoubtedly are need to be studied, however, cannot reduce philosophy of law to the study only of these problems. There are much more global problems in the law, which can be evaluated only by the philosophy. That’s why global ideological problems are named as philosophical. In this sense, O.E. Leist rightly pointed that philosophy of law isn’t necessarily criticize applicable law and not always oppose it ideal law, which doesn’t exist yet. Philosophy of law always set a goal of not only assessing the applicable law, but also about understanding the nature and the meaning of the law in general².

If the subject of the philosophy of law to cut till the “ideal spiritual principles of law”, then it isn’t clear, what for the named science call exactly “philosophy” of law. To such narrow and exactly legal science can be proposed another, more specific name. And not to use vain philosophy.

What is the reason to mislead ourselves, believing that “ideal spiritual principles of law” is the philosophy on its own? Obviously, that she is in such interpretation gives philosophical and methodological understanding of law in a very truncated form, and more precisely – will not give.

Here is again very important the approach. “Idea of law” in neo-Kantian and neo-Hegelian or other interpretation to study from the philosophical and

¹ See: Big legal vocabulary/ under editorship *Sukhareva A.Y.*, M., 2003. P. 737-738; *Barihin A.B.* Big encyclopedic vocabulary M., 2005. P. 671.

² *Leist O.E.* The essence of law. Problems of theory and philosophy of law. M., 2011. P. 272-273.

philosophical-legal positions is necessary and should be. This review will give an impulse to the development of the general theory of law; indicate her the way to cognition. Wherein, is very important, cognition of neo-Kantian, neo-Hegelian and other directions will be carried out from the philosophical positions, comprehensively, objectively, widely, including all philosophical knowledge. But this is possible only in case of putting the philosophy of law over the general theory of law. Otherwise (if considered the philosophy of law to be a legal science) indicated approaches and directions will be study only in the limit of legal sciences, that it, isn't fully. And then such scientific work will turn from the philosophy into fiction because it is hard to be a supporter of, for example, neo-Hegelian without a complete study of Hegel's doctrines, his supporters and opponents, the works of others philosophers, philosophical criticism. If the researcher tries to appeal to a truly philosophical thought, so, he will obviously go outside the subject of legal sciences. In this regard, philosophy of law couldn't be examined as a part of the general theory of law, that is, to limit its subject with frames of legal sciences.

So in general, we can agree with the scientists in that philosophy of law differs from the general theory of law not only with a higher degree of abstraction of philosophical concepts and categories, but also with the exit outside of legal problematic¹.

It is very important another question, connected with the interaction and interpenetration of sciences. Whether the philosophy of law is possible, not diving into philosophy, increase a potential of the general theory of law? Apparently not, because in this case where from the philosophy of law will eat ideas?

This, of course, doesn't mean that the philosophy of law should become exclusively destiny of philosophers. G.A. Gadzhiev noticed correctly about this: "Don't need to think that philosophical thoughts – a monopoly of professional philosophers and that the attendance of philosophy by lawyers, economists and

¹ *Leist O.E.* The essence of law. Problems of theory and philosophy of law. M., 2011. P. 264.

writers – invalid intellectual poaching”¹. However, in practice, we often see the opposite: lawyers are reluctant to attract philosophers for comprehending philosophical problems of law, declaring that the philosophy of law – is a legal discipline and “patrimony” of lawyers, but not philosophers.

Fourthly, in a scientific discipline, one of the components of which is the philosophy, by its definition must dominate and play the main role. Otherwise, this discipline will cease to be a philosophy.

All such disciplines (philosophy of economics, philosophy of history, philosophy of medicine, philosophy of law and etc.) are created on the philosophical basis. The order of their formation is the following. Philosophy is a general to the relation of a concrete science (particular). Firstly, inside the philosophy highlighted a direction, related to a specific science. At the same time, in science are formed questions, going outside its subject and requires philosophical thinking and resolution. Further integration if this philosophical direction and science lead to the creation of a new scientific discipline. But in such construction a particular (knowledge from the concrete science) may not prevail the general (philosophy). To consider philosophy from the position, for example, of economics or law isn't logic and correct. It should be vice versa.

Is always happen such integration? Experience shows that not always. In a number of natural and humanitarian sciences, she doesn't happen. One of the reasons is that, that not all, for example, natural sciences need such integrations. Philosophical problems (or problems, requiring philosophical level of understanding) in these sciences are relatively few. There is no need of formation of independent directions in philosophy.

Here is clear that for the formation of such scientific disciplines, as philosophy of economics, philosophy of medicine, philosophy of law and others, respectively, by economics, law should be a demand in it, should be a desire to reach out, “to rise” to the philosophical knowledge. Such sciences are striving to

¹ *Gadzhiev G.A. Ontology of law (critical research of legal concept of reality). M., 2013. P.6.*

the philosophy. Striving, in order with her help solve their scientific problems, but, of course, not for that to evaluate the philosophy from the position of economics, medicine or law. That's why the key word of mentioned disciplines undoubtedly for philosophy.

Thus, the philosophy of law is an interdisciplinary science. Such scientific disciplines are proposed to call *philosophical-specialized*¹.

If there does not understand of the priority of the philosophy, absent the need in philosophers, so what for to form philosophical-specialized scientific discipline? But, the scientists, who are ready to study philosophy of law without philosophers, curiously enough, meet. But if it will be philosophy? Here is a question.

However, also like to hide with the words “law”, “law science”, “jurisprudence”. In confirmation of these words we can give an example. Earlier, the authors of current research got acquainted with one study guide on legal psychology. It was indicated in it that legal psychology – is a psychological science and that the material in this guide is supplied primarily from the psychological point of view. The guide was interesting and informative, filled in with psychological themes and thoughts. During reading only one question occurred: what for in the title of this guide was featured the word “legal”? This word was clearly excessed, because the content of the guide has really psychological direction. The words “legal” and “legal science” were flashed only in the introduction and conclusion. Directly in the main part of the work were found only two examples, connected with the legal practice. And wherein, in the conclusion it was concluded that knowledge of psychology is very important and should be actively used in jurisprudence. With such conclusion, of course, there is no sense to argue. But I need to admit that this work was written for psychology, and jurisprudence, according to the view of contemporary popularity of legal science, was a kind of shield, veil, gave to the guide more attractive title. By the

¹ Zakhartsev S.I. Philosophy of law: Some thoughts about the subject // The world of politics and sociology. 2012. № 7. P. 122-131; Zakhartsev S.I. Some problems of theory and philosophy of law. M., 2014.

way, this isn't the only example. Authors also met the study guide, devoted to logic, but for lawyers. Its content was a good study guide exclusively on logic.

The question arises: whether the similar situation only in relation to philosophy we sometimes observe in the philosophy of law, when are preparing pure legal works, in which occasionally intersperses alluring of all the word "philosophy"?

Fifthly, the location of the philosophy of law inside the general theory of law couldn't affect the accuracy of definition of the subject of the researched discipline. Philosophy has philosophical and methodological purpose. If we based on the philosophy, it is obvious that the subject of the philosophy of law surely must combine in it philosophical and methodological components.

Contemporary Russian philosophers of law often repelled not from the philosophy, but from the law. Perhaps that's why in their arguments generally focus on one aspect of the subject. For example, S.S. Alekseev and V.S. Nersesyants wrote about the researched science mainly from the point of view of the worldview¹. This approach, of course, wasn't complete, that's why was rightly criticized by other specialists². There were not enough attempts to combine philosophical and methodological positions.

Thus, philosophy of law takes place between philosophic and legal sciences. Conditional-schematically it looks like that:

¹ For example, S.S. Alekseev wrote, that the final decision in the philosophy of law has its "philosophical core". See: The law: alphabet – theory – philosophy. P. 395.

² Kerimov D.A. Methodology of law. P. 14-15.

As the basis can be taken that philosophy develops fundamental problems of ontology, epistemology, axiology, anthropology, logic, ethic, praxeology, cognition. In this case, the subject of the study of philosophy of law must be accordingly fundamental problems of ontology of law, epistemology of law, axiology of law, anthropology of law, logic of law, ethic of law, praxeology of law, justice.

Position of the authors of a current work from the point of view of determining the components of the subject of philosophy of law isn't so original. Discussions about that what of the above mentioned include or, conversely, exclude from the subject have been conducting for a long period. Our approach is expressed in the desire to bring philosophy of law closer to philosophy, to raise it above the general theory of law, and not to consider it inside the legal sciences. And the most important: to consider philosophy of law as an individual philosophic-specialized science.

We are pleased to note, that in the legal environment occur specialists, considering the philosophy of law more from the philosophic, rather than from the legal positions. To such, for example, related a famous German lawyer R. Alexy. There is an interesting review of S.I. Maksimov according to the works of this scientist. S.I. Maksimov writes, that R. Alexy “it is difficult to accuse in any prejudgments, as it often happens, when professors of philosophy insist on the philosophical character of philosophy of law, and professors of law – in the legal. R. Alexy – is a lawyer, along with the lectures on the philosophy of law he also reads lectures according the problems of the public law. So, let’s no hurry to accuse him in treason to corporate interests...”¹.

It is necessary to say that also S.I. Maksimov, being a famous lawyer, considering the legal reality, primarily, from the philosophical positions².

About necessity of unity of efforts of philosophers and lawyers exactly under the philosophical wing says V.D. Zorkin. The realities of time, as the scientist considers, pushing to that, “philosophers talk about and, and lawyers listen to philosophers and understand, that the law consist not only from the collection of laws, - otherwise one legislative reform is enough, and huge libraries, even if here to put shelves up to the top, go to wastepaper. There is no need to withdraw into narrow frames, it is necessary to have wide view on the jurisprudence, by prominent Russian thinkers for us – those, who are engaged in the intellectual work, whether it a practical work of lawyer or teaching, or academic activities. And the main impulse, as it seems to me, still must set the philosophers”³.

Attempts to consider the subject of philosophy of law inside jurisprudence are constantly faced with contradictions. For example, not all scientists include in

¹ *Maksimov S.I* Philosophy of law as a problem of the philosophy of law // Philosophy of law: contemporary interpretations: selected works: articles, analytical reviews, translations. Kharkov, 2012. P. 17.

² See: *Maksimov S.I*. Legal reality: experience of the philosophical comprehension. Kharkov, 2002.

³ *Zorkin V.D*. Philosophy of law: past, present, future // Philosophy of law at the beginning of XXI century through the prism of constitutionalism and constitutional economy / Edition of Moscow-Saint-Petersburg philosophical club. M., 2010. P. 43-44.

the subject of the philosophy of law, ontology of law. Actually, that doesn't the philosophy studies ontology? Whether is possible philosophical thoughts, for example as Hegel's, attribute to the philosophy of law?¹

It was caused a dispute, in our view unjustified, inclusion in the subject of philosophy of law, legal logic. While it is clear, that logic – is a philosophical science, so the there is no obstacles for study the logic of law in the frames of the subject of philosophy of law.

It is paid not enough attention to the questions of human consciousness, awareness of human rights, legal consciousness, that's why, apparently, many of them even not thinking about the necessity of inclusion of these questions in the subject of philosophy of law. V.P. Malakhov expressed the correct thought that many domestic legislators have completely overlooked legal consciousness; it is represented only implicitly, in its content².

Not all specialists include ethics of law in the subject of philosophy of law. The law by its origin is needed to be on guard of good. The problem of good and evil is the central problem of ethics. The studies about good and evil, morality and immorality, moral, virtue, justice, happiness and duty traditionally studied by ethics as philosophical discipline, but have the most important meaning for the philosophy of law³. View of ethics affords to evaluate the law not only, for example, from epistemological positions, but also from moral, what is really important for the understanding of legal being. In legal being, by the way, there were quite enough examples of what centuries ago was considered to be moral became immoral, and even criminal. And vice versa.

¹ One of the last and really interesting philosophical-legal books, dedicated to the ontology of law, was a monograph by *G.A. Gadzhiev*. See: *The ontology (critical research of a legal concept of reality) of law*. M., 2013.

² *Malakhov V.P.* Philosophy of law. Ideas and proposals. P. 10.

³ About ethics. see: *Guseinov A.A., Irrlitz G.* The short history of ethics. M., 1987; *Guseinov A.A., Apresyan R.G.*, Ethics. M., 1998.

Ethics as a science about the highest good of human, of kindness, acts as a kind of methodological guideline for the cognition of law. That is, cognition takes place not only for the cognition by itself, but in a particular direction¹.

Exactly ethical values underlie all legal concepts. In this sense, legal ethics searches for ideas, principles, fundamentals, which are regulating behavior of human, directing his actions, which establishes criteria for good. Here is also considered the main problems of the application of such moral ideas, principles and fundamentals in specific situations, connected with moral choice. The process of cognition of legal being without ethics impoverishes itself, loses goals and directions. Therefore, without any doubt that the ethics of law is included in the subject of studying philosophy of law.

Thus, philosophy of law – is a philosophical-socialized science, which subject of study are fundamental problems of the ontology of law, epistemology of law, axiology of law, anthropology of law, logic of law, ethics of law, praxeology of law and legal consciousness.

Not indisputable judgment was expressed by V.S. Nersesyants. Firstly, he said that in a scientific profile and disciplinary affiliation of the philosophy of law “have several aspects. If we are talking about the philosophy of law in general, it is obvious that we are dealing with an interdisciplinary science, combining certain beginnings, at least two disciplines – legal science and philosophy...This interdisciplinary component is general for all the versions of the philosophy of law, regardless of whether they are developed as a separate legal or philosophical science”².

¹ In monographs we had to go many times to the philosophy of law, ethics, reasoning about ethical side of criminal proceedings, and also about operational-search events, connected with a silent monitor of wiretapping, secret examination of living spaces, control of mailings and etc. See: Zakhartsev S.I., Chabukiani O.A. *Operational-search events and investigations: concepts and relationship*. Saint-Petersburg, 2010; Rohlin V.I., Zakhartsev S.I., Mironov M.A., Stukanov A.P. *Institute of rehabilitation in the Russian legislation (appearance, development, concept, perspectives)* / under editorship V.I. Rohlin. Saint-Petersburg, 2007; Zakhartsev S.I., Ignaschenkov Y.Y., Salnikov V.P. *Operational-search activity in the XXI century*. M., 2015 and others.

² Nersesyants V.S. *Philosophy of law*. P. 17.

With the thesis of V.S. Nersesyants that philosophy of law is an interdisciplinary science, should be accepted¹. However, later V.S. Nersesyants writes: “When the question occur about the interdisciplinary belonging to jurisprudence or philosophy of particular variants of the philosophy of law, essentially we are talking about the *conceptual difference* (authors italics - S.Z., V.S.) of legal and philosophical approaches to the main problem (meaning and including and all others, more private problems) any philosophy of law: “What is the law?”².

That is, if you develop a thought of V.S. Nersesyants further, so in fact it turns out that we have two different scientific disciplines: philosophy of law in a philosophical approach and philosophy of law in a legal approach. However is clear, that it isn't so.

On the contrary, the strength and power of the philosophy of law is in its versatility, interdisciplinary. The sphere of its cognition is situated at the junction of two branches of knowledge of the philosophy of law. Such scientific crossing in XIX and XX centuries have opened a wide stratum to the cognition of the surrounding us being. Nobody dragged to different corners the philosophy of economics, philosophy of culture, molecular biology, physical chemistry and etc. If we are talking about that the philosophy of law is studied by lawyers and philosophers from different sides, then we should recognized that science “philosophy of law” at the present time doesn't exist at all: she doesn't exist physically, or she is at the level of formatting. And there are separate directions in philosophy, which are interested in law. And besides them, there are separate theorists of law, considering in law also the fundamentals of the philosophy.

But this opinion, apparently, isn't true. Philosophy of law is and exists exactly as an interdisciplinary science.

¹ Alekseev S.S. correctly wrote: philosophical-legal, integrated level of the scientific knowledge is expressed in the formation and development of a special self-sufficient scientific discipline, covering like philosophy (for its principles) and also jurisprudence (for its main content). See: Alekseev S.S. Philosophy of law. P. 3.

² Nersesyants V.S. Philosophy of law. P. 17.

Given judgment by V.S. Nersesyants, in our opinion, is related to inaccurate definition of the subject of the philosophy of law. If we are talking about the subject of the law only from the jurisprudence point of view, that now occurs often enough, so we really get only legal science, somewhat detached from the philosophy. And this gap will progress. What else can we get? Philosophy of law in this way will be more “dive” in the legal particulars and nuances, move away from the high – philosophical – comprehension of legal being. S.S. Alekseev liked the statement by Y.G. Ershov about that the philosophy of law “has little interest in speculative constructions, divorced from the real legal processes and phenomenon”¹. From this, Y.G. Ershov made a conclusion that the philosophy of law in the sense “grows” on the fundamental of all legal knowledge².

But this point of view didn’t stand up criticism. Firstly, it isn’t so from the historical point of view: philosophy of law was “grown” out from the philosophy, not from the legal knowledge. And secondly (the most important), maybe, it is hard to dispute the fact that exactly philosophy is the basis for other sciences, including jurisprudence. Accordingly, exactly on the basis (or, when you like, foundation) of the philosophy obtained legal knowledge, studied legal being. And not vice versa.

Already now, under the legal approach, many theorists of law, denoting the difference between the theory of state and law and philosophy of law, doesn’t find clear and convinced boundaries. Yes, according to the indicated approach is difficult to find them. V.S. Nersesyants writes that the main problem of the philosophy of law is the question: what is law? But when we are talking about legal sciences, the knowledge of what is law, is the theory of state and law.

Hence it is necessary to make a conclusion that philosophy of law couldn’t be turned into a pure legal discipline. The subject of the philosophy of law is more wider, rather than legal sciences. By divorce from the philosophical knowledge philosophy of law as a legal science will not need – it will be replaced by the

¹ See: *Alekseev S.S. Philosophy of law. P. 4.*

² *Ershov Y.G. Philosophy of law. P. 9.*

theory of state and law and, partly, by sociology of law and some other legal sciences. In this form, its meaning lost before philosophy. Philosophy will not get rich from the legal knowledge.

Wherein, of course, there shouldn't be separation of the philosophy of law from law. The scientific power and importance of the philosophy of law just in its interdisciplinary, interdependence, mutual enrichment of knowledge.

However, approaches to the study of the philosophy of law V.S. Nersesyants differentiated quite tough on philosophical and legal. Thus, he wrote, that *in philosophy of law as a special philosophical discipline* cognitive interest and research attention primarily focused on the philosophical side of things, on demonstration of cognitive capabilities and heuristic potential of a particular philosophical conception of law. Essential meaning in this interpretation given to a meaningful concretization of the concept with reference to features of the object (right), its understanding, explanation and development in the conceptual language of this concept, in line with its methodology and praxeology. *In the concepts of philosophy of law, designed from the position of jurisprudence*, for all their differences, on its turn, tend to be dominated by legal motives, directions and guidelines of research. Its philosophical profile here isn't defined by philosophy, but due to the needs of legal sphere in its philosophical reflection. Hence is the predominant interest to such problems as the meaning, place and importance of law and jurisprudence in the context of philosophical worldview, in the system of philosophical study about the world, human, forms and norms of social life, ways and methods of cognition, system of values and etc.¹

As we can see, again we are talking not about the single science, created on the basis of integration of knowledge, but about disciplines, having quite different subject areas. In a single science there cannot be such a significant difference in subjects and approaches. That is, again, implicitly, we are talking about the different sciences which are strictly separated between each other.

¹ Nersesyants V.S. Philosophy of law. P. 18.

On other words, in this V.S. Nersesyants approach it turns out that there was no knowledge integration between philosophy and jurisprudence. Accordingly, it isn't created a subject area of study philosophy of law and developed its methodology. So, to assert that the science philosophy of law exists, at least, premature. However this conclusion contradicts to the objective reality and, incidentally, to the conclusions of V.S. Nersesyants, who always wrote that specified science exists.

It seems that it is necessary to abandon classification of philosophy of law to philosophy of law as “a special philosophical discipline” and philosophy of law “as a legal science”. This classification from the scientific point of view, as can be seen, isn't accurate and regressive. She recalled to a famous anecdote about the renaming of the Russian Railways into the Ministry under the name “there” and Ministry “back”.

On other words, there can be very different approaches to the subject of philosophy of law. They can settle their positions by philosophers, lawyers, sociologists, psychologists, political scientists and other specialists. But these approaches, concepts should be within only one discipline – philosophy of law. And to divide a scientific discipline, science to the parts depending on the directions of scientist's thoughts is impossible. So, it is impossible and absurd to say that there is a special psychological science of the theory of state and law (for example, based on the views of L.I. Petrazhitskiy), a special sociological science of the theory of state and law and etc. it must be going in about different approaches, concepts inside one scientific discipline. However, philosophy of law sometimes tries to be divided into two different scientific disciplines: “philosophical philosophy of law” and “legal philosophy of law”. What, of course, isn't correct.

Philosophy of law is really occurred in the depth of the philosophy. Later, there was an accumulation of philosophical and legal knowledge. This accumulation, which is naturally resulted in the diffusion of knowledge, rethinking of the subject, and as a result, creation of a new science – the philosophy of law. Philosophy of law, as well as any spin-off from a whole branch of knowledge,

some time “fought” for its independence, developed its scientific basis and received the general acceptance in the philosophical and legal environment. At the present time – is a recognized interdisciplinary independent science, resulting from the integration of knowledge of the philosophy and jurisprudence of law and legal being.

Philosophy “as a mother of all sciences” thereby fulfilled its mission before the Science, “giving rise to” a new, very important scientific discipline. This historical evolutionary process is typical for the scientific life.

As a result, it should be recognized that philosophy of law is an interdisciplinary science and should be perceived in this form. If it will eliminate or not evaluate any of its components, this science will cease to exist. There is no need afraid of interdisciplinary sciences. At the present time, most major scientific discoveries are connected with the integration and diffusion of scientific knowledge, even seemingly incompatible. But if in physics, chemistry, medicine, biology and etc. they are possible, so why they are impossible in law?

It is needed to say that not all specialists accept suggested here approach to the subject of the philosophy of law. Lawyers don’t particularly like “placement” of the philosophy of law not inside legal sciences, but above them.

As a critical remark commonly called already mentioned question about that such approach can lead to separation philosophy of law from law. With this remark we don’t agree at all. Philosophy of law has already taken place as an interdisciplinary science. It already contains the baggage as purely philosophical and also legal sciences, necessary to carry out its scientific mission. Therefore, at the present stage it is impossible to say that during establishing the philosophy of law “above” jurisprudence, in the philosophy of law will be considered problems, which are not relevant to legal realities.

As well as it isn’t right to speculate in the statements about that the philosophy of law in this approach will not be going down to the consideration of specific legal norms and questions. On the contrary, proposed approach allows in the frames of the philosophy of law not only “reasoning about high”, but also to

analyze specific legal norms, which necessity of consideration will be connected with decisions of problems, staying before the philosophy of law. In the analysis of the philosophical questions, connected, for example, with law and justice, is necessary consideration of specific norms according establishment of the truth in a procedural law. And also in law there are a lot of questions, which are needed to have philosophical understanding.

Here is appropriate to quote the statement of D.A. Kerimov about that the leading methodological role of the philosophy of law in a system of legal sciences doesn't exclude, but allows development of methodological problems by branch legal sciences, which rarely reach not only general theoretical, but also philosophical-legal problems (for example, problems of guilt and responsibility in a civil and criminal law)...In other words, philosophy of law uses the extracted branch legal sciences knowledge for the further more comprehensive and deep cognition of legal reality and perspectives of its improvement¹.

Some critics-lawyers set up the question: if the philosophy of law – an interdisciplinary science, so where – on the philosophical or juridical faculty it should be studied? Wherein, it states, that legal direction isn't the most important for the “pure” philosophy, so to teach philosophy of law should on the juridical faculty among legal disciplines, and then again to make attempts to justify the conclusion, that also the philosophy of law – is a legal science.

In this conclusion there is a lot of subjectivism and not enough logic. To study philosophy of law is necessary on the philosophical and juridical faculties. Wherein, naturally philosophy of law is more studied on the juridical faculties. This is due to the fact that its creation and purpose lies in the philosophical services of the general theory of law and other legal sciences. Philosophy of law is the main nexus between jurisprudence and philosophy. However, this doesn't mean, that the philosophy of law – is a legal science and a part of the general theory and law. Philosophy is also not a legal science, though it is precisely studied on the juridical faculties.

¹ *Kerimov D.A. Selected works. In 3 volumes. Volume 1. M., 2007. P. 34.*

In conclusion there is a sense to repeat: philosophy of law – is a philosophical-specialized science, the subject of study of which are fundamental problems of the ontology of law, epistemology of law, axiology of law, anthropology of law, logic of law, ethics of law, praxeology of law, legal consciousness.

§ 2. The origin of law

The question of origin of law has always been one of the main in jurisprudence. We want to present to the specialists our thoughts on this occasion.

There is no doubt that the law has occurred before the state, which in its essence is an organized community of people. That is, historically, firstly a person appeared, people, and then states. With this conclusion agreed all scientists, regardless of which concept of origin of life on the Earth (evolutionary, divine or others) they adhere to.

But in what moment near the person occur the law?

It is obvious that the need for law arises always, when there are at least two people, so when there is a certain community. In this case, their cognition requires the establishment of any mandatory rules of behavior, definition of “who is the elder one”, whose opinion is more priority and etc. Any, even the smallest society, is need of order, organization, there arises certain relations, that is, there is occur the law. In other words, when on the Earth nearby were two people, among them there was relations, that is occurred the law.

However, if the person is single – he still striving to order and establishes it for himself. The person regulates his behavior for himself, daily routine, making in convenient form for him marks about its observance. Exactly installed for himself his own routine, tells him when to work, when to rest, what and in what sequence to do. So, in fact, set up for him the right. He doesn't need the right in form of laws. But in form of regulator of his behavior he has the right and this right based on the laws of nature and on the nature of person's own.

This conclusion is confirmed by hermits, who consciously chosen to live out of people. According to them, being completely alone, they still established legal norms, created rules of behavior, according to which they lived and moreover, installed themselves the responsibility for their violation. For example, as told one of the hermits, one of the forms of punishment for violations of their own behavior, he chooses additional kneeling for a certain time. In the history of Orthodox there

have been a lot of examples, when a person refused to live in the society with people and alone, but at the behest of the mind, still installed him the legal norms. For example, as you know, norms of law, toughening own behavior, installed for himself a famous Russian St. Seraphim of Sarov.

In other words, since the moment of inception on the Earth, a person consciously was striving to the law, it was necessary for him for survival. This necessity told to him his mind. Thus, the consciousness of human tends to have a desire for order in life. Furthermore, maybe in the consciousness of human incorporated to live according the rules, constant order, that is law. The consciousness shows and tells us that the human will not survive in the other variant.

As it known, any person created from two shells: external (tangible) and internal (intangible, spiritual). Consciousness leads external and internal one. It controls the body. But consciousness also develops internal world, requires the pursuit to knowledge, intelligence. And through the consciousness any person understands that he couldn't, being alone, survive without established rules for himself. And moreover he will not be able live among the same people without established rules of behavior.

Of course, by the early humans the law has really primitive character, but important is that he has occurred with a person. Also at the same time occurred consciousness by the human the law of the freedom for thought, feelings, respects your own dignity. Therefore, it should be recognized that the law "born" with a person.

Appearance of other people has crystalized specified words. Furthermore, has appeared the respect to the person's birth, freedom of word, which the early humans were undoubtedly endowed, self-esteem and the need to protect their rights.

Specified rights are inherent to person from the birth. Thus, in our opinion, the law was in every early human, the law "born" with the human. Primarily from here, we think, originate natural human's rights.

It is necessary to pay attention that norms of law are characterized as all terrestrial beings. Each species of animals has their own understanding of their rights and responsibilities. Thus, they have the right. Observation of any animals completely accepted this theory. The life of animal world is also ordered.

We need to say, that practically all specialists, studying natural human's rights, noted that each person has specified rights. But wherein delicately skirting the question about do they arise. In fact someone from the side doesn't granted them with these rights according its sole discretion. Each of us having them, wherein, from the birth.

A commonly used expression, that natural human rights are inherent to the nature of person himself, if it is possible to express so, "corny" enough and not specifically. It is on the one hand, satisfy everyone with his reference to a kind of human nature. But, from the other hand, if you think about it, explains nothing. And a few lawyers had a desire to understand, what is this "nature" that everyone likes to refer?

One of the few, who had a desire to understand something in this question, was a famous Russian philosopher B.N. Chicherin. He wrote that natural rights – is a system of general legal norms, derived from the human mind. However, under the mind B.N. Chicherin understood existed somewhere outside "supreme determinate beginning as in the subjective and also in the objective world, as in conscious and also unconscious", some "law of all being"¹.

We must proceed from the fact that the law isn't material. And if it is born with a person, it should be initially laid into his mind. Exactly there, along with the person the law is born. In this sense we need to agree with L.I. Petrazhitskiy, who substantiated that the law is initially present in the human's mind. He wrote that the law is a phenomenon not an external, material world, as, for example, stone,

¹ *Chicherin B.N. Philosophy of law. M, 2010. P. 94.*

wood, but “a phenomenon of spiritual world, psychiatric phenomenon, phenomenon of our soul”¹.

Another question is where in the human’s mind “situated” law? L.I. Petrazhitskiy believed that the law – are emotions and thought that he has opened in the human’s mind special legal emotions.

But is the law – emotion? As you know, emotion (from the lat. *emoveo*) means “shake, excite”. Hence in all the general sense emotion - is an exciting, erected state, associated with the assessment of the significance of the individual influencing on him phenomenon, factors or events. Emotions are expressed primarily in the form of direct experiences of satisfaction or dissatisfaction of the actual needs or expectations of the person².

The law and emotion – different concepts. The law, like any other phenomenon, can cause certain emotions by the person (for example, positive or negative). But this only underlies the difference between them.

We think that the law is a part of human’s consciousness. The law is situated in the consciousness of each person, born and develops together with him. Everyone is born with consciousness. And exactly in the consciousness of person, there is a legal component, a kind of a legal consciousness, responsible for its behavior in the nature and society. Exactly through the consciousness of the person there is a need in the law, and also a desire to the law. Desire to law, in our opinion, is one of the laws of human’s mind.

Consciousness, apparently, is the source of natural human’s rights. Like consciousness itself, these rights are inalienable: the right for thought freedom, conscious, religion, movement ant etc. Need for the rights inherent in person, in his consciousness as in the highest form of psychic activity of humans. The task of being, society in this case consists in ensuring normal, healthy human’s consciousness.

¹ *Petrazhitskiy L.I. Theory and politics of law. Selected works. / under editorship E.V. Timoshina. Saint-Petersburg, 2010. P.251.*

² According to convictions of psychologists, emotions as all others psychiatric phenomenon, not studied enough and understood differently by different authors. There is no general definition of emotions.

In 1980s years E.P. Velikhov, V.P. Zinchenko and V.A. Lektorskiy were expressed opinion, which considered to be supported by D.A. Kerimov that philosophy until recent times was limited by general arguments according consciousness (relation between being and consciousness), and psychology in the last decade has forgotten about the existence of the problems of consciousness¹.

Nowadays interest to consciousness has rapidly increased. V.A. Lektorskiy on this occasion said that consciousness, which for centuries considered being the undisputed field of philosophical analysis, became the subject of research in the frames of different specialized sciences. These questions are not new. But today they are occur already in a new context and require new answers, taking into account what has been done in the field of research of consciousness by specialized disciplines².

However, until now there is no completely clear answer on the question about what is the consciousness. In a general sense the essence of consciousness clearly and understandably were outlined by M.S. Strogovich and D.A. Kerimov. As they write, consciousness usually defined as a spiritual condition, which subjectively reflects the objectivity and on this basis produces, creates human knowledge. Consciousness – is the highest form of psychic human activity, subordinating, regulating and controlling all others phenomenon of mental life.

The concept of consciousness is a psychological concept, it is a phenomenon of the human's mental life. Consciousness is primarily expressed in the understanding, comprehension of certain factors and regulations and then – in setting of specific goals and finding the means for achieving this goals. The activity of mind – this is what characterizes consciousness as a dominant phenomenon of the human's mind³. Wherein it is important to emphasize that

¹See: *Kerimov D.A. Methodology of law. P. 380; Velikhov E.P., Zinchenko V.P., Lektorskiy V.A. Consciousness: experience of interdisciplinary approach // Questions of philosophy. 1988. №11 P.10.*

²Quote according to: *Kanaev I.A. Problems of consciousness in the interdisciplinary perspective (review of the scientific conference) // Questions of philosophy. 2012 № 10 P. 171-175.*

³ *Kerimov D.A. Methodology of law. P. 384; Strogovich M.S. Selected works. T. I. M., 1990. P. 53-54.*

consciousness isn't confined to activities on the reflection of objective reality. It consists in intellectual activity, aimed at changing of this objective reality, desire to improve the being.

Human's activity is subordinated to its consciousness. And especially in it – in the consciousness – pledged the necessity of law for life.

Thus, as theses can be indicated the following:

- the law was born earlier than the state;
- the law was born along with the first human;
- in the mind, or more precisely, in the consciousness of each person pledged the need in law;
- striving to the law – is the law of human's mind;
- natural human's rights took its place from the mind, or more precisely again from the human's consciousness.

As you know, the states were born later than the human. With the formation of states has received the development of legal sciences, created several scientific schools, approaches. These schools began to compete between each other. Exactly the competition has strengthened contradictions between directions of the law so, that now it is hard to reunite it. Debates about the origin of the law sometimes reach tough confrontation. Although, in our opinion, these debates are sterile and unproductive (what is proved by the time).

And most importantly, that debating about the origin of law, the majority of specialists strictly adhere to only one version of its origin, absolutizing it, arguing with the opponents and somehow not admit the thought that there can be several origins of law. It can be connected as with the human's nature and also with the will of the state. We believe that on *different stages of existence on the Earth humanity, the law arose in different forms repeatedly*. At least, the birth of the law was occurred three times. First: with the appearance of human and its consciousness on the Earth, in which is pledged the pursuit to law. Second: with the appearance of the first state and the birth of law in it – already another, positive, regulatory, rigid. Third: with the birth of customs, received the status of

legal customs and norms of law within the time and mentality, culture, development of separate societies.

For this reason L.I. Petrazhitskiy has expressed well. He wrote that we have a picture of ever-increasing variety of competing theories, each of which raises any particular factor or element of human life “in the basis” of all social life and its history, all social processes. They are consider, that the basis of all in the human society, the factor, which is determine all other phenomenon, are conditions of production of material goods, productive forces and means of production; other come all down to imitation from the side of members of society to more outstanding and developing personal creativity individuals; the third one come all down to a collapse and conquest one tribes and other social groups by others; the fourth one think the decisive struggle for the existence and natural selection; the fifth one see everything in the properties of the race; the sixth one – in the physic-geographical conditions of life of the concrete society and etc. The false of these conceptions, according to L.I. Petrazhitskiy opinion, determines be the absolutization of its single principle, discarding of other factors. “Wherein, - as scientists considers, - if the meaning of these and etc. theories consisted only in the statement that so-and-so, favored by the history factor has its own, so-and-so area of activity and the share of values in the social life and its history, so all or many of these theories could be true”¹.

Returning to the state, we need to emphasize, that in this case it isn't so important what it refers to. And important is that the appearance of the state is also “spawned” the law, but already in other form than in human's consciousness. In the form of generally regulatory settings, the observance of which is ensured again by the state.

The “birth” of the law by the state has a lot of well-known reasons. It is the necessity of regulation of social relationship between people and the necessity of retaining power, property, wealth and the necessity of regulation of natural human

¹ See: *Petrazhitskiy L.I. Theory of politics and law. Selected works.* P. 439-440.

Authors of this monograph have written many times about that during studying of the existence or the essence of law there is no need to absolutize it.

rights. Wherein the positive law was supposed to act and acted as a counterbalance to the desires of a separate individual. Indeed, objectively, in the consciousness of any person born as positive, kind thoughts and also negative (bad and dishonest), though they sometimes want to be implemented. Even natural rights for every person are different. Someone consider natural and necessary for itself the right for life and freedom, but there is also those, who believe that the natural for its life is the right to be free at the expense of others, the right of exploitation of others, receiving from others profit for its free existence. Exactly according the state and positive law it was able to formulate and outline approximate list of human rights, recognized as natural and necessary for all. And the meaning of the positive law for the human's life is no less great.

Thus, scientists, who believe that the law came from the nature of human himself, and specialists, who believe that the law came from the state, are right.

Wherein we need to convince, that although unnatural and positivistic approaches are united under one term: "the law", it is very difficult to bring them under one denominator even though that at the same time we are talking about different things. Different due to the origin, essence, the way of usage, even named the same – the law.

We need to say that now among positivists there are no practically scientists, denying natural human's rights. As well as among unnaturalsists there are no one of those, who rigidly pushes the role of the government to the secondary roles. But wherein it is failed to create a unified and everyone satisfied concept. However, one of the not yet overcoming reasons – is the actual difference between the concepts of law. There is a sense to think. Natural human rights occur only from the consciousness. Positivism largely comes from the state. Can the natural human rights come from the desire of the state? No. The state cannot force to be free. It can organize conditions for the realization of freedom and equality. It can, of course, not organize, but the state, still will not be able to cancel the freedom of

thought, religion, dignity and even word¹. Thus, natural human rights cannot come from the state, they can come only from the essence of the person, its consciousness. Positivism, on the contrary, largely comes from the state. From the consciousness also, but the priority is after the state. And the will of the state expressed in the laws, don't like always to the person (his consciousness).

Here it should be noted that in modern Russia is declared priority of the natural human rights. Of course, there is here some kind of a constant idealism and romanticism, because in practice norms estimated by the government can limit some natural human rights, including the right for life. Furthermore, there are values which are objectively existed in life and cost not less that the human rights: Fatherland, Faith, protection of the nearest by your life and etc.

It seems that in the modern sense, is prohibit talking about one or another concept. In a historical sense – yes: the law was created earlier than the state, natural human rights earlier than the overly regulated. It seems that now the problem should be interpreted like this. The law comes from the nature of a person, from its consciousness. For the consciousness the law is a part and has a huge meaning. Here we are talking about the streamlining of life, existence perceived by consciousness. But the law comes from not only from the consciousness, but also from the state. In practice, the law coming from the state, depending on state's economy, policy, culture of the state, traditions in the state. All above mentioned have influence on the natural human rights, up to the limits of some rights. In its turn, also the natural human rights have influence on the state and coming from it the law of impact. However, the natural rights cannot influence on state's economy and on the already existed mentality.

Furthermore, the law is arises and also on the basis of already existed customs in society, received over time the status of legal. *Wherein there is no need to deny, in addition to already named and other conceptions of the origin of law.*

¹ The state cannot keep the unfreedom of speech some time under the threat of rigid repressions. But it cannot cancel.

In connection with the above, as already mentioned, more useful and correct is to consider the law as a complex multidimensional social phenomenon. This approach will allow not trying to cross “a hedgehog with a snake”, what sometimes can be observed in the scientific works, but evaluate the law fully and comprehensively.

In this paragraph, was repeatedly mentioned the name of the famous lawyer L.I. Petrazhitskiy, therefore and according to psychological thought can be given the impression, that authors of this monograph are supporters of this theory. At the same time, the authors are not supporters of the concept of L.I. Petrazhitskiy.

If shortly, we need to recognize that the psychological theory of L.I. Petrazhitskiy significantly enriched jurisprudence and the philosophy of law, and its author is one of the serious thinkers. We need to agree that the law is born in the human's mentality, but, firstly, not only in mentality, secondly, not as a special legal emotion, but in consciousness. We fully support the scientist that it is impossible to absolutize any one factor of being, as a universal mean of cognition of all that is named “on all occasions of life”. However, unfortunately we need to regret that L.I. Petrazhitskiy on his own, in spite of being said, has absolutized psychology for the cognition of law. Thus, the law, according to L.I. Petrazhitskiy – is a real mental phenomenon of a special kind, with nature of which we can get acquainted directly and authentically in our soul, that is by the way of observation, comparison, analysis of our own states in motion. Dividing the law on the intuitive and positive, and also on official and unofficial, he writes that all these kinds are only varieties of one psychological concept of law as imperative-attributive experiences, but with different psychological composition. Governmental and social power, according to his opinion, in fact isn't a will or the power, but emotional projection, emotional phantasm, something unreal and etc.

With these arguments, for obvious reasons, we don't agree. It is impossible to support by the isolation of more than 15 kinds of the positive law (including the

right of the words of religious and ethical authorities, the right of legal idioms, the right of the one-sided promise of the monarch) and other such fabrications¹.

However, in relation to the works of L.I. Petrazhitskiy is necessary to add two more positive considerations. First: unfortunately, in XX century in general and in the legal science in particular have created not a lot of concepts, theories (even controversial), having a worldwide popularity and objectively causes a great interest. The theory of L.I. Petrazhitskiy is in a great demand. Second (which few know): as a teacher, social activist and prominent lawyer, L.I. Petrazhitskiy has made a great contribution to the solution of the problems of equality between men and women in Russia. And in what is now, there are a lot of lawyers among women in Russia, is the large merit of specified specialist².

To sum up, we need to agree with V.S. Nersesyants that original creative efforts of L.I. Petrazhitskiy had a noticeable influence on the development of the domestic philosophy, theory, psychology and sociology of law³.

At the end of the paragraph it is necessary to repeat conclusions. According to the presented concept, at different stages of human existence the law has arisen in different forms at least three times. First – with the appearance of human and its consciousness on the Earth, in which is laid the desire to the law, necessity of law. Second – with the appearance of the first state and birth of coming from him positive law. Third – with the birth of customs, received the status of legal customs and norms of law within the time and mentality, culture, development of separate societies.

¹See: *Petrazhitskiy L.I. Theory of politics and law. Selected works.* P. 380-560.

²Finishing the work (one of the first in Russia) about the necessity of equality between men and women L.I. Petrazhitskiy wrote: “Let’s express our wish and hope that in any case, eventually our future colleagues, of now hurting sex, scientists-lawyers and interns – women will pay a special attention, from one hand to study of the customary law and connected with them feelings, perceptions and volitional movements as peculiar, but powerful and unfriendly for them mental strength (for the success of the struggle it is necessary to know your enemy and its properties), from the other hand, on the science policy of law as a mean to cause the movements of friendly forces not only by the way of the inspired resolutions, petition and etc., but also by the way of a serious and truly scientific, deeply grounded system of argumentation.” See: *Petrazhitskiy L.I. Theory of politics and law. Selected works.* P. 243.

³ *Nersesyants V.S. Philosophy of law.* P. 710

Of course, represented here the theory of the origin of law is no more than a scientific suppose, although, in our opinion, quite reasonable, or at least having right to exist. However it is necessary to understand that any theory of the origin of law cannot be considered as a true, as long as science doesn't answer the questions about the origin of life and humanity. At the moment, there are no answers on these questions. There are many supporters of divine origin of human, life, existence and everything what is connected with it. Nowadays are developing theories about extraterrestrial (space) birth of humanity and etc. We could only believe in one or other concept.

But until we know the exact truth about main indicated questions, to answer on the particular – for example, how occur the law? – just cannot. We could only wait the answers on these questions.

At the same time, we want to believe that thoughts about these questions are slowly bring us to the solutions, helping either confirm hypothesis, or, on the contrary, clearly contradict them, what actually also adds knowledge.

In conclusion, we need to say with regret that during the last time in the Russian jurisprudence isn't paid clearly enough attention to the questions of the origin of law. The authors are hope that this paragraph will push the scientists to the discussion of this so interesting question.

§ 3. Questions of ontology and epistemology of law

What is the law? Over the millennium of human existence haven't been developed a single and suitable definition for everyone.

The law is like a big diamond. As you know, the most common faceting of diamond is 57 facets. The scientists see a particular facet of the stone, sometimes even considering it in detail, while overlooking, that there are at least 56 facets of the same stone.

The same is happens with law. Specialists in one facet of this phenomenon judge it as a whole. It is obvious that theories which are received by this way eventually balk at unsolved contradictions. Later appear new thinkers, who also, sometimes genuinely believing that they see the whole subject, sharpen views on one from manifestation of the subject. Their theories are also contradicted by other concepts, which also far from the ideal.

How many different concepts of understanding the law has been historically? It would seem that not a few (positivistic, natural, contractual, psychological, historical, sociological and etc.). However, there are not so many, as facets of diamond. That's why there is an assumption that until it will not be created a significant number of independent concepts, objectively and fully discloses specific facets of law, it will not be able to create a single and general concept. But when the amount of definitions of law will reach critical mass, it will grow into quality, as a result will be received the understanding of law already on a completely new level, maybe amazing for all of us.

Hence is a question: if we combine all what we know *now* about the law, could we receive something more and everyone satisfying? Apparently – not. While we only came to the understanding that it is impossible to stop only on the one concept of law, trying to “make” it general, main. It is necessary strive to embrace the law as a whole, to study law overall. This *comprehensive approach*¹ to the study of law in this case is the most appropriate.

¹ From Latin: *Comprehen* – universality, *Comprehendo* – universal.

For specified cognition of law is needed philosophy. Exactly philosophy allows “to rise” over the problem, to evaluate it in historical aspect, in dynamics, according to the development of scientific knowledge about the world and existing. I think that philosophically, a significant amount of legal research, although having a global aims, in fact represent the work at the foot of the pyramid. And it is naïve to believe that “the huge distance” will be passed quickly. And sometimes instead of rising to the knowledge, the work is conducted “in a circle”. For example, more than a century ago N.M. Korkunov summed up a convincing result of the attempts to create so-called encyclopedia of law. He, particularly, wrote: “To create from the encyclopedia of science a science, which would be however independent, a special science and embracing the content of all separate sciences, was not possible”¹. At the same time, a century later, propose to come back again to this idea.

Another typical example. At the present time there are attempts to combine theories of natural and positive law into integral theory of law. But the law – not only these two theories. So, the construction in such a way is doomed to failure. Philosophically rise over the problem and evaluate that the combination of only specified theories will be not completely enough, - turns out not everyone.

Contemporary relation of legal science to the law required philosophical evaluations. Thus, at the present time, is clearly observed that many specialists begin to write “sublimely good” about the phenomenon “law”. That is, all, what is connected with the true law – is fair and honest. And what is unfair, totalitarian, undemocratic (although contained in the legal norms) – is already not a law. Here become commonplace expressions – lawless law, illegal authority, illegal relationship and etc. That is, the law in the recent years began to idealize.

This approach has become so common among students that teachers of a number of industry disciplines, complain that in universities, in which the students inspired the idea between the difference and contradictions of law, is really

¹ *Korkunov N. M. Lectures on the general theory of law. Republished. Saint-Petersburg, 2004. P. 33-34. See also: Ekimov A.I., Korkunov N.M. / under editorship V.D. Zorkin. M., 1983.*

difficult to force future legal experts to study codes and other legislative material, since many students are convinced that almost all of it isn't the law at all¹.

It is important to understand that if to see on this phenomenon of law “through the pink glasses”, it is impossible to get closer to the understanding of the law and its essence.

It should be admitted that if legal norms of reformist laws lead to mass impoverishment of the popularity, infringement of requirements of education and health – that is a legal outrage. Outrage! But exactly legal. At the same time, the popular phrase “lawless law” which is used, justifies the law itself and explains everything and makes everyone happy. Under these circumstances the law will become a holy thing, an idol, to which everyone pray and don't allow criticism. They say, the law - by the definition is good, honest, pure and free from bad admixtures. Or: the law – is a freedom, justice, equality and not otherwise. For example, V.S. Nersesyants started the book on the philosophy of law like this: philosophy of law deals with the knowledge of law as a necessary form of freedom, equality and justice in the social life of people².

But such understanding of law is one-sided and therefore not objective. Impaired cognition of any phenomenon contradicts the very essence of philosophy. During non-critical research it is impossible to receive true knowledge.

For the philosophy of law this specified provision is fraught with a great danger. Non-critical approach brings the understanding of any phenomenon to hypertrophic form. This inevitably leads to a perverted understanding of phenomenon, essence and concept. Subsequent criticism, which sooner or later breaks, often destroys not only formed approaches to the studied phenomenon, but also discredited the phenomenon itself, connected with it concepts and ideas.

A clear inflection point in one direction gives an overload of problem, as a result causing “pendulum effect”. As a result even the brightest and reasonable ideas, receiving hypertrophic form, are subjected to indiscriminate criticism, for a

¹ *Leist O.E.* The essence of law. P. 312.

² See: *Nersesyants V.S.* Philosophy of law. P. 1.

long time are being forgotten and replaced by other concepts, which are proved to be also not without flaws.

In addition, philosophers of law don't always take into account the reflection of philosophy. Throughout the history of humanity of the human's development, philosophy was characterized by a constant reformulation of its main problems. One concept that seems quite reasonable, is inevitably replaced by another, fundamentally differs from it. If the specialists, for example, see the perspectives of natural-legal theory as the dominant theory of law in Russia for a long time, so to this theory is necessary to be more critically and meaningfully.

Taken now attempts to isolate law from the criticism are doomed. Even assuming the divine origin of law, you will pray to God, not to the law. What is naturally. To oppose God to the law or to supplement God by the law is absurd and meaningless.

Again, if you try to idealize the law, create such law, to which everyone should strive, it is still not correct to reduce it to the form of freedom, equality and justice. The law is much more varied and ambiguous, rather than above specified categories. Moreover, accurately determine specified philosophical categories – is a hardest philosophical question.

The law – is important and necessary phenomenon of social life. But the same according importance is also other phenomenon – culture, economic and etc. Is it possible, for example, ideal justice in the economics, if primitive and one want to sell more expensive, and other – to buy cheaper? Is it possible an ideal justice in the legal dispute of individuals according the division of property – everyone has its own justice. Is it possible to have unambiguous assessment of cultural works (for example, “Black square” by Malevich), will it be completely fair? Wherein no one writes about wasteful economy, uncultured culture and etc.

Here is need to be said that authors of the current work don't identify the right and the law. However, it is fundamentally wrong to counter these concepts. And to counter one-sided, shielding the law as a phenomenon from criticism. I want to ask, why is writing “a lawless law” and not, for example, “a lawless

right”? What for white wash the legal norms? Moreover, it is happened so that the norms which are seems us legal today and in all senses fair, through the historical period don't already look like legal. For example, reforms in Russia, which were conducted in 1990-ies and issued with the relevant legal norms, firstly were seemed to be exactly legal, liberal. However, after a small period of time, they have led to significant negative consequences: breakdown of the state, separatism in Russia, nationalism, impoverishment of a considerable part of the population, arm forced conflicts and etc. The ambiguity of the result of conducted reforms has recognized the governance of the country.

Now it is obvious, that the legal norms that established the way of specified reforms can hardly be attributed to legal (in that sense, which is laid down by the separate scientists-idealists).

But there are also opposite examples. The order of the marshal G.K. Zhukov on the protection of Leningrad at any price in its cruelty would seem unlikely to fit in the legal frames. However, the course of history has objectively demonstrated the highest justice of such a decision, the rightness and correctness that is exactly the legal character. Now it is clear to all of us, that if the Leningrad hadn't been kept, the number of dead would be much more and the question about the victory over the fascism would have remained open. It is necessary to say that in the history of humanity has already accumulated a lot of legal standards, including violence and cruelty.

How true for this reason wrote R.Z. Livshits, for one and the same groups of people, one or another law represent equality and justice and is legal, for other groups – not. Therefore, there is no general and unambiguous criterion for differentiating of legal law from illegal. Wherein, one and the same law can be legal and illegal on the different levels of social development¹.

In this regard, the concept of legal and illegal laws cannot become the reference point for government authorities and officials, applying the law. In other words, this concept is a kind of speculative construction, which cannot be realized

¹ About this see: *Livshits R.Z. Contemporary theory of law. A brief essay.* M., 1992.

with the application of the law. Here, on this level once again is vividly displayed the question exactly scientific, dialectical validation of ideas and constructions.

A deep research of the problem of “legal-illegal” laws was conducted by O.E. Leist. According to his absolutely fair opinion, a serious obstacle on the path of formation of the meaningful philosophical directions of studying law in recent times became a conception which until recently was named by its supporters as “historical-materialistic concept of differences and relation of right and law”, and now renamed in “libertarian”. The law, which was issued by the state, this concept opposes the law, the essence of which is seen in the freedom, equality and justice. On this is based definition “lawless law”, which isn’t corresponding to the notions of freedom, equality and justice. Based on this concept of centuries-long history of humanity is really hard to find “legal laws”. If to consider the law as the embodiment of freedom, equality and justice, so the history of law begins with the XVII-XVIII centuries, and all the previous law (Laws of Hammurabi, Laws of Manu, Roman slave law, all law of the Middle Ages, in Russia – the Russian truth, all the Laws and the Codes and etc.) shouldn’t be considered as the law. It turns out, that the “libertarian concept” as would have abolished a great part of the history of law. While acknowledging theoretical courage and consistency of the founder of this concept V.S. Nersesyants¹, it is necessary to note that recently he has abolished a great part of the history of law. The state, according to his opinion, constituted only on the basis of “legal laws”, and everything else, is still considered in the history as the state and was as a different kinds of despotism, which fundamentally differ from the state².

But further – is more. As O.E. Leist continued his thought, on the basis of abstract reasoning, remains always good right rarely to the bad law, is difficult to formulate any specific recommendations for a contemporary legislator, which fundamentally acknowledges the ideas of freedom, equality and justice, but not always able to embody them in law. Furthermore, out of sight of the supporters of

¹ See *Nersesyants V.S. Theory of the state and law*. M., 2001. P. 28-30, 46-49 and the next.

² *Leist O.E. The essence of law*. P. 307-308.

a criticized concept completely fell out opposite relation – of a good law and a shaky, unsecured and therefore a bad law. An example of such relation – is an article 59 of the Constitution of the Russian Federation on the right of replacement of military service by an alternative, civil service and impossibility of the realization of this right, due to the lack of a legislative definition of the procedure for its implementation. Supporters of distinguishing between right and law didn't notice, that the right differs from the law by ability to be implemented in a particular legal relationship, rights and duties and therefore in the right cannot be embodied overly general formulations (good according to the plan), having no developed mechanism of a specific legal relationship.

Furthermore, – as O.E. Leist just noticed, – out of sight of the supporters of distinguishing between right and law, fell completely also the implementation process of both, because, according to its opinion, the right – are ideas of freedom, equality and justice, and the law – texts, which can contradict to these ideas. However, history knows not bad literacy execution laws, texts of which proclaim freedom, equality and justice only for that to disguise injustice, terror, violation of basic human's rights and freedoms. Such was the Constitution of the USSR of 1936, democratic provisions of which wore declarative character and was a form of propaganda in the years of mass repressions. Whether it, according the opinion of the supporters of libertarian idea, this Constitution as a “legal law”?¹

Fully agreeing with a specified scientist, it is necessary to add one example, which is brightly characterized one-sided and inaccuracy of approach “to the law as to the definition of a good phenomenon in relation to the bad law”.

By the Constitution of the Russian Federation a person and his rights determined as the highest value of the Russian state. For the implementation of such a law have been issued laws not bad according the content. It seems that everything is correct. Indeed, to the laws, by and large, they have no complaints – they are all corresponding to the Constitution of the Russian Federation, fulfilling its promise about that the human's rights are the highest value.

¹ *Leist O.E.* The essence of law. P. 309-310.

However, a question arises whether it is accurate that the human and his rights are considered to be the highest value? Are there no other values above the rights of a specific person in Russia? Is the priority should be by single, opposing single interests to the general? Is that not a value as the country, state, faith, finally the life and health of their compatriots?

About this in 1915 has already written a famous Russian lawyer S.A. Kotlyarevskiy. He noted that there is no legal state without the consciousness of the citizens of the value of law, without love for the law, struggle for law. But there is no state where there is no readiness in the well-known minutes to sacrifice this love, of this habit has made already legal way in the name of duties to the Motherland, in the name of responsibility, secure, in name of service worthy of its historical development. “In this sense, the hypertrophy of legal instinct, famous, let’s say political effeminacy may occur as a dangerous property in the struggle for life (and from this struggle in the most acute form, not insured any state), if it isn’t balanced by a sufficient supply of basic immediate patriotism. From the other hand, the state needs not only the willingness of citizens to sacrifice themselves, he needs their ability to survive this sacrifice as the rise of national enthusiasm, it should be inherent a power to trigger this enthusiasm. It turns out a strange paradox: ability of the citizens to sacrifice their legal goods is also associated with the high level of state organization. Painful and dangerous – in appearance – disharmony turns into such high harmony, to search for which everywhere says the commandment of life”.¹

Russia, which at least twice per century is attacked by invaders, citizens of which are grown up in the community, was brought up by the collective work, especially perceive the words: “patriotism”, “Fatherland”, “self-sacrifice for others”.

About the same, as the spokesman of opinion of the Russian people, says the Russian Orthodox Church. In the Declaration about the rights and the dignity of

¹ Kotlyarevskiy S.A. The power and the law. Problem of legal state. M., 1915. P. 373–374.

person from 6th April 2006, adopted by X World Russian National Council, is said: “Rights and freedoms are inextricably connected with the obligations and responsibility of the person. The individual, implementing its own interests, is called to relate them with the interests of nearest, family, community, nation and all humanity. There are values, which are staying no lower as the human’s rights. There are such values as faith, morality, holy places, the Fatherland. When these values and the implementation of the human’s rights are in contradiction, society, government and law should harmoniously combine the both. It is impossible to prevent situations, when the implementation of human’s rights would suppress faith and moral tradition, would lead to insult religious and national feelings, revered shrines, would threat to the existence of the Fatherland. Dangerous is seen an “invention” of such “rights”, which legitimize a behavior, condemned by a traditional morality and all of historical religions”.¹ Thus, the Russian Orthodox Church confirmed opinion about that also today the public interests in Russia cost at least no low than the individual and private interests.

Therefore, there is no doubt that the Constitution of the Russian Federation should declare the highest value of the law not only a specific person, but also a Russian society, the importance of the Fatherland, its protection from the invaders.

It should be convinced that the norms of the Constitution of the Russian Federation in the part of the Declaration of the rights of a specific person as the highest value on the underestimation of the significance of the Motherland and Fatherland are not fully thought out. Wherein in the laws contains norms according to the protection of the state and society. That is, in fact, norms of the Constitution in this case are an example of that the law could be not only perfect, but also worse than the laws it implements.

Thus, the law shouldn’t be idealized. It represents a phenomenon of a social life, human’s life and reflects processes, happening to people. Talking about the natural humans rights (the right for life, freedom of conscience, movements, religion and etc.), nobody will argue with that all these rights appearing by the

¹ [Http://www.pravoslavie.ru/news/16935.htm](http://www.pravoslavie.ru/news/16935.htm).

human after his birth, but not before the birth. That is, the law inseparably connected with alive human, born and thereby appeared in the social life. Accordingly, it is impossible to separate the law from the human and society. The law – isn't a cloud, floating somewhere outside the people. And since the law is inseparably connected with the human and society, it isn't necessary to talk about him as about something supernatural, sublime. It just reflects the society in general and the specific people – their virtues and their vices.

It is remained a mystery why exactly the law endure of such idealization among legislators (basically theoreticians of law). Economy, culture and politics are estimated by specialists in these branches more carefully and objectively, without illusions.

It is likely that the phenomenon of the law contains in it the constant desire to kindness, honesty, justice. Or, may be, ideal from the law is created by the scientists, somewhat removed from the specific legal realities, clog of many legal mechanisms, red tape in disputes, injustice, dishonesty, sneaky tricks, bribery or pressure on the court and etc.? It is should be noticed that all these properties have already been and are always by the law, during the whole history. They are repeatedly described in the literature, historical works and also by the lawyers themselves.

It is necessary to live in realities. On behalf of one of the authors of these lines was carried out a physiological questionnaire of the 5 thousand citizens of Moscow. They were asked the question: "What is the law according your opinion? If it is difficult, with what word (words) do you associate the law?"

The answer has greatly puzzled. 86% answered that the law – is prohibition or this word is associated firstly with prohibition and punishment; 5% found it difficult to answer; 9% answered otherwise. But to give other answers, it seems isn't so important clear advantage of understanding the law and punishment in case of default.

It is necessary to say that earlier during the preparation of a previous monograph on the philosophy of law, have been asked 2 thousands citizens of

Moscow. The numbers were very similar. Particularly, while for 83% of respondents the law was also associated with prohibition and punishment¹.

What it would be? Scientist writes about the measure of freedom, equality and justice, and by people, society it is mainly associated with prohibition and punishment? And why prohibition and punishment in the law are more meaningful for people rather than mandatory rules or legalized order of any action?

Of course, it is desirable to conduct a similar question with a maximum consideration of all parameters of the respondents: age, education, social status and etc. Breakdown of answers is also desirable to make according social groups. This, of course, will give an opportunity to install more accurate answers of the social opinion rather than a random sample of 5 thousand citizens of Moscow.

Here is opened a wide range of a scientific work. It is particularly interested to conduct such survey in the most developed European countries and to compare with the received data in Russia. We don't exclude that in Western Europe results could be others. But there can be also the same as according to our observations, there developed not only the law-abiding, but also the fear of law. Thus, without conducting researches abroad, was detected a quote of a famous Austrian philosopher F. Hayek: "Understanding our own rights, we understand what we shouldn't do".²

From the one hand, it is good that the law is associated by Russians with prohibition and punishment, but not with violence and cruelty. However, from the other hand, prohibition and punishment – isn't the positive human reaction. They are not encouraging and usually don't cause positive reactions. So it is logical to assume that the law doesn't cause positive emotion among the majority people. And talking more specifically causes negative. Wherein, even if we assume that during a survey of a specific segment of population will have different results, it is still 86% of associating the law with prohibition and punishment – it is too much.

¹ *Zakhartsev S.I.* Some problems of theory and philosophy of law. // under editorship V.P. Salnikov. M., 2014. P. 50.

² Quote according to: *Malakhov V.P.* Philosophy of law. Ideas and proposals. P. 154.

How are dangerous prohibition and punishment? They are not looking for salvation and protection. To prohibition can be used as to requirement. But the soul doesn't like prohibitions. And here it is important to understand and to feel the difference. We can give a simple example. Everyone understood the importance of traffic rules. It can be said that the traffic rules regulate the rules of behavior on the roads and this is good. It can be said that the traffic rules required behaving on the roads only so, and not otherwise. But it can be said that the rules are listed how is prohibited to behave on the road and for failure establish punishment. It seems to have no difference. All statements are truthful and fair and the meaning by and large is the same. However, in the first phrase feels positive attitude to the rules, and in the second one – neutral. But in the third phrase is heard openly negative attitude, from where it is felt that there is no wish to abide such rules, if not a danger (severity) of punishment. People, who perceive the law in such a way, are not waiting either help from it or something good. On this occasion V.P. Malakhov quite correctly noted that legal consciousness is negative in such a sense that all its specificity is found in the sphere of prohibitions¹.

Wherein, in relation to the Russian mentality exactly with the help of strict punishments can be achieved respect for law in general and for the rights of others in particular. About this will be said more precisely in the chapter related to legal consciousness and legal nihilism.

However, on the mentioned above can be viewed from the other side. The law in a certain extent – is the protest of society on human behavior. And it also can be said that society to a certain extent and forms the law generally and the human's rights in particular. In other words, continuous dialectical intertwining and interdependence. Hence largely are the roots of developing by the authors of the current monograph direction of the comprehending study of law.

It is necessary to admit that the following thought, which was expressed by V.M. Sirih and supported by O.E. Leist, wasn't fully understand: "...Recognition of the regularities of law as the subject of the general theory of law is purely

¹ *Malakhov V.P. Philosophy of law. P. 154.*

formal. In fact nobody during the process of presentation didn't identify and even didn't make attempts to name specific patterns of law".¹ But are not identified in the research process essential characteristics of law (normativity, official establishment and protection by the government, consistency, formal definition, credibility) to a certain extent, are not related to its regularities, on the basis of which are formulated *legal* (authors italics - S.Z., V.S.) concept of law?

Specified features are the symptoms of systematic patterns of law as a legal phenomenon. Furthermore, these features which were identified during the study of law, in one or another form are related in all books on general theory of state and law, also in the book of O.E. Leist. In the law, researchers have been noted also other patterns.

Above, the word "legal" was specially highlighted, because here the law is seen only and only through the prism of legal, not philosophical knowledge. As well as surgical operation can be seen only from the point of medicine as a set of actions on excision of malignant tumors. But it can be also from the philosophical point of view about that, how is good in principle, surgical intervention, criteria of admissibility of such interventions, realities of the preservation of quality of life after surgery and etc. The same is with jurisprudence. The law – from the legal point of view has patterns, which were enough studied by the theory of state and law. From the philosophical point of view the question is broader: this is values of law and the cognition of its norms, the appropriateness of methods chosen for the cognition, the humanism of law and the question of original justice of limits rights of others (the same) people and the permissibility of violence in the law, limits of violence and the reality of obtaining the necessary legal regulation and etc.

The law as any legal phenomenon can be evaluated through the past, present and future. If with the past law is more or less clear, the present law reminds philosophical question: if the half poured glass half empty or full? The future law

¹ *Sirih V.M.* Logical reasons of the general theory of law. V.1, M., 2000. P. 40; *Leist O.E.* The essence of law. Problems of theory and philosophy of law. M., 2011. P. 307.

is vague enough, because it is impossible to say that scientists at the present time imagine themselves absolutely clear, how it should be.

In the proposed contemporary concepts (natural, libertarian, integral, others) there is a lot of idealism. However, humanity hasn't yet succeeded and in the nearest future, without any doubt that it would be impossible to create the ideal society, even though the absolutely fair society. Out of ideal society the models of idealized law isn't feasible in full amount, they will be refracted in different directions, possibly reaching up to illegal. Examples of when good ideas are turning into lawlessness and terror known by all.

Perhaps, the light at the end of the tunnel will be visible, when the humanity will come to a common understanding of the word "justice". When this term will be equally conscious by humanity, it could be possible to talk about legal concepts, ensuring its implementation in life and the being. Exactly in this case the norms of law could be fair for all of them. However, justice is a philosophical category. In the history of humanity there wasn't created a unified and acceptable to all legal consciousness. Therefore, a different understanding of justice will be different up to the mutually exclusive, approaches to the law, understanding of what the law should be. It is thought that the humanity in its development is necessary to go through many stages, to pass more than one century in order to come to the law as a universal guarantor of justice.¹

It is necessary to take into account dependence of the law from the external factors, for example, economy. According F. Engels the law is almost completely dependent on the economy. The law depends on the economy according positivism. The law is partially, but also depends on the economy according jus naturalism. Even if recognize the law as a kind of reality the dominant and ruling in the world, without strong economy many of the natural humans rights will become slogans which are nothing containing and have no practical meaning (the right to a dignified life, the right to dignity, the right to secure old age and etc.).

¹ About law and justice significant works wrote *Ekimov A.I* See, for example: Justice and socialistic law. Saint-Petersburg, 1980.

That is, the law at least partly, in some extent dependent on the economy. This conclusion is very important because in this case it is necessary to convince objectively that the law cannot be completely fair. In fact, economy cannot be fair. And if the law at least partially dependent on the economy, so it is at least sometimes, unfair, by definition.

In general, contemporary society is still far from such heights as freedom, equality and justice. And the concrete legal mechanisms according achieving of these goals, ideals (this is how they should be considered) are not created yet.

Developing of such legal mechanisms can largely be associated with the universalization (if it is possible) of concepts of justice, equality and freedom. Here are opening wide horizons for the philosophers, including those, who are specializing on the philosophy of law.

And in the modern world to develop, open, create something isn't enough. It is equally important to publish their achievements, to speak and further – to be heard. The trinity – to create, to speak and to be heard – is a scientific ideal, which is sometimes achieved, frequently reached with a delay, and sometimes not reached at all.

Many contemporary specialists, cognizing the law, are pushing off from any suitable concepts of the origin of law.

However, it is seems more correct firstly to assume the essence and the content of law. This process is really interesting.

In fact the law – it is a protection from violence, and violence of enforcement of standards fulfillment and a violence regulator. And in its society given to its mentality, traditions, culture and other social factors, parameters of regulation of violence are different.

The law – this is implementation of human needs and its limit and the regulator of needs. Wherein, if it speaks so, the law provides human's life humane.

The law – this is concrete laws, issued by government and the being, which isn't dependent on the specific laws and even encouraging us to publish these laws.

The law – this is a reasonable regulator of the life activity and nonsense, absurdity, recklessness (for example, senseless and comic law in the case law and etc.). The law shows both intelligence and also recklessness of humanity.

The law is striving to the justice, and at the same time, allows injustice.

The law is directing on the establishing of objectively truth, and at the same time – admits its failure.

The law is dynamic and at the same time, contradictory in its dynamics. Thus, depending on the external social factors one and the same act can be a crime, and can be – efficient conduct of the case (e.g. speculation).

The law in some cases forms police, and at the same time is an instrument of police. Wherein, the law cannot solve all the problems of the humanity, although many of them see it like this.

The law regulates economy, and at the same time depends on the economic processes.

These thoughts can continue and continue. Ultimately it is seen that the law – it is undoubtedly a complex dialectical multifactorial social phenomenon, depending on objective and subjective factors. To the subjective factors, for example, can be attributed tyranny of a person, competent to adopt legal norms (examples).

Thus, the law is a complex social phenomenon, multidimensional and contradictory, which should be considered without idealization. This conclusion underlies formation and formulations by the authors of this work the theory of *comprehending study of law*.

Common in our times definitions of the law although they reveal the features of the law, but firstly, are relatively one-sided, and secondly, as it was already mentioned, considering the law idealistically and not objectively.

If the law on its own is a complex and contradictory social phenomenon, so, respectively, the legal being is also soaked by these contradictions. The inconsistency of legal being is manifested in the adoption of legal law in the sphere of economics, which are almost always improve the situation of one and

nevertheless worsen the situation of others. So, it is necessary to emphasize – that we are talking about the adoption of the exactly legal laws.

Or the law enforcement practice. Nowadays in the world's fashion came in so-called competitive process. It is considered to be the more democratic, providing equality of parties and etc. During this process parties often provide to the court opposite and mutually exclusive information. This means that at least one of the parties is lying openly. As a result the court renders a decision. And specified action is considered to be legal! Wherein, decisions of the court depend on the cunning of parties, lawyer's resourcefulness, eloquence and etc. As all know, judgment isn't always correct. And the law in this case, - what is the most paradoxical! – in fact acts as a regulator of lies, provocateur and stimulator of lie, and not for establishment the truth and justice¹.

Interest to the law, recently, as it seems, has increased in a scientific community. Informative work appeared that explores the essence of law. Sometimes, they can be found quite sharp criticism of the modern state of law observance, but the laws themselves are criticized always and everywhere. Wherein, what is nice that instead of sweeping criticism appear specific and meaningful proposals for the improvement of laws and other regulatory legal acts. In fact, dissemination and popularization of the law is one of the elements of legal being. But almost everywhere the law is idealized. For example, it is known an opinion that the current laws are bad and thus not legal.

It seems that many lawyers consciously or according fashion is making methodological mistakes in their arguments. They are copying from jurisprudence the procedure of argumentation and from the natural science the procedure of proof, where is necessary artificial variables (for example, "ideal gas"). Appeared such terms as "ideal society", "ideal state". And to the term "law" the word "ideal"

¹ Some processualists (we support them) believe that by the competitive process the court must establish exactly objective reason. But this, unfortunately, doesn't change the essence of law, which by its forms are actually regulates lies (or the possibility of lies) at least by one of the parties in the court.

isn't already added, because many people became to consider that the law is ideal by its definition.

If there are such rough analogies in the humanitarian sciences? We believe that there is no, since it is obvious that ideal conditions in the society and in the state are impossible principally for all. Principally is impossible to create the law suitable for everyone. However, for the Russian legislator and its scientific support in the face of scientists this obvious philosophical conclusion has ceased to be a problem. As a result in Russia had happened a parade of laws, which are never be executed because of the impossibility of their demands. The most amazing is that the authors of laws, trying to justify their mistakes, said that the laws are issued for ideal society, to which Russia is still far away. In fact, such an explanation clearly demonstrated a departure of the specified authors from the basis of philosophy and their methodological mistake. In physics, you can put an experience, taking into account ideal conditions of some process or substance. However, to adopt laws in justice, basing on the ideal idea, that, for example, there is no more crime, is unacceptable. Such laws are not just will not be respected, but will angry society, which will force legislator to make adjustments. But wherein, this can worsen the social situation in the state, which cannot be hold by the public authorities.

To the lawyers – scientists and practitioners – are necessary to be closer to philosophy, basing on it, and to doubt more, to look critically at legal phenomena. A step in this direction will be the beginning of a movement from the observed mythical legal idealism to the legal side of legal realism, comprehend study of law.

Nowadays, perhaps, there is no one field of public relations, which in varying degrees wasn't regulated by the law. The norms of law in its own reflect and characterize economy, culture, politics, history, intelligence, the way of thinking, attitude to the person and etc.

In such circumstances, the law is one of the forms of reflection of the being. And since the law isn't convincing with the human being – so this is a form of reflection of the social being, appealed to regulate existed social relationship.

The question about the possibility of legal being existence without the human is also need to be viewed through the prism of realism and objectiveness. What is the kind of existence, where there is no human, but there is a law? Between whom law regulates relations in the being without people? If it necessary to have the law in the being without people? The answers on these and other similar questions are obvious. The legal being, of course, cannot be without human. The law without human deprived a sense.

In this regard, the law shouldn't be considered as a fully independent substance.

The next moment is connected with that through what cognized the law and the legal reality. Nowadays in the Russian legal science is widely spread opinion of V.S. Nersesynats about that the law is cognized through the legal law¹. As this scientist wrote, the legal libertarian epistemology as a truth takes its objective scientific knowledge about nature, properties and characteristics of legal law, about preconditions and conditions of its approval as a current law. Analyzing the foregoing statement, A.N. Chaschin writes that according to V.S. Nersesynats opinion epistemological difference between libertarianism and jus naturalism is manifested in the fact that the emphasis is making on law, not on the right (for jus naturalism is peculiar an accent exactly on the natural law). Difference from legism (legal positivism) in that the last one is studying every law as a right, and libertarianism as a right studies only legal law, separates laws from the right, contradicting to them. Search for the truth for jus naturalism – in the natural law, for legism – in the positive law, for libertarianism – in the legal law².

Such point of view is doubtful according to the reason that, as was already mentioned, the legal law – is very subjective concept. And what can be considered as a legal for one social group, will be illegal for another one. In the first approximation, it seems to us that the law is more appropriate to evaluate as a whole through its sources. It isn't necessary to allocate from the right only laws

¹ *Nersesyan V.S. Philosophy of law. M., 1998. P. 64.*

² *Chaschin A.N. Contemporary legal doctrines of Russia / under editorship T.N. Radko. M., 2014. P. 54.*

and only legal laws. The right must be evaluated as a whole, taking into account each source of law, including such as a legal practice, which is fairly widespread in the world experience. Here is very interesting to quote the statement of the Director of the Institute of Philosophy of Russian Academy of Sciences A.A. Guseinov about his contact with law. He writes: “As a Director of the Institute I had a couple of times deal with the court. It was left on me a heavy feeling from all of this. Considering the real everyday life of the Institute, I can say: for 95%, maybe for 99% all relations in the Institute, his positive activity is based on the tradition, well-established patterns of behavior, oral agreements, common sense – to the words, on thing which, if they will be taken to the court, they will be immediately calling into question”¹. A.A. Guseinov also writes that saturating the Russian society with lawyers “we violated historically formatted for our society measure of the correlation of the right and law with justice, morality and tradition”².

A comprehensive and systematic assessment of the law through the legal sources allows achieving more objectiveness and honesty of its cognition.

The legal being is dialectical, that is contains also internal contradictions. The most brightly it is manifested within the legal regulations of the social relationship. From one hand, the society is striving to the maximal regulation of the social relationship by the law. Literally so, that any life situation firstly, will be the related legal norm, secondly that this norm will not be contradict, clearly understood and applied. The movement in this direction everyone see and feel. The legal array is significantly increasing. For the last time has recently gone to the nonexistence the understanding of the lawyer as a human, if not knowing, but at least orienting in all the laws. It was need a more narrow specialization for the specialists of criminal, civil and administrative law. However also there the growth of legal array is objectively determined the necessity of more narrow

¹ *Guseinov A.A. Philosophers and lawyers have many common themes. // Philosophy of law at the beginning of XXI century through the prism of constitutionalism and constitutional economics / under editorship V.V. Mironova and Y.N. Solonina. M., 2010. P. 14.*

² *Ibid*

differentiations of specializations. Thus, from the civil law “fostered” specialists in land law, family law, labor law and etc. However, the further growth of laws and subordinate legislations is continuing, requiring even more “narrow” specialists. For example, currently, are very valuable lawyers – on such a small part of the administrative law as the traffic regulations. A traffic regulation, their application, analysis of road traffic accidents has thousands of nuances. And these nuances are very important for people.

But, from the other hand, it is preferably for any society that the laws will be well-known, simple and understandable for all people. Nowadays even the lawyer has not enough power to deal with many nuances of the contemporary legal system of the concrete state. As a result, many people, paradoxically, are defenseless enough before the norms of the law. Specified conclusion confirms countless of examples, when educated people, having a big life experience, have been easily deceived not only by fraudsters, but also by the governmental authorities (inspectors of traffic police), by the smart lawyers.

In the legal being turned out another paradox and internal contradiction. Society and people, from the one hand, are interested in that everything will be clearly regulated by the law, and from the other hand, cannot “digest” already existed legal array. Wherein, the law, unfortunately, due to the objective reasons can act against the human and society. If not so long ago the phrase “It is impossible to make a step, without breaking anything!” was treated with humor, but now it is heard in it more tragedy. Within in this case, all – as ordinary citizens and also governmental authorities, – are in principle under the same conditions. Governmental authorities, whose service is regulated by a complex of instructions and orders, can also easily become subjects of administrative and also criminal responsibilities. According to above mentioned, there is a Russian proverb: “If there was a person, it will be an article”.

Thus, the law and legal reality appear as a complex and dialectical contradictory phenomenon.

Above mentioned allows by “broad strokes” to formulate the theory of *comprehending study of law*. First of all, it is necessary to say that the relevance of the formation and formulation of this theory is caused by the necessity to appeal to the concept of law from the philosophical positions, to evaluate it comprehensively and fairly, refusing from often applied in the current time method of the idealization of law. Specified theory must perform the role of a private theory in the philosophy of law.

As it known, any theory studies the pattern of occurrence, its functioning and development. From the point of view of philosophical theory of cognition, an object – is that, on what is directed cognition. The object – is that part of reality, on the attainment of which is directed efforts or researchers. By this reality are perform objectively existing social relationship, which are regulated by the law.

The subject should reflect the main, essential parts of objective reality. Basing on the dialectical theory of cognition, the subject of the theory of comprehending study of law is the law by itself as a complex, contradictory, multidimensional, dynamically changeable social phenomenon, *evaluating without domination of any legal concepts*.

The subject of the theory of comprehending study of law includes also:

- patterns of essential dialectical contradictions in the law and the legal being (some of them were mentioned in the paragraph);
- patterns of influence on the adequate and objective evaluation of the law and the legal reality of external factors (to such factors related economics, politics, ideology, the role of the Head of the state and etc.);
- perspectives of the law development in the context of legal reality.

At the beginning of the chapter it was given a comparison of law with a diamond. It is necessary to notice that the diamond came out of carbon then, when we substantiated the necessity of its 57 facets. We believe and hope that as soon as before the researchers of law will open approximately the same variety of facets and characteristics of law, it will clearly define its essence and purpose. This will happen not now, and, we suppose, not in the nearest future.

The way to the cognition of law is lying not through the persistent justification of any one concept of law, which is often “blamed” by many scientists. However, not through the integral theory of law, which confined to the attempts to take “the best” from the existing legal concepts. Not fully cognizing the law, it is impossible to say, what is “the best” in it, and what – is “the worst”. We are talking not about the unity of different legal concepts. The meaning of a proposed approach is seen in a strictly objective, real, deidealized, deideologized cognition of law, not avoiding domination of any concepts. The more objective will be evaluated the law as a complex, contradictory, multidimensional social phenomenon, clearly will be reveal its contradictions and flaws, strengths and weaknesses, opportunities and limits of its opportunities and etc. – the sooner it will be able to come to the cognition of law.

§ 4. Questions of methodology of law

The purpose of the philosophy of law is including also in the definition of a common methodological base for the cognition of law. Exactly the presence of a common methodology in law is a philosophical and philosophical-legal problem, which philosophy of law has to decide. It is advisable to focus on this question in details.

The transformations that have occurred in Russia in 1990-ies, ironically, greatly touched philosophy and methodology of the scientific researches. Particularly, dialectics have been subjected to obstruction, which was earlier recognized in Russia as a universal scientific method for the cognition of law.

This position in philosophy has become a fever for methodology of other sciences, including the legal science. It is also spontaneously formed groups in it, which became to practice different approaches to dialectics. Ultimately, this led to the destruction of developed over the years clear methodology of legal disciplines. In the basic science for all legal disciplines – the general theory of the state and law – scientific methods began to be interpreted in completely different ways. For example, the part of scientists still believes that dialectics is a universal method of cognition¹. Other specialists are considering dialectics among others, equal in value, scientific methods².

There was formed a group of scientists, denying methodological meaning of dialectics. For example, A.B. Vengerov wrote: “hyperbole of the materialistic dialectics turned methodology into artificial searches for the “rise” of the scientific knowledge from the concrete to abstract, to the scholastic arguments about the lack of antagonistic contradictions in a socialistic state and etc. It is necessary to understand that the crisis of socialistic idea in that form, in which it was implemented in a totalitarian state and its legal sphere, at the same time, meant a

¹ Kerimov D.A. Methodology of law. P. 49-50, 83; Makuev R.KH. Theory of the state and law. M., 2010. P. 35 and etc.

² See, for example: *Theory of the state and law* / under editorship M.N. Marchenko, M., 2009. P. 11, 15-16.

crisis of dogmatic materialistic dialectics”¹. And then, continuing his thought, the author wrote about the formation of the scientific principle in studying the state and law, which “...involves getting rid of the myth, utopianism and vulgarism, asserts the primacy of the objective scientific knowledge over the selfish interests of certain classes, social groups and separate scientists”².

Commenting on what he saw in the methodology of law, O.E. Leist quite emotionally noted: “Some authors on inertia are continuing journalistic criticism of Marxism-Leninism; the majority of theorists rejects only certain aspects of Marxism, seeking to maintain the number of previous conventional ideas. Nowadays it is hard to find among the specialists on the theory of the state and law at least one scientist, firmly standing on the former Marxist-Leninist positions. But even more difficult to find a scientist, firmly standing on the other philosophical-ideological positions, which could be crowned the building of legal science. If the general theory of law, exempted from the mandatory criticism of the bourgeois ideology and search for “peculiarities of socialistic type of legal relations” received an opportunity calmly develop inherent to it stricture of concepts and categories, but with philosophy of law the situation is much worse. Ideological-philosophically vacuum, which was created in recent years, hasn’t been filled yet with anything else. Not without reason, expressed an opinion that philosophy of law isn’t needed at all”³.

This statement, of course, is extremely subjective, because many scientists haven’t lost methodology in general and dialectics in particular. On the contrary, they have tried (and unsuccessfully) even more to develop it in relation exactly to law. Taking for example the works of the most distinguished philosopher of law D.A. Kerimov⁴. However, above mentioned quote of O.E. Leist eloquently shows that in terms of methodology of legal sciences was observed and sometimes now observe a certain “perplexity”.

¹ *Vengerov A.B.* Theory of the state and law. M., 2009. P. 21.

² *Ibid.*

³ *Leist O.E.* The essence of law. M., 2011. P. 307.

⁴ See: *Kerimov D.A.* Selected works. In 3 volumes. M., 2007.

In particular, there is no characterized phenomenon for the legal science, when separate specialists are trying to get around the questions of dialectics in the methodology. Thus, in his textbook S.M. Koshelev writes those in the theory of the state and law are used special and private methods of cognition of law, (for example, particularly-sociological method, comparative legal and etc.). However, the method of dialectics isn't mentioned by author either among universal, or among general, or among private methods of cognition¹. Periodically, began to meet the cases, when in the academic literature on legal disciplines authors began to avoid expressing opinion about methodology of one or another industrial or applied science².

The questions of dialectics, its understanding and meaning were considered above. Now it is necessary to focus on how dialectics is important for the legal sciences.

As already mentioned, since the development in the broadest sense is one of the foundations of dialectics, so there is a question: what is dialectics for the science? The answer is obvious: science cannot exist without development. Development of scientific knowledge assumes constant change, movement and dynamics of knowledge. Without development the science is dead. It will stop in its development and then it will make a lag from the necessities of life. Experience shows that objective (again dialectical) world development of knowledge can force to return to the forgotten theory, however it isn't always possible to make up for lost. For example, in the USSR cybernetics was considered for a long time a lie, and wasn't developed. After almost half a century, an objective flow of life and development of scientific knowledge forced to return to this forgotten theory. However, during the extended downtime, there was a significant backlog of Russia in cognition of the essence of information technologies, production of computers, other electronic computers, mobile telephones and etc. This, on its turn, determined the lag of legal science in the questions according information and information

¹ *Koshelev S.M.* Theory of the state and law. Saint-Petersburg. 2007. P. 12.

² See, for example: Administrative law / under editorship *L.L. Popova*. M., 2005.

technologies, observing in many legal disciplines. So, information law with explicit delay was recognized in our country as an independent branch of law. In criminal law, only in 1996 were appeared articles, which were providing criminal responsibility for the crimes in the sphere of computer information, and about two years these articles haven't been used, as the criminal procedural law wasn't ready to such kind of material evidences, as "harmful program, attached to the criminal case in the electronic form". There was accordingly, a noticeable lag in criminalistics: there were not methodical recommendations on the tactics of investigation actions and methodic of the disclosure of the computer crimes. Nowadays, when the information technologies are used actively for the commitment of many crimes (fraud, illegal cashing out, illegal bank activity, legalization of cash, received by money laundering, corruption crimes and etc.), legal sciences are not situated again in the forefront in ensuring practice by methodical recommendations for proving of such crimes.

That's what causes the departure from dialectical principles of development, a denial that the development plays the first role in the science and it isn't necessary to disturb it.

Even critics have no doubt that general methods which are used in the law (systemic-legal, comparative-legal, historical-legal and etc.) are hardly being able to do without dialectics.

As you know, dialectics is based on the idea of universal communication, which, on its turn, implies interdependence of phenomena. For example, such social phenomenon as crime implies the existence of combating with it, availability of crime law and crime procedure. The criminal procedure cannot exist without criminalistics; the same as criminalistics is inextricably linked with the criminal procedure, criminal law, combating with crimes and etc. Appearance, for example, of computer crimes caused necessary changes in the criminal law, develops criminal procedure, requires new approaches in criminalistics. Exclusion from the Criminal Code offense of "speculation" implies, on the one hand, exclusion of this

act from the numbers of crimes, and from the other hand, – changing the direction of criminalistic methodic of investigations of crimes.

In the cognition of law are actively used the general laws of dialectics. The law of unity and struggle for opposites points indicates to the coexistence of different forces and tendencies and these forces are simultaneously in the unity and contradiction to each other. In this case, the right – is a bright example of this law. The law means justice, but permits injustice; the law struggle with violence, but at the same time regulates social relationship with the help of coercion and violence and etc.

An example of the law of mutual transition of the qualitative and quantitative changes can be observed in the information law. At the beginning, it wasn't known and wasn't recognized by the law, and then appeared scientific publications and regulations, which increase in the quality and quantity has led to the justification of the informative law.

Thinking about this law, V.S. Nersesyants noted that qualitative changes of philosophical-legal knowledge (its multiplication, clarification and concretization, increase of the volume and etc.) occur in general from the positions and boundaries of one or the other concept of law, which is lying in the basis of a certain concept of the philosophy of law, its method and subject. Quantitative changes of philosophical-legal knowledge are connected with transition from the former concept of law to the new concept of law, with formulation of a new philosophical-legal theory with a corresponding new method and a new subject. Of course, the degree of such qualitative changes can be different, but new concepts are expressing qualitative leap in the process of development of philosophical-legal cognition and in the process of philosophical-legal thought¹.

An example of the law of negation of negation can be considered on the environmental law. Environmental law hasn't been considered for a long time as a legal science. Then it began to be considered in the context of other legal disciplines, i.e. there was a denial of a previous knowledge. Finally, it emerged as

¹ *Nersesyants V.S. Philosophy of law. M. 2011. P. 12.*

an independent branch of law, wherein, there was again a denial of the previous stage of development.

V.K. Babayev writes correctly about that each of the dialectical laws manifest itself in any legal phenomenon, process. Thus, any legal norm, and particularly newly adopted, reflects the unity and contradictory of the regulated social relationship, coincident, at the same time conflicting interests. It occurs, when there are changes in social life, gradually accumulate, reaches the new qualitative condition and requires a fundamentally another legal norm. New social relationship replaced the former and newly adopted legal norm, regulating these relations, denies the old, preceding to it legal requirements¹.

The main dialectical categories are: whole and part, individual and general, reality and possibility, structure and elements, theoretical and practical, content and form, purpose and mean, cause and effect and etc. For example, the need for regulation of concrete social relations is the reason of publication of legal norms. The publication of norm is the consequence of the necessity of the regulation of mentioned relations. Or: a specific act of a person is the cause of the application of legal norm. The use of norms, as fixed in it effects, are the result of an act of a person.

Using the described principles, laws and categories dialectics is implemented as a universal method of cognition. Dialectics laid and is laying in the basis of the development of legal sciences.

V.K. Babayev wrote about this that during the study of law, method of dialectics appears in that the law is viewed as a phenomenon, which, first, is determined by the nature of a person, socio-economic, political, religious and other conditions of social life. Secondly, it is closely associated with other social phenomena. It is hard to find in society sphere of social relations, where there will be no legal norms, social phenomena, to which the law wouldn't contact in one way or another. Balancing the law with other social phenomena, it is possible to identify the place of the law in society, its characteristic features. Exactly that's

¹ *General theory of law* / under editorship V.K. Babayev. Nizhniy Novgorod, 1993. P. 42.

why the law is compared to politics, economics, morals and customs. Thirdly, the law is constantly evolving. Every new stage in the progressive movement of society – is a new stage in the development of the law. Gradual quantitative changes (law upgrading, in particularly) in the legal system led to the qualitative transformation of law¹.

Overall, as it was concluded by R. Lukich, it is impossible to become a good lawyer in that case, if to be restricted only by special, exclusively professional methods and don't approach to the law from the position of more general, dialectical method².

Unfortunately, in the legal science on judgments sometimes influence ideology and politics. The authors of a current monograph related to the scientists, seeking to so-called “pure” science, which is exposed to anyone's influence. Perhaps, to the same have been committed A.B. Vengerov and other specialists, who are actively criticized dialectics. However, trying to get away from the ideology and politics, they, on the contrary, have immersed in it. For example, A.B. Vengerov wrote: “Indeed, relying in such dogmas of dialectics as, for example, unity and struggle of opposites, Stalin and his supporters approved about unlimited and increasing class struggle in the socialistic society. You know to what genocide forms of struggle with its own people has led this transmission of “dialectical knowledge in 1920-1930-ies in Russia to the processes of collectivization, elimination of the creative intellectuals from public life and etc.”³

But if in dialectics is something said about collectivization, genocide of its own people and elimination of the intellectuals? Where are scientific philosophical arguments, specifically indicating on the impossibility of usage of dialectics as a universal methodological foundation? Why the actions of politicians, perhaps not knowing the dialectics in a full volume, are the arguments for its leveling? Unless is it scientific, philosophical discussion?

¹ Ibid.

² *Lukich R. Methodology of law. M., 1981. P. 43.*

³ *Vengerov A.B. Theory of the state and law. P. 21.*

In this sense, E.I. Temnov was rightly said: “Traditions of scientific and academic studies of the theory of the state and law over several decades in our country have been connected with development of materialistic, historical, dialectical directions in its Marxism-Leninism understanding. However, materialism, dialecticism and historicism have been occurred already on the early stages of the formation of scientific knowledge, consistently developed by scientists of many generations and logically should be present on its contemporary stage. Dialectics acts as a philosophical (ideological) basis of the theory of the state and law that is the doctrine about the most general logical relations, formation and development of the being and cognition.”¹

However, not all experts are fully realized this truth. As an example we can give a quote from the scientific article of I.A. Klimov and G.K. Sinilov according operational – search activity (OSA) – the science rather conservative, having a really applied character. At the beginning, specified authors note that in the soviet time dialectics was considered to be a methodological basis of the theory of OSA, and further the write: “...Since the development of the theory of OSA historically coincided with the period of functioning of the soviet type of statehood and its collapse and reformation occur at the present time, so in these conditions is inevitable the evolution of point of views on the methodology of the theory of OSA”². That is, to paraphrase, the evolution of points of view on the philosophical, methodological aspects of the theory, according to the opinion of the specified authors, depends not from the development of philosophy and philosophy of law, but from the reformation of the state, change of the constitutional order and etc.

By the way, in a science, the OSA approach of negation of dialectics was blamed and not accepted by most specialists³. It was noted that some scientists who studying the modern investigation and its different manifestations, from one

¹ See: The general theory of the state and law. M. 2010. P. 33.

² *Klimov I.A., Sinilov G.K.* Methodology of the theory development and improvement of the OSA practice in the conditions of modern Russian society // Actual questions of the theory and practice of operational – search activity. M., 2001. P. 33–34.

³ See: *Zakhartsev S.I.* Dialectical methods in operational-search activity // Legal science: history and modernity. 2012. № 7. P. 62-69.

extreme (Marxism-Leninism understanding of the universality of the dialectical method) rushed to another and write that: ““dialectical method of cognition, freed from the ideological accretions of the “universality” “portability” is equal in the system of scientific methods”. Is it so equal in this system? Of course, we can disagree with classics of Marxism-Leninism, as it did the esteemed professor (and now it is fashionable), but what for with the water splash out a baby? Is dialectics was invented by V.I. Lenin? If not shortly before him G.F. Hegel justified the universal character of the dialectical method and has made it out “of the system of scientific methods”?.. Even if we assume the presence of dialectical method in “the system of scientific methods, studying of investigation (and not above them due to his universality), so he is situated, as we think, on the top of the pyramid of methods of non-metaphysical cognition (and if you like, of system)”¹.

It is a pity that some of Russian specialists are so susceptible to the outside influence. For example, I.L. Chestnov supposes that the cognition (full, absolute) of the world is rejected *in the contemporary epistemology* (author’s italics - S.Z., V.S.). With regard to the law he is supporting some foreign experts and states it so: “A famous English anthropologist E. Lich...writes, that any social (including legal, for example: law and crime) concept is endowed by different meaning in different context: legal can become criminal and vice versa. That’s why, according to his opinion, there cannot be eternal laws of human society and inalienable human rights. Thus, we could make a conclusion that any social institute is contextual historically and socio-cultural: its content is set by the era and peculiarities of culture of a certain society”. And further: “It is obvious that the law is contextually relevant as a historical epoch and also as a certain culture – civilization through the scientific community, which is developing, transmitting, promoting the proper theory of law. That’s why the theory of law (law understanding) cannot jump the

¹ Shumilov A.Y. Phenomenon of the scientific schools of professional investigation. M., 2007. P. 45.

boundaries of the intellectual consensus, episteme of epochs and culture-civilization”¹.

Well, the law is really reflects the modern epoch and culture. But is it just only modern? Unless the law doesn't reflect the previous epochs? And wherein isn't the law having outstripping reflection that is the reflection of future social relations? Well-thought legal norms are living for centuries. A bright and famous to all examples – Roman law. It reflected experience of its creators (historical aspect), its contemporary epoch and have outlived a dozens of epochs (outstripping reflection). The law is able and even aimed to look into the future, to “jump” through its epoch and culture. Therefore, to “bind” the law to a certain epoch isn't fundamentally correct.

Very precisely about the theory of reflection of the objective reality in law wrote D.A. Kerimov: “...This theory, reproducing superfine mechanism of the human mind, not only detects the failure of agnosticism, but also plays very important methodological role in the whole system of the sciences, including the law, because legislation and its implementation are not that other, as a reflection and the most outstripped reflection of the objective reality, directing its development. The problem of reflection is the key problem in law; therefore, its solution will contribute to further improvement of law-adopting and enforcement. In this regard, we must turn to the definition of reflection. This category, firstly, has a historical character, because during the progress of sciences is constantly evolving and enriching; secondly is systematically improved in the process of cognition and thirdly, has a universal quality, because it reveals itself on the different levels of cognition either organic or non-organic world”².

Other conclusions of E. Lich and I.L. Chestnov are also not indisputable. Thus, the dependency of law from the epoch and culture is manifested not in all cases. In particular, hardly from the epoch, culture or civilization depends on such

¹ *Chestnov I.L.* Criteria of the modern understanding of law // *Philosophy of law in Russia: history and modernity: materials of the 3rd philosophical – legal readings in memoriam acad. V. S. Nersesyants.* M., 2009. P. 254, 256, 260.

² *Kerimov D.A.* Methodology of law. P. 101.

natural human's right, as freedom of thought, freedom of religion, freedom of conscience and etc. Indicated rights are related to those, which are hardly possible to take away. At least, no one has a possibility to take away the right to freedom of thought, conscience. It is possible to interfere with the freedom of religion, but not to take it away. The most European countries have sad experience of war for religion.

And the fact that legitimate sometimes becomes criminal (and vice versa) shouldn't be that there cannot be eternal laws of human society. Indeed, one of the dialectical facets of law is its dynamic and contradictory in its dynamics. Sometimes, what is criminal becomes legal and vice versa – for example, approval (prohibition) of abortions. However, deliberate murders from mercenary motives are considered and consider criminal regardless to the epoch. Punishments for such crimes were indeed different and dependent directly on the level of culture, civilization, epoch and etc. But not crimes themselves. Legal protection against indicated murders is one of the eternal laws of human society. The same applies to laws derived from the commandments, for example, don't steal.

Furthermore, initially we didn't agree with a message of I.L. Chestnov about that the denial of cognition of the world is the contemporary epistemology. It turns out, as already mentioned that other opinions are not modern, old and not perfect. However it should be only recognized that, on the contrary, arguments about the impossibility of cognition contain obvious flaws.

As it was noted above, it is necessary to understand correctly philosophical problem of monism and pluralism. Different and conflicting opinions in the science are possible and necessary. Without them anyway. However, any judgments are needed to be checked, moreover by a scientific way. Only so and in such a way it is possible to speak about scientific knowledge and not about chaotic, - or, as it fashionable to say according to P. Feyerabend, “anarchic”, - set of concepts, judgments and logical conclusions. And for the constancy is need to have dialectics as a universal method of cognition.

At the same time, seemingly simple conclusion is perceived not by all. There are specialists, which, possibly, due to the conjuncture or hostility “to all soviet”, deliberately substitute concepts: begin to talk about the science, and then in reasoning artfully change the science to ideology, and conclusion based on reasoning about ideology are again making about science. As a result, is a false conclusion, when the reasoning are seems to be correct. And philosophical – logical fallacy, which consists in the substitution of concepts, the unsophisticated reader, a student, a post graduator may not notice.

As a striking example of this can be served a statement of O.E. Leist: “In the philosophy of law the difference of opinions is inevitable and unavoidable, because it expresses the diversity of ideological positions of researchers, reflection of valuable orienting points and also different philosophical setups of researcher – his support either on sociology, or religion, or politics, or psychology, or morality, or other form of social consciousness. There is nothing wrong in it. The history of humanity proves that exactly originality, diversity of ways of thinking have been and are the basis of the intellectual development, and thus a social progress. And vice versa: the unity and uniformity of the ideology in any society – a sure sign of totalitarianism, which is artificially and violently, engrafted unanimity, stopping every possible deviation from it. Existence in public consciousness of several ideals, varieties of each as well as different submissions about ways of its achievement naturally for the reason that people by its nature cannot think the same way. There were always different ways of justifying ideals, including legal”.

According to this quote we can say the following. There is no dispute that opinions about legal ideals can be different. It is useful, important and necessary. But the ways of checking of such opinions should be only scientifically reasonable, and not “always different”, as O.E. Leist writes. And it is not given of any argumentation of his opinion by O.E. Leist, but is making a frightening link to totalitarianism, struggle with other way of thinking, what made unsophisticated readers believe in it. Wherein, it is not paying attention to the fact, that

totalitarianism, strictly speaking, has nothing to the discussion about the ways and methods of cognition.

Scientific methods of cognition are able to identify and distinguish serious legal concepts from the legal concepts of mythical, adventurous-subjective, anarchic, frankly stupid, not realized and other ideas. It was well-written about this by M.I. Kleandrov. He paid attention that, unfortunately, is very rarely used simulation method of modeling the situation that arises in the implementation of specific proposals on improving legislation, law enforcement practice and etc. While using this method, regarding to the specific proposals of some dissertators, submitted them to the protection and, in fact, are the central in their thesis, we can say only one: God forbid, if it will happen. And so, without a model, externally it looks like a decent...¹

Thus, a unified scientific methodology is needed for the legal science. This function was successfully fulfilled by dialectics. The laws of dialectic acts and are the basis for the other scientific methods. Wherein, it was already noted that dialectic isn't forgotten in the west, on the contrary, is actively used. In particular, the famous American lawyer G. Berman uses dialectical method as a main research method for the creation of integral law. This way was supported by his students and supporters².

It is necessary to say that not all Russian lawyers refused dialectic. On the contrary, a broader approach to its study provides a great opportunity for the development of the universal method in law. For example, noteworthy efforts of V.M. Sirih according unity of dialectical ideas of Hegel, Marks, Engels and other scientists³. Certain steps in the cognition of the development of dialectical method of cognition in law have been also taken by the authors of a current edition.

¹ *Kleandrov M.I.*. PhD thesis of the lawyer: first steps of a researcher. M., 2004. P. 52.

² See: *Berman G.* Faith and law: reconciliation of rights and religion. M., 1999.

³ *Sirih V.M.* Logical foundations of the general theory of law. Volume 1. M., 2000. P. 180-190, 258-259 and others.

While it is difficult to understand, to what will lead these efforts. However, there is no doubt that these efforts are positive and go in the direction of the further development of science and its methodology.

According to all mentioned above, dialectical method of cognition will be long remaining as a universal method (methodological basis) for the philosophy of law, general theory of law and others legal sciences.

§ 5. Legal progress

Another significant problem for the philosophy of law is a legal progress.

In philosophy, the progress in the most general sense is commonly understood as a development from lower to higher¹. This understanding of the progress is quite for a long time became popular in dictionaries. For example, V.I. Dal defined the progress as a mental and moral movement forward². In modern dictionaries under the progress means the transition to a higher stage of the development, movement forward, change for better, improvement³.

With this approach, the progress acts as a component of dialectic. The basis of dialectic is development, increment of knowledge, movement forward, what is the progress. The fact that progress is inextricably linked with regression only emphasized its dialectical nature as a result of unity and struggle of opposites. For understanding and consciousness of this progress is important a starting point, which starts measurement according the principle “what it was” and “how then became”. From here it is possible to allocate the main properties of progress: relativity and concreteness. N.I. Kareev wrote: “There is no nothing absolutely perfect. There is only such relative and comparative perfections, and we can placed them in a well-known order...according to the degree of their removal from the imperfect to the nearness with our point of view...Using this ideal order to the sequence of historical facts, we evaluate the course of history as concurring or dissenting with these ideal order, that is as progressive and regressive and, summing up, expressing our judgment over the whole of a current history, determining its meaning”⁴.

¹ *Progressus* – movement forward, success (lat.)

² V.I. Dal. Explanatory dictionary of the living great Russian language. In 4 volumes. Volume 3. M. 2007. P. 478.

³ See, for example: Explanatory dictionary of the Russian language / A.E. Bahankov, I.M. Gaydukevich, P.P. Shuba. 2000. P. 281.

⁴ Kareev N.I. Philosophy, history and theory of progress. // Collected works. Volume I. History from the philosophical point of view. Saint-Petersburg, 1912. P. 122-123.

Progress is possible, apparently, in any system. Even if the system is constant and seemingly not altered, this condition of rest in historical period can be assessed as a progressive or, on the contrary, regressive. Indeed, to the condition of rest was preceded origination, movement, improvement. The condition of rest again, in the longer historical period may look like as stagnation, and perhaps, as a foundation of further movement.

In general our world and being tends to change and evolvement¹. This is evident in the environmental nature and in products of human activity, for example, techniques and in social life. Finally it is felt in the human consciousness. To the human's consciousness is objectively inherent dissatisfaction with achieved². After implementation it would seem the most desirable wishes coming temporary rest, and then again follow impulses for moving forward. And this is inherent not only to ambitious and dedicated, but also to self-sufficient people. The absence of the impulses of development, movement forward, tends to human degradation³.

The phenomenon of progress – regression is presented in all areas of the being, it is important to choose correctly the same starting point and time interval. In this regard, it can distinguish countless kinds of progresses: technical progress, intellectual progress, moral progress, economic progress and etc. In its turn, these kinds of progress can be dialectically enlarged or, on the contrary, divided. For example in technical progress we can allocate the progress in the field of mechanical engineering, aircraft construction, shipbuilding and etc. In economic progress – progress in the field of banking and etc. If to look from the other side, progress in the studying of nuclear physics is a component of the progress in physics as general and further – scientific progress.

¹ A. Whitehead was correctly noted that the humanity has only two ways: either progress or, degradation; conservatism in its pure form contradicts to the essence of the laws of the universe.

² E. Auerbach credited with a popular expression: dissatisfaction – is not only the source of suffering, but also a progress in the lives of individuals and entire nations.

³ “Who doesn't go forward, he goes backwards: there is no standing position” (the authorship of the expression is attributed to V.G. Belinskiy).

Here we note that it isn't necessary to associate progress exclusively with an active or sometimes revolutionary human's activity, on the attainment of new scientific secrets, reach of new highlights and etc. It seems that it isn't necessary to prove that movement and development of the materialistic world, nature, consciousness is going through the revolutionary way.

The obvious difficulty lies in determining of criteria of progress. Indeed, even specified kinds of progress are not so similar to each other and, accordingly, are radically different criteria of their evaluations.

In scientific and educational literature were met attempts of determining of the general, universal criteria of progress. The most interest was approach to understanding of this criterion through systematic-structural scientific approach. If to evaluate the progress in any phenomenon of the being or in the process of systematic-structural, so in general, universal criteria of progress include the following features:

- increase of the degree of differentiation (diversity) of system, combined with the integration of its parts, components;
- increase of mobility, efficiency and reliability of materialistic systems, increase of their ability to overcome contradictions;
- replication in the expanding scale the main functions of the system;
- growth of the system autonomy in relation to the external conditions;
- increase of the degree of organization and integrity of the system¹.

At the same time, this approach cannot satisfy all requests. So, it is obvious that it isn't completely applicable to the evaluation of the social phenomenon, even if consider them as a system. And especially not applicable to the progress in consciousness and to the mental progress, for knowledge that was carried out by many generations of philosophers.

¹ See, for example: *Alekseev P.V., Panin A.V. Philosophy. P. 492.*

Thus, the problem of defining the common, universal criteria of progress philosophy and science haven't decided yet. This makes the search for criteria of progress directly for each of its types¹.

Wherein, for the goals of a real research, of course, firstly is very interesting the progress in jurisprudence or the legal progress, which, is seems refers to the scientific management of the philosophy of law.

Here is appropriate to ask the question: does the legal progress exist? The answer on it should be positive. With the human's development improves law, legal regulation of its activities. Thus, the modern civil law is largely based on the Roman law, however left him ahead on the regulation of specific kinds of activities. In criminal law are justified and injected concepts of the offense, its elements, established the statute of limitations accountability, recognized as unacceptable physical punishments and etc. In criminal procedural law cancelled such kinds of the truth establishment as fight, ordeal and torment². So, the legal progress is evident.

At the same time this phenomenon hasn't been studied in detail by the philosophy of law. In this regard, the authors of a current work will be pushing in their researches from the philosophical understanding of the progress in general, based on what is logical to refer to its legal component.

The legal progress should be defined as the transition to a higher level of the development of law, improvement of legal regulation.

Originally we wanted to link the legal progress exclusively with *qualitative* improvement of legal regulation. It seemed that a quality change is a key concept, which fixes the transition from one condition to another. And this point of view, in principle was well justified. At the same time, summarized and again comprehended empirical material, it was decide to abandon from this approach. For example, as a result of scientific works is refinement of any concept in law. It

¹ The work of such scientists as S.M. Popova, S.M. Shakhrai and A.A. Yanik deserves attention and appreciation, who tried to measure progress in the economic sphere of life. See: Measurement of progress. M., 2010.

² F. Iskander noticed with humor: progress, my dear friends, it is when still kill, but not cut off ears

seems that it is a small detail, but such improvement – even minor! – allow understanding better the legal norm, avoiding failure in its implementation. Is it not a progress? Such clarification in this case isn't associated with a global improvement, doesn't led to the qualitative positive changes, but nevertheless it is still movement forward. And it means progressive movement! Furthermore, everyone knows the example about the meaning of comma in the expression “behead not pardon”. Does it always fully understand the meaning of changes in legal norms? Are they always can be calculated precisely? Probably not. Therefore, positive changes in the legal regulation are the progressive movement, legal progress.

The main characteristics of legal progress are:

- relativity;
- specificity.

Relativity of progress consists in definition of the subject (phenomenon, process, action and etc.) in relation to which the progress is evaluated. For example, in the USSR there was no broadening access to the world legal thought. And when the access has occurred, legal ideas have been considered through the prism of criticism. At the present time, each specialist has a free access to any books in law, has a possibility to express point of view on them and not to be subjected for that censure or even more repressions. That is, regarding the USSR in Russia in the part of legal science, access to the law the legal progress is evident.

On this basis, progress isn't a scientific abstraction, it is always concrete. The identification of progress involves specifics, clear and understandable result. Particularly, opening of the meaning of fingerprints allowed from the beginning of XX century actively use them in crimes investigation, what is objectively were not in the previous period. And if to compare criminalistical tools at the beginning of XX century with modern opportunities of criminalistics, is again evident an obvious progressive development.

As for the progress in general, the progress in one component of legal regulation often entails movement back in the other. These movements are happen

interrelated, independent and systematically. Consideration of law as a system of norms allows evaluating the legal progress through the prism of systematic-structural approach.

In this case, returning to the above mentioned, the legal progress will be characterized by the level of autonomy of legal system in relation to external conditions, increase in the ability to overcome internal contradictions, improvement of the degree of organization and integrity of system. To speak about full autonomy of law in the modern world development, of course, shouldn't. The right like any other social phenomenon is quite dependent on the external conditions.

For example, the change of the state course, political regime will inevitably entail changes in the legislation. We can speak about autonomy of system only in the context of that the law even during inevitable changes will implement the function of justice, human protection against illegal encroachments, ensuring legality in the state, respect of human's freedoms and his dignity. That is, even under significant changes of the state, the law should protect people from violence, humiliation of its dignity and personality, prevent from torments, tortures, tyranny.

The legal progress can be viewed from two points of view: global (broad) and specific (narrow). The global approach is associated with human development in general, its legal consciousness, legal culture. In a global sense, occurring in a modern society legal processes will be appreciate by the followers not soon, not earlier as in a hundred years. In its turn, nowadays it is possible to evaluate the presence of legal progress in comparison with the previous centuries. And, as was already noted, there was made a conclusion about the presence of legal progress, what expresses in the prohibition of tortures, in the improvement of the law of evidence and etc.

A narrow approach to the study of progress is related to a specific (mostly contemporary) stage of human's development. It is always necessary to evaluate the legal processes in the narrow approach.

Currently, in the legal reality is observed as the diffusion of different legal systems and their further distinction, separation; as the learning experience of other countries in the part of legal regulation and stubborn adherence of the country to “its” course, ignoring of international practice; as the implementation of the advanced scientific achievements and completely ignoring of the scientist’s opinions, pushing them off from the possibilities to influence on the process of the formulation of laws; as the clear movement to the direction of improvement of legal regulation, and, on the contrary, the pendulum motion, that is, the adoption of one concept, then a withdrawal from it and adoption of the conflicting concept, then again return to the first one and etc.; as edition of legal regulations for “long term use” and for “specific person”.

In 2010, by the authors of a current work, was conducted a really interesting research of legal progress over the past 25 years.

They were interviewed 800 people at the age of 50 years, who have a higher education. 400 people from them have a higher non legal education and were not related to the legal sphere. Another 400 people have a higher legal education, worked in law enforcement or taught legal disciplines.

The age of the interviewed people was not chosen randomly. If we take their minimal age – 50 years, so, respectively 25 years ago (in 1985) they have already been grown educated people with an established worldview and system of values. Although this question wasn’t asked, but most likely each of the respondents by 25 years has already huger education or at least received it. That is, each of the respondents has the ability objectively enough and analytical “mature” to evaluate legal processes, which have been happening in Russia over the past 25 years¹.

Respondent were asked two questions:

1. How, in your opinion, changed the law, legal regulation over the past 25 years? What became better and what is worse?
2. Has the legal regulation over the past 25 years improved or worsened?

¹ The elderly interviewed was my teacher and co-author of two monographs, participant of the World War II, honored lawyer of the Russian Federation, Professor *V.I. Rohlin* (born in 1926), who dead in 2014.

Among non-lawyers:

47% of respondents said that the law, according to their estimates, 25 years ago was more equitable than it is now. Wherein 41% noted that at the present time the court decision depends more on money, relations, status, administrative resource than earlier;

34% of respondents noted that nowadays a person has quite more possibilities to study law by himself and receive legal information. Wherein 50% said that at the present time there are more legally literate people than it was earlier;

However 62% showed that the law, according to their opinion, became more complicated and contradictory. And despite the accessibility to the legal acts via Internet, it is difficult to understand them without the help of legal professionals, and 59% said that nowadays the law became not for the people in the broaden sense, but for the lawyers, which are making it more complicated, because there is no simplicity of presentation in the law.

27% as a positive noted that at the present time, in relation to the previous, became much more individual rights and freedoms (especially freedom of speech and movement). But 18% objected that nowadays, in comparison with the previous time, in law forgotten interests of the state and society.

Wherein 71% showed that 25 years ago they felt themselves much more protected by the law than now. Perhaps, that's why in relation to the legal progress over the past twenty-five years interval the respondents said the following:

- 54% of respondents said that the legal regulation over the past 25 years has generally worsen;
- 32% on the contrary, showed that the legal regulation has improved;
- 14% were troubled with answer¹.

¹ We would like to note once more that among non-lawyers were interviewed only people, having a higher education.

An interview of lawyers gave the following answers:

68% of respondents said that the law became more contradictory than earlier;

72% said that in comparison with other years, the legal array has significantly increased. Wherein 67% showed that now, due to necessity, greatly extends the narrow specialization of the lawyers. If 25 years ago specialization wasn't so obvious and has a general character (for example, specialist in criminal law and specialist in civil law), but now only in the civil law appeared and developed dozen of areas, requiring the deep of knowledge in the specific cases and events.

According to the opinion of 34% of respondents, at the present time became more declarative legal regulations, having no legal mechanism of implementation. In this development 28% has paid attention to the absence or lack of mechanism of accountability for non-compliance in comparison with the previous years.

45% said that earlier the law was more equitable than it is now and generally was less dependent on the official position, personal relations and money. So, earlier there were much more opportunities and chances objectively and impartially consider the case, dispute and to obtain a fair result. About that now, the legal regulation become to strive to more justice, than earlier, said only 2% of lawyers.

70% noted significantly increased for the past 25 years the level of legal literacy of the population. Wherein, 47% reported a sharp fall of legal awareness of the population and desire to know the law in order to avoid responsibility.

73% of respondents showed that in contrast to the previous time, now in law there is a priority of personal rights and freedoms over the social and state interests. However 41% of respondents are not evaluating positively the appeared priority of personal rights and believe, that now, there is no an optimal balance between personal rights and social and state interests.

In relation to the legal progress over the past twenty-five years interval the lawyers said the following:

- 37% of respondents said that the legal regulation over the past 25 years has generally worsen;
- 36% on the contrary, showed that the legal regulation has improved;
- 27% were troubled with answer.

Obtained results we think are interests to all: as for the lawyers and for non-lawyers, as for the participants of interview and also to the broad mass.

Evaluating results it should definitely to bear in mind, that over the past 25 years, has occurred a fundamental break of the existed order in Russia, has significantly changed legislation (research, as it was mentioned, was carried out in 2010). During drastic changes in the first stage are always arise significant contradictions of laws, inconsistencies of regulations, different interpretations of one or other events¹. On the stages of break-up of the existed order and social being, legal regulation, apparently develops regressive. However, in the future it is aligned and developing already forward. It seems that if the survey would be conducted shortly after 1917 and the subsequent civil war, so the legal development also would be named as a regressive, rather than progressive. At the same time, subsequent years have brought to the soviet law significant achievements.

There is a confidence that criticism of the contemporary legal regulation, firstly, is objective, secondly, many of the expressed comments, will be removed later.

Results of the survey are very important, because on their basis it is possible to allocate the basic criteria of legal progress. Criteria, which are important exactly for the law, concerning not only lawyers, but all members of society.

First. It is obvious that all are waiting for justice from the law and legal regulation. The constant achievement of justice is one of the main criteria of the evaluation of legal regulation. Furthermore, justice gives confidence in human's *protection* by the law against wrongful actions. And the vast majority of people are

¹ Common phrase: «God forbid to live in the era of changes», - is very appropriate here.

evaluating the law on the basis of whether they achieved justice, a fair decision in the legal dispute. In this case they feel themselves really protected.

It is significant that almost all layers and non-lawyers, covering the theme of justice, clearly believe that over the past 25 years the law and the legal regulation became less equitable, became fewer opportunities to receive objective and fair result.

Second. The legal progress is associated with the *comprehensibility* of legal regulations, *simplicity* of its presentation. Nowadays, apparently, there is no need in such criteria, as legal accessibility. Regulatory legal acts via Internet and other communicative tools have become available for all. But the other criteria of progress – comprehensibility and simplicity of legal norms – have become more evident. Accessibility to the text of the regulatory document doesn't mean its comprehensibility, simplicity of understanding and application. All people, lawyers and non-lawyers are striving exactly to the simplicity of presentation of norms, and proceeding from it – to the comprehensibility of norm. Comprehensibility and simplicity of presentation are the main step for overcoming of legal illiteracy, impossibility to be fooled and, consequently, to minimize the possibility of committing against themselves and their nearest wrongful actions.

It is well-known phrase about that if the laws were simple and understandable for all, there will be no need in lawyers. Life logic and human life experience suggest that we will never achieve that the laws become understandable absolutely for all of us and simple for perception. Lawyers don't need to uptight for their occupation. However, it is always necessary to strive to the clarity, serenity and perspicuity of legal norms. And this, without any doubt, is an important criterion of legal progress.

A definite progressive step is a book, which was prepared by the collective of authors under the direction of T.Y. Khabrieva and Y.A. Tikhomirova, related to the conception of the development of the Russian legislation. It is quite clearly in it sets out directions and perspectives of the further improvement of the Russian

legislation that allows to lawyers, businessmen, politicians and other interested readers to look forward¹.

Third. To talk about the legal progress is possible only if the legal norms are not wearing declarative character, but having a clear *legal mechanism of implementation*. The survey showed that many regulatory legal acts are not implemented due to the reason that the mechanism of its application hasn't worked out. When the norms only declare something and nothing more, they became a shield, behind which can be created lawlessness. Such norms are dropping the authority of law in the eyes of law-abiding citizens, provoking them into committing illegal acts. Only a clear and consistent procedure of the implementation of the concrete norms allows coming to the desired result – to the legal order.

Fourth. Criterion of legal progress is *the level of legal awareness and legal culture* of the person. If the law in all its diversity and the state was able to increase the level of law-abiding people, so this, without any doubt, is an important criterion of legal progress and as an accomplished fact, and as basis for further development.

Conversely, the low level of legal awareness shows distrust of the population to the law, doubt in his ability. Under such circumstances it is frivolous and ridiculous to talk about the legal progress. From such kind of law will not wait for justice and protection; its clarity will cause a smile by population, because regardless to the requirements of norms, the law will not be respected; the legal mechanism of implementation of norms will not be interested for anyone.

This criterion can be specified as the level of credibility to the law.

It should be said that the survey showed another moments, requiring understanding and relevant adjustments in the legal politic. Over the last 25 years a person, his life, rights and freedoms have been recognized as the highest value. Many specialists are considered the merit of modernity priority of the human's

¹ See: Concepts of development of the Russian legislation/ under editorship T.Y. Khabrieva, Y.A. Tikhomirova. M., 2010.

rights over the public rights. It is noticeable for the population: as for lawyers and also for non-lawyers. However, the attitude to this state of affairs, as the survey showed, is far from identical. Firstly, from the non-lawyers on the priority of personal rights paid attention not a significant number of respondents and most of them said that now in the law are forgotten interests of the state and society. Among lawyers the fact of priority of the rights of personality over the public indicated a significant number. But also there, what is significantly, the majority of specialists has evaluated this priority not positive and has specified that now there is no balance of individual rights and public interests.

Before the survey the authors believed that the protection of human's rights, priority of the human's rights will be one of the criteria of the progress. However, based on the result of the survey, we need to convince that the priority of individual over the public is considered to be not only the progress, but also according someone's opinion evidenced about the regressivity of legal regulation. It is possible that in other countries it looks different. But in Russia, as repeatedly stated, the rights of the state and society are in the scale of importance traditionally placed lower than personal rights.

In this regard, it isn't even clear whether it is possible to select as a criterion of legal progress existence of a *reasonable balance between interests of individual, society and the state*. In the proposed phrasing, probably, it is possible. But with compulsory condition that above named balance will be really perceived by the population and society.

Therefore, dialectics shows that from the one hand it is logical and correct seeking to establish a clear legal regulation of all legal relations. From the other hand – its opposites – people are striving to install brevity and clarity of the regulatory legal acts, and not to its bloating, complexity and severity of perception, what is inevitable with an increase of legal array. This dialectical contradiction situated in the center of legal regulation.

At the same time, there is a clear accumulation of legal knowledge, increases its number. Wherein, there is no transition to a qualitatively better measurement.

However, it is clear that we are on the way from the transition of the quantity of the regulatory legal regulations exactly to the side of its qualitative improvement, simplification and ease of usage.

Thus, the main criteria of legal process are:

- achievement of justice in legal decisions, human's protection by law;
- clarity of the regulatory legal actions, simplicity of its presentation;
- clear legal mechanism, for the implementation of standards;
- level of legal awareness and legal culture, level of credibility to the law;
- presence of a reasonable balance between interests of individual, society and the state;

Above mentioned researches and conclusions allow to talk separately about the values of law.

First it is necessary to say that the question of what are the values of law, theorists and philosophers of law traditionally hasn't come to one conclusion. There are called different approaches. But what we would like to draw your attention!

In one of the last books on the philosophy of law, published under the editorship of the esteemed M.N. Marchenko, concepts of values and values of law are given quite subjectively. The author of chapters about the values, PhD in philosophical sciences V.N. Zhukov accidentally or essentially retreated from the accepted in society approach to values as importance, significance, benefit, usefulness and etc. It was based on the principally another approach, according to which "in the broader sense, under the values usually means phenomenon of the reality (facts of ideal and real world), having *one or another* (authors italics - S.Z., V.S.) meaning for society, its groups or separate individuals"¹. Then he writes that the division of values for the positive and negative is accepted far not by all. If to understand under the value some usefulness, so there will not be any of negative values. But if we proceed from understanding of values as phenomenon of reality,

¹ Philosophy of law. In 2 volumes. Volume 1. / under editorship M.N. Marchenko. M., 2014. P. 301.

having some value for people, so the recognition of negative values are quite justified¹.

The approach, which was outlined by V.N. Zhukov, really exists in philosophy. It is associated with the worldview of the thinkers that many social phenomenon can be perceived positively by one and negatively – by another. That is, the same phenomenon is a positive value for one and negative value for another. On this basis separate philosophers has formulated conclusion that there are no values, which are only positive or only negative, based on what values were suggested to be considered as a contradictory phenomenon.

However, this approach is shared not by all philosophers. And first of all and foremost, because phenomenon and values cannot be considered as synonymous. To different phenomenon it is possible to relate differently – that is. But the word “value” is specially highlighted as a concept, initially having a positive meaning, positive color. Under the value understands that subject or phenomenon, positive meaning, usefulness or importance of which has been already proved and evaluated. In relation to these subjects (or phenomenon) are said that they are useful. The value is estimated, or to be exactly – positively estimated category of the phenomenon or subject. For the negative assessments in the science and in the Russian language there are another terms, but not the word “value”. Otherwise the society will get confused in these concepts.

For the law, proposed by V.N. Zhukov statements about negative values are not acceptable at all. Then it will be necessary seriously to talk about the value of crime, including the value of terrorism, deliberate murders, cannibalism, child abuse and etc. It is not clear, why in the description of such actions to use the word “value”. What is the sense to evaluate such action as cannibalism and actions of the serial killer, who has raped and killed children as “negative value”? It seems to us, that the statements of V.N. Zhukov are close to sophistry or he didn't fully understand what the law is.

¹ Ibid: P. 322.

Furthermore, such phenomenon as crime always by far negatively perceived by all the society and law, what is clearly refutes the theory of individual philosophers, who claims that all phenomena are contradictory. If to assume hypothetically that crime has a positive value, so then we lose the meaning of the law itself, legal relationship.

And finally, it is not clear, why the named arguments of V.N. Zhukov to put in the book! Described by V.N. Zhukov approach to the values, as it was already mentioned, isn't supported by many philosophers. And we share their opinion.

I must say that the quoted book on the philosophy of law under the editorship of M.N. Marchenko was very useful and informative. It deserves positive rating. But the third section, which was written by V.N. Zhukov and devoted to the axiology of the state and law, seemed to be failed.

We also don't agree with the approach that the right itself is considered as a value by the philosophy of law. The right – is a dimensional, contradictory phenomenon. However there is no value in it. On the contrary, every person and every society want that it will be consistent, understandable and easy for implementation.

Wherein, the right itself, without people and without life, has absolutely no value. For this, it may seem, not complex conclusion, is necessary to pay attention that's why. The existence of the human and humanity on the Earth, of course, are the values themselves. If to take the stage below and determine which values are *in life*, so this list can be very long and individual. Here are health, and work, and leisure, and family, and friends, and books, and science, and education and etc. But if the law can be referred to such values? As it seemed – no, for the simple reason that the law as it was already mentioned is a compulsory companion of the human existence. Without the law, even established by the person itself for himself, simply not able to exist. Moreover, without law, even at the primitive level of legal traditions, there can be no one society. The same as the person cannot exist without food and air. Is the air is a value for the person? The value is *pure* air. And the air by itself – it isn't a value, but simply the necessary means of existence. If it will

not be air – there will not be a life. The same as a value is *healthy, useful food*. But the food by itself – only the necessary means of existence of the person and humanity.

Also the law by itself is compulsory condition of human and society life. If the person will not have human rights, any norms, defining its activity, he will not be able to survive. But the *justice* of law, *simplicity and comprehensibility* of its norms and etc. – are already values of the law.

Maybe for solving the problems of axiology of law the starting point is to make developed basic criteria of legal progress: justice in the legal decisions, human protection by the law, comprehensibility of the regulatory legal acts, simplicity of its presentation, clear mechanism of the implementation of legal norms? Indeed, especially they are very valuable for society, people and a specific individual. And the law, as it was already noted, is need not for itself, but for the people.

Chapter III

LEGAL SCIENCE: ACTUAL PROBLEMS OF CONTEMPORANEITY

§ 1. General problems of scientific works in jurisprudence

The concept of this book covers research of legal science. In the proposed chapter indicated common and very frequent omissions of scientific works on jurisprudence, touched contemporary problems of teaching of legal disciplines, ethical problems of legal science and other questions.

The end of XX – beginning of XXI centuries in Russia was characterized by the increase of the PhD theses and monographic works on jurisprudence. The increase of the interest to the law seems to be greeted. However, getting acquainted with researches, involuntarily pay attention to the fact that, unfortunately, not all of them are really relevant, revealing a new layer of problems by theoretically and practically meaningful works. It is necessary to be objective. Some of the dissertators have received degrees of candidates and doctoral degrees of legal sciences as a tribute to fashion. Putting a scientific degree on business card, these people ceased their communication with science or almost ceased.

In the end it turned out that people who are actually willing to connect their life with science, actually turned out to be not so much. In this chapter is talking about the works of these people. Analyzing the submitted research, we drew attention to some important circumstances, about which I would like to speculate.

1. In large part of monographic works, mainly in the sectorial legal sciences loses the connection with the philosophy of law. In fact, this leads to the fact that not all possible methods of research are used in the specific case, but one or two (although it is specified that applies all of them). Hence is suffering and the completeness of the study, and the objectivity of the results. Sometimes is broken the logic of the presentation of materials. The conclusions are not taken into account historical dimension, without which it is impossible to evaluate the

contemporary condition of legal being. And many other comments, characterizing the retreat of the philosophers from the philosophical-legal settings.

About the observing process was written very correctly by D.A. Kerimov. According to his opinion, breakaway of the sectorial legal sciences from the philosophy of law is fraught with danger play only the traditional problems, which have been solved and known long ago and distract from the new problems, which are constantly proposed by the activity of society. It is necessary to refuse from the tendency of the separate representatives of sectorial legal sciences to proclaim in their works in the beginning of one or another philosophical-legal principle, and then “forget” it. And only at the end this principle again “remembers”, in order to show the correspondence of obtained results to the original philosophical-legal principle. This method of legal research turns philosophical-legal principle in the shield, behind which is possible to hide from the reproaches in philosophical-legal ignorance, and the research by itself, in fact deprived of philosophical-legal basis, loses scientific importance and acquires pseudoscientific form. Therefore, the usage of methodological principles of the philosophy of law in the sectorial legal sciences should be meaningful, “with knowledge of the case”, creatively¹.

Indeed, in many applied works, authors write about that what are they caring about, not always paying attention on the bases of philosophy, sociology of science, jurisprudence, sometimes even not knowing of this bases – but, wherein, not forgetting to specify in the methodological basis of the research, the methods which they have been used. However, without philosophical foundation each science becomes a fiction, vinaigrette of judgments, logically not related to each other.

It seems to be important that on the indicated problem will pay attention chairmen and members of the dissertation councils, scientific advisors and consultants and also specialists by themselves.

2. Another comment refers to good and full monographic researches: their scientific results are implemented slowly or not implemented by the legislator.

¹ *Kerimov D.A. Methodology of law. M., 2000. P. 82.*

The results of the scientific researches, are formulated into concrete proposals for amendments to the legislation, in their vast majority remain only “on paper”. It is associated with the absence of the necessary connection between the scientists-legislators and legislative authorities. Many interesting and useful proposals are not studied at all. There are no departments in the apparatus of the legislative authorities, the task of which will be the study of the results of the scientific researches. And, on the contrary, in scientific councils and agencies there are no functions to bring the results and proposals of scientists to the logical end.

As a result, conclusions of the specialists remain in monographs, scientific articles, dissertations where they sometimes “die”. The necessity during the preparation of dissertation and approbation of the results also doesn’t give much effect.

Perhaps, the time has come to create a scientific center, the task of which will be to bring proposals of scientists to legislators.

Creation of such center, of course, associated with a big amount of problems. Firstly, it is, naturally will not be able to “digest” all the proposals of the specialists. Secondly, these proposals can “fill up” for many years as the center and also legislative authorities. Thirdly, not all proposals of the specialists should be released for consideration, for example, the State Duma of Russia. In particular, taking into account the polarity of the views of specialists according separate problems – in the fourth. There are other objective problems.

But still, the function of the implementation of the scientific proposals in the area of law is needed. Accordingly, there is a need of authority, implementing this function into activity. As a working version of the functioning of system of implementation of the scientific proposals can offer the next one. It seems that there have to be a specific and multi-level system of the evaluation of proposals. As a variant: if specialist has analyzed the practice of application of legislation, came to conclusion that it is necessary to make adjustments in the law, approbated results, so he should receive for this reason conclusion from the scientific organization. This scientific organization (it can be university, scientifically-

research institution or dissertational council) should submit proposals to the academic center. In this center, these proposals should be explored by the specialists and after expert evaluation to send to the appropriate parliamentary committee or the apparatus for further study and then for submission for consideration by Parliament or by legislative authority of the constituent unity of the Russian Federation.

In principle, there is nothing original in this scheme. It is very similar to the existed method of the evaluation of dissertations. But during consideration of the dissertations, expert council of the Higher Certifying Commission, for example, evaluated, if the work is worth to be honored by the scientific degree. However, expert council isn't responsible for "promotion" of the researches results. As a result it was happened so: the author of the relevant work, containing important proposals, received a scientific degree, but ideas and proposals themselves haven't been anywhere implemented. It was also so that ideas have been implemented after some time, when the necessity of changes, what is called, "overdue". And later deputies expressed confusion: where were the scientists before, although importance and urgency of changes have been already formulated in dissertations, in which there were also relevant draft laws.

Regardless to dissertations, if they contain concrete proposals for improving legislation, so according the request of the dissertation council they also need to be sent to the center for evaluation and implementation.

It seems that the proposed way, from the one side should increase the status of scientific-legal organizations, and from the other hand, increase responsibility of these organizations.

Scientists and legislators should move toward each other. Parliamentarians should be also particularly interested in the quality of the adopted laws. That's why should be more common the practice of expert legal assessments of draft laws and if necessary their extensive discussion in the scientific community.

All above mentioned will provide an opportunity to bring together scientific proposals and their implementation.

Otherwise, what is actually happens now, there is an objective gap between practice, law and science. For example, the law declares one thing, in practice requirements of the law sometimes distort, change, pervert or simply not implemented due to various reasons. Sometimes such reasons are objective, sometimes – not. Such processes are revealed by science. It reveals noncompliance of the law, reveals the causes, formulates proposals, which are reflected in the scientific (first of all, in monographic and dissertational) works. And further these proposals are remain to be unclaimed¹.

Then appears a new researcher, who reveals the same, already known problems, adds to them authors comments, which sometimes having no principle character – and defends a new thesis. But this movement in a circle doesn't end in it. And after a short time there is a new specialist, “revealing” the same problems, formulating similar conclusions, rightly insisting on that the necessity of amending into the law is already overdue – but, as the old proverb said, and a cart is often still there.

Furthermore, it is important to understand that a significant part of proposals according improvement of legislation is having technical character. In many laws there is a lack of clear definition of terms, updates, additions of a few words and sometimes even a comma. These proposals during implementation will only improve and simplify the law, isn't changing its spirit and without requiring significant time, financial and other costs. However, these laws are rarely implemented.

In Russian Federation more or less is operating mechanism of implementation of the achievements in medical science. In jurisprudence, in fact, such mechanism hasn't been created. However, it is necessary to notice that a

¹ For example, from 1995 and to the present time, were defended more than two dozens of candidate and doctoral dissertations, devoted to the usage in criminal proceedings the results of the operational-search activity. In the vast majority of theses was justified by necessity to regulate the order of usage of such results in the Code of criminal procedure and cited specific proposals. At the same time, the order of the usage of the indicated results in the Code of criminal procedure isn't regulated.

scientist-lawyer – is a very big and prestigious occupation. The state and we by ourselves shouldn't allow our specialists to write “into the table”.

It is necessary to consider the following.

The life is objectively shows that it is impossible to prepare voluminous regulatory legal act, taking into account all cases even in a particular branch of law. There are always dozens of examples, not covered or not sufficiently regulated in this act. Any code requires additional clarifications on its application. To fill existed gaps is used the interpretation of the law “in the spirit of the law”, which comes from the perspective goals, tasks, principles and etc. However, they are not always able to help.

Then occurred a question: where else reflects the spirit of law? Oddly enough, there is such a document. It is an explanatory note, attached to the draft law before its consideration in the legislative authorities. It usually indicates relevance of the adoption of law, its priorities and the main moments, which are subject to be changed. As many parliamentarians – not lawyers (and even if they are lawyers, but not usually specialists according the branch of the adopted law), they, in order to understand the meaning of the proposed changes, first of all read this explanatory document, from which often vote. Exactly after reading of this explanatory note it is possible to understand about what thought deputies, while adopting it, and. Finally, why the law was adopted in a specific moment (neither earlier nor later).

Moving in the direction of openness and democracy, it would be preferably to publish these explanatory notes.

It is important and other. It is difficult to approve, but, apparently it happens that the explanatory note doesn't reflect the character of the regulatory legal act. That is, in the note are written correct targets, but the norms by themselves are outlined in such a way, that their implementation of declared goals will not be able to achieve, in case of acceptance of an alleged law the legal regulation will become worse.

In this case, by the way, it will be clear, who and for what purpose have mislead deputies. Furthermore, publication of the note will give an opportunity to the scientists, who are not directly admitted to the draft laws, to engage quicker in discussion, to clarify standards, to offer variants of achievement the goals or to persuade that the acceptance of such law doesn't correspond to the specified goals.

For example, in 2000, more than a year, a group of professionals wrote a project of a new Code of the criminal procedure (CCP). Toward the project was prepared explanatory notes, persuaded deputies of the State Duma of the Russian Federation to adopt this Code. CCP will become effective after six month of publication. However, as it only was published, scientific community and practitioners have revealed so many shortcomings and omissions that in haven't yet enacted law (!) hastily made dozens of amendments. On this, of course, nothing has ended, but only begun. Nowadays, for a ten-year history of a modern CCP, it was made in it over 700 amendments. It is obvious that the law was adopted absolutely not prepared.

This raises a few questions.

The first one to practitioners: if it is possible to work under such conditions, to fight with crimes, to protect victims and illegally blamed? The answer is clear.

Another question is to the deputies of the State Duma: how it was possible to adopt such a law?

And here it is likely to read prepared by authors of CCP explanatory documents to the draft law. And then to ask, why they have misled deputies: due to their arrogance, intentionally, due to ignorance of objective reality, due to some other reasons? I would like that from this, in general, shameful story for the law, deputies will also make conclusions.

D.A. Kerimov noted that at the present time the Russian legislator falls into extreme, when at least take into account the objectivity of the regulation of social relations. As a result, appears not only confusion in legislation, but law and order gives the way to the chaos and tyranny. The absence of the legislative culture and ignorance of the orders of legislative mechanism by the majority of deputies, and

also official authorities of the state structures, as a result will lead to a sharp separation and breaking ties between objective and subjective, to the underestimation of their dialectical intersections and mutual transitions¹.

Explanatory note is better to publish not with already adopted relevant law, but earlier. To install, for example, a practice that explanatory notes and voluminous draft laws (for example, codes) should be published at the moment of their admission for consideration to the State Duma. This will allow scientists quicker to get involved in the discussion and to avoid stupid things in the law. After all, that is not the absence of clearly-defined criminal procedural strategy, which, defensively, may be refer the authors of this sad CCP, and in that proposed by them and adopted by the State Duma the first variant consisted entirely of gaps, omissions and holes.

It should be said that after adoption of the CCP it was criticized, and rightly, almost by everyone. But the question is why there wasn't such a wide discussion of this law before the adoption? And why comments were not perceived by a small group of specialists, who have already seen the project before consideration by the State Duma and tried to amend it?

In the legislative experience there are many more outrageous facts. But since we are talking about the criminal process, it is necessary to give an example from the above branch of law. In 2000, the State Duma of the Russian Federation issued a Resolution dated 26th of May, 2000 № 398-III "On declaring amnesty in connection with the 55th anniversary of victory in the Great Patriotic War of 1941-1945". Subparagraph "b" of the paragraph 8 of the Resolution demanded to stop all criminal cases, being in production of the preliminary investigation authorities and courts, on the crimes, which were committed before coming into effect of this Resolution, in respect of persons who were awarded medals of the USSR or the Russian Federation.

¹ *Kerimov D.A. Methodology of law. M., 2000. P. 103.*

In this formulation the deputies, of course, didn't notice anything special. Didn't notice that the reference in the paragraph 8 wasn't about prisoners, but only about suspects or the accused. Didn't notice that there is no matter for this paragraph, according what crime (minor offense or particularly serious) the person is accused.

In the end, the effect of this paragraph was extended to the bandits in 1990-ies, if those have state awards. And taking into account that these criminals, as a rule, had experience of combat actions in Afghanistan and Chechnya and had awards, they had to be released from the custody and stopped their criminal cases. Moreover, according to the CCP of that time in order to stop the case due to the amnesty, it wasn't required that the person convinced himself guilty of a crime commitment. It was only necessary his acceptance to the application of amnesty. And investigators have not once heard from the accused: I pleaded myself not guilty, but agree in the application to myself of the amnesty and termination of the criminal proceedings. The reasons for the consent to the application of the amnesty were very different, but understandable: desire to be free from the custody, unwillingness to communicate with the legal proceedings. However, for the majority of the described groups of people didn't matter, for rehabilitating or non-rehabilitating ground a criminal case stopped against them.

One of the deputies of the State Duma, who adopted this absurd resolution about amnesty, justifying himself, explained, that he and some of his colleagues understood this paragraph differently. Namely, that if the defendant in a criminal case is a veteran of the Great Patriotic War, having awards, it is necessary to release him and to stop the case.

A month later (in June, 2000) in a hurry mode, by the State Duma of the Russian Federation was adopted Resolution, which correct containing in the above mentioned resolution absurdities about amnesty. But someone had to be already released. And nothing prevented to publish in advance the project of that the deputies would like to adopt. In this case gaps and mistakes would be immediately identified by scientists.

In general, above mentioned shows the problem of isolation of the broad layers of scientists-lawyers from the authorities of adoption of legal acts. Then, in fact, not supposed to be.

Given the fact that in the State Duma, Council of the Federation and government authorities there are not enough non-lawyers, it turns out that the scientists sometimes receive possibility to study law and legislation, which was adopted not by specialists. It is necessary to realize the stated problem and to find ways of its solution.

It should be said that there is a book, having positive assessment, which was prepared by the Institute of legislation and comparative law under the Government of the Russian Federation and dedicated to the concepts of development of the Russian legislation (under editorship T.Y. Khabrieva and Y.A. Tikhomirova)¹. The concepts of development should be published and widely discussed, in order on their ground, taking onto account received comments and suggestions to prepare a high-quality law. Maybe, it would be better exactly for the indicated institute to take on it coordinating role to promote proposals of scientists.

3. In scientific work on jurisprudence is almost never considered and forecasted economic effect from the received results and formulated proposals. Moreover, proposals and conclusions sometimes can have very serious consequences both: political and economic character. But this side is very important for implementation of proposals, is totally overlooked.

For example, expressed in the constitutional law ideas about the return of a direct gubernatorial elections require serious economic costs. In the customs law changes in the labor Code of the Russian Federation can significantly increase or also significantly decrease profitability of the budget of Russia. In the land law some proposed changes require enormous economic investments, which are not considered by dissertators.

¹ See: Concepts of development of the Russian legislation/ under editorship T.Y. Khabrieva, Y.A. Tikhomirova. M., 2010.

As a clear example can be works in administrative law, devoted to the necessity of the reformation of government authorities. According to the program of reformation, supported by scientific work, dozens of departments of the ministries and organizations have been restructured, renamed. Even the militia was renamed into police. As a result was spent a huge amount of money. Are incurred costs will be paid back?

At the present time Russia lives in a market economy. Accordingly, while formulating conclusions and proposals it is necessary to understand, firstly, costs for the implementation of proposals, and secondly, economic consequences.

M. I. Kleandrov wrote correctly about this. He noticed, that quite often justified and made proposals that simply cannot be implemented. By the way, this is sometimes inherent to the Federal legislator. And norms of a number of laws and some proposal of individual dissertators (maybe can be served as the theoretical basis of these standards?) intended for execution in an ideal society, to which Russia is still far. Therefore, is there any wonder that laws are often not implemented or implemented “exactly the opposite”, the fact that some laws individuals are trying to “adapt” by themselves in order to use them in personal selfish interests (e.g. – bankruptcy law)¹.

Thesis in its sense – is a project for the improvement of legal regulation. Any project, except purely theoretical, have to be calculated, determined its costs, investments, benefit. This is not happening. Hence are formulates, as was said by a classic, proposals on a cosmic scale and the same stupidity.

There are also positive examples. Thus, humanization of the criminal-law legislation in reducing punishment of imprisonment for economic crimes contributes to reduce costs on the maintenance of convicted. Proposals to enhance the usage of such kind of punishment, as penalty also contributes of increase of treasury and not incur any extra charges.

Of course, the thesis on jurisprudence should not be devoted to the economic calculations. However, it is very important to take into account the costs for

¹ *Kleandrov M.I.* PhD thesis of the lawyer: first steps of a researcher. M., 2004. P. 52.

implementation, to understand economic effect. And of course, the costs should be balanced with benefits from the implementation of proposals. That is, if innovations requires costs, but the population of Russia will benefit in protection of their rights, freedoms and justice – such ideas are useful and requiring implementation.

4. In addition to economic benefits, there is also political effect, social effect and etc. In other words, specific benefit from substantiated changes in the thesis. But this benefit also isn't always forecasted, evaluated and even mentioned in the works.

Often, it happens due to the fact that dissertator doesn't see or doesn't set up the final goal of its research. The standard, referred to dissertation phrase is said that the author wants to make suggestions to one or another regulatory legal act, in order to improve regulation of the social relations in a specific field. But even if to agree with its proposals and to make amendments, regulation of social relations isn't going better. In fact, there was not depth in the work, but analyzed regulation of social relations in general, isn't evaluated the whole regulatory legal act, and considered only its small part. And the act itself, as it turns out in protection, isn't perfect and doesn't correspond to the realities of the time. And the fact that it will be made meaningless changes, the situation doesn't change in a positive direction.

As a result formulating proposals, which are something clarifying, but which actually have no effect, because regulatory legal act is imperfect by itself.

What are the benefits of such studies? There is a minor benefit – better understood a little segment in one or two norms of the law. Probably, it will bring a benefit, but due to a condition of change of regulatory legal act by itself. And nothing else. As a result it's a pity for works of candidates.

5. Artificial complication of science.

Legal science annually grows with new knowledge (at least we want to believe in it). Various studies are conducted, which are covering different sides of legal reality, formulating conclusions, clarifying concepts. Ultimately, such movement creates scientific progress, which can be greeted.

However, along with that, happening imaginary movement forward, *artificial complication of science*. This can be attributed to the several typical cases, encountered in many dissertations:

- desire of applicants to bring all vital functions to the legal norms, to regulate in the law all that is possible according to the theme of their researches. In dissertations almost in every specialization can be met proposals about inclusion in law one or the other definition, legislative regulation of private cases of application of certain norms and etc. Instead of, as the sages said, to make laws simple and understandable, it is constantly propose to add them, to regulate in detail, “to make heavier”. Attempts of simplifying the laws are very rare;

- many dissertators, who are developing specific theme, trying to give her “their” definition. In fact, it turns out that this new definition isn’t new at all, and represents itself retelling of another definition. If there is no possibility to suggest new definition, so the applicants definitely trying to clarify something in already existed concepts. This process is almost endless and, as a rule, is empty from the point of view of the content. In our informal question to one of the applicants about what for he is going to rephrase already existed concepts, he answered honestly, that he would like to bring something new;

- artificial “complication” of language. Some specialists are having tendency to use terms which are difficult to read and difficult to reproduce. Simple and clear words are replaced with synonyms, which are rarely used even in the scientific literature. And it is normally, when these concepts would be used precisely and correctly. But many of the concepts have several meanings, which ultimately only add confusion. You can have a good treat to that concepts which use, are taken from philosophy. However, now it is became popular to borrow terms from physics, mathematics, which are outwardly similar in meaning, but used in the technical disciplines and not quite suitable for jurisprudence. Here we can also include complication of the proposed concepts. In the scientific work are rarely met short and capacious determinations, and increasingly – massive, containing, hard for understanding phrases. Apparently, applicants permitting such

things, sincerely think, that there is a true science. However, they are wrong. And they are completely forgotten that the top of professional achievements of lawyer – is the ability to express thoughts and laws by simple and clear for everyone language.

Allocated in this item remarks are typical for many contemporary works. As suggestion we offer to strengthen demands on scientific work of dissertation councils.

6. The next problem is connected with interpretation of the law. As you know, every scientist-lawyer having deal with interpretation of legal norms. No one has the right to prohibit to the specialist (or to the person, impersonating it) to make comments, to analyze, to discuss specific norms, to express suggestions for their application.

The question is that, how free is a scientist in breadth of interpretation of the regulations of law. And more precisely: if he can, making comments on the legislation, to offer breaking the law or to evade from its execution?

Of course, not, answer, probably all. Furthermore, the statement of question seems, at first glance, awesome and awkward.

However, there is such a problem. And in confirmation of our words we give specific examples from the criminal-procedural science.

For the criminal proceedings of Russia in the last two decades one of the most relevant problems is the use of the results of the operational-search activities in proof on criminal cases. And here, in the comment to the Federal law “About operational – search activity” (OSA) has indicated that illegally received results of operational-search activity, turns out to be used by the proof. In this book it is argued that while carrying out operational-search activities and application of their results “the fact of violation of the Federal law (*about operational-search activity* – authors italics - S.Z., V.S.) should not entail cancellation of the obtained results”¹. And further: “The same approach should be applied also while deciding on the

¹ Comments to the Federal law “About operational-search activity” / under editorship A.Y. Shumilov M., 1997. P. 120.

question on giving the procedural status of evidence of a material object, obtained by operational-search activity by violation of the Federal law. The fact that this violation situated out of the frames of criminal process and doesn't mean violation established by criminal-proceeding law the procedure of forming the physical evidence"¹. It is easy to assume that if allowed the usage of illegally obtained results of operational-search activities (so where – in criminal proceedings!), so the authors of the comment refers very calmly to the illegal organization of events.

For non-specialists in such a delicate sphere is necessary to explain that operational-search events – are, for example, telephone tapping, control of emails, correspondence (also via the Internet), observation (surveillance), interrogation, secret examination of the home². Most of them are allowed on the basis of a judicial decision, if there are sufficient grounds for a limited numbers of articles of the Criminal Code of Russian Federation. It is hard to say, what was understood by the authors of the indicated comment under illegal organization of events and receiving, respectively, illegal results. From the judicial practice, accused of the illegally carried out operational-search events we can make a conclusion that this, apparently illegal examination of the home, interrogation with the use of violence and torture, carrying out interception without a proper permission of the court and etc.

Indicated position was strictly condemned by the legal community³. Some even believed that in this case, the authors of this comment just sealed or not accurately expressed their thought.

But several years passed and in tutorial (!) on operational-search activity was written literally the following: “Due to the fact that among the given grounds of inadmissibility of evidence, there is no direct guidance on the recognition of evidence admissible in connection with the violence of requirements of the Federal

¹ Ibid: P. 120-121.

² See: *Zakhartsev S.I.* Operational – search activities. Saint-Petersburg, 2004; *Zakhartsev S.I., Medvedev V.N.* Withdrawal of information form the technical communication channels (legal analysis) / under editorship V.P. Salnikov. Saint-Petersburg, 2004.

³ About this see: *Zakhartsev S.I., Ignaschenkov Y.Y., Salnikov V.P.* Operational-search activity in the XXI century. Saint-Petersburg, 2006.

law about OSA, we can say that the meaning of CCP, the violation of this law don't influence on the classification of the evidence, obtained in the process of OSA to the number of invalid. It is associated with that the results of OSA by themselves are not the evidence, and the violation of the regulations of operational-search legislation are not in a direct connection with the production of investigative and procedural actions. As a result, they don't influence on the content of investigative actions and the nature of the data, obtained during this operations"¹. The author of cited phrase was O. A. Vagin.

But this isn't all. Named scientist has repeat his opinion in the comment to the Federal law "About operational-search activity", introductory article to which was written by the esteemed V.D. Zorkin. Moreover in this comment O.A. Vagin went further and after above quoted was written literally the following: "Position of the Federal law about OSA are not regulate criminal-proceeding relations, therefore, cannot determine the admissibility of evidence, which can be obtained only in the manner or ways provided with the regulations of CCP. The requirements of admissibility can be presented only to the results of OSA (for example, telephone tapping, control of emails, correspondence (also via the Internet), home invasion, control delivery, operational experiment and others) submitted in documents or as a material evidences. What about other results of OSA (for example, interrogation, making inquiries, observation and some others), which are the only information about the facts, so they are not change the content of the actual data obtained as a result of carrying out investigative actions"².

Thus, according to the opinion of O.A. Vagin, results of the illegal conducted operational-search activities – interrogation, observation, making inquiries – can be easily used while proving in criminal cases! In other words by proving, apparently, can be used: the results of interrogation, which was conducted with tortures, results of a secret observation in a private house, made without

¹ Theory about operational-search activity. M., 2006. P. 574-575 (author of the paragraph is O.A. Vagin).

² See: Comment to the Federal law "About operational – search activity". With the application of decisions of the Constitutional Court of Russian Federation and the European Court of human rights / Introductory article of V.D. Zorkin, M., 2006. P. 239-240.

judicial decision, falsified documents received during the event “making inquiries”.

It is somehow not serious to make comments on the opinion of O.A. Vagin. Each first-year student knows that illegally carried out legal action, generates illegal result, not having legal power. There is no sense to argue much about the danger of such actions as for the human’s rights and also for legality, objectivity of criminal proceedings and etc. It is obvious.

It is needed to note that V.D. Zorkin by himself in the introductory article to the above named comment wrote correctly: “...The results of the operational-search activities are not the evidences, but merely information about the sources of those facts, *being received in compliance with the Federal law on OSA* (authors italics - S.Z., V.S.) can become evidences only after securing them by a proper procedural way”¹.

About legality was greatly said by S.S. Alekseev: “Legality – is one of the few social phenomena, which is based on the principle “or” – “or”: either unconditional, absolute legality everywhere – or its collapse, if allowed deviation from the strict requirements even in the smallest things. Indeed permissibility to break the law “even in the smallest things”, “for good reasons” “sometimes” in fact means permissibility of derogation from her in any case and always (is it so hard to justify that exactly this case is “the smallest one”, “respectful”?)”².

We can give another typical example. Part 4 of article 157 of the Code of criminal procedure of Russian Federation states: “After directing the criminal case to the Head of investigative authority, investigative authority may perform investigative actions on it and operational-search events only on the behalf of the investigator. In case of direction of the criminal case to the Head of the investigative authority, according to which wasn’t found a person, who committed the crime, investigative authority is obliged to take investigative and operational-

¹ See: *Zorkin V.D.* Introductory article on the comment to the Federal law “About operational – search activity”. M., 2006. P. 17.

² See: *Alekseev S.S.* Law and restructuring. M., 1987. P. 503.

search events to establish the person, who committed the crime, notifying the investigator about the results”.

The content of this regulation, in our opinion, is clear enough and cannot be ambiguous. Since the investigative authority direct the criminal case, operational-search events on it are carried out only on the behalf of the investigator (except the case, when on case there is no found a person, who committed the crime). From the first sentence of the regulation, the word “*only*” could be excluded – the sense of written doesn’t change. However, the legislator, by the formulation “*only* on the behalf of the investigator” made in the article emotional note, in order to exclude categorically double interpretation of the article, and to make its content clear to everyone.

However, in the monograph of A.E. Chechetin is written that after direction of the case from investigative authority “operational-search events in relation of persons, involving to the criminal liability, can be made without order of the investigator”¹. The motivation is the following: “Implementation by the operational units of obligations for solving crimes may not be subjected to the decision of investigator and from availability (lack) of its order”². No more, no less.

Scientists – specialists in other fields of law – helped us to collect rich enough collection of such comments of the laws, going completely against outlined in the norms of the laws themselves. So the problem of deliberately perverse interpretation of the law exists in all branches of the law!

And everything is okay if we were talking about misprints, incorrect wordings, finally mistakes. But in these cases we are talking about offers of principled disregard of the law, deliberate introduction of readers in misconception. And the authors of such statements are the lawyers, having degrees of candidates and PhD of legal sciences³.

¹ Chechetin A.E. Operational-search activity and personality. Barnaul, 2006. P. 12.

² Ibid: P. 10.

³ We don’t know what O.A. Vagin and A.E. Chechetin are teaching now and where they are working.

And who are the readers? If to consider that the most examples presented in the textbooks, then, not counting the teachers, the readers are mostly students of the juridical universities – future lawyers-practicians, including enforcement authorities. And it isn't just bad, it is scary!

Paraphrasing a famous proverb, the law isn't as scary as its interpretation!

How to struggle with this problem, admittedly, isn't clear.

One of the variants can be strict, principal relation of the scientific community to knowingly false fabrications. Public condemnations of such interpretations, critical analysis of such statement on the conference and seminars. Conviction of the authors of such “pearls” in a public recognition of their wrongness.

7. Maybe it seemed, but over the last decade have been published a small amount of original authorship works. There were also a few works, containing principal new provisions and conclusions (even if very controversial, but new). In general, scientific work represents them as rewriting of each other with some additions and clarification. Works on such “endless” subjects as philosophy and philosophy of law also, as a rule, doesn't differ with originality. Furthermore, they are traditionally “add” rewriting of the history of philosophical and philosophical-legal knowledge. But then again it wasn't seen almost principally new on the history of philosophical-legal thoughts: the same approaches. Although, if to deepen into the problem, some of the traditional approaches to the philosophers of law and to their works can be argued.

Thus, the most researchers considered a famous Russian philosopher B.N. Chicherin to be a liberal, a defender of the natural human's rights and freedoms in Russia. Thus, for example, it was considered by V.S. Nersesyants¹. G.I. Ikonnikova and V.P. Lyashenko write that the main content of the philosophy of law of B.N. Chicherin – natural law as a system of unwritten norms and rules. These norms and rules are the basis, principles of creation of the positive law – a

¹ *Nersesyants V.S. Philosophy of law. P. 685.*

doctrine about truth, justice and equity¹. E.V. Kuznetsov writes that science about the law in Russia to XIX century has overcome the backlog of the western European jurisprudence and in many relations went forward due to the works of B.N. Chicherin about natural law². In the same vein, but usually without references, write many other specialists. Indicated approach is firmly rooted in the textbooks on philosophy of law³.

However, having studied the works of B.N. Chicherin, we cannot agree with indicated conclusions. For example, this philosopher has denied the necessity and desirability of the equity, even formal, in the economic rights. He argued eloquently and somehow cynically that “people are equal inly as free persons, and not as members of the highest whole, where they can have different purposes and therefore different rights and responsibilities. That’s why in the article 1 of “Announcement of the rights of human and citizen” to the statement of the beginning of freedom and equity, was added: “social distinctions can be based only on common utility”. This is quite wide beginning; it can require not only the difference of the political rights to various social classes, according to their political ability, but also hereditary advantages, on what exactly based monarchy and aristocracy”⁴.

Indicated opinion of B.N. Chicherin illustrating well several things. The first one: B.N. Chicherin divides society into classes. Second: political and economic rights should not be the same, as we are talking about *different rights*, not about *equality*. Third: it isn’t clear who and how will evaluate and install “social distinctions can be based only on common utility”. However, with regard to this and other works of B.N. Chicherin we think that he was meant that this “common utility” will be evaluated by the representatives of the highest aristocracy, but not by the general population. And benefit from this “common utility” will likely have a small number of recipients. That is, civil rights – for everyone and economic

¹ Ikonnikova G.I., Lyashenko V.P. Philosophy of law. M., 2010. P. 122.

² Kuznetsov E.V. Philosophy of law in Russia. Saint-Petersburg, 1989. P. 97.

³ See, for example: Philosophy of law: A course of lectures. In 2 volumes. Volume 1 / under editorship M. N. Marchenko. M., 2014. P. 518.

⁴ Chicherin B.N. Philosophy of law. M., 2011. P. 108.

privileges – only for elite. From this follows, fourthly that the lawyers-legislators ensured with the help of their works the interests of the ruling elite, and maybe first of all – its economic interests. It is necessary to consider one more important moment. In his works B.N. Chicherin developed the idea of transition from autocracy to constitutional monarchy, what put him in the merit separate contemporary researchers. However, wherein it isn't considered that B.N. Chicherin was a representative of a noble, wealthy family. Transition to constitutional monarchy has provided himself and the people of his circle wide political and economic opportunities.

And more about B.N. Chicherin, as about liberal and humanist. He believed that “the state isn't obliged to deliver to the citizens the means of living. It is a private case. Every person finds a job for himself and earns livelihood. When due to unfortunate circumstances a person have no possibilities to earn livelihood, he asks for the help of the nearest. Then comes vocation of charity, first private and by the lack of the latter, public. The state in the types of humanity cannot come for the help of suffering people. But charity not becomes the law for them; it acts as the forces and opportunities”¹. In other words: if the state has no capabilities (or it has other priorities) – a person will not receive unemployment compensation, tolerable living conditions and even livelihood. In fact, the state, according to B.N. Chicherin, isn't obliged to feed everyone and, accordingly, to ensure the right for life.

Not begging the contribution of B.N. Chicherin to the world philosophy and philosophical-legal thought, we cannot call him the liberal. On the contrary, having reread once more the works of this philosopher², it seems that the estimation of B.N. Chicherin as a liberal is likely incorrect.

Approximately the same is thinking V.A. Tomsinov, who noted that political views of B.N. Chicherin were in a constant development. During his life he was

¹ *Chicherin B.N.* Property and the state. Saint-Petersburg, 2005. P. 605.

² See, for example, works of *B.N. Chicherin*: Philosophy of law. M., 2011; General state law. M., 2006; Property and the state. Saint-Petersburg, 2005; Questions on philosophy. M., 1904; Questions on politics. M., 1903 and etc.

called as “liberal conservator”, but this definition only indicates on the mixed, composite character of the worldview of a thinker¹.

It seems that the works of other philosophers and philosophers of law can be evaluated quite deep and more objectively, than sometimes is in the contemporary literature, which sometimes for some reason repeats each other.

Even more strictly on this problem is looking D.A. Kerimov. He rightly draws the attention of the scientific community in the almost complete absence of contemporary domestic jurisprudence of fundamental researches, the dominance of “bad commentators bad legislation” and “helpless generalization of helpless law-enforcement practice”, unsystematically accumulated abundance of materials on private and secondary questions, on insufficient number of new ideas and developments at various conferences, symposiums, round tables, capable in the main their weight to support not more than the appearance of activity of legal science².

In the part of dissertations we would like to add one more observation. Many contemporary dissertations on jurisprudence sometimes “dazzle” with references from which it is difficult to make a conclusion that the aim of research was to create something new, to add a little bit or simply mention all the scientists. Especially in regard to candidate’s dissertations. Moreover, as some dissertators told us that their supervisors required that each page of the text contained the reference to anyone of the scientist.

Of course, we don’t belittle the importance of the references. Scientific works are needed to be written on existed material. But in the works, especially which have a lot of references, isn’t always clear separated: what was, and what became. Wherein, “what became”, as was already mentioned, for the most part isn’t original. It isn’t pleased to see that the references are putting not for the cause,

¹ See. *Tomsinov V.A.* Boris Nikolayevich Chicherin. Biographical essay. Introduction to the book “General state law”. M., 2006. P. XXVIII.

² About this see: *Chashin A.N.* Contemporary legal doctrines of Russia / under editorship *T.N. Radko*. M., 2014. P. 107.

but out of respect to reputable scientists in a specific science, in order just to mention them.

There is a wish: surely to write a new one and controversial. The truth is born in dispute.

8. The Russians, including lawyers, have become noticeably less to read. Especially, in regard to the printed materials, first of all books and scientific magazines. All this lead to the reduction of the pressrun of scientific literature. Accordingly, ideas and opinions of specialists in part of the law and legislation have become harder to spread even in the scientific and professional area¹.

A partial solution to this situation can be duplication of ideas and opinions of the several scientific magazines, partial repeat of previously written in other books. These partial repeat of previously written – objective necessity in communicating their views to professionals. Wherein, it is necessary to expand the advertising of books and articles on relevant topics on the Internet. So it is should be like this: the user types in the electronic database the legal question that he is interested in and the base gives the books and articles, where reflects the answers and opinions according to the desired subject.

Thus, we have identified here eight problems and shortcomings of contemporary Russian legal science. However, it is clear that, the list probably will be supplemented.

To some extent, one consolation is that contemporary foreign legal science also has a lot of problems. So, two monographs of the authors of a current book were translated on English and German languages and published abroad. Questions, which were raised in the books, also associated with shortcomings in the legal science and legal regulation, have received feedbacks from the foreign specialists. In its turn, they shared with their difficulties, some of which having global character. First of all, it is scientific difficulties, the absence of a single philosophical and theoretically-legal approach in jurisprudence (in many countries

¹ Then literally begs the call to read, but in the contemporary conditions, unfortunately, it will be only a slogan.

in the science is spread ideas about impossibility of cognition of the being, including legal, denial of epistemology, impossibility and uselessness of finding of an objective truth in the criminal proceedings and etc.)

I hope that every scientist on his place will make everything that depends on him, in order to solve indicated problems and other, which haven't been mentioned here. It seems that we can achieve much more if we will often discuss existing problems all together and negotiate on ways of resolving them.

§ 2. Ethical problems in legal science

We don't want to write about the problems of ethics in the scientific legal work, but it is impossible not to write. As the thesis, can be denoted four the most serious ethical problems.

1. In the last 20 years have been particularly relevant the problem of the correctness and ethical correctness of maintaining of the scientific discussion in the law. Up to caustic phrases, bordering with insult began to fall not only aspiring lawyers, but also prominent scientists.

Moreover, not sparing neither their contemporaries nor not those who has long gone. For example, P.F. Yudin, academician of the Russian Academy of Sciences of the USSR in one of the latest works has received the words: “duty “philosopher” of the regime”, “arrogant philosopher”, “the thieving guard useful for the authorities “truth””. Wherein, reasoning of P.F. Yudin is characterized no otherwise as “idle juggling with quotations from classics”. It is doubly frustrating that indicated swearing was used not by someone, but by the academician V.S. Nersesyants¹.

There are also words in relation to other famous lawyers. A.Y. Vishinskiy has received the following expressions: “one of the most heinous figure throughout Soviet history”, “a deft, sophisticated and shameless lackey of the leader and the totalitarian system” and etc. At the end, V.S. Nersesyants came to the conclusion that: “NCIA (National Commissariat of Internal Affairs) authorities”, thus, helped to Vishinskiy, Arzhanov and many others “correctly” understand Marxism-Leninism and thanks to this soon became academicians and corresponding members. It would be fair, of course, to recognize “academicians” appropriate “authorities” for their great contribution to the ideological education of “personnel”².

¹ *Nersesyants V.S. Philosophy of law. M., 2011. P. 355.*

² *Ibid: P. 363-364.*

Similar expressions now can be seen on a considerable number of legal works. For example, recently I.Y. Kozlihin on the readings which were devoted to the philosophy of law, called the same A.Y. Vishinskiy “notorious scoundrel”¹. Outlined clearly shows that the indicated problem of the ethics of scientific discussion is long overdue and has already overdue.

First of all it is necessary to define: expressions of V.S. Nersesyants – are they insults or not? Obviously, it is so. If it is insults, so according to the legislation of almost all countries for them set responsibility. In other words, if such expressions will be addressed to the live people, it would be difficult to avoid responsibility. Wherein, in the soviet and Russian criminal law for the insults more recently have existed even criminal responsibility. Therefore we cannot believe that such statements came from the lawyers.

The next question is: where containing these statements? The answer is striking: in the scientific and educational literature! However, scientific and educational literature – isn’t a boulevard press. In the science there is no place for insults, humiliations, condescension and disdain. This is principally not allowed and not ethical.

Furthermore, the dispute in the scientific literature should be conducted with the science. It can be and should be trying to evaluate the position of one or another scientist according to exactly scientific questions. Wherein, political career of these scientists, their private life, moral and immoral actions and others are not included in the subject of science. If, for example in the scientific literature studying Pierre Abelard, so it is interested his reasoning exactly as philosopher, theologian, one of the founders of conceptualism. All know the famous sad history of Abelard and Eloise, which has the meaning only from the point of view of formatting and further change of the views of Abelard. But in the philosophical literature there is no need to give subjective emotional evaluations of the rightness

¹ *Kozlihin I. Y.* The general theory, integral jurisprudence or encyclopedia of law? // Encyclopedia of legal science or integral jurisprudence? The problems of studying and teaching: materials of the 7th philosophical – legal readings in memoriam acad. V. S. Nersesyants. / Executive editor V.G. Grafskiy. M., 2013. P. 9.

or wrongness of the behavior of Abelard in relation to Eloise and further punishment of Abelard. For these evaluations there are magazines, popular journals, TV programs, but not the scientific literature. However, we also don't want to hear such statements in journalistic programs.

In his book V.S. Nersesyan's cited essays about many philosophers of different time. However, he refrained from the insults to the address, for example, Aristotle, who considered the slave (the person!) like a thing. But he has insulted recently long gone contemporaries. If such position is permissible for a scientist and for a person?

As you know, it is impossible to serve to the two gods at the same time. You cannot call for freedom, legal culture, equality, pluralism of opinions (!) and at the same time to use offensive words against the colleagues for that their opinions (even wrong!) don't coincide with their own fabrications. If specific people are nasty personally, the science doesn't have any relation to it.

Requirements for the ethics discussion are having particular relevance, because ugly, offensive expressions of the scientists to the address of each other have entered to the educational legal literature. Given and similar quotes are found not just everywhere, but in the textbooks, including also theory of the state and law, philosophy of law – subjects, by its definition, pure, exalted, free from dirt and worldly vanity. Exactly the same is seen philosophy of law. Using by V.S. Nersesyan's and other scientists of such expressions is contrary to the spirit of science and violated the ethic of debate. The beauty of the philosophical thought is melting. Famous to all expression of Aristotle: "Plato is my friend, but truth is dearer!" sounds stronger than the dozens of insults, but wherein it is perfectly correct and beautiful.

The next question is: against who were used these offensive expressions? At the meeting, which was held in 1938 according to the questions of science of the soviet state and law, which was so "colorful" described by V.S. Nersesyan's, except Vishinskiy were present and performed M.A. Arzhanov, P.F. Yudin, S.A.

Golunskiy, M.S. Strogovich. All of them became corresponding members of the Academy of Sciences of the USSR¹.

There is a sense briefly to look at their biographies and contribution to science. M.S. Strogovich – one of the recognized soviet scientists. A great specialist in the field of theory of the state and law. In 1940 M.S. Strogovich with S.A. Golunskiy was published one of the first soviet textbook “Theory of the state and law”, which trained several generations of lawyers². More M.S. Strogovich is known as an expert on criminal procedure and prosecutorial supervision³. His two-volume “Course of the criminal procedure” forever and quite rightly went down to the history as a classical scientifically-educational doctrine⁴.

His co-author on the textbook S.A. Golunskiy, in addition to contribution in the theory of law, is rightly considered one of the pioneers of the Russian criminalistics. He is the author of the first Russian educational and scientific works on criminalistics⁵.

M.A. Arzhanov – a famous theorist, who, undoubtedly, has left their mark in the general theory of law⁶.

P.F. Yudin has never been a lawyer. However, as a soviet philosopher he was well known all over the world. P.F. Yudin led the Institute of philosophy of the Academy of Sciences of the USSR. The main doctrines of P.F. Yudin were devoted to the history of Marxist philosophy, problems of dialectical and historical

¹ Yudin Pavel Fedorovich was elected also as academician of the Academy of Sciences of the USSR.

² Golunskiy S.A., Strogovich M.S. Theory of the state and law. M., 1940.

³ See, for example: Strogovich M.S. Material truth and judicial proof in the soviet criminal process. M., 1955; Strogovich M.S. Prosecutor’s supervision over the observance of legality in activities of the inquiry authorities and preliminary investigation. / under editorship M.S. Strogovich, G.N. Alexandrov. M., 1959 and others.

⁴ Strogovich M.S. Course of the soviet criminal process: in 2 volumes. M., 1968-1970.

⁵ See, for example: Golunskiy S.A. Technique and method of crimes investigation. M., 1934; Golunskiy S.A. The examination of the crime scene. M., 1936; Golunskiy S.A. Criminalistic method. M., 1939; Criminalistics. M., 1959.

⁶ See, for example: Arzhanov M.A., Kechekyan S.F., Mankovskiy B.S., Strogovich M.S. Theory of the state and law. M., 1949; Arzhanov M.A. State and the law in their relation. M., 1960.

materialism, theory of scientific communism¹. These doctrines are also known abroad.

Are the works of these scientists interested today? Of course. Criminal-procedural and forensic works hasn't lost their relevance. The works on the theory of law and philosophy from the standpoint of the present day seem to be largely controversial. But they are also need to be studied, even to be compared with the modern philosophy and modern law. Without past, as you know, it is impossible to understand the present and to look into the future. Wherein, there is no doubt that each of the mentioned authors was the great scientist.

Why then to write that they became corresponding members due to NCIA authorities, which helped them ““correctly”, understand Marxism-Leninism and thanks to this soon became academicians and corresponding members”.

It should be separately stop on A.Y. Vishinskiy. And this is dictated not with the wish to protect or somehow to evaluate this political figure. In the books on *philosophy of law* the scientists should evaluated exactly as scientists, not as the prosecutors, ministers, public figures. A.Y. Vishinskiy, no matter how to relate to him, as objectively a famous scientists – theorist of the law and processualist – academician of the Academy of Sciences of the USSR, director of the Institute of the state and law. He was a supporter of normative (rather even narrowly normative) understanding of law. His works are now criticized, in many respects fair, but it isn't cross out either the fact of the works or their scientific value.

Normative (if you like narrowly normative) approach to the law objectively has its place in the history of law. This approach, and indeed as many others, has its weaknesses. These weaknesses are needed to identify, analyze, but not to insult scientists. It's a pity that exactly now, when freedom of speech, began to forget about ethics of scientific discussion, culture, humanism. And then speak about nihilism, the absence of legal culture and then wonders where it came from? And at the same time, one academician writes to the address of other academicians the

¹ See, for example: *Yudin P.F.* Materialistic and religious worldview, M., 1930; *Yudin P.F.* Who are “national-socialists”?, Sverdlovsk, 1942; *Yudin P.F.* From socialism to communism, M., 1962.

following words: “a deft, sophisticated and shameless lackey”, “arrogant philosopher” and etc. And so where writes – in the textbook! Moreover, on the philosophy of law!

Nowadays, in the universities are studying and graduating students, who grew up in Russia in the period of freedom of speech and opinion. The task of teachers (and textbooks) – to ensure harmonious development of this generation. Important step in this development is the possibility of students to receive objective knowledge, to be free by the choice of worldview. Philosophy, and also philosophy of law, is the basis for the formation of a worldview. This basis must be solid, strong and clean.

Probably, it isn't necessary to prove that training has also educational function. The task of legal universities is not only to give to student appropriate knowledge, but also to educate them in a spirit of compliance with the laws, respect to the rights and freedoms of each person, the love for the Motherland and people. How the showdown between the scientists in the textbooks contributes the education of the lawyers? What, then can we teach the students?

However, now the problem of the ethics of conducting discussion is relevant not only for legal disciplines, but also for all sciences in general. T.G. Leshkevich, speaking about the problems of science, correctly noted that very often scientists greatly exaggerate their personal contribution to science, comparing their activity with the activity of their colleagues, what creates a lot of problems, founded in the scientific debate and turns to the violation of the scientific correctness and scientific ethics¹.

For works on the law such thing, for obvious reasons, especially unpleasant.

Dear colleagues! Let's respect each other and or readers!

It should be separately noted that the authors of the current work have a great respect to the contribution of V.S. Nersesyants in the legal science. Therefore, to read in the works of this scientist insulting, dismissive and extremely subjective expressions in relation to other specialists especially frustrating.

¹ *Leshkevich T. G. Philosophy of science. M., 2005. P. 203.*

2. Opening lecture notes on the philosophy of law, which was published in 2009 in Ukraine (Kharkov), we surprisingly have read that “*Ukrainian legal mentality was formed during the process of the constant struggle of our people for their statehood, culture, language, religion* (authors italics - S.Z., V.S.), and the Russian – under the influence of the strong absolutist state”¹. Further, the authors of the cited textbook have identified several features of the Ukrainian national character, to which, in particular, carried the following: “Individualism and desire for freedom – negative attitude towards strong government as such, which borders with anarchism; extreme manifestation of individualism is such a feature as *isolation, stemming from quite tragic history of Ukrainian people, which constantly tried to be enslaved by other states*”². In the same spirit in the textbook there are several paragraphs. The authors of the above mentioned lines are fairly well-known in Russia philosopher S.I. Maksimov and less famous M.P. Kolesnikov.

First, let ask ourselves the questions, what states means, which are constantly “seek to enslave Ukraine”? According to the content of this book, to such states related also the Soviet Union and Russia. Thus, according the opinion of the mentioned authors, being in Kievan Rus, royal sovereign Russia and the USSR, the poor Ukrainians have always been enslaved, but struggled for their faith, independence and statehood?

And now it is necessary to come back directly to philosophy. I think that there is no sense to waste words in order to convince the readers in dishonesty of the cited Ukrainian lecture notes (it can be noted at least, the phrase “Kievan Rus”).

But why such expressions appearing exactly in the literature on the philosophy of law? Unfortunately, the answer is also not clear. To the contemporary Ukrainian government is need philosophical explanation of that Russians and Ukrainians – are two absolutely different nations, who have nothing

¹ Philosophy of law: Lecture notes / under editorship O.G. Danilyan. Kharkov, 2009. P. 157.

² Ibid: P. 158.

common. Philosophical (the highest scientific) justification of that there was no Kievan Rus, and also that there was no, that the USSR most of its existence was ruled by natives from Ukraine (N.S. Khrushchev, L.I. Brezhnev, K.U. Chernenko).

In other words, the government would like to base on the philosophy and philosophy of law in conducting their politics. And the role of the philosophy of law in this case come down to “servicing” of the government in their dirty deals.

Such policy, which is primarily relying on the philosophy and philosophy of law held by the leaders of Ukraine since 1990-ies till the present day, so it is more than 20 years. Wherein, cited lecture notes was published in Russian language in order to confuse the young Russian-speaking generation, who didn't caught the Soviet Union and the common Russian-Ukrainian nation. And the textbook on philosophy of law of the same content was published with the same purposes but already on Ukrainian language¹. The result of this deception and entanglement was a Civil War, which was happened in Ukraine in 2014.

With regret I have to think that there is a deceit in the reasoning about mission and the meaning of the philosophy of law. After all, philosophy of law in Russia has always served the powers that be. For example, a famous religious philosopher Feofan Prokopovich in favor of Peter I and the monarchy has justified caesaropapism; in the later period B.N. Chicherin justify necessity of the difference of political rights for different social classes; pleasing to the power philosophical reasoning then have been found in the soviet time and also now.

Maybe the role of the philosophy of law in relation to the legal sciences really comes down to the philosophical justification of that law, which is beneficial to the ruling power? And the law itself is really only a social institution on ensuring interests of the ruling (prevailing, governing) class. And there is no need to “break a spear”, inventing special idea of law? To think so, of course, we don't want, although the question about that if the law can exist without ruling ideology, was solved repeatedly be philosophers.

¹ Philosophy of law: Textbook / under editorship *O.G. Danilyan*. Kharkov, 2009. P. 183-184 and others.

The authors of these lines became the owners of rich legal library, including pre-soviet and soviet periods. Putting near soviet and post-soviet books, involuntarily amazed at how varied the views of one and the same scientists on the law, state, political leaders. Moreover it draws attention one interesting detail. If a scientist zealously and shameless praised the soviet system, to the point and not really referred to the soviet leaders, so exactly he in 1990-ies started violently and shamelessly to abuse this system. Here is also a serious ethical system of modern science.

In the soviet time all works on jurisprudence (and not also) had to have references to K. Marks, F. Engels, V. Lenin and the ruling of the General Secretary of the Central Committee of CPSU. However, even in this difficult time the scientists have done differently. Someone has referred, and then wrote about the science. But there were also other, who invented striking language of praises, from which then has rapidly declined and began to give new, already sharply negative assessments of the contemporary history and law.

These processes were well noted by D.A. Kerimov. “We cannot be silent about one sad fact, – the scientist writes. – Recently some representatives of the science have found for fashion to rewrite our history, including the history of law, often distorting it. And in this unseemly business, unfortunately, individual lawyers are taking active participation. For example, one of them, wrote in 1963: “To socialist system is organically alien tyranny and lawlessness”; in 1972: “Socialist law to all its content, principles, “insides”... is a factor of morality and culture”; in 1981: “Socialist law – is the first on the history of legal systems Law of workers – the Law from the large letter, answering of the centuries-old inspirations of humanity...” But the most remarkable is that the cited author is literally in a short period of time argues the opposites. In 1995, he notes that: “...a society in its underlying principles, suppressed by lawlessness and injustice, reacted to the horrifying reality, gave a signal that the way where is necessary to go in order to escape from the depth of totalities and to move to the legal civil society, – is the way of the law and legality”; that the legal science need to have repentance

and cleansing, understanding and a clear recognition that the soviet legal science was at the service of a totalitarian system...”; in 1997 – “soviet law is represented as an ugly reality – terrible in its essence and its consequences”. And such kinds of expressions are accompanied by similar apologetics already in relation to the modern Russian regime... It shouldn’t be overlooked that the science – isn’t a position; it is indifferent to grades, titles and ranks, doesn’t tolerate arrogance, lie and servility”¹.

If we want to engage genuine philosophy and philosophy of law, so, firstly, it necessary to be always honest, to avoid conjecture, servility.

Furthermore is necessary to serve the truth, always seek to receive true knowledge, to avoid approaches, that the truth isn’t reachable, don’t write everything you want.

And finally, but fundamentally to relate to deliberate dishonesty in favor of the authorities.

While we have to note peculiar ethical problem for the philosophy of law and law: attempts of the philosophical explanation of dishonesty in favor of the authorities.

3. The third ethical problem, which is relevant for the legal sciences is the problem of plagiarism. It is obvious to all that in the legal science the scientist begins scientific work not from the very beginning, but already on the base of existed scientific works. Acquaintance with them and designation of their results are kind of “point of reference”, watershed, separating already known from the new one, which author is going to “introduce”. However, there are also the facts of “borrowing” of the scientific thoughts for further extradition of their own. Perhaps, many specialists were faced with the same facts.

Especially have spread such cases among students because of the Internet. Conducted analysis of having in the Internet showed that in its availability are diplomas on almost any legal theme. In the teaching practice of authors of the current book, have already collected enough facts, when students are bringing

¹ *Kerimov D.A. Selected works in 3 volumes. Volume 1. M., 2007. P.XXIX-XXX.*

completely downloaded works from the Internet. But works, which are published in the Internet, can be used and, probably are using by unscrupulous authors for their dissertations and monographs. Indeed, in the Internet there are a lot of published works.

By the way about the Internet. The “aged” scientists traditionally not very familiar with the Internet, electronic correspondence and electronic publishing of the scientific works. This generation trusts traditionally to books. However, now there has become a common practice of publishing of their works (both literary and scientific) in the Internet. Moreover, this practice at the present time for a number of positions is more profitable. So, there is no need to make the way to the editor’s office, to wait until the book will be published. There is no need to think about pressrun. It is just enough “to lay out” the book in the Internet and it will familiarize those, who are interested in its content. Wherein, much more people have possibility to familiarize with the electronic version, rather than with printed. Moreover, already appeared electronic scientific (including legal) journals and sites.

It should be also noted that, according to the given in press data of studying of the public opinion, generation of Russians at the age till 25 years and younger already don’t like to read printed books, and all information receive from the Internet in the electronic form. And even classic is read on mini computers.

During the work on this monograph was conducted a survey of 700 lawyers of different Russian companies. It was found that 647 of them on controversial matters of interpretation and application of the legislation primarily focus on the electronic databases, reviews of legislation, available in the electronic networks and search systems. Conducted surveys of 500 masters, graduates and adjuncts showed that 474 person from them in the preparation of the scientific works also primarily guided by the publications in the Internet.

And here occurs legal problem – the problem of the authorship of the scientific works. It is not always possible to determine who firstly published their thought in the Internet. It is mostly likely that in perspective the scientist can face

with the massive violation of the copyright. Wherein, to prove the authorship on their works for those, who mostly were published in the Internet, will not be so easy.

Furthermore, to specialists who are working on computers, are need to consider the following. Usually, computer which are situated at home and at the universities are connected to the Internet. Through the Internet isn't so difficult to steal the entire contents of computer. That is, an interested person can download all your notes to him and while you are continuing to work on them, will publish them under his name or somehow other will use your doctrines. Thefts through the computer network are quite common now. However, thieves are mostly interested in other information: accounts numbers, passwords to electronic cards and etc. Facts of thefts of the scientific works are not known yet. However, it cannot be excluded that will appear thefts of scientific works via the Internet. Therefore, in the number of governmental organizations is prohibited to make secret documents on computers connected to the Internet.

Principally, to work on computer which is connected to the Internet is the same as to write formulas on your fence – to see what was written can almost everyone.

At the present time, jurisprudence isn't ready enough for the protection of the copyright of the scientific works, published in electronic form. Apparently, the legal community is needed to develop some recommendations according protection of copyright of the scientists.

We emphasize that it is very important not to condone to plagiarism. For example, the chief editor of the “vakovskiy” journal “Drug control” A.V. Fedorov has uncovered plagiarism: his article was completely rewritten and published from his name without any references to the actual author by one young applicant. It was written a letter to the university, where the article was published. Soon was received a reply that an indicated applicant “during writing the article was not based on the position of the use of the works of other authors with the aim of issuing them as their own, and didn't intend to plagiarize scientific research.

Wherein, explained the right of the author, who believes that his right was violated, to refer with an appropriate claim to the court”¹. In other words, instead of the academic council of the university will conduct the proceedings, in order to establish the fact of the incident and to condemn the young scientist, the university administration gave to understand that it will not going to investigate indicated fact. That is, the offender, who committed plagiarism, appears precedent of impunity.

As it was rightly noted by V.S. Stepin, ideally the scientific community should always reject researchers, who were convicted of intentional plagiarism or in deliberate falsifications of the scientific results in favor of any worldly benefits. To this ideal stands the most closely the community of mathematics and natural scientists, but by the humanitarians, for example, sanctions to the researchers deviating from the ideal of academic honesty, are greatly mitigated².

4. An important question is also financial support for scientists. T. Parsons emphasized the need for adequate exchange with society that allows people of the scientific occupations to make their living only due to their professional training³. For jurisprudence this problem is doubly relevant. Firstly, financial support of the professors and lecturers at the legal universities leaves to wish the best. The same applies to the scientific institutions. This, of course, doesn't have positive effect on the quality of the scientific researches. Moreover, in jurisprudence has become a common practice of paid publications of their own scientific works. Furthermore, protection of the thesis entails also certain costs. In the end, it should be recognized that not all good specialists having opportunity to conduct necessary for them researches and to protect them. In general, the work of scientists-lawyers isn't enough financially supported. And jurisprudence itself has become quite dear science, spending costs on which can afford not all.

¹ Fedorov A.V. About the article of Sogomonov D.K. “To the question about the object of “reborn” smuggling” // Scientific notes of Saint-Petersburg filial of Russian Custom Academy. 2013. № 1 (45). P. 105.

² Stepin V. S. Philosophy of science. P. 118.

³ Leshkevich T. G. Philosophy of science. M., 2005. P. 203.

This situation, secondly, creates conditions, under which legal science is starting to be prerogative of the elite. People, who are not having enough costs, every year is harder to become a scientist.

Is it good or bad that legal science becomes prerogative of the elite? Historical experience shows that when the access to the science are not having all willing and eager, she begins to become scarce and wither, turns into the regime of stagnation. Furthermore, if the legal science will be only for the elite, we received scientists, which will be creating legislation “for themselves” and “for itself”. However, how such legislation would be correspond to the word “law”, how it could protect even the main rights of all citizens of Russia, and not only its small part? Historical experience again convincingly shows that in Russia such experiment are ending with the radical breaking of the existed system with all attendants of its consequences.

In the end it should be noted once more that among ethical problems of legal science here are especially highlighted the four one: ethics of the scientific discussion, servility of government, plagiarism, insufficient funding of science and scientists.

§ 3. The main scientific problems of legal science

In Russia at the end of XX - at the beginning of XXI century's has increased interest in the scientific problems. Fundamental works have been issued on the philosophy of science¹. Now became popular and common scientometric indicators. That is, already enough universities, studying and evaluating effectiveness of the scientific activity of the scientists, guided by the index of citations of the works.

In the legal science always have been raised scientific questions. For example, fundamental works, devoted to methodology and sociology of legal science, has become the works of D.A. Kerimov². Serious researches of the history of law and legal study was conducted by V.S. Nersesyants and other specialists.

However, many scientific questions of legal science have been not often considered separately from each other. Comprehensive researches of the scientific questions were not enough. Now, given the observed pluralism of methodologies, introduction of various scientific indexes, such researches are especially important.

The purpose of this paragraph – to mark some the most relevant scientific problems of legal science.

1. Methodological problem of legal science has been repeatedly indicated in this book. Here the authors just focus attention on that all humanitarian sciences without clear methodology are prone to crisis and self-destruction. The reason is very simple. All humanitarian sciences, unlike natural, are having low intersubjectivity. They are very dependent from the specific researchers. Furthermore, humanitarian sciences are less verified. Speaking simply, if the apple five hundred years ago was falling down, is falling down now and will be falling down further, that can be proved by every researcher, so in the legal science there

¹ To them, primarily included the works of V.S. *Stepin* See, for example: *Philosophical anthropology and philosophy of science*. M., 1992; *Philosophy of science. The general problems*. M., 2008.

² See works of D.A. *Kerimov*: *Philosophical problems of law* M., 1972; *Methodology of law (subject, functions and problems of the philosophy of law)* M., 2000; *The problems of the general theory of the state and law: in 3 volumes. Volume 1. Sociology of law*. M., 2001 and etc.

are a lot of abstractions and evaluated knowledge. Now, methodological problem, undoubtedly, is one of the main scientific problems of legal science.

Generally, it should agree with opinion of I.L. Chestnov, who wrote that, the theory of law nowadays is experiencing not the best times. And it applies not only to the domestic theory of the state and law, but also to more prosperous western science about the law. The complexity of the situation of the theory of law is primarily concerned with the ideological crisis, provoked by postmodernism¹.

2. The above mentioned is forming another scientific problem – dependence on the legal knowledge, the level of education, ideology, worldview and etc. Legal science is full of controversy conclusions. This is particularly evident in the part of the history of legal science. Here is a double subjectivity: subjectivity of legal knowledge and subjectivity of the historical knowledge, also depending on the ideology of researcher, his beliefs and even emotions. For example, V.S. Nersesyants in the works on philosophy of law and history of the political and legal doctrines describes quite restrained the law under the slave system, the law of the middle ages (when it was allowed and actively used tortures, breaking on the wheel, quartering, burning alive and etc.), late political regimes, also having a noticeable bloody trail. But when it comes to the description of the soviet system, from pages literally stand out bile, insults and etc. As a result this scientist came to conclusion that in the USSR there was no law at all – it was completely totalities. As V.S. Nersesyants wrote: “Social (including economic) relations are regulated here by another (non-legal) remedies and standards”².

This conclusion was not consistent to the realities, that even S.S. Alekseev, who generally, divided the late ideology of V.S. Nersesyants, wrote that such evaluation isn't accurate³.

¹ *Chestnov I.L.* Practical, clavecinist jurisprudence – exit from the dead end of law dogmatization // Encyclopedia of legal science or integral jurisprudence? The problems of studying and teaching: materials of the 7th philosophical – legal readings in memoriam acad. V. S. Nersesyants. / Executive editor V.G. Grafskiy. M., 2013. P. 46.

² *Nersesyants V. S.* Jurisprudence. Introduction to the general course of the theory of the state and law. M., 1998. P. 20.

³ *Alekseev S.S.* Selected works: The science of law. The general social problems. Publicism. M., 2003. P. 97.

Particularly, autonomous development of the blocks of private and public law under socialism is reflected in the fact that the public law can be suppressed and changed by the non-legal methods by state authorities, but the private law remains as quite complete law, which is used by the citizens and used by courts, other governmental authorities, who are competent in the sphere of private law. Thus, the institution of marriage although has undergone some technical changes in the soviet period of historical development of our state, but still remained to be true legal (to be honest civil-legal) institute. The citizens of the USSR have entered into marriage, used the mutual rights and duties of spouses, divorced the marriage, recognized it as invalid and etc. based on the norms of family law in administratively-legal or judicial order. Therefore all family codes of the RUFSR are the laws, moreover, legal laws, and in fact sources of law¹.

However, the works of V.S. Nersesyants have many followers, who perceive conclusions of these scientists as a scientific fact, trying to develop it. On the base of these conclusions legal science is also moving. But is this knowledge true? And can be such extremely subjective conclusions of V.S. Nersesyants the base for studying the history of the state and law? Here is a question: to what side is moving exactly the legal science?

It is remembered that in 1990-ies in variety of dissertations councils was really hard to protect researches, where there was no criticism of the soviet system.

As a sum: there is no doubt that there is a serious scientific problem of legal science such as constant subjectivity, exposure of the ideology, worldview, political regime and other factors, generally – external. There are many episodes, when under the influence of these external factors, and not new scientific achievements in jurisprudence, one and the same scientist during his life repeatedly changed his opinion and relation to the law. It is enough to look on the early and later works of the same S.S. Alekseev². Thus, scientific problem for the legal

¹ About this see: *Chashin A.N.* Contemporary legal doctrines of Russia / under editorship *T.N. Radko*. M., 2014. P. 38-39.

² See, for example: *Alekseev S.S.* Civil law during the period of detailed building of communism. M., 1962; The problems of the theory of law: Lectures course in 2 volumes.

science isn't merely the dependence of knowledge from the specific researcher, but also from the era of conducting researches by the scientist.

It should be said that young specialists solve this problem by really very peculiar way. That is, often can be heard an expression: it isn't important what work do you have, it is important who your supervisor is. Unfortunately, such expression is largely true. Many things depend on the status and credibility of the supervisor.

But really these things mean a deliberate dependence of young researchers from opinion of supervisors, which can be quite subjective. And also mean dependence of science from their "authority", from their opinion, ideology, but not always from the depersonalized knowledge.

Unfortunately, the science of law, as any humanitarian science, is subjective enough. She has her authority and quite rare revises knowledge. This is largely just due to the fact that many authorities don't allow oddly with their reasoning opinion to the wide scientific discussion. There are less empirical measurements, having objective character. These obstacles reinforce the role of the supervisor. The more he respected the more chances for protection, publishing of the book or even article.

Ideally, the knowledge should be depersonalized; however lawyers cannot fully provide it. That is, firstly gives opportunity for dishonesty, secondly, reduces the rate of development of science.

3. Scientific problem, which has become quite common in humanitarian science was a mixture of monographs, manuals and textbooks. For the legal science indicated above is especially relevant. It is found that the textbook or manual have been prepared as a monograph, in fact is represented as an independent study or several generalized researches. At the same time, the content of some of the monographs have descriptive character, it doesn't pose questions,

researchable part, reasonable conclusion. It seems that someone has specially mixed the concepts in order to confuse everyone.

Scientifically-research works should also be more or less clearly distinguished between theoretical, applied researches and scientific developments. Theoretical research is connected with the improvement and development of concepts and categories of the apparatus of legal science and directed on the comprehensive cognition of the objective reality; first of all on the elucidation of its essential relations and patterns¹; applied researches – there are researches, directed on solving specific socio-practical questions of legal science; scientific developments – resolution of scientific problems, related to the creation of new methods, recommendations, using of new forms of law and etc. parallel with the improvement of already existed. To such works are unacceptable the same requirements according introduction of their results to the practical legal activity².

In the Soviet Union was also a problem of mixture of monographs, textbooks and manuals. But it was not scientific, and was associated with other causes. As remembered a famous criminal law expert R.S. Belkin, all united edition “Legal literature” could “digest” all lawyers, willing to publish their monographs. Therefore, many criminal law experts have been published their monographs as manuals³. Nowadays, this problem has already become scientific.

4. Fundamental researchers of legal practice need a lot of years.

Therefore it is necessary to start them much earlier of the period, when there is a need for another natural transformation of the system of civil, criminal and administrative proceedings. Only under this condition can be prepared on time and at an appropriate level scientifically-based recommendations and developments for the implementation of results into legislative and judicial practice. Offered

¹ from dialectics to cognition not going away.

² Indicated scientific problem in relation to the science of criminal-proceeding law is well consecrated by A.V. Volevodz. See: About the effectiveness of implementation of achievements of the criminal procedure science to the practice of criminal proceedings // Library of criminal law expert. Scientific journal. 2014. № 1 (12). P. 360-370.

³ See: *Belkin R.S.* History of the domestic criminal science. M. 1999.

recommendations and developments should be subjected to the comprehensive discussion in the scientific community, wide legal society, practitioners¹.

However, experience shows that in the Russian life everything happens the opposite. There are very few long-term studies of legal practice. And dramatic changes in legislation, usually, made spontaneously, quickly and still late. Wherein, discussion of the draft laws in the wide legal society isn't implemented. Practitioners are put before the fact of new changes and, naturally are not ready for them.

Thus, the legal science on the objective and subjective reasons isn't respond in time for changes of the legislation, practice of its implementation, and generally – not fully fulfill its function.

And here we need to convince that not a big amount of scientific organizations are ready to conduct long-term researches. Specialist have no desire to spend it only because they are costly, not always thankful from the point of view of using the results and no having quickly returns in the form of, for example, scientific degree, recognition and etc.

One of the possible ways of solving of the indicated problem is a separate well-funded long-term legal research.

5. The problem of scientometrics in legal science. As you know, scientometric data in the last decade became actively to use in the science for different kinds of reports of the scientific organizations, scientists themselves, and also for evaluation of their scientific activities for a certain period of time. The most common are various citation indexes, which are based on statistical scientific methods.

At this stage indicated methods are slightly supplanted have already proven in the practice method of commission expert evaluation of the works of scientist, and also the method of reviewing of his separate doctrines.

¹ About this see: *Volevodz A.G.* Criminal-legal obstructions to the international cooperation in the sphere of criminal proceedings. // Library of criminal law and criminal science. 2013. № 2. P. 164-172.

In the legal science scientometric evaluations are becoming more common. There have appeared quite interesting books on legal scientometrics¹. Some separate legal sciences are trying to develop their own scientometrics. Probably, that the interest of scientometrics would be less stronger, if the variety of universities for more higher indexes of citation, wouldn't have to pay higher salary.

However, the dependence on the payment isn't the only reason of the contemporary interest of the scientometrics. The practice of reviewing, as you know, always subjective and has all disadvantages which are associated with subjectivism. This necessitated the search of intersubjective depersonalized methods of evaluation of the scientists.

Focus on the relevance of the doctrines of scientists through the amount of citations of their works seemed at initial stage quite attractive.

However, actively used nowadays practice of evaluation through the Hirsh index and other indexes of citations also not free from the serious objections, including subjectivism. For example, chief editors of scientific journals in making decision about publishing can give preference to the authors who are making references on their works. And, accordingly, vice versa.

But there is also another side. Quoting of the author doesn't give evaluation of his work. It is only taking into account that was made references to the work of specialist. Therefore it is enough to write in the book or article stupidity or to express an opinion, which is not in accordance with the law – and this work will be criticized, that is, will refer to it. It will turn out that in case of a negative assessment and criticizing of the work itself, index of its citation will be high!

In the index of citation the big importance is playing popularity of the law. Thus, specialists in forensic-expert activity with the importance of their works for the specific legal science will always have lower index, than specialists in the civil law. Moreover, specialists on the theory of the state and lay by its definition will

¹ See: *Shumilov A.Y.* Introduction to legal scientometrics. M. 2012.

have generally higher rankings, because every serious scientific research begins with theoretically-legal base.

It is should be considered that the interest to some branches of the law increases and then decreases. For example, nowadays, unlikely someone will be interested by the works on the collective law, although earlier they were quite popular. How evaluate doctrines of scientists, who are developing such law?

The same is related to the works of separate scientists. Thus, earlier there were not many references to the works of famous pre-revolutionary lawyers. Now, it is vice versa, became popular to refer not to the contemporaries, but to the works of the Russian legal writers of XIX – beginning of XX centuries. There are vivid personalities, interest to the works of which are almost extinguished, and then vividly ignited. To these, for example, related the works of the Russian religious philosopher of law I.A. Iliyn, the founder of the psychiatric concept of law L.I. Petrazhitskiy.

Indexes of citation are not free from subjectivism and also because in Russia there is a strange custom – to refer to the government of the state to the point and not, the leadership of ministries and agencies and etc. If to consider objectively and fully everything that was published in Russia during XX century, so the largest index of citation will be by K. Marks, F. Engels and V. Lenin. During the soviet time to them gave referred in all scientific works. The same, in varying degrees, have saved to the present day. In the system of Ministry of Internal Affairs, for example, there is a fashion to refer to the speech of the Minister of Internal Affairs. In a number of universities is necessary to refer to the doctrines of the rector (or Dean of legal faculty).

It is also important an ethical aspect. How ethically and correctly to measure contribution of the scientists to the science by the method of citations? Whether, in principle is correct to engage such measurement? In cultural studies it was managed to avoid such comparisons: which of the composers – Tchaikovsky or Glinka – quoted more. In the art studies, as you know, mathematically are not compare between each other the contribution to the art of Aivazovskiy and Repin.

Furthermore, repeatedly was raised a question about if there is possibility of scientometric evaluations in humanitarian sciences, including jurisprudence.

If such evaluations are possible, so, firstly, not between each other (it is not ethical), secondly, evaluations should be comprehensive. It should be taken into account not only citation, but also popularity in Russia, popularity abroad, number of monographs, their reconciliation, popularity and using in the educational process at the universities and etc.

The big contemporary scientometric problem – is to develop objective scale of ranking of the scientist. Now we can propose to use reconciliation, and indexes of citation, and other evaluations in the complex.

It is necessary to say that in the soviet time there were works, in which have been concerned the scientometric problems of legal science. Such reseaches have mostly been carried out by the specialists of the theory of the state and law and a number of sectorial legal sciences. However, disadvantage of these works was that, they mainly considered the problems of legal science inside the legal science. But to be objective, it is necessary to “climb” over legal science and to look at the existed problems “above” and “from the side”. For such evaluations and researches need philosophy and philosophy of law.

It should be specially paid attention to this simple truth, because philosophy of law, as it was already mentioned, sometimes trying to make to the study of only “ideas of law”, “the sense of law”, forgetting about scientific – truly philosophical – part of this scientific discipline.

In general, sociology of science is now represents quickly developing philosophical direction. And quite possible that the specialists in this field of knowledge will delight again by achievements, which will be positively reflect on the legal science.

§ 4. Problems of legal education at the present stage

Legal education in Russia nowadays is going through a difficult period. This is largely due to started in early 1990-ies reform of the education, which despite the change of the presidents, ministers of education and governmental authorities in general, has become permanent. The common phrase about the difficulties of life during the era of changes is as relevant as ever for the legal education. Thus, can be highlighted some problematic questions of getting nowadays of legal education.

1. To the readers of this book, of course, there is no need to explain the importance of getting of completely qualitatively legal education, and also which consequences may occur, if an investigator, prosecutor and etc. will be pursuing their legal activity without the knowledge about the law and legislation.

Doctors, long ago realized the danger of getting non qualitative medical education, don't allow getting it in absentia. Legal science, however, is still possible to obtain in absentia.

The authors of a current monograph repeatedly spoke against getting legal education in absentia. However, this appeal, as the appeals of other specialists, still remains to be not popular. On the contrary, to get higher legal education is still very simple.

Since 1990-ies in Russian Federation have occurred a demand for the legal education. Demand, as you know, borns supply. In Russia, during the indicated period have been opened dozens of legal universities and faculties. The majority of the institutes and universities considered necessary to have law faculty in its composition. Of course, such splash has a sharply negative impact on the quality of the education.

However, for people, which already have higher education, provided significant and unjustified benefits upon getting diploma of the lawyer. They are allowed to get legal education not only in absentia, but also in a short time.

In one word, such policy of the state clearly showed that legal education in contrast, for example, to medical education – education, as it can be said so, “second class”.

Further reform of the Russian education led to a partial transition to western standards of education. In particular, we have adopted two-tier education “bachelor-master”, instead of the usual and understandable system, when was graduated “specialist”. There is a question occur: why someone believes that foreign education is better? Experience of community with foreigners (from students to professors) gives opportunity to make completely opposite conclusion – soviet-russian education is much better, than overseas. During communication with the colleagues from the foreign states even the most stringent opponents of Russia then admitted that Russian education at least not worse than foreign. What for began in Russia to copy the western system? Diplomas of prestigious Russian universities were perceived in the West. Russian famous scientists without any problem arranged to teach in the best overseas universities. And wherein, no one was interested that Russian doctor of sciences or professor has never had specialty “master”.

However, in our country has been adopted two-tier system of higher education (bachelor-master). But what was happened later? Further, specialty master of law was allowed to receive for people who are not having specialty bachelor of law. As a result, as was rightly written by A.V. Fedorov, practice has shown that to the master course in the legal specialties entered a significant number of persons, who received higher education in other specialties (zoologists, geologists, engineers and etc.). Not having the base legal education (and master course doesn't give such education), figuratively speaking, not being able to fly, they immediately begin to engage in the program of “the highest piloting”. It is impossible to imagine that the person, not having basic medicine education, starts preparation, for example, carrying out the operation on the heart. Why it doesn't exist in the medicine? Indeed professionals are prepared, in whose hands is the life and health of people. And why it is so possible in jurisprudence? In fact, from the

lawyers no less than from the doctors, but only in other sphere, depend the life and health of the citizens, protection of their rights and freedoms, normal functioning of the state in general¹. And if to add that master course is opened in the non-core university (shipbuilding, economic, engineering-mechanical and etc.), so is it necessary to wonder which lawyers do we have now? Further, these “lawyers” consulting people, as a result people are left without property and as the debtors. Other prosecuted to responsibility innocent people – without malice, just doesn’t have enough knowledge in order to understand the case and etc.

About the same, principally was said by I. Y. Kozlihin. According to his words, happening in the educational sphere processes can hardly be named as reform of education, as reform – is at least the system of goal oriented actions, directed to the improvement of something. “I was never lucky to meet someone from the colleagues, who stated endorsement of what is happening: it was wrong and bad, and now became rightly and better. Firstly, transition to the two-level system of bachelor-master has destroyed during the previous five years system of education, which for all its possible disadvantages didn’t recommend itself bad. Now the former education truncated up to four years. In this, may be, wouldn’t be nothing wrong. Four-year education was in the famous soviet universities: in Sverdlovsk, Saratov and Kharkov. But contemporary four-year education – is not a coherent system of university education of the soviet times, but something chaotic. Everything came down, essentially to the reduction of the courses and even exclusion some of them. Two-year master course, which seems could compensate the problems in reality nothing compensates as to the master course accepted not only bachelor-lawyers, but also specialists of the other bachelor specialties. Moreover, graduated master course receive the right to teach in the legal universities. The absurdity of this is obvious”.²

¹ *Fedorov A.V.* About the article of Marischak V.M. and Parshin O.D. “Contemporary tendencies of the development of the institute of the criminal responsibility for smuggling” and in the master course on the direction “jurisprudence” // Scientific notes of Saint-Petersburg filial of Russian Custom Academy 2014. № 1 (49). P. 272-275.

² *Kozlihin I. Y.* The general theory, integral jurisprudence or encyclopedia of law? // Encyclopedia of legal science or integral jurisprudence? The problems of studying and teaching:

Thus, legal education loses its status. And status is quite high. Indeed repeatedly met and now we are meeting situations when economists, engineers, historians, militaries and even doctors would like to have higher legal education. Wherein, the lawyers, who are willing to get diploma of engineer or military much less.

At the end it should be said that a big amount of legal universities and faculties, contrary to naïve expectations of some optimists, brought not the increase, but decrease of the quality of education. It is necessary to continue the process of certification of legal universities and faculties regarding the ability of preparation of the professional lawyers.

2. The next question was the possibility/impossibility of protecting the dissertation on the scientific degree of the candidate of legal sciences, not having the higher legal education. Paradoxically that in Russia during a long period of time was allowed to protect dissertation on legal sciences to persons, not having higher legal education. Were these works good? Unlikely. Such protections haven't contributed to the authority of legal science, positive exceptions, probably, have been, but namely exceptions. Only in 2011 the Government of Russia has paid attention to this not normal situation¹. Decision of the government has caused, oddly enough, a lot of protest expressions. Well, having higher legal education in Russia is prestigious, and to be a candidate or a doctor in legal sciences – even more than that.

3. Focused on the practice western jurisprudence basically “baked” from the students narrow profiled specialists. Contemporary capitalistic world, where, to put it mildly, there is a significant influence of economic, is also waiting for narrow profiled, but already ready for independent work graduates of the universities.

materials of the 7th philosophical – legal readings in memoriam acad. V. S. Nersesyants. / Executive editor V.G. Grafskiy. M., 2013. P. 11.

¹ Resolution of the Government of the Russian Federation from June, 20th, 2011. № 475 r. «About introduction of changes to resolution of the Government of the Russian Federation from January 30th, № 74» // Meeting of the legislation of the Russian Federation. 2011. № 26. Article 3799.

Soviet-Russian education, on the contrary, was oriented on the preparation of widely profiled specialists: engineers, doctors and etc. It is hard to say, what system is better. Experience shows that good specialists in any systems are drawn to knowledge and development. Narrow profiled specialists on the base of already having knowledge, seeking more deeply to study theory. Widely profiled specialists are seeking to learn deep one or two directions. No wonder, it is said that any theorists of law should know minimum two direction of the law.

The danger consists in that the western system of education never destroys itself. We want firstly destroy all what we have and only after that to build something in the ruins (or again to copy from the West). So, now scientists are putting fairly the question: if we refuse from our usual system of education, so to whom, at what course and to what extend is need to teach fundamental legal disciplines: theory of the state and law, history of the state and law, history of the political and legal doctrines? There is no clear answer on this question. As a result, it isn't excluded that in the course of our "reforms" in our country will refuse or almost refuse from the basic legal disciplines, will be releasing attorneys, lose the school of teaching. But in this case early or later, but likely – early, will be lost the law itself.

Moreover, "reforming", "pre-reforming" and "post-reforming" are constantly pulling to step on the same rake: in order to appreciate and to develop what we have – to sprinkle head with ash, to destroy everything, and then to think of popular question: what to make further?

On this question in the part of legal education has been already given a good and clear question. S.S. Alekseev and V.F. Yakovlev wrote that it is important to focus not so much on the acquisition of many practical knowledge, as on the acquisition of fundamental positions of science about the state and law, which will allow to see for a specialist, regularities of its development, deeply understand the objectives of its activities, to detect problems, proposed by life and to find the ways of their solving, constantly improve their knowledge and independently

increase the level of its professional preparation¹. Exactly on such base is necessary to build cognitions of any specific branches of law.

Such approach is especially important and useful in the contemporary conditions, when as a result of permanent growth of the amount of laws already impossible even with the help of electronic search systems to observe all the array of the regulatory legal acts. Furthermore, it is impossible to include them to the system of education for further study. And even unserious to speak about their study in the frames of bachelor. The higher legal education should teach understand of law, system of law, regularities of its development, the role of the state, law and a specific lawyer in society, to develop the skill of independent work and its correct interpretation, to teach correctly implement norms of the law. Well highlighting this problem, I.L. Chestnov principally correctly noted that employers often meet gradulators of legal universities with the phrase: “Everything, what you have been taught in the university – forget, now the elders will tell you, how is necessary to work”². However, having wide basic legal education, desire to know the law and ability of independent work, there was no problem for the majority of the gradulators to master the concrete norms.

In the development of the indicated phrase there is a sense to tell about the research, which was conducted for the purpose of a current monograph. It was surveyed 500 gradulators of the Russian legal universities and faculties with work experience no less than one year.

The following questions have been raised:

- Was your employer satisfied with quality of your legal knowledge when you were applying for a job?
- How do you rate your knowledge immediately after beginning the work?

¹ Quote according to: *Zaharov V.V.* Contemporary model of the domestic legal education: traditions and innovations // *Encyclopedia of legal science or integral jurisprudence? The problems of studying and teaching: materials of the 7th philosophical – legal readings in memoriam acad. V. S. Nersesyants.* / Executive editor V.G. Grafskiy. M., 2013. P. 154.

² *Chestnov I.L.* Practical, clavecinist jurisprudence – exit from the dead end of law dogmatization // *Encyclopedia of legal science or integral jurisprudence? The problems of studying and teaching: materials of the 7th philosophical – legal readings in memoriam acad. V. S. Nersesyants.* / Executive editor V.G. Grafskiy. M., 2013. P. 48.

- Did the knowledge of the theoretical-legal disciplines help at work during implementation of the specific norms of law?

The following answers have been received:

373 people responded that the employer wasn't satisfied with the quality of legal knowledge. As a rule, there was not enough knowledge according to the practice of implementation of the concrete norms of law, the skill to compose legal documents;

347 people responded that they were not satisfied with their legal knowledge after beginning the work. Wherein, 128 people responded that they were satisfied with their knowledge. And it was noted that many lawyers in the firms, where they have worked, over the years became "artisans", that is know very well small amount of legal norms and practice of its implementation. However, they didn't know (or forgot) another legislation and sometimes addressed with simple questions, regarding the branches of law, not associated with the work. The remaining respondents abstained.

And finally, are very interested answers on the third question. 466 people responded that during the work by implementation of the specific norms of law, helped them knowledge of theoretical-legal disciplines and wide legal horizons.

Commenting the answers, some respondents convinced that often at work was tried to push them on the illegal (and sometimes criminal!) actions (were asked to find a way of evasion from payment taxes, to give consultation how to deceive creditor, help to confuse investigation of the criminal case or to challenge evidence collected by him and etc.). And especially awareness of themselves as a lawyer, understanding the purpose of their work and responsibility for their actions stop them from committing of illegal actions. All this is a result of a good basic legal education.

It is significant, that in pre-soviet and soviet time preferred not to take on operational work in the security services persons, who are having higher legal education. This is because the fundamental legal education, which was given immediately after school, as a rule, produces consciousness, based on the strict

observance of the law. But, primitively speaking, it is hard to imagine intelligence agent, who is strictly guided by the rules: don't cheat, don't steal and etc. And not every lawyer could "cross" through settings, which have obtained in the youth.

Thus, fundamental theoretical-legal knowledge should have everyone, who considered himself as a lawyer.

4. To the actual problems of teaching should also include the question about what to teach to the students as the fundamental science of law: the theory of the state and law, encyclopedia of law, integral theory of law or something else.

This question is not new for law and for the higher legal education in Russia. It was actively discussed at the end of XIX century. Discussion ended that it was refused from the idea of the encyclopedia of law¹. The entire XX century Russian lawyers have to experience the essence of law, dispensing without "encyclopedia". And this way of cognition was successful. What is the reason to rename the science under the clear and understandable name of "theory of the state and law"? It is unable to answer this question. Maybe, proponents of the encyclopedia of law sincerely believe that it would be better, and maybe the motive is the desire "to leave a trace in science", which in fact is nothing more than pride.

The argument of proponents of the encyclopedia of law seems, at least, unconvincing. And the most important is that if somebody would like to invent something better, it is not necessary suddenly to abandon from what it was. So that's that, but the quality of teaching basic legal disciplines in the USSR, undoubtedly, was one of the highest in the world. However, if the reforms in this part take on "Russian", so there is a danger that everything will be as always: it will be refused from the theory of the state and law, and the new one would be worse. Certain steps in this direction have been already made. Thus, in 2008, was published very interesting book under the name "Encyclopedia of law", including the sections about the dogma of law, sociology of law and philosophy of law². If it was written as a monograph, examined scientific questions, wherein proved, that

¹ See: *Korkunov N.M.* Lectures on the general theory of law. Saint-Petersburg, 2004. P. 33-34.

² See: *Grevtsov Y.I., Kozlihin I.Y.*, Encyclopedia of law. Saint-Petersburg, 2008.

the law should be taught as encyclopedia, so it will be great. But the book was written as a textbook. Students, who bought the book, were under confusion. The same confusion has arisen by teachers. Who suffered at the end? Prestige of legal science and the authority of teachers. Not surprisingly, as it became known that in some universities this really interesting book is not emphatically recommended by teachers as educational literature, because there is no subject in the university under the name of “encyclopedia of law”.

For full higher education is needed philosophy as the cornerstone, theory of the state and law and philosophy of law as philosophical-specialized science, binding philosophy and the theory of law.

5. Another modern hobby was testing on the offsets, exams and paper tests. In the legal sciences, this, unfortunately, is again the step not forward, but back. Implementation of testing can bring and bring benefits in the natural sciences. In humanitarian sciences it is not helpful, but harmful. All humanitarians should be fluent in the Russian language on the high level, to be able clearly and exactly to express their thoughts. For the lawyer clarity and accuracy of the expressing of thoughts – his bread. Such skill is learning, also during tests and examinations. This is not the only argument. It is necessary to consider the legal science contains a variety of mutually exclusive approaches to these or that phenomenon. For example, to the right, state, law and etc. How is correctly to answer on the question in test: what is right? It could be understood by legislator as the measure of freedom, equality and justice, as a will of ruling class, erected in the law, as a mental phenomenon, as the identity of law and etc. Where the student knows, what worldview have the teacher, or the person who is going to check the answers? Besides above mentioned is needed to understand that testing learns not think, to make arguments and to prove what is important for jurisprudence, but by the method of elimination to guess the answer. However, such “solutions” are quite harmful for the practical work, taking in account the diversity of the situation in life.

6. The problem, which is not associated with reform of legal education,

but directly associated with teaching, is a traditional and permanent discussion about that how many branches are in the legal science. This question in different universities is solved in completely different ways. Apparently in different ways is also teaching. Furthermore, because of uncertainties, in some universities are trying to teach each from variety of branches “for a little bit” and in other universities teaching of some branches is almost absent. For example, not everywhere is taught prosecutor-supervisory and operational-search activity. The problem is not even whether branches of law are really the branches of the law, which was taken for example prosecutor-supervisory and operational-search legislation, but the other. In fact, operational-search legislation, almost the only, secures restrictions of the human rights for the secret of the private life, secrecy of correspondence, telephone conversations, allows and regulates unofficial examination of the home, car, office, allows to collect information about health, property and material wealth, friends and acquaintances. In other words, regulates and allows completely invading to the private life and natural rights of the person¹. Prosecutor-supervisory legislation, on the contrary, is an essential tool for the protection of human rights.

To the question about why these disciplines are not taught or taught in the regime of “3 lessons”, is answered, that there is not the branches of the law and the emphasis in the training at requested university (faculty) is made on the detailed study exactly of the branches of law.

As a result young lawyers don’t always have a clear conception even about the legal system. Wherein, nowadays are spread two extremes. Some gradulators from the universities are naming not more than 10 existed in Russia branches of law (criminal, administrative, civil and appropriate types of procedural law, to which adds constitutional, family and (rarely) one or two more branches of law). Or vice versa: it lists all possible types of legal branches, including aerospace, computer and etc. The most interesting is that the same inconsistency and

¹ See: Theory of operational-search activity / under editorship K.K. Goryainov, V.S. Ovchinskiy, G.K. Sinilov. M., 2006.

subjectivism can be found in academic literature. There, along with the generally recognized branches of the law, can be found the name either newly formed branches, or branches formation of which is generally have no doubt.

There is doubt that this book will mainly fall to the experts, who are well known debates about the number of branches of law. There is no sense to repeat these debates. The purpose of written is to show necessity and importance to come, finally, according indicated question “to a common denominator”.

In this context is seen very interesting the offer of S.S. Alekseev about classification of branches of law and in accordance with classification allocation of the respective branches.

The scientist divides the law into three main components:

1. “*The profile, basic branches*, covering the main legal regimes; moreover, it is need to select and put over the entire system of branches really basic branch of the entire system – constitutional law; then three material branches – civil, administrative, criminal law, appropriate to them procedural branches – civil procedural, administrative-procedural, criminal-procedural law;
2. *Special branches*, where legal regimes are modified, adapted to specific spheres of the social life: labor law, land law, financial law, social security law, family law, criminal-executive law;
3. *Comprehensive branches* which are characterized by the connection of dissimilar institutions of profiling specialties and branches: commercial law, the law of prosecutor supervisory, naval law, environmental law”¹.

It seems that on this level of development of science the process of cognition through its classification is quite acceptable. In this regard, we can offer in the academic literature and teaching of law to base on the proposed classification of S.S. Alekseev.

¹ Alekseev S.S. The law: alphabet – theory – philosophy: Experience of comprehensive research. M., 1999. P. 45–46.

Above was outlined several problems of teaching of legal disciplines in the modern Russia. It is very important not to gloss over them, but to reveal, to criticize, to unite efforts in fixing them.

In conclusion, we would like to quote the words of D.A. Kerimov about what should be legal education. The scientist writes that the sense of legal education not only in “coin box” of the various and numerous information and knowledge, as in the acquisition skills of critical thinking, in ability of communication of the facts of legal life and at the same time concrete practical solutions to relevant legal important cases, in their strict logic and evidence. The legal education seeks not only to comprehend complex legal phenomenon and processes, but also to sow in the souls of students “the holy fire” in the creative daring and bold innovations, opening new horizons of legal theory and practice.

For the achievement of this goal is necessary the knowledge of not only fundamental “dogmas” of jurisprudence, but also to a certain extent possession of the information of other sciences, having in varying degrees relation to constantly existing legal problems. After all, at “junctions” of two or more sciences are born the most fruitful and promising ideas, theories, concepts. It is appropriate in this context to remember that the legal education in Russia originally and traditionally was organically associated with the entire complex of other branches of knowledge, in particular with philosophy, sociology, ethics and psychology. The Russian lawyer was obliged to have the breadth of views, high culture and morality, to be an encyclopedic, to know the uniqueness of the psychological nature of the nation, national customs and traditions of development. These principles should be implemented by the contemporary legal education¹.

¹ *Kerimov D.A. Selected works. In 3 volumes. Volume 1. M., 2007. P.XXI.*

§ 5. The main problems of contemporary legal practice

Legal practice seems to be far away from philosophy and philosophy of law. A cliché is that philosophy is not needed where it is necessary to work, and it is needed where one talks about the work.

However, from the practice of implementation of legal rules comes the belief in law, legal consciousness, normal way of life of society. And on the contrary, practice can turn around relation to law, then appears legal nihilism, increases amount of violations, social being ceases not to be healthy.

Moreover, a number of practical questions have already gone beyond the comprehension of the practitioners, and its significance is achieved not only theoretical-legal, but also philosophical level.

Some of such global questions will be covered in this paragraph.

The first problem is an excessive formalization of the norms of procedural law, ordinary routine of doing even simple legal cases. This provision, of course, is inconvenient for participants of legal relationship. People don't want to mess with the law, because it "will be ridden on the courts", will force to come in inconvenient time, repeatedly repeat one and the same words, to speak publically on unpleasant occasions.

But if ordinary citizens in order to participate in the proceeding require asking for a leave, endure other inconveniences, so for the legal clerks, even from the side of the state, there is a work. And their work they are making often not only for the result, but for the sake of the work itself, for its process. They don't need particularly the result. And it seems that he doesn't need for the state.

It can be confidently stated that the law is still moving in the direction of strengthening of formalism. This also applies to the Russian law which traditionally criticized and the rights of the developed foreign countries, in which the number of regulatory legal acts already exceeded the level of study, even if to spent on it the whole life. There are more and more formalization of legal actions in the law, step-by-step regulation of the steps and small steps. Accordingly, in the

process of more small violations, if the procedural procedure is violated, can be interpreted as a real violation of the law with appropriate conclusions. In some countries, sometimes it is impossible to undertake some process, not violating any formality! Furthermore, the legal science, what was written about above, is still developing in the direction of detail of all procedural actions; scientific works dazzle with proposals to regulate whatever can be regulated.

However, it is necessary to understand well, on what was paid attention several times: the law is not so bad, as its interpretation and its interpreters. Indeed, not always the norm of law can be ideally described, and moreover, it is not be able to understand it clearly. As a result occur very different interpretations of simple and by its definition not compulsory actions for regulation. Such interpretation leads sometimes to disastrous consequences.

In confirmation of his words, we can bring two paradoxical examples: one, from the Anglo-Saxons law, another from our Russian.

In England was justified a person, who convinced in committing of the crime, due to the fact that the prosecutor was late on the trial. The English judge, who is strictly comply all formalities, began the trial just in time and determined that there the defense is present and the prosecutor not. And he did formally correct conclusion that if there is no one to blame, so there is no prosecution, listened to the defense and acquitted. This story was made a lot of noise, because it was not understandable for society what for they need then criminal proceeding? In order to comply with formalities or to achieve the highest justice, protection of the rights and health of citizens, protection of people?

Even more wild case has occurred in Russia.

To understand it, we need to describe it more precisely. Earlier, Russian CCP although have disadvantages, but in comparison with its present wording was not understandable enough. Earlier, according to the Russian CCP during detection of the fact of crime was initiated a criminal case, set the person who committed it, who was accused under the same criminal case and after investigation, the case was proceeded to the court. If during the investigation was revealed that accused

person didn't act alone, but in a group, so the other participants also faced a charge under the same criminal case. Any questions on the application of the indicated norms from the prosecution, the defense and the court didn't arise.

The vagueness and excessive formalization of the demand of the modern CCP led the practice to that the criminal case, directed to the court, should be initiated not in fact, but against concrete person, otherwise, they say, it violated his rights for defense. Therefore now, after initiating of the criminal case by the fact of the crime, after setting the person, who committed the crime, it became necessary to initiate one more criminal case against the criminal. Then criminal cases are joining into one case and sending to the court¹.

And now the case itself. In the city M. in fact of the rape of a girl was initiated a criminal case. A maniac, who committed a crime, was found and against him was initiated criminal case, which was joined with the initiated earlier. During the investigation it was established that maniac was act with an accomplice. He was also found in the framework of the joined criminal case and he was accused. In the court of the first instance both maniacs under the weight of collected evidences were found guilty and they imposed a severe punishment.

However, the Supreme Court of the Russian Federation has revised the judgment. In its decision was noted that it was not initiated separate criminal case against the second maniac. That is, strictly formally, he was accused and collected evidences without existence a criminal case against him. So, formally, all collected evidences against the second maniac have no legal power! The second maniac was acquitted!

This is despite the fact that the norms of CCP in this question are not clear; there is no unambiguous, understandable requirement to initiate separate criminal cases against all participants.

Are the law and justice prevailed in the given examples? Doubtful.

¹ Thus, by the way, is improving statistics of the authorities of pre investigation, because the number of investigated and directed cases to the court becomes more.

In the end, it actually turns out that on the practice the right is not for the law and justice, but for lawyers and formalities. By the practical workers sometimes there is no understanding of law, the sense of law, the purpose of their work. Hence are the acquittals of murderers and maniacs for failure to comply formal procedures, not influencing actually for failure to comply the rights of the defendant. It is remembered when one of the judges, pronouncing an acquittal for failure of really occurred violation of the law, said: “Of course, the failure to comply with the law, I could eliminate during the trial. After all, it is clear that the defendant is guilty. However, I specifically brought in an acquittal, in order the prosecutor will receive punishment later and learn how to work!”. However, prosecutors couldn’t be taught by these methods, only because, that part of them are also do their work not for the result, but for the sake of the work itself.

This raises a serious theoretical-legal and even philosophical-legal question in the limits of legal regulation, and also about the true aims of legal work, criminal proceeding.

The second problem associated with the truth in law. Earlier in pre-soviet times in the legal disputes was considered as an absolute rule establishing of the objective truth. This order was also saved by the soviet legal era. On this postulate were raised all the generations of the Russian lawyers.

However, with reforms and cataclysms, which had happened in Russia at the end of XX – at the beginning of XXI centuries, in Russian legislation has been happened a global transformations. Their magnitude is largely associated with that from the CPC (Civil Procedural Code), APC (Administrative Procedural Code) and CCP of the Russian Federation disappeared requirement to establish an objective truth. She became to be replaced by the conventional, contractual and other “legal” truths.

At the same time, legislator was hurried as always and didn’t edit the legal norms so, that they will have unambiguous interpretation. As a result of contradiction of the laws, the practice began to decline, specialist in sectorial legal sciences and in the theory of law were divided in their opinions. The question thus

rose to a new, already philosophical level. It is necessary again to evaluate what an objective truth is, possibility of its establishment and if it necessary to establish it in the legal disputes.

In philosophy under the truth is understand the knowledge, objectively reflects the actual reality. The truth can be also defined as conformity of thoughts to reality. These definitions reflecting two characteristics of the truth: *objectivity and concreteness*. Under the objective truth is understand and adequate reflection of the object by the cognizing subject, reproducing cognizing object so, that it exists by itself, out of the consciousness. There is no subjective truth, as there is no knowledge, which could be true for the one person, but wrong for all others. Concreteness of the truth – is a reflection in the knowledge of certain relationship and interaction inherent to the study of phenomenon, depending on the conditions, pace and time of their existence. The abstract truth, which is fit for all life occasion, doesn't exist. The truth is always concrete¹.

Procedural law on Russia was always directed on the achievement of exactly objective truth.

The need to establish an objective truth, without any doubt, contributed development of the dialectical method of cognition. In philosophy dialectical doctrine about possibility of establishment of the objective truth was guide for the entire legal thought. In many foreign countries², on the contrary, it was not accepted to establish an objective truth. To a certain extent, it was also associated with philosophy. In the mentioned countries there was no appreciable dominance of dialectics and based on it theory of cognition. In philosophy and culture of such countries, what was already written about, were quite common other theories of cognition, including about impossibility of establishment objective of the truth. In such circumstances in the West was “born” something, which was named “legal truth”. Indicated definition has little in common with an objective truth in the philosophical sense. She is associated with the decision of the court, issued in a

¹ *Philosophy* / under editorship: V. P. Salnikov. Saint-Petersburg, 1999. P. 285–286.

² First of all in England, in the USA and other countries with Anglo-Saxon system of law.

particular case. And such decision, issued in compliance with all necessary procedures, is considered to be not only legal, but true!

The fact truth of legal truth is conditional. It may coincide with an objective truth, or may not. In reality, legal truth is a kind of a notional unit of the assessment of fairness of justice. The legal truth can be called as a kind of fruit, the result of the agreements adopted in society in terms of justice.

Set out illustrated the influence of culture and mentality of the West on the law. The west society is pragmatic. It is advantageous for them to resolve disputes quickly and clearly, in order “digging” in the nuances of the case. Society has become accustomed to that is more optimal to make decisions on the legal precedent, than to examine again all evidences for search of this unknown “justice”. Furthermore, for the West economy has always had a special meaning. To impose the court costs on the parties of the case – practice that was existed abroad for centuries. The costs which are not only directly related to the proceeding, but also the costs, directed on collecting of evidences. The court, according to the established practice, should not search for evidence and prove. He acts as an arbitrator and only evaluates evidences, for collecting of which the parties incurred costs, sometimes significant. Besides, the factor of the speed of justice has as physiological and only economic importance. In addition to that, of course, to establish a legal truth is easier than objective. To make the decision about who better has proven rightness is easier, than to investigate the case in details.

As a result the western society really got accustomed to that who gave the best arguments; he is right from the point of view of the court. And who is right – behind him is the legal truth. And it is not important that actually this truth is not a truth, but a fiction, shield. I.L. Chestnov is leading interesting results of the researches, conducted by the lawyers of the USA. He writes that USA “realists” already in 30-ies years of XX century showed the dependence of the decisions taken by the judge, from his (judge’s) culture (education in northern and southern states), race, confession, age, gender as well as subconscious image of the parties –

participants of the trial, and supporters of the “school of critical legal researches” in 70-80-ies years of XX century – from political to ideological preferences and also socio-economic status¹.

In general, any trial – is a cognitive activity. Is it possible from the cognition point of view to consider the legal truth as the truth? Obviously, not. From the philosophical point of view the legal truth – it is not the truth at all. The word “truth” in the researched word combination, was probably chosen from the correctness to the justice. The legal truth is sometimes named as a formal truth, conventional truth, judicial truth, contractual truth. Using in this case as synonyms the words “formal”, “conventional”, “judicial”, “contractual” – also apparently were chosen in order to underline the falsity and incorrectness of using the term “truth” in such cases.

Actually, there is no legal truth at all. There is only the true knowledge – so is the truth, true and untrue knowledge – so is false, inaccurate and incorrect. When is said “legal truth”, so is need to understand simple *judicial decision*, which is the most appropriate for the particular situation. If for the legislator is important exactly the word “truth”, so in order to avoid confusion he proposed to use the term “*conventional truth*”², that is knowledge, which can be considered really relevant to the reality (correct, clear) only with the established share of assumption. The term “conventional truth” shows and emphasizes conventionality and possible inaccuracy of lurking behind him knowledge. However, the legislator didn’t accept this proposal yet.

Currently as a result of the reforms in arbitration and civil proceedings is proposing to establish not objective, but legal (conventional) truth. Wherein, principle of establishment of such truth is treated as “regulatory leadership beginning of the civil procedural law, in accordance with which movement of the

¹ Chestnov I.L. Criteria of the modern understanding of law // Philosophy of law in Russia: history and modernity: materials of the 3rd philosophical – legal readings in memoriam acad. V. S. Nersesyants. M., 2009. P. 258.

² See: Zakhartsev S. I. Science of operational-search activity: philosophical, theoretical-legal and applied aspects. Saint-Petersburg, 2011; Zakhartsev S.I. Law and truth // The world of politics and sociology. 2012. № 9. P. 146-152.

trial...should go in direction of using all prescribed by the civil-procedural norms means *for the authentic, and in case impossibility or under the law inappropriate – likely establishment of the circumstances* (authors italics - S.Z., V.S.), having relevant meaning for the proper resolution of the case on the merits”¹.

This approach, occasionally encountered in modern procedural literature, is rightly criticized by reputable scientists. That is, M.K. Treushnikov writes, that the author’s statements, denying achievements of the truth as a goal of the justice, are built on the abstract and formal judgments. As a base of reasoning is taken the lack of guidance in the CCP of the Russian Federation on the duty of the court to take all statutory measures for comprehensive, full and objective investigation of the actual circumstances of the case. Indeed, - the author points out, - has changed the conception of CCP of the Russian Federation from the point of view of the principle of competition as a mechanism of achievement the truth, but not a refusal from this goal of justice. On the contrary, in the new version of CCP and APC extended set of types of evidences, detailed rules of evaluation of the evidences, introduced regulations of participation of the specialist in the process, saved previously existing guarantees of checking legality and validity of judicial acts². The same think and other specialists³.

Statements of a number of authors about that according to the modern civil, procedural and arbitration law in Russia before the courts is not set a goal to reach the truth, and the courts doesn’t reach this goal, are differ from the objective indicators of judicial statistics. These are results of the activities of the courts of appeal, cassation and supervisory instances. The cancellation of the judicial acts by these instances, as a rule, evidences of the judicial error and not achievement of the truth by the court of first instance⁴. So, it was in pre-soviet time. For example, a

¹ See: *Osokina G.L.* The civil process. M., 2013. P. 137.

² *Treushnikov M.K.* Judicial proofs. M. 2005. P. 12.

³ See, for example works: *Bonner A.T.* Establishing the circumstances of the civil cases. M., 2000; *Amosov S.M.* Judicial cognition in the arbitrage process. M., 2003.

⁴ *Treushnikov M.K.* Indicated essay. P. 15.

famous Russian lawyer E.V. Vaskovskiy wrote that the aim of proving – is to establish that the statement is true¹.

And moreover an objective truth is necessary to establish in the criminal-procedural law, which was also suffered from the reforms. About the necessity of establishment of an objective truth in the criminal proceedings have written almost all authority prerevolutionary specialists: I.Y. Foynitskiy, S.I. Viktorovskiy, V.K. Sluchevskiy and others². For example, I.Y. Foynitskiy wrote that the truth – is the highest law of justice, the desire for her must be imbued in all his measures. Indicated position was supported also in a soviet time. That is, M.S. Strogovich indicated, that the truth, established in the criminal process according investigated and resolved by the court case, is an objective truth...This is a complete and accurate accordance of an objective reality results of investigation and court about circumstances of the investigated and resolve by the court case, about the guilt or innocence of the prosecuted persons³.

CCP of the Russian Federation didn't reproduce those provisions. Scientists, who were involved in the preparation of the new law, are explained by the fact that requirements of comprehensive, complete and objective research of the circumstances of the case, allegedly incompatible with put in the basis of CCP of the Russian Federation principle of competition and with the special role of the court, designed as an arbitrator, not getting up neither one, nor another side, to solve the argue between the prosecution and the defense⁴.

However, under such chaotic requirements of CCP of the Russian Federation, with its inconsistencies,, the aim of establishment of an objective truth according the case, even not be clearly and plainly regulated, is still a guarantee of legitimacy. Developing an indicated thought, K.F. Gutsenko noted that exclusion

¹ See: *Vaskovskiy E.V.* The civil process: Chrestomathy / under editorship M.K. Treushnikov. M., 2005. P. 362.

² See, for example: *Foynitskiy I.Y.* Course of the criminal proceeding: in 2 volumes. Saint-Petersburg, 1996; *Viktorovskiy S.I.* Russian criminal process. M., 1997; *Sluchevskiy V.K.* Textbook of the Russian criminal process. M., 2008.

³ *Strogovich M.S.* Course of the soviet criminal process. M., 1968. Volume 1. P. 132.

⁴ See: *Sheyfer S.A.* Proof and proving in criminal cases. M., 2009. P. 37–38.

from the criminal-procedural law references about the truth and some guaranteed her achievement provisions, cannot by itself “liquidate” objective, not depending from the legislator regularities of cognition. That’s why the legislator was forced to make provisions in CCP of the Russian Federation a number of procedural rules, directing preliminary investigation and judicial proceedings in a way, which, ultimately should lead to the establishment by each criminal case exactly that has long been called the truth, the true. To the rules of this kind include, for example: provisions that define the subject of proof that fully and comprehensively covers the circle of circumstances, necessary for the correct resolving of the criminal case; clear requirements, applicable to the merits and procedural form of proofs; responsibility of the relevant authorities and officials to make decisions due to their inner conviction, based on the totality of relevant, admissible, reliable evidences¹.

Given the arguments indicate that the imposing principle of adversarial in a modern CCP of the Russian Federation is quite combine with the principal of comprehensive, complete and objective investigation of the circumstances of the case. As for the court, acting in the opinion of authors of a modern CCP of the Russian Federation, only as a referee, who is not establishing an objective truth, is necessary to pay attention on opinion of S.A. Sheyfer. According to his opinion, we cannot agree with such structure in several reasons, and primarily because of certain requirements that conviction cannot be based on assumptions. This requirement, coupled with the determination of the validity of the verdict as the actual circumstances of the case, means that while bringing a conviction, the court should be convinced in the correctness of its conclusion about the guilt of the defendant, that is should not be guided by formal, but rather by material, objective truth. Proposed structure is also based on the false interpretation of the role of the court in the adversarial process, as if completely removed from the establishment of the de facto circumstances of the case. The court, while remaining the subject of proof and being objective and impartial arbitrator, has a right, however, to collect

¹ *Gutsenko G.F.* Criminal process. P. 206.

evidences in order to verify the evidences, which are already given to it, or to clarify something or otherwise unclear circumstance¹.

Indeed, disclosure for many crimes – is a complex and difficult work, which is not always possible for investigator to cope with. Besides, sometimes there is an unfavorable situation for establishment of the truth: the lack of the informative traces left by the event, their destruction due to the natural phenomena or not understanding the meaning by its citizens and etc. But an objective difficulty of investigation of the crimes doesn't mean principally impossibility to establish the truth according the criminal case. Against such possibility doesn't say that many of the highlighted crimes remain to be unsolved to the present days. The possibility of cognition of the truth in spite of the difficulties, standing on this way – is a manifestation of a philosophical principle of the cognition of the world. Different positions mean the transition on the agnosticism's positions, with what is impossible not to agree. And the practice of disclosure of serious crimes, which for many years remains to be unsolved, confirms this pattern².

The same position was always defended by the authors of a current book, remembering aphorism of a famous ancient Roman lawyer Minucius: the truth is going towards the one, who is searching for it³.

Completely agree with the specialists in the part of necessity of finding an objective truth according criminal cases, is necessary to add some more thoughts.

1. The lack of necessity of finding an objective truth would greatly complicate the identification and proof of the facts of bringing to criminal liability obviously innocent and make deliberately incorrect judgments. Is it possible in principle to say about deliberate innocence of a person or about deliberate incorrect judgment, if to admit that objectively establish the guilt is not possible?

2. If there cannot be the principle of comprehensiveness, completeness and

¹ *Sheyfer S.A.* Proof and proving in criminal cases. P. 46–47.

² *Ibid.* P. 44–45.

³ See: *Zakhartsev S.I.* Proving, proofs and kinds of proofs // Criminal-procedural law / under editorship V.I. Rohlin. Saint-Petersburg, 2004. P. 159-160; *Zakhartsev S.I., Chabukiani O.A.* Operational-search events and investigations: concepts and relationship. Saint-Petersburg, 2010.

objectivity of investigation, as many processualists considered in the modern CCP of the Russian Federation, then, apparently, the criminal proceeding seen to be one-sided, not complete and not objective process. However, who needs such proceeding? Obviously, neither victims nor accused would be interested in it.

The most acutely indicated problem is understood by the investigation officers, employees of operating units and prosecutor officers. They remember about what was happening in Russia in 1930-1940-ies years of the mass repressions, when to find an objective truth is formally required, but actually founding of her wasn't encouraged. Therefore, the vast majority of practitioners recognize: in order to avoid a repetition of the lawlessness, is necessary to establish an objective truth.

It is ironic that the scientists, who are for the formal, not objective truth, before, generally fought for the expansion of the rights of the accused. Now, however, their efforts lay in the criminal proceeding foundation for the lawlessness in regard of the accused: the investigator, who is investigating the case, will be anyway, if the accused is guilty or not; the prosecutor, supporting the charges will be indifferent to its content; the court without seeking the truth, but trusting to the prosecutor, will bring an indictment to the innocent person.

In 2008-2009 years was conducted a survey of 500 operational employees with work experience exceeding one year¹. 477 (95,4%) from them are considering necessary to establish exactly an objective truth.

However, the question of whether it was always possible to establish an objective truth during operational-search activity, were obtained the following answers:

- 367 persons (73,4%) said that the truth is established in $\frac{3}{4}$ of the cases;
- 102 persons (20,4%) indicated that the truth is established in $\frac{2}{3}$ of the cases;

¹ See: *Zakhartsev S. I.* Science of operational-search activity. Saint-Petersburg, 2011. P. 214-215.

- 31 persons (6%) abstained¹.

3. Not only in scientific publications, but also in practice have to face with a surprising opinion: if the investigator sees the innocence of the defendant, he still needs to send the criminal case to the court in order to receive an acquittal. This is argued that acquittal declares a person innocent in the commitment of the crime, and the decision to dismiss the question of the guilt of the accused is no completely removed. But if to establish an objective truth the court must not so he under these circumstances can make either an acquittal or a conviction.

Thus, it appears that previously established in Russia approach to the compulsory establishment of the exactly objective truth is acceptable and necessary for the proceedings. Wherein, practiced in some countries, the principle of establishment of legal truth, because of its ambiguity repeatedly came under criticism of the foreign specialists.

As was already noted, in 2010, in Institute of the state and law of the Russian Academy of Sciences hosted the 5th philosophical – legal readings in memoriam acad. V. S. Nersesyants on the theme: “Standards of scientific of legal theory”. The participants of the readings to the standards of scientific of jurisprudence include also requirement of the truth². That is, for the legal science, legislators also require the establishment of objectivity and truth. Otherwise, actually, cannot be, because in the absence of truth in the science, the science itself loses the meaning.

But it remains a mystery, why, accepting possibility and necessity of establishment of the truth in the legal science, come legislators is not considering necessary achievements of the truth in law enforcement? Such specialists should try to “climb” over their purely practical knowledge, to evaluate the essence of law and law enforcement, to begin to explore (or explore deeper) philosophy of law. You can pay attention to the precise words of V.D. Zorkin: “I think that the

¹ It is necessary to clarify, that under the failure to identify the truth here implies unsolved crimes, but not the implementation of the cases in relation to innocent.

² *Grafskiy V. G.* It is early to make a point: instead of conclusion // Standards of science and homo juridicus in the field of philosophy of law: materials of the 5th and 6th philosophical – legal readings in memoriam acad. V. S. Nersesyants. M., 2011. P. 159.

vocation of the philosophy of law and their supporters is not in looking up from the people, to bring them ideas which are leading to the law, leading to the truth”¹.

We believe it is necessary to establish in the proceedings exactly an objective truth. The legal truth from the point of view of the theory of cognition is not a truth.

The third problem from practice required philosophical-legal reasoning. It consists in that the lawyers in their practical activity are often working against the law, against justice and in favor of specific persons.

In this also seemingly understandable question there is a serious philosophical problem. After all, young people after school entering to universities in order to understand the law, clearly without the goal to protect maniacs, justifies thefts, deceive people, tell how to commit crimes and not get caught and use the imperfection of the law. We are talking in this case either about lawyers, or even mostly about lawyers of firms and organizations, solicitors.

Why they, who have been studying the law in their absolute mass, seeking to know and follow the laws, are working against law, against justice? First of all, primitively thinking, they are guided by material aspect.

But we want to put a question in a slightly different thing. After all, if the doctor ceases to treat and furthermore begins to tell how to heal a person to death – he becomes a criminal. If an economist, knowing all the details of the economy, begins to advise, how to steal unnoticed, he also becomes a criminal. Engineer, who begins to tell how to avoid compliance with technologies and not get caught, is the offender and etc.

The lawyer (advocate, legal adviser, lawyer in the company) – is almost the only occupation, in fact, implying, that he will tell you how to break the law and to avoid responsibility for it. And such lawyers – paradoxically! – seems to be necessary for society.

¹ Zorkin V.D. Philosophy of law: past, present, future // Philosophy of law at the beginning of XXI century through the prism of constitutionalism and constitutional economy. P. 45.

Furthermore, the actions of indicated doctors, economists, engineers are strictly condemned by morality. In addition, they will be told: you were taught to heal, to build, to invent, to save and etc., and as you learned, began to engage in activities against your occupation, has changed to your occupation. But in regard to lawyers nobody tell in such a way. Furthermore, if the lawyer will be able to turn an illegal case in his favor – in the eyes of the society he will be...a good specialist!

What is the reason of such surprising turns of our being? The specifics of the lawyer's occupation, which is necessary not only to comply with the law, but also to struggle against it? In the imperfection of society? In the priority of material values over spiritual? In the weaknesses of people? Or in the genesis itself – controversial, multivariate entity? None of the science can fully answer on the asked questions, only philosophy.

To the help to those, who will be engaged in the indicated problem, was conducted research. It was interviewed 600 first-year students of legal faculties and universities, 600 third-year students and 600 gradulators. They were asked a question: “Will you be studying for the lawyer help to law offenders and criminals to avoid responsibility, protect law offenders in the court and give consultations about how to get around the law?”

The answers were the following:

- 479 first-year students answered – they will not. 98 persons said that the will. Others abstained;
- 337 third-year students answered – they will not. The willingness to defend iniquity was expressed by 181 persons. 82 students abstained;
- 288 gradulators said – the will not. 247 gradulators said they will protect and help even the criminals, 65 – abstained.

If to ask already practicing lawyers, it is not surprising that if it turns out that the vast majority of them will be ready to help the criminals. Wherein, almost all of the lawyers at least once have consulted their friends, relatives and acquaintances about how to get around the requirement of the law.

The fourth problem: corruption in law enforcement.

Corruption in law enforcement is not only Russian phenomenon. From the indicated evil are suffering people in other countries, which is proved by many foreign publications. For example, a famous French writer Stendhal at the beginning of XIX century wrote: “Justice was almost always corrupt”¹.

About corruption in recent time have written a lot of scientific and publicistic books, conducted a lot of researches. These works are informative; sufficiently in details reveal the essence of the problem. But there is no tangible movement in the direction to improvement. And the reason is not in that scientific recommendations are not implemented in practice. The majority of countries, in the part of the struggle with corruption in the legal sphere, take into account opinion of the scientists.

The main reason is that the vast majority of the scientific researches of corruption in law enforcement are conducted as a “from bottom to the up”. They start from specific cases of manifestation of such corruption.

Corruption in the legal practice in general and in Russia in particular, requires long ago philosophical and philosophical-legal study. This study in the first approximation, gives a bleak conclusions, because in the legal sphere, in the law enforcement everything is ready for corruption. So:

- it is not necessary to establish an objective truth. Accordingly, any decision – fair or not! – suitable, if only this decision will be justified;
- there is a lot of formalism in the laws, what create difficulties by their full compliance, what can be used and to accuse the opposite party in the violation of the law;
- lawyers already from the student bench are already to study law in order to earn money on this knowledge, regardless of whether they are defending justice or injustice;
- professional deformation of legal awareness of law enforcement officers.

¹ *Encyclopedia of aphorisms*. M., 2003. P. 439.

As a result: a corrupted judge, taking bribe for the illegal decision, having a high qualification, can skillfully turn the case to the necessary to him direction. And it is extremely difficult to prove, that he was guided by the corruption motive. Furthermore, in many countries there are restrictions on the conduction of operational-search activities in relation to judges¹.

Outlined above concerns not only Russia, but almost all countries. And not only the judges, but also investigators, interrogating officers, prosecutors. In every country a competent lawyer is able to interpret the case so, that will change its meaning.

It seems that without solving of the outlined global problems in this chapter, it is almost impossible to struggle effectively against corruption in law enforcement.

The fifth problem is peculiar for Russia – prestige of judicial law in Russia is not high. People are still slowly getting used to the court, as to the way of solving the conflict, argue, of understanding who is right. But also in those cases when there was decision according the dispute, it has no such authority as in the West. Often it is believed that the judge helped to win the dispute not disinterested (Russian proverb “The laws are nothing for me, if I know the judges”) or the judge, I am sorry, stupid and doesn’t understand the laws. The courts haven’t gained yet a significant credibility in Russian society.

In the legal state the court, as you know, occupying a special position. After all, people appealed to them in case of disputes and conflicts. In Russia it is not observed yet.

The non-authority of the court well shows also an underdevelopment of arbitration courts. As you know, entrepreneurs, especially successful businessmen from all over the world, traditionally solve questions in the arbitration courts, because there they can participate in choice of their judges. In Russia, famous

¹ *Zakhartsev S. I.* Operational-search activities in Russia and abroad. / under editorship V.P. *Salnikov*. Saint-Petersburg, 2003.

businessmen for solving the conflicts are choosing English law and English arbitration courts!

I think that largely to it condones legal nihilism of the significant part of the Russian population. However, not high authority of the modern judicial system in Russia associated with other reasons, including in this paragraph.

Chapter IV

LEGAL CONSCIOUSNESS AND ITS DEFORMATION

§ 1. Legal consciousness

Philosophy of law is unthinkable without research of legal consciousness. In this chapter will be consider some problems of legal consciousness, legal nihilism and professional deformation, extended and refined previously published authors view of these questions¹.

As was already mentioned, the law was originated on the Earth at least three times. First – with the appearance of person on the Earth, in whose consciousness is inherent desire to the law, necessity for the law. Second – with the emergence of the first state and appearance of coming from it positive law. Third – with the origination of customs, this over the time received the status of legal.

There is no doubt that on each of the coils of the origination of the human's right there is also legal consciousness. In the consciousness of a born person there is a desire to the law, he evaluates his rights on the primitive level (right to life, to nourishment, to health care), partly regulates their behavior, and in the future perceives and evaluates legal customs and regulations of law, issued by the state. The law and, accordingly legal consciousness are always close to the person. Different is only the level of the awareness of law.

Consciousness and legal consciousness related as a whole and a part. That is, human's consciousness necessarily involves awareness of the law. If the person due to some reasons have not learned to read, to count and to write, so he will not have awareness, understanding of the majority of scientific, including legal truths. But consciousness, even primitive will exist. And legal consciousness still will exist. In all life conditions (in non-populated places, in non-civilized society, among non-educated people) a person even on the primitive level will always understand and evaluate the rules of its behavior, that is, what he can do, and what

¹ *Zakhartsev S. I.* Legal consciousness: concept and levels // Legal field of modern economy. 2012. № 2. P. 48-53.

should be avoid. In addition to the requirements of consciousness in law, to regulate its behavior will help and customs, which are quite common in the non-educated layers. On the basis of such traditions and his own consciousness the person will evaluate his behavior that is, guided by legal consciousness.

In other words, the law is not conceivable without the awareness of it by the person. But and consciousness is impossible to imagine without the law, which is vitally necessary for each person.

The question of whether legal consciousness is inherent to the person itself from the birth or not, is little studied. On the one hand, legal consciousness is associated with an appropriate mental development. Legal consciousness – is a reasonable activity. From this point of view legal consciousness doesn't arise, but it formed later. From the other hand, the person is endowed with the rights from the birth. From the birth begins mental activity. So legal consciousness begins to form from the beginning of the mental activity that is practically from the birth. Hence is originated a famous wisdom.

A woman asked the sage a question: "At what age is necessary to begin to educate a child?" The sage asked: "How old is the child?" "Just turned five", – replied the woman. – "In this case, – concluded the sage, – you are late with education for five years".

That is, already with the beginning of mental activity of the child, even primitive, laid the foundation of the understanding of the law, legal consciousness and behavior. The legal customs and laws he will comprehend and evaluate later, during the process of his life.

However, philosophy of law and legal sciences, of course, are not interested in legal consciousness of preschoolers, but legal consciousness of the adult part of the population.

Principally, approaches to legal consciousness are defined by the science already long ago. Under legal consciousness is commonly understand the system of legal feelings, emotions, ideas, views, evaluations, installations, performances and other forms of expressing relation of the person to the existing law, their rights

and freedoms, legal practice and its implementation, and also to the desired law, to other desired legal phenomenon.

In the regulatory impact of legal consciousness P.P. Baranov highlighted the following moments:

1. Legal consciousness not just contributed awareness by the citizen of the goal of legally important behavior, but also is a source and a channel of this awareness. Legal consciousness helps person to comprehend thoroughly the situation. Exactly here occurs invisible process of “splitting” of consciousness on legal and illegal.

2. Legal consciousness helps to the person to “see” the set of possible means from the achievement of goals legally important behavior and to make choice of specific tools from this hypothetical variety.

3. Legal consciousness of the person helps him correctly evaluate social effectiveness of the chosen strategy of achievement of the goals legally important behavior¹.

On legal consciousness, that is on the internal evaluation of legal reality by the person, in addition to direct legal norms, providing influence and other factors. To such factors, in particular, relate existing in the society the system of moral norms, accepted in the society the rules of behavior, example of surrounding you people and co-workers and etc. As this experience shows, these factors providing more influence on the formation of legal consciousness, rather than legal norms. In this sense, is absolutely right V.N. Kudryavtsev, who long ago has justified this thesis. In his opinion, the norm of law in disposition determines behavior desirable for society and personality. However, it is necessary to take into consideration one principle provision: legal consciousness was always closer to the “action”, rather than legal norm. Exactly it, and not the legal norm “to prevent wrongful behavior” and give to the action “desirable legal meaning”².

In the legal science legal consciousness can be subdivided into three levels:

¹ *General theory of law* / under editorship V.K. Babayev. Nizhniy Novgorod, 1993. P. 480 (author of the chapter – P.P. Baranov)

² *Kudryavtsev V.N. Law and behavior*. M. 1976. P. 38.

1. simple;
2. scientific (theoretical);
3. professional.

However, despite the common use, such position arouses criticism. After all, scientific-pedagogical workers in the field of law, without any doubt, have exactly *professional* legal consciousness. Furthermore, by their pedagogical practice and scientific publications these specialists develop legal consciousness as common for citizens and also professional among future and existed lawyers. Indicated category of people is in charge of the formation of legal consciousness.

However, it is not correctly to say that, for example, the Chairmen of the court, the Head of the major law firm, Director of the law firm has professional legal consciousness, and professor of the theory of law – scientific, i.e. not professional. In this is feel contradiction of scientific and professional legal consciousness, what, of course, shouldn't be.

It seems that scientific legal consciousness relates to the professional legal consciousness and is the highest level.

It is necessary to take into account that in jurisprudence, as also in the medicine, many practical workers have scientific degrees and titles. In fact, after achievement by the person of a certain successes in practical jurisprudence, he has a conscious need to increase their knowledge, to organize them better, to estimate them newly and reconsider. Where is can be done, as not in the science?

That's why many accomplished practical workers are striving to the science, trying from the scientific point of view to look again at certain problems, to share experience and, conversely, more thoroughly to evaluate proposals of other colleagues.

This process is known to everyone. Many famous statesmen, politicians, judges, prosecutors, lawyers having not only high scientific degrees, but became well-known scientists¹. However, they have the same legal consciousness. So what

¹ It is impossible to name all. The Chairmen of the Constitutional court of the Russian Federation V.D. Zorkin and V.A. Tumanov – are famous theorists of law, the former Chairmen

is legal consciousness: professional or scientific? It is hardly possible to assume that their legal consciousness is changing depending on the location: in the office – professional, and on the faculty or at home – scientific?

Above said related not only to the state and public statesmen, famous practitioners. It is known a lot of specialists, who actively and effectively combining scientific and practical. Their main sphere of activity is associated with practice (lawyers, investigators, prosecutors and etc.), what is not disturbing them to make preparation of the dissertation researches, teaching. Again arises the same question about their legal consciousness.

We propose to classify legal consciousness to:

- professional;
- non-professional (ordinary).

Wherein, professional legal consciousness can be divided into:

- scientific and scientifically-practical (complex);
- non-scientific (strictly practical).

Scientific and scientifically-practical legal consciousness is the highest level of legal consciousness.

The lowest level of the professional legal consciousness are practical workers, not striving and cannot due to the objective reasons to rise to a higher level of awareness and perception of legal reality. As experience shows, these people, as a rule, turning into artisans, well-know a very narrow part of the law, one, with which we have to deal with in everyday activity. Other components of law even within the same industry are often for them (or quickly turning into) unknown and incomprehensible.

of the Supreme Arbitration court V.F. Yakovlev – a member-correspondent of the Russian Academy of Science. Academician of the Russian Academy of Science T.Y. Khabrieva was occupied responsible position on the government service, was Deputy of a Minister. The member-correspondents of the Russian Academy of Science D.A. Kerimov and S.S. Alekseev were a public deputy of the USSR. So it was earlier. For example, a famous theorist of law, academician A.Y. Vishinskiy was a General prosecutor of the USSR; prominent positions in the General prosecutor's office in that period of time were occupied by the member-correspondents of the Russian Academy of Sciences M.S. Strogovich and S.A. Golunskiy. If to take prerevolutionary period: L.I. Petrazhitskiy was a deputy of the First State Duma of the Russian Empire, B.N. Chicherin – the mayor of Moscow. This list can be significantly broadened.

Maybe the next thought is indisputable. *A real lawyer should do or trying to engage in scientific activity.* Without that legal norms are forgotten and even famous provisions became possible for implementation only in the typical cases.

Only scientific activity allows systematizing knowledge, constantly improving them and broadening their cognitive horizons. Therefore effective practical legal activity is impossible without the thought of movement forward, without constant expansion of the cognition of law and the legal being.

Apparently, the same thought O.E. Leist, who proposed to divide the levels of professional cognition of law on:

- practical jurisprudence;
- general theory of law;
- philosophy of law¹.

Professional legal consciousness of the practicing lawyers doesn't go beyond the evaluation of a current law; everything that relates to evaluation of this law, to perspectives of its change and development, to the problems of the origin of law, its sense and social purpose, not connected with its practical activity. A habit to think with wordings and concepts of cash law born conservatism of some parts of corporation of lawyers, rejection of innovation on the legal system, even if these innovations lead to the improvement of the content of law and its implementation. Professional legal consciousness of lawyers sometimes disagreed with the needs of society and generally accepted norms of justice. The state for practical jurisprudence – is a sum of officials and state authorities, who have rights to solve and consider different categories of cases; lawyer-practicing is interested in jurisdiction or jurisdiction of entrusted him cases, and therefore the competence of different state institutions and officials, hours and days of their work, order of the registration of the documents (claims, statements), period of consideration of the cases and appealing of decisions and etc.

The general theory of law, according to O.E. Leist, is the second, higher, than practical jurisprudence, level of knowledge about law. The general theory of

¹ Leist O.E. The essence of law. P. 259.

law doesn't teach how to solve specific cases. But she helps during research of materials of case to distinguish legal facts from the circumstance, having no legal meaning, to determine the presence of legal structure and its qualification, to solve not always simple questions of a choice of norm, which is going to be applied, to check legal power of this norm, elements of which containing in different regulatory legal acts and etc. The general theory of law is seeing in the state, formed by the law legislative organization, implementing law and protecting him from violations. The general theory of law studies such problems, which are conditioned with the existence of the state, as the ration of the private and public law, legal status of the state authorities and officials as a special subjects of law, especially material-legal and procedural norms, place and role of the court and other law enforcement authorities in law enforcement, the rule of law and etc.

The third, the highest level of the cognition of law is *philosophy of law*, seeking to understand the laws of being of law, his place and role in socio cultural world of different civilizations, his connection with person, collective, society and state, with social awareness and culture of humanity. Since philosophy of law uses conclusions of other public sciences and moreover, no free from orientation on the specific system of values, philosophical views on the state, as also on the law, are diverse. Depending on the ideals and value orientation the one see in the state otherworldly power, validity of moral idea, the second one – organization, form of society, the third one – machine to suppress one class by another, an instrument of violence and coercion, the fourth one – highlighted from society as a result of division of labor hierarchically centralized class of persons, occupation of which consists in management and coercion, the fifth one – is the personification of Russia, Fatherland, the Nation and etc. Philosophical view of law is diverse and contradictory. But it is connected with practical jurisprudence and is able to influence on the practice of solving of legal cases¹.

With such a high evaluation of philosophical-legal consciousness of law is advisable to agree. While supporting proposed by O.E. Leist classification, it is

¹ See: *Leist O.E.* The essence of law. P. 259-266.

necessary to note that, he didn't specify an important detail: general legal and even philosophical-legal level of knowledge has not only theorists-thinkers, but also some practicing lawyers, and also officials, who are combining practical and scientific works. Wherein, it is cause an approval of the thought of O.E. Leist that philosophy of law has a practical function, can in a number of cases have an influence on the practice of reviewing legal cases, and general problems of praxeology of law entering the subject of this discipline.

It is necessary to say separately about conventional legal consciousness. This level of legal consciousness is the most common, as an absolute majority of people not having legal education. The formation of such legal consciousness is significantly influenced by upbringing, environment of people's life, immediate conditions of their existence; the level of life, intellectuality, education and etc. The large is the value of experience with communication of the right. This experience is accumulated both by human actions and replenished through the media, communications, films and etc.

The conventional legal consciousness begins from the common awareness. Speaking about it, V.S. Stepin wrote, that common awareness, as a rule, doesn't make a reflection on their deep basis. A person in its everyday life understand what is space, time, good, evil, justice and etc. and apparently to this understanding evaluate concrete events, acts and actions of other people. But usually he doesn't think about the meaning of these categories, and if we talk about their definition, identifying of connections and relations, so the common thinking cannot solve them. They can be solved by philosophy. It carries out the reflection over the universals of culture, brings them out to the judgment of mentality, turns into special ideal objects, with which than philosopher operates the same, as mathematician with numbers and geometrical figures, studying their properties and relations¹. Agreeing with this opinion, D.A. Kerimov adds: "connections and relations indicated (and other) universals of culture solve not only philosophy, but

¹ Quote according to: *Kerimov D.A. Methodology of law. P. 388.*

all other humanitarian and social sciences, including legal science and first of all philosophy of law”¹.

The lawyers haven't paid proper attention the conventional legal consciousness. Perhaps, that's why in the academic literature on jurisprudence are met very simple concepts of the conventional legal consciousness. For example, A.B. Vengerov believes that “conventional legal consciousness – is a relation to the law, its evaluation on the level of stereotypes, clichés and rumors, plying in some or others social groups, sometimes in crowd”². In this definition the author is completely ignore such important factors of formation of legal consciousness as intellectuality, education, and finally upbringing. A person who was educated in law and morality, even not being a lawyer, will not be evaluate the law through the prism of stereotypes, clichés and rumors and etc. Wherein if a person is intellectually developed and educated – even more. Hardly proposed by A.B. Vengerov definition can be attributed to well-known physicians, mathematicians, doctors, teachers and etc., although their legal consciousness in terms of jurisprudence is not professional and not scientific. D.A. Kerimov was rightly said the maturity of consciousness of the individual does not depend on the level of intellectuality which is nor hereditary acquired or closed in itself value. This is special mentality and character, which is produced by person itself in the process of practical activity, communication with other people in conditions of life of the whole society³.

Other disputed judgment occasionally encountered in scientific and academic literature is contradiction of conventional legal consciousness to the scientific. Thus, conventional legal consciousness in relation to scientific is often characterized in a negative way. At the same time, significance of the conventional legal consciousness is very large. Exactly it is a peculiar indicator of effectiveness of the action of legal norms. And in this context, it gives impulses for the scientific understanding of such norms, formulating proposals according its improvement.

¹ Ibid.

² Vengerov A.B. Theory of the state and law. P. 563.

³ Kerimov D.A. Methodology of law. P. 393.

The scientific legal consciousness is unthinkable and impossible without studying of conventional legal consciousness, which is the starting point for the study of certain social legal relations.

As intellectuality is traditionally understood as a highest form of awareness, it is not correct to ignore during evaluation of the conventional legal consciousness.

Furthermore, conventional legal consciousness as most of mass legal consciousness is the basis of law enforcement. The higher is his level, the higher is, apparently, the level of legal order. Therefore lawyers with their every word and action should raise the level of the conventional consciousness.

It is necessary to comment briefly about one more question. Nowadays, to the scientific revolution introduced the term “intuitive knowledge” – understanding the essence of the subject, received through the intuition, immediate comprehension of the essence of things. Here soon will be a question of whether there is an intuitive legal consciousness?

It is necessary to say that to the term “intuition” was not given enough attention how by philosophers, and also by psychologists. As a result intuition, as a rule, determines as a perceptual cognition.

It seems that the case is a little bit different. Intuition is likely to be a presentiment that is before the feelings, until the feelings. Hence speaking about intuitive knowledge is more correctly to define as presentiment about the features of the subject, but not as about understanding, understanding of its essence. That is in this case, we are speaking about awareness and moreover not about legal consciousness. Therefore, we believe that it is not correct speaking about intuitive legal consciousness.

At the same time, intuition can play specific role in the legal behavior. Thus, people who are not having legal education and professional legal consciousness, but having life experience intuitively can legally correct to do in the difficult situation. That is, intuition can act and acts as a kind of prompter for

consciousness. However, it is not necessary to mix it with consciousness and cognition.

§ 2. Legal nihilism in Russia

The question about legal nihilism in Russia has been raised repeatedly in the works of Russian philosophers of pre-soviet time. In soviet time about this deformation of legal consciousness was written a little. The term “nihilism” was well-known only due to the school curriculum (immortal work of I.S. Turgenev “Fathers and sons”), however it wasn’t implemented to law.

In post-soviet time an interest to the legal nihilism has significantly increased. Appeared a lot of different scientific and journalistic works. Now – in Russia the pendulum is always swinging at full amplitude – the word “nihilism” is mainly associated exactly with legal content, what is also not correctly enough.

The term “nihilism” has Latin origin (from lat. *nihil* – nothing) and variety of values. The most famous are such kinds of nihilism, as:

- ontological nihilism, according to which the being doesn’t have objective sense and value. Such approach periodically became popular in philosophy;
- epistemological nihilism, denying cognition and knowledge. The most famous modern philosopher-nihilist, who professed epistemological nihilism is R.Rorty.
- moral nihilism, according to which nothing is moral or immoral.

And, finally, legal nihilism, interesting in the context of outlined in this chapter.

As researchers noted, legal nihilism includes in it three components of denial. The first of them is domination of the negative attitude to the existed legislation. Under influence of political-economic circumstances, forming crisis condition of society, the law loses its legal content and is not perceived as a mean of protection of rights and legitimate interests of individual and society in general. Disappears respect to the legal norms as a means of regulation of the social relationship. Further denial of this norms leads to their failure. The second component is a negative relation of society to the existed law order. And finally the third component – dismissive attitude of the public consciousness to freedom and

formal equity as the basic values and fundamental principles of legal regulation. It becomes a result of action of the stringent requirements of the state that doesn't recognize the value of law in the mechanism of regulation of the public relationship¹.

And indeed, historically was happened so that kindness, justice, honesty in legal consciousness of Russians wasn't identified with right. The majority of population of our state in pre-soviet time was lived by the community. Within these communities, existed theory own traditions and customs, having for their members the status of generally binding regulators of public relationship. Legal custom was one of the most important sources of law in Russia. Exactly such customs were considered to be fair and having priority in relation to the norms of law, which, in fact, the majority of population didn't know.

It is necessary to remember and consider that Russian for many centuries – until 1917! – was an agrarian country, where the vast majority of population was illiterate or semi-literate. About what nuances of legal regulation could be spoken about? Public relationship in such communities was regulated by morality, ethics, which were reinforced appropriate customs, received in fact the status of legal.

Exactly legal customs, and not natural law or positive law, were a foundation of legal regulation in ancient Russia. V.S. Stepin correctly writes according this question that in community's life intertwined various manifestations of spirit of collectivism, which N.A. Berdyaev identified by the terms "commonality" and "collegiality". Berdyaev emphasized that collegiality is different from commonality, that is, such condition of collective life, which defined by external coercion. Collegiality also implies unification of people from their internal motives, by common purpose and common case. But in real system of life orientations these different and even contradictory meanings are often

¹ *Varlamova N.A.* Legal nihilism: past, present and future of Russia // Open society: Informational - analytical bulletin. 2002. № 1 (12). P. 12.

intertwined. Their link can be found both as in the mentalities of traditional peasant community and also in the soviet time¹.

To collegiality is necessary to add having in mentality of Russian compassion, heartiness. But these light qualities are often manifested and manifesting to persons, who are pursuing by the state and law. Hence are old proverbs: “From the lower Don there is no issuance” (proverb of Cossacks), “Moscow for us is not a decree” (proverb, authorship of which is attributed to Tambov region). Persons, who were pursued by the state (read – criminals) in the ancient Russia for some reason always evoked sympathy, what was never observed in the West.

But also ruling elites of Russia (pre soviet, soviet and modern), nevertheless, also was not distinguished by any particular respect to law. For example, famous to everyone quotation of B.A. Kistyakovskiy from the article “In defense of law (intellectuals and legal consciousness)”, published in journal “Milestones” in 1990: “Dullness of legal consciousness of Russian intellectuals, the lack of interest to legal ideas is the result of our persistent evil – the lack of somehow legal order in everyday life of the Russian people”. Wherein, named scientist in this article came to conclusion that in spiritual development of Russian intellectuals wasn’t participated none of legal ideas. Complementing his thoughts, B.A. Kistyakovskiy writes: “If to take into consideration this comprehensive and disciplining value of law and to realize the role that it played in spiritual development of Russian intellectuals, so it turns out the result are extremely disappointing. Russian intellectuals consist of people, which neither individually nor socially are not disciplined. And this due to the fact that Russian intellectuals have never respected law, never has seen the value in it: from all cultural values the law was situated by her in the largest paddock. Under such conditions our intellectuals couldn’t be created a strong legal consciousness; on the contrary, the last one is situated on the

¹ *Stepin V.S. Value of law and problems of formation of legal society in Russia // Philosophy of law at the beginning of XXI century through the prism of constitutionalism and constitutional economics. Edition of Moscow - Saint-Petersburg philosophical club // M., 2010. P. 22.*

extremely lower level of development”. And further: “By all universities we have established legal faculties; some of them exist more than one hundred years; we have also half a dozen of special juridical higher educational schools. All this will amount to the whole of Russia about hundred and fifty legal departments. But none of the representatives of these departments hasn’t given neither one book, nor even a legal study, which would have broad public value, and would effect in legal consciousness of our intellectuals. In our legal literature it is impossible to specify even a single article that would put the first at least this in essence is not deep, but still loyal and fighting legal idea, as “Struggle for law” by Ihering. Neither Chicherin, nor Solovyov hasn’t created anything significant in the field of legal ideas. And all good that was given by them, was almost barren: their impact on our intellectuals was negligible; at least was found in it the echo exactly of their legal ideas”¹.

To all is well-know and given by B.A. Kistyakovskiy poem of B.N. Almazov:

*For reasons organic
We are quite not supplied
Common sense legal,
This devil of Satan.
Wide Russian personalities
Our truth ideal
Doesn't fit in narrow forms
Of legal beginnings.*

Speaking on this theme, V.D. Popkov accurately noted that history of the Russian state indicates contradictory trends in the field of intellectuals in its relation to the state and law. From the one hand, is obvious that the origin and development of intellectuals in Russia connected with state, its activity, including legal activity, maintaining law enforcement. However, in Russian political and legal history is observed also negative attitude of certain circles of intellectuals to

¹ See: www.vehi.net/vehi/kistyak.html.

“law of the state”, law enforcement. For example, the Slavophiles expressed approval, denying the meaning of legal norms for the social life of Russia, which, from the point of Slavophiles view, prefers “spiritual life”, “internal truth”, in contrast to the West with its “external form”, “bill honesty” of western European bourgeois¹.

The same was observed and among regional elites. As V.S. Stepin writes, many populations were voluntarily a part of the Russian Empire, but the condition of entering was the following: “we will not live according your laws, we will live according our customs”. And empress or emperor wrote: “let them go under our crown and live according their customs”. But also when Russia conquered new countries, including them into empire, local elites, customs and traditions of ethnical cultures were saved. So occurred public education, where none of the cultures wasn’t disappeared, where was no unification of cultures in that sense, as it was in Europe in the era of formation of the national states, when many ethnic groups and ethnical cultures has been disappeared. In Russia ethnic enclaves, which were a part of Empire, was preserved, but the price for this preservation occurred contradictory connection of cultural examples and customs, determining different relation to laws and legal norms. Hence arisen difficulties of establishment of united legal regulation and movement to the legal society. Justice in this case acted as a kind of compensation for the lack of united legal community. People’s consciousness divided the laws for just and unjust, and those, which are considered to be unjust, should never been implemented².

Wherein, in ancient Russia is difficult to distinguish king, emperor, autocrat who haven’t glorified themselves by their cruelty and complete (!) denial of human’s rights, such a unit. But the kings, who forever left in history not only bloody trail, but bloody river are quite enough. And some of them differ by their cruelty even among the cruelest.

¹ *Theory of the state and law* / under editorship M.N. Marchenko, M., 2009. P. 805-806 (author of chapter – V.D. Popkov).

² *Stepin V.S. Value of law and problems of formation of legal society in Russia* P. 18-20.

We can give two the most popular historical examples. The first one: Ivan IV, named for the pursued policy as Ivan the Terrible. Famous Russian historian N.I. Kostomarov, studying activity of Ivan the Terrible, emphasized: “Vainly we are tried to explain his misdeeds by some guiding purposes and wish to limit arbitrariness of the highest class, vainly tried to create from him image of democratic sovereign. On the one hand, people of the highest title in the Moscow state were not so hostile to the lower layers of society, that it was necessary for the people’s interest to start against them fighter campaign...From the other hand, ferocity of Ivan Vasilyevich was comprehended not only by the highest class, but also public masses, as showed by a slaughter in Novgorod, people baiting by bears for fun, return to guardsmen for plundering of entire townships and etc.”¹. Wherein, guardsman was a highest creature, to which was needed to pander always and everywhere. And peasants suffered from tyranny of the newly made landlords. Condition of working people was even worse, as with all disgraced owners ruin has been fallen to many people, connected with disgrace life conditions, and there are a lot of examples, when king, beheaded boyars and then sent to ravage their ancestral lands. Based on the above outlined, N.I. Kostomarov came to conclusion: “With this new state of affairs in ancient Russia, feeling of legality should be disappeared... Establishment of life-guards was obviously, such a monstrous weapon of demoralization of the Russian people, which hardly anything else in history could match, and staring at these foreigners correctly observes: «If Satan wanted to invent something for the human damage, so he couldn’t invent anything better»”².

Another memorable with particular cruelty autocrat of ancient Russia was Peter I, whose policy has overtly violent features and has made significant influence on the alienation of society from the law. The state during the time of reign of Peter I have a strong police orientation, and bureaucratic arbitrariness passed all permissible limits. Everyone, who on duty was provided to take

¹ *Kostomarov N.I.* Russian history in life stories of its main personalities. M., 2004. P. 226–227.

² *Ibid:* P. 235.

something into the treasury from the ordinary people, believes, that “now he can for himself suck from the poor people till the bones and on their ruin arrange himself benefits”¹. As a result of reign of Peter I, as A.I. Alexandrov writes, was observed a sharp drop of immoral standards of society, which inevitably entailed increase of criminality².

However, as thin notice another famous Russian historian V.O. Klyuchevskiy, against arbitrary and inept rulers, have managed remained two means of defense: lie and violence. Decrees of Peter I was strictly ordered to search and execute escaped, and they are openly lived with their entire settlement in spacious courtyard of strong masters in Moscow. Other runaway shelter of escaped was forest and contemporary to Peter news talking about unprecedented development of robbery. Robbery bands, headed by fugitive soldiers, connected into well-armed cavalry troops and destroyed populous villages, stopped treasury fees, invaded into the cities. “By robberies, the lower answered on the tyranny of the top: it was a silent frankpledge of lawlessness and impossibility here and careless despair there. A metropolitan clerk, passers General, a provincial nobleman have thrown out of the window decrees of terrible converter and together with forest robberies little worried by the fact that in capitals were semi-state Parliament and nine and then ten in Swedish arranged boards with systematically divided departments. By impressive legislative facades was covered the general mess”.³

As you know, Peter I was very fond of popular Russian proverb: “What has sober in mind, then by drunk on tongue”. Guided by her, he was staying sober, often got drunk his closest dignitaries in order to find out their true thoughts, feelings, deeds, intentions. Not to drink for dignitaries was impossible. And they – the elite of former Russia – richest and noble magnates, ruling class, intellectuals in that meaning, were got drunk. Got drunk, knowing and realizing, that they were

¹ Ibid: P. 682.

² About legal nihilism see: *Alexandrov A.I. Philosophy of evil and philosophy of criminality*. Saint-Petersburg. 2013. P. 168-180.

³ *Klyuchevskiy V.O. Russian history*. Moscow; Saint-Petersburg, 2009. P. 730.

observed by the all-powerful emperor and that their fun, real or fake, could be ended with jail and gallows. One episode is demonstrated, when during one of the feasts, Peter I found that the Head of the Secret expedition (main security service of Russia in that time) earl P.A. Tolstoy doesn't drink. Peter reacted: came to him, and, as historians describe, said something like that: oh, you are a bald head, if you were not clever, would have hung up you long ago¹. Hardly in such circumstances by grandees and their heritors could form healthy, normal legal consciousness. They were also unprotected from tyranny of the emperor, as their bondsmen from their own.

A descendant of the cruel Head of security service of Peter's reforms was famous writer and thinker Leo Tolstoy. However, he, as an eminent moralist, has never believed in the power and importance of law (positive and natural). From point of view of Leo Tolstoy, the law is nothing like "despicable deception", jurisprudence – "twaddle about law", and necessary to live not by the law, but by conscience. As P.I. Novgorodtsev writes, Tolstoy argued that all efforts, result of which was constitution and declaration of laws were vain and useless; it was a wrong and false way². Where, from what society and under what circumstances L. Tolstoy has so absorbed legal nihilism, apparently, is not necessary to describe additionally.

Cold-dismissive attitude to law were demonstrated by prominent representatives of ideological current of public thoughts at end of XIX – at the beginning of XX centuries, what couldn't, in its turn, not influence on the same relation of society to him. For example, A.I. Gertsen wrote: "Legal insecurity, since old times gravitated over the people, was for him a kind of school. Blatant injustice of the one half of his laws, taught him to hate another; he obeys to them as to the power. Complete inequality before the court killed in him all respect to legality. Russian, no matter what rank he may be, circumvents and violates the law

¹ *Anisimov E.V.* Palace secrets. 2nd edition. Saint-Petersburg, 2007. P. 49.

² *Novgorodtsev P.I.* Crisis of contemporary legal consciousness. M., 1909. P. 4.

everywhere, where it can be done with impunity; and absolutely the same acts the government”.¹

This quotes and facts objectively refutes untied in the last decades propaganda of pre soviet period as a legal and law-abiding.

Frank disregard to law was observed as in the soviet and also in the post-soviet time. Phenomenon of legal consciousness and legal nihilism on soviet time requires separate consideration, as it quite controversial. On the one hand, we can confidently talk about legal nihilism during the October revolution of 1917 and subsequent civil war. From the other hand, in 1960-1970 years the level of legal consciousness of the soviet people was high enough, confirmation of which is the low level in relation to the USA and the Western Europe of criminality and law violence, respect to the law, possibility to achieve justice. However, by 1990 was everything ruined, years and “gens” of lawlessness has taken its toll, the level of legal nihilism again became to be very high. This situation was aggravated started “restructuring”, involving by deception and impoverishment of the population. As scientists noted, democratic values, which were proclaimed at the initial stage of the transitional period – freedom, equality, justice – remained to be for many unreachable, or sometimes even false².

The Russian state, – as A.I. Bastrykin writes, – is now in a very difficult position: romanticism of the days of restructuring has already gone into oblivion; “courage” of the first years of “radical democratic reform” has exhausted itself. In place of the enthusiasm of updates and “hopes of youth” in public consciousness came despair, skepticism, disbelief and anger, sadness and disappointment³.

As a result the level of legal nihilism in Russia is now high enough.

Quite interesting about having provision was said by A.I. Alexandrov. According to his opinion, as every individual, though not always consciously, depending on the level of general and legal culture, decides for itself question of

¹ *Gertsen A.I.* Collected works: in 30 volumes. Volume 7. M., 1956. P. 231.

² *Bashkirova E.* Transformation of values of the democratic state (Post communistic transformation and formation of democratic society in Russia) // 2000. № 3. P. 50.

³ *Bastrykin A.I.* Theory of the state and law. Saint-Petersburg, 2005. P. 114–115.

the observance of the law, trying on the norms of legal system to their own moral values and interests, important role in such decision plays his subjective attitude to the law constitutive institute – to the state. Only high conscious individuals, distinguished by their outstanding level of the general and legal culture, are able to comply with law, abstracting from their attitude to install it state. Such people can separate activity of incompetent, dishonest or corrupted government officials from the state the same. For majority of subjects conditions of social life which were set by the state (condition of economics, determining of employment of population in manufacturing, level and timeliness of remuneration of labor, degree of integrity of public officials, identified by a public institution), are peculiar conditions of the transaction between the state and citizen about his obedience to the law. The human put his obedience to the law, i.e. fulfillment of his duty before the state to comply with the law, in direct dependence from the execution by the state real or imaginary his duties in front of the man¹. In case of violation, according to the opinion of individual by the state of its obligations to the citizens, individual psychologically receive a kind of “carte blanche” for not complying of its duties, including and duties to comply with laws².

In confirmation of these words let us cite two egregious examples. In the middle of 1990-ies were carried out studies of professional preferences of Russian teenagers (conditionally: who wants to be someone). According to the result of survey, among leaders of ranking was occupation of hired murderer (“killer”)³.

In 2013 by the authors of current book was conducted sociological survey among law enforcement officials and were received really impressive results. From 700 surveyed investigators and operational employees 502 stated that during investigation and solving crimes, struggle with criminality believe into the highest

¹ *Alexandrov A.I.* Philosophy of evil and philosophy of criminality. Saint-Petersburg, 2013. P. 181.

² In the book of A.I. Alexandrov positive is that, he is one of the few who justified author's proposals according correction of situation with legal nihilism. Another articles and monographs in their absolute majority ended with general and in fact empty by its content slogan that it is necessary to correct situation, to struggle with legal nihilism and increase the level of legal consciousness. But how really increase it, scientists usually keeping quiet.

³ *Zarubin A., Vagin V.* Reputation – capital of personality. M., 2007. P. 25.

justice more, than in the norms of law¹. In what other country you can get such answers from people, who are directly standing on the point of the struggle with criminality?!

On the question of how to reduce legal nihilism, is necessary to express several proposals. They are not indisputable, however can be claimed by the Russian society and legislator.

It should be borne in mind that relation of people to human's values, society, kindness, law and etc. is laid in childhood. Exactly in childhood occurs assessment and understanding of what is good and what is bad. Therefore, a huge role in formation of correct life belongs to the family. If significant part of parents in Russia are infected with legal nihilism, they will *never* (it is necessary to highlight this word) bring up the children in the spirit of respect to law.

Then, an important educational value has school and environment, where teenager grows up out of the family. Here there are really unused reserves. The school can and must promote law, its role in everyday life, work, communication. Such work isn't conducted. Wherein in it, oddly enough, are not interested teachers themselves. In fact, many teachers themselves often use against children different offensive swear words. This applies to teachers of many schools, including elite. Why is necessary to explain the teacher, that during such offences, pupil has a right through his legal representative or on his own to bring the teacher to justice?

Very important the role of environment, where teenager spend his time after lessons. And here again there are problems. The majority of Russian citizens are not rich, many of those who are at the poverty line. They are unable to provide the child with cultural time spending after lessons. So, the child will be bringing up by the "street". However, "street upbringing" will not instill respect to law, likely on the contrary.

After school, service in the army is waiting for boys, who, without any doubt, respect to law, especially to the human's rights, doesn't add. As a result,

¹ *Zakhartsev S.I.* Professional deformation of legal consciousness among workers of police, judges and prosecutors // Library of criminal law expert. Scientific journal. 2013. № 4 (9). P. 335-343.

after service in the army appears twenty years old men, who are not only (also as their parents) doesn't believe in law, but also what is called, experienced in his life experience.

Here occurs a question: where to take reserves for formation of the healthy relation to law?

Perhaps, it is necessary to go in the following direction.

Firstly, is needed to work among adult population, who are parents of youth. But what work? In fact, this adult population of Russia during the last twenty fifth years had been repeatedly deceived. In the indicated period, as E.V. Kusnetzov writes, in the consciousness of many people have mixed such concepts as "kindness" and "evil", "legitimate" and "unlawful", "legal" and "illegal". Almost completely lost its meaning the words "mercy", "decency", "goodwill"¹.

During preparation of the monograph was conducted a curious survey. At the beginning it was interviewed over 3000 employees of different firms and companies, and also governmental officials (Russian citizens of Russia). They were asked questions: if it possible, according your opinion, in Russia to achieve justice with the help of law; do you believe in the power of law in Russia?

The purpose of the survey was to identify individuals, having nihilistic legal consciousness. From the 3000 of those, were discovered 2012 persons, who don't trust the law, don't believe in the power of law and believe, that with its help it is impossible to achieve justice.

On the next stage of the survey were separately interviewed exactly these 2012 persons. They were asked a question: what is needed to do with law, in order you, personally, begin to trust him and believe in its power?

The answer, frankly speaking, impressed. From 2012 persons 1978 answered approximately the same. According to their opinion, it is necessary to have only two things: firstly, to achieve enforcement of all laws, and for this,

¹ *Kuznetsov E.V.* Crisis of contemporary legal consciousness // Legal consciousness. 1994. № 3. P. 3–10.

secondly, to punish very strict for nonfulfillment. Wherein, the phrase “very strict” was replaced by respondents with the words “harsh”, “cruel”, “ruthlessly”.

Indicated survey has shown well mentality of Russians and then, what they are waiting from law. Experience shows that in Russia traditionally respect power. To this are suitable Russian folk proverbs: “For a beaten two unbeaten give” and “With a good stick and carrot don’t need”. Most likely, exactly with this can be explained the low level of criminality and legal nihilism in the USSR in 1960-1970 years. In that period were afraid of law, respected him and willingly complied. As soon as in the middle of 1980-ies the government has become weak, and almost no responsibility, the laws have ceased to be fulfilled.

Therefore, is likely that, the stricter will be responsibility for violation of legal norms, the more respect will be to law. It is useless to convince respondents in that law – it is good. They are not believe in it from childhood and are not going to believe in it now. But are ready to afraid of law.

Of course, the fear of law, what was indicated above not a better feature – it is better to believe in law. But in this case is better to afraid and because of fear comply the legal norms. The fear to law they will instill to their children, children – to grandchildren, and grandchildren and great grandchildren, likely, will be already respect the law and see protection in it.

But here is very important that the wide part of population have seen responsibility for violation of legal norms.

Sceptics could argue by a famous historical example about that when for pickpocketing in European countries was established death penalty, the majority of pickpocketing was done exactly during execution of pickpockets. But it is not in Russia.

In Russia, despite the sceptics, movement of legislator according tightening of responsibility is bringing positive results. We can remember examples, which are illustrative for all. Still recently in Russia, unlike Europe, few of drivers pass pedestrians on the crosswalk. After significant tightening of responsibility for this violation of law, pedestrians began to pass. After tightening of responsibility for

driving a car being drunk, dramatically reduced the number of drunk drivers. This regulatory legal act, as Rules of road traffic regulation began to respect more.

Even, oddly enough, it is not principally that some drunk drivers were able to bribe their way out from the inspectors of traffic police. By paying to traffic police one big bribe, many of them will not want or couldn't pay another one.

However, now the punishment for talking on the phone during driving a car is not so big. And this requirement of the Rules of road traffic regulation in Russia not maintained by anyone. Alas, apparently, it is such a mentality.

Here is important, not to accept regulatory legal acts, which are impossible to perform and impossible to punish strictly for nonfulfillment. The government should understand clear, if regulatory legal act is adopted, so in Russia it is necessary rigidly to achieve of its execution. People should see, that everything outlined in the law should fulfill, otherwise – strict responsibility. It is worth to mention, that, of course, punishment for offense should be coherent, adequate. But in Russia, in all appearances, punishment for offense should be maximum strict *from all possible adequate to offence* punishments¹.

Work experience in one of the largest private Russian company's has revealed difficulties in observing of workplace discipline by employees (particularly: delays and early departures from work). Taken measures by the company management, including fines, reprimands had no effect. Then for one-time delay began to fire. Employees, ceased to be late. Furthermore, coming to company new employees also have not delayed, as at once perceived the rules of the company and began to obey them. This is specificity of mentality of Russian people.

Legal nihilism of the adult population in Russia mainly connected with that people don't know their rights and responsibilities. Why they don't know? Partly

¹ In order to avoid unnecessary criticism, we emphasize again the phrase “adequacy of punishment”. We are speaking, of course, not about that during travelling without ticket it is necessary to deprive freedom or to shoot for crossing the street on the red light. The punishment should be definitely strict, but adequate to deed.

under the influence of parents, as a rule, who also not believed in law, and partly because nobody have taught to them even the basics of law.

It is necessary to say that idea of mass legal education in Russia was put forward time and again. And always was failed. According to fair remark of V.A. Tumanov, “possibilities of a purely educational impact, as practice shows, are quite limited”¹. O.E. Leist said correctly, that conversation about legal study of population should be concrete. Which part of law and in what volume is desirable to know for every citizen regardless of its occupation? If it necessary for every family to have computer, containing the entire mass of current (quite complex and often changeable) legislation?²

In order to overcome nihilism, in our view, it is necessary to educate the population about that right, with which they are facing or can be faced every day. Conducted surveys showed that first of all people are interested in knowledge of rights, connected the rights of behavior in that places, where every person constantly be. It refers to the rights and obligations at work, at home, in family, to whom exactly and how to apply in case of violation of concrete rights and also how to complain, if and official or authority to whom was applied don't take measures for protection the rights. Moreover, of course, it is necessary to know the Constitution of the Russian Federation.

A part of lawyers, remembering previous experience, maybe will refer skeptical to this idea. However, in favor of given research and reasoning there is an example of the same Rules of road traffic regulation. They are taught from the childhood as general, and all know them in the part of behavior on the road. Nuances – yes, they are not known for many people, complicated cases of road accidents will not be correctly judged by ordinary people. However, all know and understand their rights and obligations, what, without any doubt, assists to the safety of road traffic.

¹ *Tumanov V.A.* About legal nihilism // Soviet state and law. 1989. № 10. P. 25.

² See: *Leist O.E.* The essence of law. P. 256-257.

Secondly, teaching law at school. To this includes: lessons of law upbringing at school, more detailed teaching of the subject “Fundamental of the state and law” and etc. Here study should be lead in more detail and somewhat different. It is necessary to agree with O.E. Leist, that it is need to study at school the Constitution of the Russian Federation, basic concepts of private law (family, labor, civil and others) and general principles of public law (administrative, criminal, procedural and others). An indispensable part of legal study should be clarification, that ignorance of the law is no excuse from responsibility for its nonfulfillment. It is also necessary to explain to pupils, where and how in case of necessity to receive more detail information about law. Pupils are also need to understand, that those, who want to engage entrepreneurial activity, first of all should study appropriate branches of law and legislation¹.

Thirdly, spread of juvenile judiciary. Children should see that their rights could really defend and there are specialists who such rights will defend necessarily.

Fourthly. Criminality to a large extent has economical motive. As long as the standard of living of the Russians is situated at the poverty line, is difficult to claim compliance of legal regulations and standards. It is necessary to increase the life standard. We understand that this paragraph sounds more as a slogan, as the observed world economic processes are not giver confidence in that the level of human well-being will be growing. However in such a big country as Russia it is necessary always to remember about the level of prosperity of the ordinary citizens, strive to it, to build internal policy appropriately.

It seems that such measures, applied in aggregate, of course, not immediately, could lead to decrease of legal nihilism and increase of the level of legal consciousness.

Furthermore, can be offered to the governmental authorities to hold a competition for the best program in increasing of legal consciousness among the Russians.

¹ See: *Leist O.E.* The essence of law. P. 257.

§ 3. Professional deformation of legal consciousness

The theme of professional deformation of legal consciousness, its origins, causes and consequences have been long in the sphere of scientific interest of the authors of this book. Perhaps, it is connected with that in practical law enforcement activity it is unpleasant to face with people who having on professional basis deformed consciousness and personally experienced how it is dangerous. Perhaps, the interest in this theme lays the love to psychology, aided by personal acquaintance with famous psychologists. It cannot be excluded that there are some other, until not well-known reasons. But, anyway, questions of the professional deformation of the employees of operative divisions of law enforcement authorities have been studied quite in detail. Results of these researches are reflected in monograph¹. Then was taken wider theme and studied the questions of professional deformation of consciousness of practical lawyers: investigators, prosecutors, judges, operative workers. This allowed extracting for science new types of professional deformation of legal consciousness, which were successfully implemented in the educational process, has attracted interest from the scientists and practitioners abroad². In this paragraph we will specify some results of previous researches.

However, to write about professional deformation of legal consciousness of scientists-lawyers, admittedly, we didn't want till the next unpleasant moment. Once, on the sub-faculty, the authors of these lines involuntarily became witnesses of indignant monologue of one famous scientist. He is berating someone's scientific article, was outraged that there are no references on his works in it. "What a science can be in this scribble, – so he called the article, – if it is not even mentioned about me in it!" After reading the article and remembering the works of interlocutor, it was correctly (at least, it seemed to us) said to him, that he never

¹ See: *Zakhartsev S. I.* Science of operational-search activity: philosophical, theoretical-legal and applied aspects. Saint-Petersburg, 2011. P. 99-109.

² See: *Zakhartsev S.I.* Some problems of theory and philosophy of law. M., 2014. P. 113-126.

wrote according indicated theme in the article. Specialists, who were present at that time on the sub-faculty heard literally the following answer: “It doesn’t matter. I am a shiner and main authority in this discipline. References on me should be everywhere”. The article this scientist of course, didn’t pass and authors in his face rose up a real enemy.

At the beginning of research we stressed that scientific-pedagogical environment, sincerely beloved by the authors of the current book, mainly consist from worth and decent people. However, such examples, unfortunately, are not also singular in it. This obliges to look attentively on the raised problem.

As you know, in theory and philosophy of law there are three types of deformation of legal consciousness: legal infantilism, legal nihilism and rebirth. However it is obvious that such classification is not suitable for professors of legal high schools and scientists. That is, as it has been repeatedly proved, for allocation of types of professional deformation of legal consciousness are need other approaches¹.

To professional deformation of legal consciousness can give general and most simple definition, reflecting the essence of this phenomenon. It seems that professional deformation of legal consciousness – it is a distorted change of legal consciousness of person under the negative influence of his occupation.

With regard to lawyers-pedagogues initially is need to divide the same teachers minimum on two big groups:

- famous scientists- pedagogues;
- those, who are not succeeded and not became famous scientists-pedagogues.

It is necessary to emphasize that majority of famous lawyers - pedagogues are not subjected to professional deformation. However, alas, there is also minority. Conducted surveys of specialists – from postgraduates to professors –

¹ See: *Zakhartsev S. I.* Science of operational-search activity: philosophical, theoretical-legal and applied aspects. Saint-Petersburg, 2011. P. 9-109; *Zakhartsev S. I.* Legal consciousness: concept and levels // *Legal field of modern economy*. 2012. № 2. P. 48-53; *Zakhartsev S.I.* Professional deformation of legal consciousness among workers of police, judges and prosecutors // *Library of criminal law expert. Scientific journal*. 2013. № 4 (9). P. 338-348.

helped to identify several characteristic types of professional deformation of famous scientists-lawyers.

According to opinion of respondents, the most common deformation is: *painful vanity*, narcissism.

For such scientists is characteristic sincere to believe that they are the most talented in jurisprudence, involved in all discoveries in science. They require that their surname always mention in all works in one way or another affect the sphere of their interests. Repeatedly we had to see that if such scientist didn't see his surname in the dissertation abstract, so he was seeking to "fail" applicant and to hinder his defense. Dissertation councils, as you know, are often created in several specialties. So, even in the case when the theme of research and specialty with the works of scientist is not connected, was still required to specify his surname in the dissertation abstract.

Specialists, who are subjected to such deformation in relation to their works, are not shy without self-irony use such words as "my fundamental researches", "prominent achievements" and etc.

Before description of another deformation it is required to say several words. Fruitful century of scientists, when the most valuable works are written, actually is not so long. Conducted researches allow us affirm that his active phase, as a rule, lasts no more than 10-15 years. Further, specialist who even created prominent results, generally already modify and make further development of his discoveries. Of course, there are cases, when great scientists and in more elderly age are not lose the sharpness of mind and continue to create. But they are likely exclusion from the rules. The authors of a current monograph were happy to know some of such prominent Russian scientists, not losing freshness of ideas and thoughts. However, according to their explicit confession, to anility they have already lost objectively a part of their capacity of work, creative fuse, quickness and originality of thinking.

And majority, as it was mentioned, often working on additional formulation and development of their previously formed ideas. This work is often successful,

but sometimes during this appears professional deformation of legal consciousness. Conventionally it can be named as *extreme subjectivism*. People, who are exposed to the above named deformation, manifests in the belief of infallibility of their own ideas, in their absolute truth forever. As a result concepts and conclusions, formulated by such scientists twenty, thirty and more years ago, they are still considering being true. Moreover, the only true. And “closing eyes” on that, during the last twenty years legislation has strongly changed, developed approaches to law, happened finally, global social-economical transformations in the country and also in the world.

Scientists with described deformation of this explicitly don't notice that. And when to notice changes is impossible, so specialists don't change or clarify their position, but stubbornly trying to prove their rightness, based on their previous works.

Unfortunately, not few examples of such deformation can be given from different branches of law. That is, once to the authors was caught on the eye a work of one famous proccesualist, who proved that results of operational-search activity couldn't be used in investigation on criminal cases. Such position really was in soviet-Russian criminal process in 1980-ies and earlier. Further was adopted Federal law “About operational-search activity”, which allow to use named results in investigation, was adopted CCP of the Russian Federation, also established possibility of their usage, was completely changed judicial practice. Indicated above proccesualist, indicates these regulatory legal acts, however further not shy writes that the usage of results of operational-search activity in investigation is not just wrong, but also...illegal.

In humanitarian studies, also in jurisprudence, by famous scientists can be found such deformity as *distrust to youth*, young scientists. Such deformation, as a rule, results in artificial “slowdown” of young scientist with defense of candidate or doctoral theses, obtaining academic degrees, publishing of books, involvement to the team of authors for writing academic literature.

Repeatedly it was heard also that it is indecent to defend dissertation in legal science before forty years! Some sincerely affirm about desirability of establishment of age of consent, determining from what age doctoral dissertation on law can be defended. And okay, if such statements came not from the scientists. Not at all, periodically they are coming from scientists, who objectively made a significant contribution in jurisprudence.

Wherein, it is obvious, that such thoughts are going against the science, principles and purposes of scientific cognition. To science is absolutely still, in what age specialist will conduct researches, make discoveries or even prepare fundament for future achievements, write useful and informative monograph.

To medicine, physics and several other sciences such deformation of consciousness of scientists, is not peculiar. She is probably also presents, but in a much smaller size. And defense of doctoral dissertations at the age of thirty years is no rare there.

Specialists of humanitarian studies are subjected to her quite substantial. According to observations, among reputable scientists-lawyers, people who are ready to support young scientists approximately equal to the amount of those, who, on the contrary are ready to “slowdown” their career growth in science.

Unfortunately, among professional deformations encountered *unethical behavior* in relation to colleagues and junior colleagues. And mostly it occurs by people, recommended themselves in science. The question is here not only and so much about that one scientist with an obvious superiority communicates with other colleague. This is also bad, but can be result of ordinary ignorance. We are talking about here about settling the score of one scientist with another, creation obstacles to the students his “enemies”, libelous letters to dissertational councils, to the Higher Certifying Commission and etc.

The brightest example is the case when conflict between two reputable professors almost completely paralyzed the work of dissertation council one of the very prestigious educational institutions. Professors “in principle” failed the students of each other. Furthermore, if one of them was supportive to dissertator

(even not a student!), other one principally didn't give him a chance to defense. Members of dissertation council divided approximately into two equal parts: one part supported one professor, other part – another one.

And it was occurred not everywhere, but in one of the most prestigious higher school with good scientific traditions.

However, not only famous specialists are subjected to professional deformation. Also professors who are not become widely famous can be subjected to her. The difference is that the types of indicated deformations are different.

As above, there is a sense to consider encountered and identified during the research the most popular types of professional deformation of legal consciousness of scientists-pedagogues, who are not became widely famous. Here is reasonable to ask a question: who relates to this category? Of course, dividing into known and unknown is quite conventional. At the same time, it is necessary to admit that in the last two decades in Russia significantly increased the numbers of doctors and candidates of legal sciences, whose works and researches were unclaimed. To this category primarily we can relate these people. They teach legal disciplines, sometimes write articles and books, but they had never been reputable specialists for scientific community.

One of the most spread professional deformation of legal consciousness by this category of scientists – *fear of their own opinion*. We met quite a few works, when such authors very carefully come to expression of their own opinion. Also the same carefully speak on conferences, defenses. I had to hear when such scientist said, that if you agree with opinion of another scientist, then praise him at least two times. But if you don't agree –still praise (only one time)! Scientific works of these specialists carrying generally descriptive character. It is quite difficult to crystallize from them position of authors of one or another questions.

Another type is *conjuncture*. Famous scientists are subjected to conjuncture, but we think much less. They are, as a rule, set a high value on their opinion, even if it is controversial. In the environment of less well-known specialists, conjuncture can be found quite common. We think that every scientist has met such type of

professional deformation of legal consciousness, when pedagogues-lawyers during their scientific-pedagogical career repeatedly have changed their point of view for one and other question. Wherein have changed not only because they became to think in other way, but because it is profitable from the point of view of contemporary policy of the state, opinion of management or more reputable specialist. Conjuncture force a number of specialists not to write what they know, but to comply with opinion of more reputable lawyer-pedagogue.

Such professional deformation, as *plagiarism* considering here in the context of ethical problem of legal science. But at the same time plagiarism - there is a definite deviation from normal legal consciousness resulting in the violation of the copyright. The more wildly, when it allowed for the lawyers-teachers. In this case we should speak exactly about violation of consciousness and, accordingly legal consciousness of scientist.

There are professional deformations of consciousness, characteristic as for famous scientists-pedagogues, and also for those, who are not succeeded and not became famous scientists- pedagogues.

It can be highlighted three of them.

First: *a wish to leave a mark in the legal science in any way*. For this substantiated absurd and sometimes not really normal ways of solving problems in law and legislation. Not succeeded scientists – “inventors” of such ideas – become to believe and aspire on somebody’s account to become famous. Taking already given example from textbook on operational-search activity, when such specialists substantiated possibility of usage during investigation illegally obtained results of operational-search activities. Irrationality and absurdity of such statements is obvious¹.

Second type – commitment of crimes. We don’t want to write about such type of deformation of legal consciousness, as about commitment by lawyers-pedagogues of criminal actions. However, it is known to everybody, that there are

¹ *Theory of operational-search activity* / under editorship K.K. Goryainov, V.S. Ovchinskiy, G.K. Sinilov. M., 2006. P. 574–575.

such facts and they are properly as for famous and also not famous lawyers. First of all, it is intended *corruption*, which is associated with admission to university, passing of tests and examinations. It is need to say, that there are not so many empirical facts that is cases, where bribe taker was caught with red handed and in relation to him was passed a judgment of conviction. Without any doubt, that it is much less of them, than the cases of commitment of these latent crimes.

According to observations of authors of a present research, struggle with corruption in the legal universities is not as effective as it should be. It creates impression that during struggle with such manifestations of corruption are not interested neither rectorate of the universities nor students. It seems that it is very important for rectorate to save prestige of the university, many students in their turn are happy to that they could without efforts (for a fee) to pass test or examination. It cannot be seen active struggle from the side of academic teaching staff with corruption manifestations of their colleagues. The authors are writing here about this problem so confident, because repeatedly while hiring new lawyers we had to hear honestly their answers about who of lawyers-pedagogues and how much take money. Disappoints also the fact that to the problem of struggle with corruption in the legal universities and faculties in science is paid not enough attention. About such phenomenon specialists try to avoid writing.

In the last twenty years appeared one more professional deformation, by which “infected” as famous and also not so famous lawyers-pedagogues. She is associated with transformations which occurred in Russia in 1991. Previously lawyers were prepared generally for work in the law enforcement authorities, other governmental authorities and governmental organizations. From 1990-ies students of legal universities not rare preparing to be hired to the work in private companies, advocacy. And, as it was already noted, from student bench they are interested not only with the norms of law rather than how to avoid responsibility during failure to comply it. And there are teachers, explaining in details and in fact *teaching to that how to avoid responsibility during failure to comply it*, what gaps

there are in the legal regulation of concrete branches of law and how they can be used.

With such deformation we had to meet repeatedly. A famous criminalist I.A. Vozgrin in 2000 has not allowed to defense candidate's dissertation on criminal science, devoted to tactics of the lawyer on countering of investigation of the criminal cases. I.A. Vozgrin outlined, that the task of criminal science is to help employees of investigation according to objective investigation of crimes, correct application of norms of criminal-procedural law¹.

However, in the same year the authors were met a teacher, who explaining to students in details, what is need to do, in order to “destroy” criminal case on bribe, what position during investigation in what cases is need to take, under what circumstances a bribe cannot be proved, including explained and recommended places of transfer of a bribe. On the expressed bewilderment, teacher answered that he doesn't consider such teaching as professional deformation. He teaches norms of criminal-procedural law, tells where and how they are implemented and in what situations in fact don't work. After that, he added that he prepares advocates, who should have to protect clients. And in principle, he added, such knowledge will not be redundant.

It is necessary to notice that from the mentioned time about similar facts of teaching we have to hear periodically. Indicated provisions, as it seems, relate exactly to professional deformation of legal consciousness. Teachers are required to teach lawyers in the spirit of complying with norms of law, law-abidingness, and not to teach them not to comply with the law or how to avoid responsibility.

Due to ethic reasons, in this paragraph we deliberately don't name surnames of scientists, who are subjected to professional deformation.

Surely, the majority of lawyers-pedagogues, having definite experience of scientific-pedagogical activity know about such deformation. But for young professionals to know about these facts in legal science seems not to be unnecessarily. Therefore written above mostly addressed to them. I think that to

¹ We don't know if the indicated dissertation was defended.

read this text will be useful to persons, whose behavior was the basis for outlined above.

Thus, professional deformation of legal consciousness of scientists-legislators is a brake for legal science. She doesn't give to develop, requires obedience to authority and disturbs movement of thought. In fact, scientists who are suffering from professional deformation of legal consciousness, lead science "in a circle", preventing her from improvement.

How to struggle with professional deformation of scientists-lawyers? The most preferred is the way of internal healing of science. For this it is necessary to condemn severely those, whose legal consciousness is distorted, keep their behavior under public (sub-faculty, university and etc.) control, not to indulge him. To force to make apology in case of offences. It is required to prevent inherently false fabrications of scientists, to force public refute "fabrications" which are not relevant to the law and right.

In conclusion, it is necessary to emphasize that there are not so many scientists with deformation of legal consciousness that, firstly, makes happy and secondly, gives a certain confidence in tomorrow's day.

At the same time in the law enforcement authority's professional deformation of legal consciousness is not already something surprising. On the basis of conducted researches was identified several basic types of deformation of consciousness of employees of police, judges and prosecutors.

Types of professional deformation of legal consciousness employees of police.

First type of deformation conventionally named "for fear of law", fear of powers.

To this deformation relates employees, *who are avoiding of making decisions according questions, relating exactly to their legal powers, competence.*

To such employees inherent:

- for fear to make mistake;
- wish to receive specific instruction from management on every question;

- categorical rejection of decisions according “sharp” operational questions;
- fear of conspiracy (“set up”) against yourself on the part of colleagues;
- statement of secrecy “just in case”;
- persistent wish not to work, but to give advises on work;
- lack of initiative.

Directors, who are subjected to this deformation, besides mentioned above are also inherent:

- work on samples, but not according to law;
- avoidance of taking responsibility and shifting it to others;
- “blurring” of responsibility through numerous approvals;
- bet on subordinates, who can unquestionably obey and execute any orders, regardless to their legality, morality and honesty.

To senior employees inherent also intriguing and constant fear of conspiracy against themselves on the part of superiors, subordinates and heads of neighboring departments and etc.

On the basis of this information sometimes are lying reasons, associated not with professional activity, but with vital insults and complexes. For example, unpleasant attitude (or even a secret envy) to all people, who are more educated, more beautiful, younger, stronger, more successfully.

Second type of deformation was named *legal cynicism*. To this deformation is subjected separate category.

Legal cynicism consist in that employee considers necessary compliance the law by all, except himself. This police officer has legal knowledge (i.e. there is no legal infantilism), perceived in necessity of compliance with norms (i.e. there is no legal nihilism) and doesn't allow changes of his views. However, this is also applies to other people. In his own behavior (at work or at home) employee quietly admits violations norms of law. Moreover, if policemen embarked on the criminal path, are trying to hide their behavior for understandable reasons, but considering category of employees by their behavior readily demonstrates dismissive attitude

to law, exposes them to the show. To the typical cases of cynical attitude to law by individual behavior relates unpunished car driving being drunk, hooligan antics on the street and etc., what is accompanied with proud stories about own bravery on the next working day.

At work cynicism to law is expressed in demonstrative evading from requirements of legislation, departmental orders and instructions and etc. Wherein, time and situation didn't hinder to employee to act in a strict accordance of requirements of laws and orders that is indicated behavior wasn't caused by any necessity or plausible motivation.

To the third type relate employees, *willing to struggle with criminality* and to do their duty well in correct purposes. However, over time based on the true and clear installations they deformed their consciousness, what is expressed *in a distorted perception of reality, surrounding people, including colleagues at work*.

Such employees can be divided in two parts.

First part of employees, although perceiving surrounding reality as distorted, will not go for crime commitment and violation of law "for benefit of the law" (this type was named "*false mirror*"). Their deformation consists in excessive suspiciousness, sometimes coming up to maniacal, constant detection of supervision behind itself and etc. To these persons inherent distrust of colleagues, suspiciousness them in corruption, abuses and etc. Along with this for appearance of such suspicions is enough of strange gossip, nasty-letter, careless statement. As a rule, indicated employees have no sense of humor or having very specific sense of humor.

At work, deformation of these employees the most clearly reveal in:

- in expressed accusatory incline on criminal and operational cases;
- in complete confidence on the own infallibility and infallibility of the own actions and decisions;
- in reluctance to check their own suspicions and deductions, having accusatory incline.
- in arbitrary, as a rule, explicitly enough interpretation of the law.

These persons often having inflated ego and cautiously-hostile attitude to colleagues. Reasoning with experts about such employees, involuntarily was noticed one characteristic detail. If to say such people bad about any other employee – they believe immediately. If, on the contrary to characterize a person positively, by these persons appear doubts about sincerity of speaker and also the question of what purpose this person was positively estimated.

Other part of employees, in contrast to the first one, for achievement of correct purposes, for example, struggle with criminality, is able to commit and committing crimes (effect of “Robin Hood”). As indicated persons consider, committed crimes by them “are going to the benefit of society”. For such motivation helps the common phrase of Zhegllov from the cinema “The place of meeting couldn’t be changed”: “A thief should sit in jail and nobody cares about how I sent him there”. Crimes, committed “to the benefit”, can be conventionally classified by the orientation on:

- crimes, directed on the criminal prosecution and conviction of a person, probably committed the crime. Such crimes include: abuses and exceeding of official position; forgery; falsification of evidences; provocation of bribery and etc. Typical cases of such crimes are associated with throwing up during investigation actions of ammunitions, weapons, drugs;
- crimes, directed on outrage with the person, who probably committed the crime. Indicated crimes include such shameful actions: beating during the arrest or bringing to the investigation department, mockery, torture and etc.;

It is difficult to say, what motivates named employees in their criminal activities. Historical experience shows that if you able to violate the law in such a case, so *always* sooner or later certainly will appear people, who likewise will behave toward you. However, in operational environment, sometimes this truth is neglected and guided by the thesis: “We are operational department – we can everything”.

To all employees having third type of deformation, regardless of whether they are going to crime or not, characterized by the fact that their mind don't tend to change point of view. Thus, if they convinced themselves in guilty of one or another person, so it is almost impossible to argue them out of it. Even if in the course of time installed truly guilty, these employees don't recognized their wrong in suspicions, coming up with various arguments.

Fourth type include employees, who are not having desire to struggle with criminality and exercise their duties (or initially not have) and turns *to criminality* (*this type was named "rebirth"*). At the present time criminal behavior of such people associated with illegal enrichment, corruption manifestations, which is to say selfish motive¹.

One part of such employees coming to law enforcement authorities with right attitudes and believes. But criminal environment, not due to achievement of justice "breaks" their psychology. According to the words of such persons, they become "wiser", what means appeared by them skill "to close eyes" in the criminal enrichment of person and if possible, personally participate in enrichment. In justification of their own actions by operational employees are given the phrase "the world cannot be changed", "superiors are also earning illegally" and etc. Hereafter, such employees more actively are getting involved in the process of their own enrichment by different ways: "protection" of firms, participation in corporate raid, knocking out debts, artificial creation by entrepreneurs "problems" and their "solution" for reward and etc.

Another part of police employees deliberately go to the law enforcement authorities, in order to earn money with the usage of the official position. Indicated persons initially has criminal attitude, which is impossible to eliminate somehow. In aggregate, this is caused by the observed at the present time in police prestige of work in departments, which are aimed at the struggle with criminality in the economic sphere.

¹ To practice is known other cases of the commitment of crimes by employees: murders, rapes and etc. But their commitment, as a rule connects not with their official activity, but with other, primarily personal reasons.

Types of professional deformation of legal consciousness of judges.

Results of conducted surveys allow differentiating named deformations on several types.

First type of deformation conventionally named *"fear to make mistake"*.

The origin of this deformation is absolutely normal desire to judge completely objectively, establishing the truth, punishing guilty and not allowing accuse of innocent. For achievement of this desire (purposes) the judge carefully and scrupulous sorted out in all details of the criminal case. This is wonderful. However, as it turns out in the future, on the basis of such absolutely correct behavior lies not establishment of the truth, triumph of justice, but human's fear and mistakes. At what connection, such judges are afraid not only of perpetration of injustice, as their own troubles in regard to made mistakes.

As a result fear turns into deformation. It is reflected in the fact that the named judges implicitly put in the forefront by investigation evidences of the accused. If the accused admitted his guilt in the court, the judges render justice calmly and confidently. In what connection sometimes demonstrating maybe excessive adherence to principles and dislike to the action of the accused.

But if the accused didn't admit guilt, in the mind of the judge starts anxiety. Start reflections: and what if I will condemn an innocent man and what will be to me for this and etc.? In such cases the trial begins to obtain a form of critical evaluation of all actions of investigative process, controversies with prosecutor and others. Solving of such cases, if evidences of guilt is sufficient, but the accused still not recognize, ends as a rule, by suspended or minimal sentence (just in case).

For such deformation of judges there is a common humorous saying: "Sincere acknowledgement softens responsibility, but...extends period of time!" In other words, if the accuse didn't admit guilt, so it is most likely that if the judge will bring the verdict of guilty, so likely it will be not so strict. However, if he admitted guilt, so the judge by definition will bring the verdict of guilty, in what connection, he will evaluate recognition and help to investigation as softening circumstances of responsibility, and if he will evaluate, so how it will effect on the

punishment? We know cases, when the accused admitting guilt, situated in criminal group “on the second roles” received greater punishment, than not admitting active participants of the crime¹.

On similar cases had drawn their attention and other professionals. The most detailed study of such actions was conducted by famous processualist from Saint-Petersburg S.A. Novikov. This scientist has conducted a questionnaire for one of the judges, who described the motives of his decisions like this: “When the judge brings the verdict of guilty to the accused who is denying his guilt, often deep in his mind, despite the large amount of incriminating evidences, he is afraid that he will make a mistake. Therefore assigns less severe punishment. If the accused admit guilt, tells by himself in details, how he was committed a crime, he thereby gives to the judge confidence in correctness of making decisions, what frequently lead to extremely severe punishment”². In this case what we have now is deformation of legal consciousness of the judge, manifesting in the fear of committing mistakes, in fact in fear of their rights and powers in bringing a fair verdict.

Some respondents had to face up with situation, when the judge behind the scenes uttered to investigator or operational employee: whatever you couldn’t him (accused) split, what do you think, how I need to judge now?

There is an opposite deformation, named “*legal self-confidence*”. It is associated with working out by some judge’s confidence and infallibility of their actions. They don’t afraid of law and their powers; willingly implement them, guided by their own legal consciousness. However, over the time by this judges appear infallibility of their decisions. Moreover, the belief about guilt or innocence of the accused has formed at the stage of appointment of the trial. Moreover, what is scared *finally formed*. And trial for them is nothing more than formality. They

¹ Mahov V., Peshkov M. A bargain about recognition of guilt // Russian judiciary. 1998. № 7. P. 18.

² Novikov S.A. Truthful testimonies: legal measures of stimulation in Russia and abroad (criminal proceedings). Saint-Petersburg, 2008. P. 54-55.

have already made their decisions and, not waiting of the end of trial, wrote already the sentence¹.

In their majority – there are judges, who having significant experience of judicial practice and who are really rare making mistakes. But they are self-confident and it is almost impossible to convince them in mistake. If such a judge before judicial review will make a decision that the accused is not guilty, it is almost impossible to convince the opposite.

The source of this deformation, as a rule, lies in human weaknesses, pride and narcissism. If the judge, who is professionally prepared and confident in himself, ceases to improve his knowledge and perceive critically to himself and his actions, could eventually become one of the samples of deformed personality.

*Another deformation is associated with hostility of the judge to a certain kind of activities or to certain types of crimes. The authors of a current book named this type *syndrome of resentment*. This hostility, as a rule, associated with personal troubles or received resentments. In the future, constantly circulating in thoughts desire of revenge leads to a distortion of consciousness, what is implemented in adjudging of unduly harsh sentences.*

Thus, significant part of judges condemned more severe sentences to employees of police, who are committed for trial, than to other civil citizens. As a title motive of condemning of severe sentences by such judges sounds like this: the stricter attitude to police, the more legality there. However during surveys of such judges appear other motives. For example, bringing child of judge to police, lack of attention of personal requests (for example, help in getting driving license and etc.).

A part of judges “doesn’t like” some specific crimes, for which award maximum (or almost maximum) punishment. It is easy to guess that in this case judges or their relatives, acquaintances became victims of exactly these crimes (robberies, vandalism and etc.).

¹ Practice of writing sentence before the end of the trial is common among some judges.

One case became common, when the judge was suffered from hooligan, who caused him injuries in the fight. After that, for condemning a severe verdict of guilty for males it was enough to hint to the judge that the accused is known by his pugnacity.

Some judges are not free from such deformation, as *legal cynicism*. It consists in demonstrative, cynical behavior of judges, disregard in relation to law.

Many of anonymously interviewed employees of law enforcement authorities practicing lawyers were faced up with situation, when the judge being drunk handled the trial. Given an example, when the judge was just frankly not adequate, but in this condition managed to sentence the accused to two years of imprisonment, while minimum according sanction of article was three years. After ending of the trial prosecutor prompted him about this. The judge rushed to catch up the convicted, which was incarcerated to the convoy car and followed him in the street shouted, at the same time showing on fingers: "For you not two years, but three. Three, are you understand?!"

We know cases, when on criminal cases, where the defendants agreed to a special procedure, the judges passed sentences in fact not getting acquainted with the materials of case. For example, in one case the judge invited investigator, asked him about the essence of crime, evidences and asked electronic version of the indictment, for putting it in verdict. Wherein, criminal case never left out of secretariat of court. That is, what we have now quietly-cynical attitude to the legal norms and their observance.

Wherein, similar stories such judges, savoring retell to their colleagues, enjoying, apparently, of their status. Judges, who are subjected to the described distortion, begin sincerely to believe, that their legal provision is "above the law".

At the same time their "light" attitude to the observance of legal norms such judges of course, are not distributed for other citizens. Here is always declared requirement for all to obey the law till the smallest formalities.

The source of the described deformation is impunity or lack of punishment for offences. This causes by such judges certain permissiveness.

To write about next deformation of judges – *rebirth* – is the most difficult. According this question it is not enough of empiric material, as there are few cases bringing the judges to the criminal liability and their further conviction for crimes, related with official activity. But, as we all know, this doesn't mean the absence of corruption in judiciary, the lack of facts of abuse by the judges of their powers, betrayal of the interests of the service. There are little exactly registered and proved facts. Therefore, the authors, not given specific examples and not descending to the rumors and speculations, here is only detaching rebirth as objectively existed type of professional deformation of legal consciousness of judges.

Deformation of legal consciousness of prosecutors.

To prosecutors, in principle, inherent the same deformation, as to the judges with nuances, determined by the specifics of the work. If the judges are quite independent, so the system of prosecutor's office is strictly vertical and a person, getting in to it immediately feel himself a part of this system. But in his work on supervision over legality prosecutor is relatively independent.

Hence is deformation, which inherent, from the one hand, to the "people of system" and from the other hand, having considerable independence.

Typical deformation by "people of system" is the fear of their own mistakes. It affects career, relevant to the high position goods and etc. In this turn a part of prosecutors insures themselves by making one or another decision.

By other prosecutors, as also judges, on the contrary, appears confidence in infallibility of their actions.

There is also present legal cynicism. The reasons in general are similar to judicial.

On the deformation of legal consciousness of prosecutors also influences that when the service of a person is consist in supervision of the work of others, he involuntary begins to change, get used that to his advises (correct and not so) tune in, appears habitat to give advises, sometimes without bearing responsibility for the

result. It is necessary to have deep professional knowledge and strong moral spirit, in order not to undergo of deformation and to remain as professional.

Practice has gathered quite a few examples attraction of employees of prosecutor's office (including employees of investigating committee, when he was a part of prosecutor's office) to responsibility for betraying the interests of service. In this case it is interested that such type of professional deformation as rebirth is present in the prosecutor's office. The basis of rebirth, as a rule, is a selfish motive, which at a certain stage of life "break in two" normal legal consciousness. Under this motive for justification of their criminal actions come up with different arguments:

- it is impossible to live on pension, there is a need to save money for old age;
- corruption in Russia is invincible;
- a wish of social justice, that is to take money from those, who has earned them illegally (also sometimes sincerely added "at the expense of workers");
- it is impossible to change the world, all are earning on the interest of service;
- there is no sufficient social security (there is no apartment, cars, cottages) – it is necessary to earn for them, because nobody will give it;
- parents have been honestly worked and died in poverty, I will not repeat their mistakes;
- I would like to live well, as other and etc.

Such conclusions are nothing more than pathetic attempts to justify own criminal behavior, in the basis of which are lying greed, avidity, envy. However, the same justifications are expressed and other employees of law enforcement authorities, who were captured on illegal activities.

It is necessary to say, that in soviet time scientists approached carefully enough to the research of deformations of legal consciousness of employees of the

law enforcement authorities. Indeed, with a very low level of criminality in the country and serious selection in the law enforcement authorities, deformation of legal consciousness, especially carrying criminal manifestations were rare. Cases of double-dealing, corruption, betrayal of the interest of the service have taken place, but not carried mass character.

At the present time situation has changed, but not to the better side. Emergency actions, which are accepted by the leadership of the country in reduction the things to order in law enforcement authorities bring specific positive results. These results are expressed mainly in specific persons, punished for their criminal actions. This is to some extent stops other from commitment of illegal actions. But, alas, not change their mind, but only force to act (that is break the law) more carefully. Wherein, if consciousness is deformed, it never returns back to its normal state.

In the end, it is necessary to admit that types of professional deformation by all employees of law enforcement authorities are similar. Similar also circumstances, which leads to deformation of legal consciousness. It is obliged the science more carefully to study existing problem and to develop a set of recommendations for improving personnel work in law enforcement authorities. This work should begin already from the moment of studying of a person as a candidate for work in law enforcement authorities. At this stage it is necessary to pay attention not only on formal factors (criminal record, administrative offences, mental and physical health), but also to explore internal world of a person (unscrupulousness, passionate love to money and values, morale instability, envy, greed and etc.). More importance should be attached to these factors of identity of person for appointment to senior positions as in law enforcement authorities as on any other governmental service.

Besides this is obvious that traditional classification of deformation of legal consciousness (legal infantilism, legal nihilism and rebirth) has already outdated for employees of the law enforcement authorities.

But such classification doesn't satisfy modern realities and in relation to people, who are not associated with the law enforcement authorities.

That is the facts of infantilism, nihilism and rebirth have also ordinary people. But besides them there are found also such deformations as manifestations of *legal cynicism*. Especially at the present time this is inherent to well-off people. They appreciate their piece and strive that around them complying with rights and, most importantly obligations. While at the same time they afford themselves to do illegal actions: driving car without driving license and being drunk, illegally storage of weapon, hooliganism, arbitrariness and etc.

In other – low-income and social unprotected – environment can be found facts of such deformation of legal consciousness as *fear of law*, fear of implementation of own rights. The fear of implementation of own rights sometimes occur even in case of commitment of the crime in relation to the person. There are a lot of cases, when people don't go to the police according to the facts of commitment in relation to them criminal actions. Wherein, they don't have legal rejection (as nihilists has), but they have confidence, that at the present time still will not search for criminals, and if will, so it will became worse for these people by themselves from criminals or accomplices. These people are not denying the power of law, but trying to stay from the law enforcement system far away, even in case of violation of their rights.

It can be also found the facts of the “effect of Robin Hood”. Here, as a rule, is going on about the revenge, giving back to offenders by illegal way (even criminal). Thus, people who are decided for the revenge, usually before the fact of the revenge are law-abiding and didn't commit crimes. And furthermore, after revenge they will not commit crimes. But a desire, for example of father to revenge to the rape of his daughter by illegal way, but with his own hands, naturally deforms legal consciousness. Wherein, to say that in legal consciousness of father, who dealt with the rapist has been occurred rebirth is not quite correct. Here we are speaking about another deformation – commitment of one specific crime in

relation to one specific person, in what connection as such deformed person considered, “for benefit for everyone”.

There is also such deformation of consciousness, as “legal self-confidence”. Affected by it people considered that they are know from everything better than anyone and having their own opinion on each question. Not being professionals, they sincerely understand that they are known better than anyone: how to heal correct, how to teach correct, how to catch criminals, how to guide the state or even how to write poems and to play football. In relation to law this is reflected in disrespectful attitude to him “as simplest and comprehensible phenomenon to everyone”, on which is a pity to waste a lot of time. As a rule, these people in virtue of distorted “all-knowing” legal consciousness concluded stupid legal contracts for property transfer, facilities and as a result having big damage.

Professional deformation of employees of law enforcement authorities – a serious problem for science and practice. Unfortunately, for her decision is doing not enough. The authors hope that this work “nudge” theorists and practitioners for making order in law enforcement sphere.

Chapter V

NEW GLOBAL PROBLEMS OF LAW

§1 Biomedical experiments on humans as philosophical-legal problem

On the second half of XX century as a result of opened inventions, biomedicine received a stormy development. This is an evident process to all of us, which is continuing to present days.

Works and concrete results were appeared according to:

- artificial reproduction of humans;
- transplantation of a human organs;
- replacement of genetic code;
- manipulation with mind;
- clone of humans;
- replacement of internal human organs with the help of stem cells.

It seems to be that such a process could be greeted. However, in fact, it is not so, because the results of such biomedical actions are not considered and calculated till nowadays.

To all abovementioned processes in biomedicine law also wasn't ready. It is clearly not properly regulate processes themselves as a whole and the effect of individual transactions with specific people.

At the same time, B. Yudin noted, a modern biomedicine expand technological opportunities of control and intervention to a natural problems of conceiving, passing and completion of a human life. Different methods of artificial gens reproduction, replacement of damaged organs and tissues, replacement of damaged gens, active influence on the aging processes lead to that in all this cases occurred border situations, when consequences of achievements of scientific-technological progress couldn't be prognoses. At the same time occurs a real threat of an original biogenetic base destruction, a threat to a human origin, his physical

and psychological health¹ ... For example, genetic engineering for not a long time period turned to be an avant-garde of scientific-experimental research in the world of a living. Nowadays she gives an opportunity to interfere into a genetic code of a human and change it, what seems to be positive during treatment a number of inherited diseases. However, a temptation of a planned improvement occurs to a human nature with the aim of much adaptation to loads of modern, artificially created techno sphere. A danger consists in that, organisms participating in genetic experiments could change with genetic information with other individuals, and results of such interactions could lead to uncontrolled mutations. A variety of experiments in the area of genetic engineering testify to unpredictability of her immediate and long-term consequences².

To think about, what could happen as a result of mutations and we receive an answer: everything. Including the fact that thus obtained human organisms can lose an opportunity to reproduce in a normal natural way. Or as a result of mutations will be indicated an incurable disease etc.

Here we emphasize immediately, that we are not against science development. The fact that medicine will learn to treat inherited diseases – magnificently. But all the research on humans and humanity, according to our predictions, must be in the strict legal framework. So, it must be clearly stipulated conditions for such experiments, the procedure for monitoring people with an artificial changed genetic code, responsible for this and so on and so forth. The same applies to experiments with stem cells. Without a deep research such procedures cannot be extended.

Existence of a legal framework is very important in the global sense, taking into consideration the possible consequences for humanity as a whole, and in private cases – for the protection of specific individuals, which could suffer and suffer from the results of experiments and fraud from the doctor's side.

¹ Quote according to: *Leshkevich T.G.* Philosophy of science. P. 204.

² Ibid: P. 205.

Giving an example, that we think, nowadays it is not a unique, told us one of the leading doctors – specialist of in vitro fertilization (so-called IVF)¹. As you know, there are a lot of families in Russia, which couldn't born a baby on their own. Such families are referring to clinics for impregnation by artificial way. According to the statement of specified specialist, usually doctors longer before all necessary manipulations are able to determine those, who exactly wouldn't have children. Patient isn't informed about it as well and he is offered to try. Why? Because IVF-procedure is cost a lot of money and generally is very good earnings for clinic and particularly for doctor. When the first IVF – procedure, as expected, doesn't show a result, will be proposed to make the second one, the third one, etc. Poor people, willing to have children, are sell cars, flats, taking credits, get into debts in order to recoup IVF, and don't know that all these attempts are fruitless. As a result, on the others people misfortune is earned a lot of money.

Different schemes applicable for earnings with the help of IVF also against people, who could born a baby. There, doctors “spoil” artificially the first attempt and propose to make second-third, with which everything will be all right. First attempt, artificially spoiled in fact is net earnings. By the way, receiving a baby from a second-third attempt is an indirect alibi in front of those, who couldn't have a baby also with the help of IVF. Herewith, doctors immediately warn, that from the first attempt a baby couldn't always come out. To determine, if it happened objectively or by doctors intention could not always².

All specialists are know, that crimes in the medicine sphere are the most difficult to prove. Firstly, in order to prove you may have very good medicine education, which doesn't have investigators, prosecutors, policemen. Secondly, doctors almost always could refer to the unique and unpredictability of taken separately human organism. Thirdly, medical society is very corporate and almost always protects doctors, who committed medical crimes, even if it turned to

¹ According to ethical reasons we don't tell the name of a person.

² We don't make special researches that will confirm these words. At the same time, from my own experience with people communication, receiving children with the help of IVF, we could say, that none from this impregnation with the help of IVF don't came out from the first attempt.

disability or death. Protection forms are standard: a doctor made everything correct, according to medical protocols, indications, etc.

Nowadays technologies of in vitro fertilization received government support and regions are given out paid by the government quotas for carrying out such operations. This, without any doubt, will turned to a fraud splash from the side of unscrupulous staff. Scheme is very simple: they take money from patient for the procedures, at the same time, as a secret from her, issued a payment for the operation according to “quota”, in fact from the government budget. And cash, earned as a result of two times payment, is divided between doctors.

We need to understand the fact that now hasn't already grown up generation of people, which was impregnated in an artificial way (with the help of IVF or from surrogate mother). Nowadays it is hard to say exactly what health such people will have, what immunity and what capabilities. We hope that everything will be all right.

It is needed to remember, that technologies and opportunities of having children in an artificial way have already forwarded science and mind set. Even if further it will be found out, that children's born in such a way is dangerous for humanity, to stop this process will be hardly possible, because firstly, it is set to a wide commercial basis, secondly, there are a lot of specialists in the sphere of artificial impregnation and surrogate motherhood and thirdly there is a demand for such procedures, which especially in Russia constantly raise. In other words, for example, on IVF earned a lot of money and doctor's occupation under abovementioned specialization is very prestigious. In its turn, people, who don't have children of course wouldn't stop before possibility to born them, even if they understand possible negative consequences. And we could also understand them.

With surrogate motherhood appear new, not known before ethic-legal questions. For example, how writes V.P. Salnikov, O.E. Starovoytova, A.E. Nikitina and E.V. Kuznetsov, surrogate motherhood destroy traditional introduction about social roles of mother, father, son, daughter, etc. Not understandable is a legal relation between biological mother (who born) and

genetic mother (ovum's donor). This fully refers to an artificial insemination by donor's sperm. With these technologies questioned an age-old principle of parent's responsibility for their children, family significance in life of a particular person and a whole humanity at all. Hot debates caused opportunities of governmental permission of commercial surrogate motherhood. In this case, heavy moral problems will be occur in the case, when child born "for order" "not good quality", i.e. sick or with improper gender.

Besides, the situation isn't regulated, when child turned to be unclaimed neither biological mother nor genetic parents.

So, I.K. Babadzhanov is thinking, if the price isn't so high for the family decision, when as a hostage of possible conflict will be neither the innocent child? He will become useless, but also mothers outlaw, which brought him into life and for parents who refused from him. A child – isn't an animal, which was derived by a special way and not a victim of a medical experiment¹.

Experiments for artificial extension of a human life also conceal a lot of dangers both ethical and legal. It is, for example, (in case of success of such experiments) clearly overpopulation of Earth² with ensuing from this ecological and economic disasters – people need something to eat, to drink, to breath, etc. Ecological changes in its turn are cause mutations between people and also between animals with unpredictable consequences.

During last time significant success achieved medicine in transplantation of human organs, replacement of damaged organs and tissues³. Unfortunately, medical achievements in this segment one more time have been far ahead its legal

¹ Babadzhanov I.K. Surrogate motherhood: some questions of a law regulation // World of politics and sociology. 2012, № 10. P. 107.

² Problem of demography is well known for everybody. It is considered, that on the Earth must leave at around 900 million people. Now population of planet already turned to be more than 6 billion.

³ In Russia a founder of transplantation is considered to be a famous surgeon N.I. Pirogov. In 1835 N.I. Pirogov in Saint-Petersburg for the first time in Russia has prepared and read a lecture: "About plastic operations in general and about rhinoplasty in particular". In lecture, based on his own experience he has substantiated a problem of transplantation and expressed an idea about it further development. See: Mirskiy M.B. History of domestic transplantation. M., 1985. P.9.

regulation. When appropriate legal standard were issuing, economic, following the requirements, formed very fast “black” market of human organs. Of course, such market is used to be criminal. It is criminal from the point of view of its mentoring by crime leaders¹, and also from the point of view of receiving, transportation and delivering of necessary organs. Enough to say that, nowadays in the world there are dozens of criminal groups, which are supplying human organs. Such groups are widely spread in countries with bad economic situation. What methods they use in order to “extract” hearts, kidneys and human livers, for example in African countries, we could only guess. What is more, despite the fact, that there is formal existed restriction in a variety of countries against import of human organs, there is no secret, that such process is still implemented. What is more, we think, that not without knowledge of government, which is interested in life improvement of its citizens.

In Russia protection of a person in term of donation his organs, from our point of view, isn't regulated at all. How estimate, that people (citizens of Russia!) in order to receive money for living of mere motion sell their kidney? And it is in XXI century, how we see, against the background of medicine development! What protection of person rights and equity is going to be about, if society with economic method strictly divided into two parts: those, who can afford to pay a lot for alien organs and its transplantation (minority) and those, who also by the way of selling theirs organs forced to survive (majority). In fact the second one - there are donors for the first one.

Generally, for transplantation, of course is needed to have young, healthy human organs. Where to find them? One of the sources of its receiving in Russia (and some other countries) is car accidents. The paradox is occurred, that sick people, who need such operations and doctors who are making them to a certain degree are interested in increasing of car accidents with death cases with young people! And here occur a question, to which faced police one of the foreign country. It was founded, that two doctors didn't help young people, which were

¹ We use “fashionable” word now “protection racket”

hardly injured by car accident, what lead to death (or help, but not fully, with delay). Necessary organs for clients from perished people were sold. The same fact was revealed in hospital, when hardly sick young people, but with healthy organs, which were necessary for others for transplantation, “treated” to death. Organs have been sold and transplanted. The question is that, if such cases could occur in Russia...?

But if replacement of human organs, human codes and etc. – something new, experiments according study and influence on human mind are well known longer ago. Especially successful in such inhuman experiments was Nazi Germany. At the same time, after the II World War researches didn't stop. Some specialists make it, how announced, with goods aims, for increasing efficiency, vitality, obstacles onset of drowsiness, fatigue, etc.

In fact, danger of such experiments absolutely obvious. Increase of efficiency especially in combination with artificial mental retardation could turn people to become slaves, which could do only a specific work (human-driver, human-turner, human-baker, etc.) So, as a result of such experiments of “service breeds” of a human removal, it could go on a human liquidation as a personality before those, who haven't been subjected to such mental impact. But this - is a visible stage. And what is going on further? Further is really possible, that occur a loss of knowledge, which was saved by humanity, return to the slave system and a long way ahead.

Of course, it is possible, that such manipulations according increase of efficiency people will use to themselves of mere motion and individual, for example to increase efficiency during exams preparation. However, such “treatment” would represent nothing more than a kind of drug and psychotropic substances. But once again, consequences for health still not calculated. For example, if it will be habituation effect from such manipulations, for how long time it will be enough power for a human organism to be much more efficient and vital, etc.? Experiments on mind need to have serious legal estimation.

One more very serious question for law is permissibility or impermissibility of cloning.

Serious study of cloning has been started approximately in 1950-1960 years. Just then in Europe and USA scientists have been talking about principal possibility of an artificial creation of a living being, genetically the same as parents. A real scientific breakthrough was made in 1990th, when was artificially created a mammal - sheep Dolly, and raised a question about the same experiment with human.

This problem was considered in details T.G. Leshkevich. She writes that when it was talking about cloning of human being, were needed efforts of many theorists for the comprehension consequences of this step. According to the opinion of a famous American scientist P. Dikson, every method, which was used on mammals, could be adopted to humans. In this case, we will receive copies of adults, copies of our relatives, friends and moreover could come to the situation of multiplicity, in which is difficult to distinguish, where genetic real human being is and where an artefact, i.e. artificially created is. At the same time, according to publications in 1998 American physics R. Sead on symposium dedicated to reproductive medicine publicly announced his intention to return to work concerning cloning of human. There are some willing to participate in this experiment¹.

But the majority of a scientific world perceived an idea of cloning sharply negative. First of all because the consequences of such experiment is very dangerous. Secondly, will the received clone be a human, will it have normal mind, will it accept to leave according estimated moral rules by a society, laws, how people will perceive him and how he will perceive people and etc.?

There are other arguments against cloning, that was noticed by T.G. Leshkevich, which we put shortly. She wrote that, pureness of experiment of cloning in conditions of sharply deteriorated global problems of contemporaneity cause big doubts. Such kind of experimentation, even if it is a secret, could lead to

¹ *Leshkevich T.G. Philosophy of science. P. 206.*

unplanned mutations, which result will be unpredictable. Unlikely is also that, cloning will give exact copies of selected samples. As the appearance of sheep Dolly resulted after 227 unsuccessful attempts, so fears acquire purely technical character. As E. Platonov claims, successful cloning of a first child will be need no less than 1000 attempts; will appear a big amount of still-borned or children-freaks. Cloning with the aim of helping families without children also problematic, when even if a result will be positive and abstraction from all social-negative factors, cloning assume reproduction of not a new organism, but one cotwin from mother or father, i.e. parents receive not a child, but a relative – brother or sister. Furthermore, cloning will be a support for inverted individuals – homosexuals and etc. Technologies of an artificial reproduction refused the most ponderable argument against homosexual relationship – a threat to a less reproduction of humanity. Such technologies will open opportunities for different forms of family-marriage relationship, will strengthen fundament of incomplete families and will put under doubt the whole system of a family relationship. Discussion of cloning of outstanding individuals reveal one more unexpected aspect: this technology is more likely to be vulnerable, because geniuses are suffering from serious pathologies. Schizophrenia, cyclothymic, epilepsy and a variety of different neuropsychiatric disorders – only a small set of characteristics of outstanding individuals.

In general, writes T.G. Leshkevich, cloning as a very complex experimental technology, which basically could lead to reproduction not only etalons (when goal coordinates with result), but also freaks. From methodological point of view is talking about mismatching of goals and received results, what in terms of cloning on human is immoral and criminal¹.

V.P. Salnikov, O.E. Starovoytova, A.E. Nikitina and E.V. Kuznetsov distinguish 5 main problems of cloning.

¹ *Leshkevich T.G. Philosophy of science. P. 207-209.*

1. Cloned human beings will repeat a genome of already existed person, i.e., will not have, in the full sense of the word, their genetic uniqueness¹.

2. Human cloning – is unnatural for nature way of reproduction².

3. Human cloning rebirth eugenic ideas. In order to improve the human gene pool were expressed ideas to clone Noble laureates, outstanding persons and other individuals, who brought a lot of benefits. Such cloning could lead to society split between “elite” and “simple” people. Wherein, the last group is in risk to be subjected to discrimination. For example, this could be expressed in providing of better conditions for living and development. Discriminated persons could be used as slaves, and, also be subjected to genocide. It is need to be noted, that in “elite” category could be either clones (for example on the base of having genotype of A. Einstein), or people, who have been brought to life by a natural way (on the base of “natural” of origin). One more demonstration of eugenic could be a simple attempt to establish category of persons, having or haven’t right for cloning. Absolutely clear, that even in case of legislative authorization this method of reproduction, it will be impossible to clone all of them. So, it will be needed taking into consideration the most important factor of health. And, besides, it is obvious, that cloning of antisocial individuals (for example such as Chikatilo) will not be admitted.

4. Attitude to cloned being not as to the person. Some religious confessions, also by Catholics were expressed doubts about that cloned being will be having a Soul. This point of view is supported by some individuals, who don’t have any attitude to religion, but pursued in that, almost by syngeneic occur something important for the becoming person as a person.

¹ Official position of Russian Orthodox Church states: “An idea of cloning is an undoubted challenge of human nature, inherent in him the image of God, an integral part of which is freedom and uniqueness of individuals.” See: Informative bulletin department for external church relations of the Moscow Patriarchate. 2000. № 8. P. 79.

² Head of a republic center of human reproduction Ministry of Health of Russian Federation A. Akopyan notes, that “cloning closed an evolution chain” See: Vasilenko K. Cloning and other sensations // Medical sheet. 2001. № 4. P. 8-9.

5. Unpredictability consequences of human cloning. Danger for people's life and health, who are taking part in this procedure¹.

To such conclusions came also another scientists, wherein putting on law one of the most important roles for the proper settlement of these processes. So, M.I. Kovalev writes, that already at the current level of genetic engineering development occur a real danger of genetic knowledge abuse² and unpredictable consequences experiments with human species. In order not to be late with solving of these tasks in the framework of human and humanity rights, it is necessary to schedule already now real ways of regulatory solving a variety of questions. Juridical science and legislative practice in the field of regulation of human biology and genetic must develop according to achieved results and opened perspectives in the sphere of genetic medicine, biology and genetic on her own, leaning on the first one, and predict social, and consequently, also juridical consequences of the second one.

How D.A. Kerimov correctly concluded, in western countries actively discussed (but less in our country) a variety of questions of eugenic, cloning, paternalism, replacement of organs, fertilization from test-tube – that is all refer to biosocial and bioethical spectrum. These discussions having, first of all, moral orientation, but without connection with jurisprudence and law to him in practice, barely will be achieved effective results. Unpredictability of some experiments fraught with huge and hard consequences, irreparable harm. Therefore, is urgently required in such kind of researchable novation's to integrate legal component, law, and first of all international law, with its help will be having a possibility to set up a moratorium for separate experiments across the world. Otherwise we will receive unwanted inconsistency in those negative consequences, which will create unconsented scientific researches and their results, concerning interests of the whole humanity. Let's take, in particular, mentioned "improvement" of the human

¹ *Salnikov V.P., Starovoytova O.E., Nikitina A.E., Kuznetsov E.V.* Biomedical technologies and law in the third century / under editorship V.P. Salnikov. Saint-Petersburg. 2003. P. 28-33.

² *Kovalev M.I.* Human genetic and his rights (legal, social and medical problems) // State and law. 1994. № 1. P.15-17.

race with the help of cloning. Will the humanity receive really “improved variant” of their race? Will this variant be fitting to historical changed social standards of living? Who will be asked to identify whether the human race “improved”? What methods, means, ways will be used to identify this “improvement”? Will be the next generation satisfied with contemporary representation about “improvement” of the human race? Without preliminary scientifically-based answer for these and many others questions unacceptable to conduct experiment on people and generally on the humanity. Without legal decision here (equally in other similar cases) couldn’t get along¹.

With indicated conclusion, without any doubt, we should agree. But working at legal regulation, it is necessary to take into account two difficulties.

First. Assuming, that clones with their bodies are the same as people, but not having human soul in the full sense of the word, it is very likely, that they will not perceive these people for the people. In this case, clones can be used for conducting hostilities as soldiers, and also for murder commitments, terror attacks. However, such scenario, unfortunately, is really possible. And separate reactionary regimes not supporting cloning, nevertheless will create them secretly for participation in hostilities, implementation of special tasks, etc. unfortunately, humanity knows a lot of examples, when overall restricted researches are still conducting. A bright example – creation of nuclear weapon. Despite the fact, that all western countries are announced about danger of nuclear weapon, accepted relevant rules and moratoriums, researches in the direction of its improvement, as it appears, don’t stop. Furthermore, despite the fact of all legal restrictions, number of countries, which are become nuclear only rise. Over the past decade to them were added North Korea, Iran, Israel. It shows objectively, that nowadays law could only slow down some negative worldwide processes, but not completely stop. Or whether it is need to regulate more cleverly and more strictly social relationship in the sphere of restrictions. And here it is need to consider another difficulty. That all people, also very rich, are suffering from diseases. They are

¹ *Kerimov D.A. Methodology of law. P. 534-535.*

interested to be treated with any methods. That's why many of them are ready to invest a big amount of money to genetic engineering, to pay for works for slowing the aging, extending the life, transplantation of organs. They are, in their majority very authoritative people and lobbying promotion of such researches in their countries. This process is very hard to stop due to the reason of a personal interest in such experiments and researches. And when to add, that not all of the worldwide oligarchs having normal sexual orientation, so there is their undoubted interest in cloning as a kind of continuation of their generation.

Nowadays must be only stated, that appearing regulatory acts, which are limiting biomedical experiment on human and humanity, are not perfect enough, because they are not fulfill their purpose.

Abovementioned biomedical problems are of current interest not only of the question of life, but also on the question of death. Biomedical technologies in a variety of cases will allow supporting physical life of person as an individual, even after complete mind trip. We are talking about the cases, when by injured person as a result of, for example, a car accident stopped to function a part of brain, irretrievably disappear mind. However, in this condition of the person as an individual, with healthy heart and internal organs, contemporary medicine could keep him for a long time as he is really alive. Unhappy in such condition is nothing realize, nothing feel, nothing perceive. Without any chance for recovery or return of mind. It is ends every time the same – with a death, which occur sometimes fast, and sometimes after few years.

Could be such unmoved creature in this case a person or not? Have it right for death?¹ Could relatives ask doctors about euthanasia², in order not to torment

¹ *Kovalev M.I.* writes: "There are no solid arguments against that it could be announced, that a person has right for life or death. Both of this human rights are so tightly binding, that they let's say are two sides of one medal, wherein very delicate and fragile, that is need special care in its handling. However with the right for death occur significantly much more problems, than with the right for life" See: Kovalev M.I. Right for life and right for death // State and law. 1992. № 7. P. 71.

² Euthanasia (greek ευ- «good» + θάνατος «death») – a method of medical decision of death. It is considered, that this term was proposed by philosopher F. Bekon. After more than 300 years euthanasia was used against another outstanding philosopher Z. Freud.

him further? This questions are current of interest, especially with considering a big amount of tough car accidents, hostilities, terror attacks, other injures¹.

In different countries a question about permissibility of euthanasia is solved by different methods. The Netherlands was the first one, who officially allowed euthanasia against people. Then it was allowed by some other countries, also by some states in the USA. In Russia, nowadays euthanasia against people is prohibited². Peculiar alternative of euthanasia are hospices, which are functioning in Russia from 1990³.

Here occurs a question about belongings of body deceased. If it permissible for doctors to use body or it parts with medical purposes, also for organs transplantation? Is it need to receive acceptance from relatives, and if need, so who concrete. Such questions must be carefully weighed not only from the ethic point of view, but also from a legal side.

To abovementioned adjoin a problem of an artificial human freezing. What is, for example, a legal status of a person which is freeze during clinical death (with the aim of saving till then, when scientists will find a way of cancer treatment or another untreated disease)? Such cases, how researches are mentioned, have already known yet. Particularly, the first volunteer was James Berdford, who had been frozen in 1967. In the USA was created "A society of life extension". Such cryonic societies have been occurred also in other countries. In such situation occur, first of all, a juridical problem. From one side a person isn't alive, and, isn't a subject a law. From other side – toward him maintains the obligation of third parties to carry out all possible actions with the aim of

¹ Very informative research about legal thanatology was carried out by Starovoytova O.E. From her point of view a legal thanatology – it is a branch of legal knowledge, including in it all the complex of legal thanatology problems. The main among them – juridical definition for death, right for death, death as a juridical fact, euthanasia and law, legal regulation of transplantation of human organs and tissues, and also other problems, which are directly bind with somatic human rights. See: Legal somatology foundation / under editorship V.P. Salnikov. Saint-Petersburg, 2006; Ibid: Body and law. Saint-Petersburg, 2006.

² Even in religion answers on this question are ambiguous. For example, in Orthodox religion, to which we belong, a person doesn't have such right. However some religions are supposed to have the right for death.

³ See: *Salnikov V.P., Kuznetsov E.V., Starovoytova E.V. Legal thanatology. Saint-Petersburg, 2002. P. 112.*

revitalization and treatment. Wherein isn't clear, what will happen in case if indicated goals wouldn't be reached. Will it entail juridical responsibility, and if yes, to whom and in what form? Furthermore, a question occurs about principal ethical permissibility of such experiments. Results of such experiments are not known, because none of "frozen" hasn't been defrosted yet. Many people could express a wish to extend life in such a way. Is it permissible in this case to expose cryopreservation for everyone? In what way and what necessary conditions need to be follow in order bring back to life such people?¹

Accordingly, biomedical experiments are one of the most important global problems of law, requiring at the same time very weighed and very accurate solutions.

¹ *Salnikov V.P., Starovoytova O.E, Nikitina A.E., Kuznetsov E.V.* Biomedical technologies and law in the third century / under editorship V.P. Salnikov. Saint-Petersburg. 2003. P. 14.

§2 Information space as a threat to human and its rights

Problems of human status in information space, protection of human rights and freedoms in it, sometimes are rise by scientists. At the same time, many people are not imagine the scale of these problems, respectively they couldn't fully estimate emerging risks for human, relating to immunity of private life, freedom, physical and mental health.

Danger, related with uncontrolled information spread is one of the most important problems against humanity in XXI century. Its solution, without any doubt, will be related with law, with necessary legal regulation.

Majority of people don't think enough about, where is stored information about them, who use it and how protect it. A typical answer that could be heard during interview: "Maybe information about me is stored in police". But just lee likely is stored there. Police, how all subjects of operational-search activity, generally stored information about individuals, who have been convicted or having operational interest. They are less interested in law-abiding citizens.

At the same time, for each person in different government and private organizations is stored a giant information array. What is more, information in electronic variant, which, how all understand, could be less under control and it isn't protect not very good from massive distribution.

Let's consider the main places of information storage about the person.

Actually, information about each person is starting to store long before the birth. At maternity hospital, for each pregnant woman is necessary to establish birth card exchange (or form 113/u). This card – is a special medical form of accounting, which is necessary for pregnancy control. The first page contains personal biographical information about future mother, also about inspections, diseases, harmful habitats and abnormalities (alcoholism, drug addition, mental diseases, etc.).

After the childbirth in the maternity hospital information is carrying in a card exchange about condition of the newborn. Including are specified:

peculiarities of childbirth and their consequences for the child, psychological parameters (height, weight) in its dynamics, information about method of feeding, vaccinations which are done in the hospital, information about congenital diseases, anomalies, malformations and diseases that newborn had in the maternity ward, diagnosis of illnesses and treatment, information about the individual characteristics of the newborn child, defects of musculoskeletal system, congenital malformations, anomalies, etc. peculiar only to this child.

This information is concentrated in paper form in the archives of the medical institutions, where the protection of personal data exists, to put it mildly, conditionally and on the computers of doctors.

We know not a few cases, when doctors, moving to a new job, automatically copied data about their patients and newborn babies to removable media. Where are they now? Out of curiosity you can read the correspondence of some doctors on the internet. Sometimes, there is cynically and in details discussing how mothers and babies.

Further, in relation to any person follows several stages, which records information about him and his parents:

- registration of a birth of a person (in registry office of acts of civil status);
- registration the child's place of residence;
- registration of police of obligatory medical insurance;
- registration of citizenship;
- registration in the district hospital for children;
- registration in pre-school institutions (nurseries, kindergartens);
- registration in comprehensive schools;

Each of these agencies has their own databases, which are maintained in electronic form.

Next, each person begins an adult life. And at each interval he fills dozens of times all information about himself and his relatives (like parents, children, wife), about health, property and social status, his place of residence and his relatives and so on and so forth. Such information is stored in many institutions:

- tax authorities;
- places of issuing passports and places of registration;
- military commissariats;
- authorities of Russian registry;
- records of traffic police;
- registry authorities of acts of civil status;
- records of Ministry of internal affairs about previous convictions;
- etc.

Each of these institutions has full and detailed information about the person. This information is also stored in electronic form. And although, without any doubt, they are protected better than in medical institutions, they are still getting in open access. For example, we have already seen all the above mentioned databases in sales on the markets of Moscow.

Besides these records, there are databases in organizations, without which person will not be exactly get along:

- educational institutions (colleges, high schools, academies, universities);
- medical institutions (polyclinics, hospitals, dispensaries).

This includes also databases of airlines, railway and maritime companies. They are also could be found in sales. In such databases, in addition to passport data, is stored information about when, where, on what flight and in what time a person left and accordingly, has arrived. So, the fact of a trip, which is hidden by a person in some reasons, is easy to establish.

If a person was involved in business, even if it is small, so there is much more amount of information about him. Nowadays, have created several huge databases for searching of legal entities, their founders and directors, assessing the trustworthiness of their business.

For example, specialized information databases (“Cronos”, “Spark”, “Integrum”, etc.) contain constantly updated information about legal entities and physical individuals, their registration and accounting data and places of

registration, share capital, date of establishment, owners and shareholders, executive directors. In addition there is information about their affiliated persons (physical and legal), balance sheet, reports about financial position, risks availability, etc. Additionally, on the website of FNS (Federal Taxation Authority) “Egrul.nalog.ru”, could be received all actual information about any legal entity. And the website “Service.nalog.ru” gives you the opportunity to check, if documents which were submitted by tax authorities for making changes in constituent documents of any organization and in information about legal entity, which is also connected with a change of participants, address (location), change information about director.

There are several others websites, providing similar information. For example, “Finrazvedka.ru” represents research activities and economic situation of companies-competitors, partners, suppliers, customers by analyzing their financial documents. Information agency “valaam-info.ru” contains information about legal entities and physical individuals. Database “Central catalogue of credit histories” contains information about the execution of a subject of credit history (borrower) of its obligation according to the loan agreement (credit) and etc.

But this is not all. People leave information about themselves without thinking, not only when it is necessary (in public institutions or for business). He leaves this information everywhere, even in a service sector. Now it is common, that large stores have database of their buyers, where they record fully surname-name-patronymic, residential dress, family composition and means of communication (mobile numbers and home phone numbers, email address). The same databases have delivery services, massage salons, swimming pools, credit institutions, insurance companies, etc. Each of them is having detailed database, which information stores not always reliable.

Their own databases have also mass media (TV, radio, newspapers). Their databases, of course, are selective. It doesn't apply to a general population. Generally, they contain information only about famous and interesting people for edition. If it is a political mass media – so they are collecting information about

politicians and also material which are compromising them. If it is a business magazine – so the objects of journalists would be businessmen and their families and etc. Journalists are rarely conducting their own investigations, taking out collected material for social discussion, including intimate questions and sometimes collected stored material “until better times”. However, the “victims” of such investigations may become ordinary people.

Special attention deserves the Internet. The Internet essentially – is the huge database and the kind of mass media. First of all, it is possible to find in it many of abovementioned databases and information. Secondly, information about the person, also very personal, could be actively spread and discussed on forums and social networks. Without knowledge of this person. Also could be published photos, which are compromising and discrediting of this person. Let’s say once again a few words about personal photos. For some reason, many people believe, that the emailed photo, couldn’t fall into the wrong hands. In fact, this is of course, not so. But delete your photo from the Internet is already almost impossible. On the contrary, there is a special group of specialists, who are searching for intimate photos, and then widely publishing them on different websites.

Generally in the world, and particularly in Russia, further information process is continuing. So, it is going on to introduce electronic diaries at schools, to create a single electronic payment document, a single identifying document, etc. So, the process of receiving full information about person will be continued.

Wherein, now it is not so hard either to obtain necessary information or distribute it via the Internet.

However it is need to understand, that there is right to personal and family secrets, protection of good name. Right now in society is already circulating a huge electronic data array, which couldn’t be taken under control. Despite assurances from organizations about keeping personal information in a secret, markets are constantly replenished with fresh databases.

This situation is already damaging the individual, his rights and freedoms, as evidenced by many examples. Particularly, many crimes were committed, when

criminals having a precise setting data of other individuals, issued on the last one debt. Other criminals, who received information about rich clients from the information databases of the storages, have made theft. Common cases of bullying are also spread, some of which ended tragically. So, photo of a girl, taken from the social network, shortly before wedding, published among the photos of prostitutes on the porn website. The wedding didn't take place. And the girl's mother, who was stigmatized by neighbors, committed a suicide. There are a lot of cases of usage of personal data of a person in illegal and immoral activities.

Who can get assurances that each of us will not face with such kinds of criminal activities or stupid jokes? There are no such guarantees. As there is no clear legal regulation of the information space. And in fact, there is no protection of personal data at all. Outlined above requires from lawyers serious understanding of what is happening and development of specific legal measures.

Other problem was rapidly growing mass control of people movement.

Today in big cities, cameras are installed almost everywhere, where it is possible. They are on the highways and intersections, squares and parks, stations and restaurants, hotels and toilets, schools and kindergartens, in private offices and public institutions, supermarkets, small shops, buses and the metro, etc. In one word – everywhere.

In the Internet flashes number, that during one day the average inhabitant in Moscow who is going at work and back home comes into a view of cameras 30-50 times! We checked it by ourselves and made sure that the data doesn't lie. And when you consider, how many times a person comes into a view of the office cameras at work, this number will be much bigger.

Many of abovementioned can cause a positive effect. For example, a system of video control about the situation on the highways, could afford objectively to know, who was guilty in a car accident. Video camera can also show the rude of social employees to clients.

However there are a lot of questions. So, where these videos are stored and who have an access to them? Life experience shows, that access to them have a lot

of people. Furthermore, snapshots from hidden video cameras after some time are publishing in the Internet for everyone. Nowadays none of inhabitants are insured from this. And the awkward fall of person (that could be ridiculous from someone), non-photogenic face, conflict with a passers-by, argue with relatives could be in a moment seen by many people. Even more frustrating is, when video camera will be installed in the restroom, and later will be published, what they have already seen. Of course, they will not see anything new, but without any doubt, it would be unpleasant for a person, who was captured on video.

Nowadays there are quite a lot of people, who have found themselves in video hunting for famous people, collecting and distributing in the Internet about them all negative moments of their life: traffic violations, scandals, weird behavior, failure statements. With such people, not longer ago was faced rector of MGU (Moscow State University) academician, V.A. Sadovnichiy, who, clause, calculated incorrectly the interest during his speech to the auditorium. Record of V. A. Sadovnichiy speech was recorded by video camera hanging in the auditorium (we don't know what for it was hanging there). But already in the evening, the fragment with clause of academician was published in the Internet, and lately, distributed. And of course, only a fragment wit clause, but not the whole speech of these famous scientist. The next day the whole Internet was in copies of this fragment. And also someone has already put the fact of V.A. Sadovnichiy clause in Wikipedia.

There is one more danger. As everyone knows, all records from the video cameras related to crime. Overseen can also be used for blackmail, a secret surveillance of a person, to carry out an attack and etc.

Assurances that such records will not be shared with outsiders are not corresponding to the truth. They have already appeared and will be appearing in the "black markets", where there are already exist confidential databases, records of Ministry of internal affairs, customs. It is necessary to understand, that if parents buy records where will be shown behavior of their daughter it is one side. But if killers or robbers will buy them for monitoring their victim – it is something else.

But the main question is whether it is necessary to install cameras on every step? Is it good if a person is always under monitoring? Will a person have right to have personal life, personal things and personal secrets?

Humanity has been struggled for so long time for its rights and freedoms, in order to place it now under doubt?

Nowadays there is no secret that mobile telephone affords not only to call you in every place, but also to set up your location. Mobile operators are already officially proposing services for determination, for example, location of a child or husband with the help of his mobile telephone. Mobile telephone by its nature is a transmitter, let's say a kind of your lighthouse and in some case your collar. Information about movements of the mobile phone owner is stored only by mobile operators, but nevertheless is occurring in the market and become widely available. In fact, with a wide usage of mobile telephone people have lost the right to secrecy of their movements and partially a secret of their private life.

Here is needed to mention and about wiretapping of telephone conversations. As everyone knows a secret of telephone conversations – one of the most important natural human rights, protected by government. In Russian Federation this right is enshrined in article 23 according to the Constitution of Russian Federation. Telephone conversations could be wiretapped according to Federal law “About operational-search activity”, with the obligatory observance of grounds and conditions of this event, which are indicated there. The right to wiretap telephone conversations has only those authorities, who are making operational-search activity. Violation of the secrecy of telephone conversations could lead to responsibility established by law.

However, earlier technical methods, that could allow wiretapping telephones, were strictly taken into consideration. Now development of technical methods and not enough legal regulation, lead to that the market of wiretapping and recording equipment in Russia has become almost uncontrolled. There are many people, which advertising provision of such services. And people ceased to be surprised anymore to facts of appearance in the Internet records of their personal

conversations. Professionals, of course, objected, that wiretapping of telephones – it isn't a cheap pleasure, which also need both financial and time costs. To wiretap a telephone will only in that case, if a person's conversations may represent any interest. But this is a little consolation for those, who had deal with it. And the most important, is that every person in fact could be unprotected from outrage.

Furthermore, contemporary information technology gives wide opportunity for montage of records and their falsification. Of course, an expertise in most cases could distinguish an original record from a fake. But all this will happen, only after when a person will be public discredited.

The same is related to personal correspondence. A secret of correspondence and messages in Russian Federation recognizes as a natural human right, which is protected by the Constitution and other law. But in practice, personal correspondence in computers and in the Internet could be easily attacked by hackers. And in the markets are selling a lot of products, which are allowing to open and to read messages in the Internet.

Generally, situation with a total control of a person is obvious not only for Russia, but also for the whole world. As in the mid of XX century humanity have made so many nuclear bombs and now don't know what to do with them, so now is already produced so many video cameras and recorders, that people begin to suffer from it themselves.

It is necessary to take into consideration the following. Nowadays we all crammed with electronics. Electronics is situated at home and at work, people are computerized and carry with them at least one mobile telephone. However, there are no fair researches, about the harm of this electronics to health. We can repeat that mobile telephone – is a transmitter. The fact, that carrying a transmitter with you constantly isn't good for the health realizes a lot of people. Furthermore, to talk on it for a long time.

In Russia haven't yet grown a generation that constantly used mobile phones and other electronic means of communication. While doctors, probably, cannot objectively assess harm for health. It can be hoped that it will be minimal.

In addition to physical health, information space significantly influences on a human mind.

Such impact can be classified in a several directions. The most common are:

1. Impact on political basis. It is carried out during elections, which are periodically held in Russia to various authorities, as well as the formation of relationship to politicians and public figures. It is clear, that such impact can be referred both positive and negative, for undeserved denigration of the person.
2. Impact on economical basis. It is mean about constantly pressing on the mind by advertisements about discounts, sales, perfections, privileges, etc. All these discounts and perfections are well calculated economically and bring to sellers a real profit. And rarely following after so called discounts, there is a wish to sell stale (and in general isn't very necessary) goods, but of course with profit. Information space has an impact on people and provokes them for buying not necessary goods, things.
3. Impact on religious basis. Besides world religions, which are necessary to respect, humans consciousness and thinking is treated by dozens of sects, any prophetic motions and etc. For the financing of these religious organizations are spend a lot of money, existing and carrying out programs in order to involve youth in them and etc.
4. Impact on amoral basis. A human is arranged so, that he contains proportionally as a moral and a wicked (animal) beginning. Mass media with frankly amoral programs, wicked plots, provoking violence and rudeness, unfortunately, have high ratings. The Internet – is the most favorable toy for teenagers – filled with pots about pornography, murders, mugging, brawls and etc. As a result: temptation of such plots among many people wins rationality and encourages a desire to try at least once and to participate.
5. Impact on race and national basis. It would seem in Russia – a country which has defeated Nazi, - there wouldn't be a question about nationalism.

But there is such question. And in Russia, recently, it is quite acute. What evidenced wars in Chechnya, separatism of Caucasus republics, various nationalisms motions.

Taking into account the spread of mass media, a human couldn't already hide from all this kinds of psychological violence. In every point in the city he would be reached by advertising, pre-election slogan, nationalisms appeal, proposition to join to the party or sect and etc. Indicated appeals and propositions are rare bring positive emotions. From this by a human will be accumulated aggression, which needs splashing. Negative energy spills to family, colleagues at work and passers-by.

Wherein, we need to understand, that such advertisement (both social and political), and also other propositions and appeals are prepared by professionals. They know psychology of the person and the crowd very well, on this basis actively use on public consciousness invented by humanity information technologies. Technologies themselves have been already invented quite long ago. And nowadays with development of information space, they become more effective.

Researches according to how such impacts can be harmful for psychological health of a person are held, from our point of view, not quite enough.

Furthermore we need to know and to understand that excessive impacts on consciousness will lead to social splash. Is it necessary for our society another shock? How ruinously it will reflect on all of us and generally on Russia?

To summarize shortly this chapter, let's repeat that in front of humanity at the end of XX century has occurred new global problems, relating to his corporeal nature and impact on him through the information space. Their danger must be realized as soon as possible and work out concrete legal mechanisms in order to solve abovementioned problems.

CONCLUSIONS AND FORECASTS

To finish the work on philosophy of law is always more difficult than to start. One has only to complete cross-light of all the questions and immediately became obvious that it was written not all, there is a wish to write again, add, clarify and etc. It moves like desire to be better understood and also the depth of the raised questions.

Therefore authors end presented book not only by repeating of conclusions, but at the same time by formulation forecasts of development of philosophy of law, legal regulation and legal reality.

If shortly accent attention on the made conclusions, so it is necessary to invoke researchers not to abandon from the purpose of cognition of the being, on the basis of principal possibility of such cognition. Accordingly, there is no sense to abandon from dialectic as from the universal method of cognition, objectively more developed as in philosophy and also in science.

Authors are hope that that interest in postpositivism, postmodernism as a majority of such doctrines will end relatively quickly. People generally and scientists particularly, always tended and tend to cognition of the world – to a true cognition, to the knowledge. Under such circumstances science and philosophy of science should seek to monism. On monism, in the entire world is built almost all secondary education and a major part of high education. People all over the world in schools and colleges are studying granted the same physical laws, chemical formulas, historical and social processes and etc. Refusal from monism, leveling values of scientific knowledge as cognizing of the truth, in fact means destruction of the educational system, what, of course will not be allowed by any state.

But nevertheless, if science will be striving for certainty of concepts, subjects, being, so philosophy likely will never solve the problem of understanding of something. This problem as a faithful companion of philosophical research will always be near.

Against the background of the world instability all states will be striving to develop science and to set before her more ambitious tasks. These tasks will be concerning of receiving of new and, undoubtedly, *true* knowledge about human, nature, society, structure of the world. The purposes of receiving new knowledge have as humane and inhumane character directed on enrichment of specific persons and states, strengthening of their power. Experience convincingly shows, that humanity which was formed in state, couldn't create for a long time. It striving to enrichment, absorption of others, what is always leads to destruction and, ultimately to self-liquidation. It is necessary objectively to admit that humanity constantly during all its life engaged in destroying of each other. Wherein, alas, historical experience convincingly shows that humanity not becoming kinder, wiser and more caring toward itself.

At the present time, humanity has accumulated variety of global problems, which are deadly for the Earth (threat of nuclear war and application of other weapon of mass destruction, overpopulation, lack of energetic resources, environment and etc.). We can believe that, unfortunately, in perspective some of the named threats for life will be implemented. Outlined gives opportunity to put forward hypothesis of cataclysms and circulation of human life on the Earth. Its essence is that the humanity with its actions reaches a certain frontier, after which, it is unable to be in a full composition on the planet. As a result of achieving frontier, occur catastrophes or cataclysms, affecting (sacrificing) absolutely the large part of the population on the planet. Then the survivors after cataclysms begin a new life. This life probably will start from the very beginning, because during catastrophes, undoubtedly, lost significant baggage of accumulated human knowledge, achievements, lost life experience. But solving the problems according overpopulation restores the environment, energy resources. Then the humanity develops, reaches overpopulation, violates ecology, invents deadly kinds of weapons, fighting, during the process of its activity reaches new frontier, occur cataclysm and then – a round of a new life, cleared from many invented

technologies, experience, knowledge. However, we hope that such turn will not come soon.

The most important direction of philosophical thought is philosophy of law. Philosophy of law – is a philosophical-socialized science, which subject of study are fundamental problems of the ontology of law, epistemology of law, axiology of law, anthropology of law, logic of law, ethics of law, praxeology of law and legal consciousness. Philosophy of law is the main binder between philosophy and law, legal sciences.

Authors believe that on different stages of existence on the Earth humanity, the law arose in different forms repeatedly. At least, the birth of the law was occurred three times. First: with the appearance of human and its consciousness on the Earth, in which is pledged the pursuit to law. Second: with the appearance of the first state and the birth of law in it – already another, positive, regulatory, rigid. Third: with the birth of customs, received the status of legal customs and norms of law within the time and mentality, culture, development of separate societies, status of legal customs and norms of law.

It is impossible to agree with extraterrestrial and non-human origin of law. It seems that law is a social phenomenon which is inseparably binding with the being and human. The law – is a diamond: bright, beautiful, radiant. However, the most solid and having 57 facets. As soon as researchers during studying the law will open approximately the same number of its facets (strong and weak sides of law, contradictions and flaws, opportunities of law and limits of these opportunities and etc.), will open the essence of this complex social phenomenon.

Traditionally in their majority lawyers and philosophers, examining law, consider under the angle of those concept, to which they give preference by itself. The main minus of such attempts is the absence of all-embrace and versatility study of law and its manifestations that is absence of comprehensive approach. Basing on the dialectical theory of cognition, the subject of the theory of comprehending study of law is the law by itself as a complex, contradictory,

multidimensional, dynamically changeable social phenomenon, evaluating without domination of any legal concepts.

On the basis of conducted researches were main criteria of *legal progress*. To them, in particular, refer:

- achievement of justice in legal decisions, human's protection by law;
- clarity of the regulatory legal actions, simplicity of its presentation;
- clear legal mechanism, for the implementation of standards;
- level of legal awareness and legal culture, level of credibility to the law;
- presence of a reasonable balance between interests of individual, society and the state;

By authors had been conducted quite large scale researches of legal science and practice, what allowed to formulate general problems of scientific works on jurisprudence, ethical problems in legal science, general scientometric problems of legal science, problems of contemporary legal education and general problems of legal practice.

To the *general problems of scientific works* on jurisprudence refer that:

- in large part of monographic works, mainly in the sectorial legal sciences loses the connection with the philosophy of law;
- scientific results are implemented slowly or not implemented by the legislator;
- In scientific work on jurisprudence is almost never considered and
- forecasted economic effect from the received results and formulated proposals;
- also not considering political effect, social effect and etc.;
- manifesting artificial complication of science;
- containing incorrect and deliberately wrong interpretation of law;
- there is a small amount of original authorship works, published over the last decade;
- Russians, including lawyers, became to read visibly less.

Mainly, there are highlighted four *ethical problems* in contemporary legal science:

- 1) ethics of scientific discussion;
- 2) servility of government;
- 3) plagiarism;
- 4) insufficient funding of science and scientists.

To *main scientometric problems* of legal science related:

- methodology of science;
- dependence on the legal knowledge of a specific researcher. His subjective estimations, the level of education, ideology, worldview and etc.;
- mixture of monographs, manuals and textbooks;
- retardation of legal science from practice of implementation of legislation;
- problem of scientometric in legal science.

Problems of contemporary legal education in Russia, associated with reforming, repeatedly came under criticism of all: from professors to students. Authors of current work also conducted appropriate researches and detached several problems, in particular:

- possibility to get diploma magister of law for people, having bachelor degree in non-legal specialties;
- orientation on preparation of “narrow” professionals;
- question about what to teach to students as a fundamental science of law: theory of the state and law, encyclopedia of law, integral theory of law or something else;
- undue fascination of testing instead of answers to teacher;
- permanent and unsolved problem amount in legal science branches of law;

To *main problems of legal practice* were related:

- excessive formalization of the norms of procedural law, ordinary routine of doing even simple legal cases;
- necessity of establishing of the objective truth in law;
- implementation by many lawyers in their practical activity in favor of specific persons, against the law, against justice and the truth;
- corruption in law enforcement sphere;
- not high credibility of judicial power in Russia.

In the work were traditionally conducted surveys, dedicated to legal consciousness, legal nihilism and professional deformation of consciousness. Based on the results of these researches was proposed several measures on negotiation and reduction of legal nihilism of Russian population. In our opinion, such measures must be:

- strengthening of responsibility for commitment law violations;
- teaching the basis of law at school;
- spread of juvenile judiciary;
- direction of internal policy on increasing the level of human well-being.

In previous works we have repeatedly wrote about necessity of review of approaches to professional deformation of legal consciousness. These proposals have been heard in the scientific environment. Continuing develop indicated theme, in this work was substantiated several the most common types of professional deformation of academic teaching staff of legal universities. Wherein, types of professional deformation were divided by authors on categories of deformed personalities, to the first related famous scientists-pedagogues, and to the second - who are not succeeded and not became famous scientists-pedagogues. Furthermore, were formulated types of professional deformation of legal consciousness, which are related to the both categories.

Among *famous scientists-pedagogues* were highlighted the following types:

- painful vanity, narcissism;
- extreme subjectivism;

- distrust to youth, young scientists;
- unethical behavior in relation to colleagues and junior colleagues.

Among scientists-pedagogues who are not become famous were highlighted the following types of professional deformation of legal consciousness:

- fear of their own opinion;
- conjuncture;
- plagiarism.

The general types of professional deformation among scientists-lawyers are:

- wish to leave a mark in the legal science in any way;
- corruption;
- teaching of illegal actions.

Furthermore, during research were clarified developed by author's earlier, new types of professional deformation of legal consciousness of practical workers.

Conducted surveys give possibility to pay attention on some regularities of the essence of law. The law shows positive and negative patterns. The positive are known to everyone, but it is important to remember pattern, which are having or might have negative consequences:

- dependence of law from external factors (economic, politics and etc.);
- dependence of law from person (persons), issuing legal norms, including the tyranny from these persons;
- not overall directivity of legal norms on establishing of an objective truth and justice;
- not directivity on full equality among people.

What will be the law, legal being in XXI century and further? Let's make several forecasts.

1. We expect the convergence of philosophy and law. The law is needed in philosophy. In its turn, through the law philosophy can perform as a specific regulator of social relationship, faster and more effectively develop and implement philosophical ideas, even more to bring into law humanity and justice. In other

words: setting and discussing of the goals – destiny of philosophy, implementation of ideas and giving them legal meaning – the law.

Philosophers will be striving more to the law and partly integration with lawyers. This contributes to the fact that the law takes an increasing role in people's life.

2. In law itself, electronic document will receive expansion. People are already got used to electronic payment documents, have evaluated possibility of identification of person through payment card. Everything is moving to creation of individual electronic chips and cards, containing full information about person. Existence of such ships can have positive and negative parties. One of the negative moments beholds possible control from the state side after person (chips, are likely will allow to follow movements, payments and private life and etc.). Furthermore, can be increased the risk of fraud. At the same time, for law-abiding people, introduction of electronic document (even maybe a single) could resolve problems with registration of rights, receiving of different permissions, passports, driving licenses and etc. It is quite likely that many necessary documents in perspective could be received through own computer without standing in queues and etc.

There is a confidence that will be observed gradual refusal from document turnover. Another question is on which data storage device it will be replaced?

3. It is quite possible that gradually will be implemented a practice of conducting of trials in regime of teleconference. We have already experience of conducting of international meetings with the usage of teleconference. If it will be developed and adopted appropriate procedures, ensuring compliance with procedural rights during production of trials in regime of teleconference, so it will simplify by far and speed up the process of trial.

4. In XXI century for sure we are waiting for new scientific discoveries, this will significantly change the world and the being. These discoveries will require legal evaluation and legal regulation of application of the results of these discoveries.

That is, most likely, a lot of interesting works will be added to the scientists in the field of legal sciences.

5. For many centuries twice per century Russian Federation is heavily at war. We hope that in a current century Russia will avoid war. However, with absolute certainty we have to say about continuing of armed conflicts between states. This leads to development and improvement of international law. Struggle for peace will force the states to join in coalitions, and also to become closer in a legal space.

It is possible that with development of communications will actively develop international private law, international administrative law and international labor law. Earlier this was impossible due to underdevelopment of communications between states. Observed century of high technologies resolved this problem.

In conclusion we would like to thank for reading this difficult for perception book. Authors are hope for kindly feedbacks and constructive criticism.

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