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EVOLUTIONARY INTERPRETATION IN JUDICIAL LAW ENFORCEMENT AS A VECTOR OF LAW DEVELOPMENT

A new challenge of our time was the evolutionary interpretation of law, which is gaining popularity in the law enforcement activities of courts. The reasons for this are different, ranging from imperfections and gaps in the current legislation, and ending with insufficient scientific validity of the evolutionary interpretation of law.

Key words: *evolutive interpretation of the law, discretion of judge, the analogy of law, the analogy of the law, authorised by a court procedural duties, court, litigation.*

A unique method of development of modern Russian law is its evolutionary interpretation, the essence of which is that in its application, the content of the legal norm is revealed in new facets. The interpreter finds in this interpretation a different meaning, corresponding to modern ideas about

the current (very dynamic) law and order and morality, the level of economic development of society and the achievements of modern, especially legal, science. Evolutive interpretation is characterized by mostly the enforcers who are consolidating their activities on the protection of the violated rights, freedoms and protected by law interests. The problem, which is increasingly found by scientists, analyzing the achievements of theoretical law and problematic issues of law enforcement, is the discrepancy between the conceptual framework proposed by the legislator, and the final result, expressed in the adoption of the final act, most directly affecting the inviolable-guaranteed human rights.

Of course, the legal tools and factual circumstances determine the results of the trial, but it is the freedom of discretion of the judge who resolves a civil dispute that determines the issuance of the final judicial act. The peculiarity of the implementation of judicial discretion is that not all life situations can be regulated by specific rules of the law. This is due, as a rule, to the wide scope of public relations that require legislative regulation, and with the emergence of new property relations as a result of the constant development of society and, as a consequence, the expansion of the material subjective right of the person. And here an integral component in the adoption of the correct legal act is the discretion that determines the possibility of choosing one of several alternative decisions by the court. It is this feature that determines the existence and role of freedom in the law enforcement aspect of the court. In order to resolve a dispute settled only by General rules, the court must apply its own knowledge and experience, that is, act at its discretion to «specify abstract rules for application to particular cases».

Difficulties of scientific and organizational nature, the inability to conduct a study of «successful» and «unsuccessful» judicial discretion due to the specifics of this phenomenon and the influence of the personal factor forced scientists to look for a way out of the seemingly impasse, turning to the analysis of legal norms governing the institutions of analogy of law and analogy of law.

Despite the complexity and diversity of concepts analogy of law and analogy of law, no one doubts their existence. In this regard, it is methodologically justified to go directly to the ratio of the analogy of law and the analogy of law with judicial discretion.

In procedural science formed several positions on the relationship of judicial discretion and the analogy of law and law. According to the first view, the analogy does not depend on judicial discretion. A. T. Bonner explains it this way: «the Resolution of the case on the basis of the analogy of law or law can not be recognized as a form of judicial discretion, since there is no freedom in choosing solutions. In this case, the court must implement the law governing the disputed legal relationship» [1]. Thus, in the case of an analogy of law or a law, the court must be guided by a legally established norm, the application of which is the only true one in the issuance of a judicial act. However, this situation implies cases where there is a clear similarity of relations. In other cases, the court must independently determine the signs of

which rule most indicate similarity with the signs of the relationship in question.

Fulfilling duties on the clarification of the factual circumstances and the determination of the law that should guide the resolution of civil cases and the establishment of the legal relationship of the parties, the judge implements the subjective discretion even before the moment will come to the necessity of application of analogy of the law in the absence of the necessary legal norms.

If we consider the use of analogy only as a creative process, that is, entirely dependent on the knowledge, experience, competence of the judge, it can lead to judicial arbitrariness, since it will be impossible to point to the wrong decision. Therefore, if we assume that the court, using an analogy, is not free, and its activity is reduced to the use of exclusively logical structures to identify the only correct solution, the judicial discretion is not connected with the analogy. If the court is free to choose similar relations and the process of establishing a connection between them is considered creative and situational, then the analogy can be considered a form of judicial discretion.

Particular attention should be paid to what is limited to the court, applying the analogy of law. If the analogy of civil procedural law in accordance with part 4 of article 1 of the code of civil procedure is applied, the court must proceed from the principles of justice in the Russian Federation. If the analogy of civil law (part 3 of article 11 of the code of civil procedure) is applied, the court is limited to the General principles and meaning of the legislation. But these restrictions have a blurred border, since it is impossible to clearly define what the legislator understands by the terms «General principles» and «the meaning of the legislation». Applicable to the analogy of civil procedure law, the problem also remains open, because there are several ways to consolidate the principles: textual, when the principle is directly enshrined, and semantic, when the content of the principle is derived from a number of rules. The most difficult to determine the limits is the semantic method, because each law enforcement officer or researcher puts his subjective understanding of the content of a principle.

Some law enforcers may infer from the content of the rules principles that are not recognized by all, which may raise doubts about the correctness of a court decision or other act.

In the resolution of Plenum of the Supreme Court of the Russian Federation of 19.12.2003 № 23 «About the judgment» it is possible to notice that the Supreme judicial body understands by the lawful decision such, «when it ... is based on application in necessary cases of analogy of the law or analogy of the law», and also h. 3 Art. 11 of GPK of the Russian Federation where cases of application of analogy are directly specified. In this regard, the positive links of the evolutionary interpretation of the right to development of the law in General cannot be categorically denied. Thus, the Supreme Court of the Russian Federation, acting as a body supervising the activities of the courts, stabilizes the law enforcement process to further ensure the full protection of the rights and interests of stakeholders. In addition to Supervisory powers, the Supreme Court has the right to interpret the

normative provisions of the legislation. In turn, the constitutional Court of the Russian Federation in the sphere of civil proceedings carries out: interpretation of the Constitution of the Russian Federation; the decision of questions of compliance of the Constitution of the Russian Federation of the legal norms which are subject to application in civil proceedings, at requests of courts; consideration of complaints of violation of constitutional rights and freedoms of citizens by the law applied in a particular case.

A judge or judicial body acting collectively in resolving a case on the merits is guided by legal norms on the basis of internal conviction and judicial discretion, based on an assessment of the actual circumstances of the case, based on their own knowledge, experience and other subjective moments. In this regard, many participants in civil proceedings appeal against the issued judicial act (decision) in the hope that the opinion of a higher court will differ in a more favorable direction for the appellant.

Recognizing that normative legal acts are adopted in a reference form (international treaties, conventions, Constitution), and the legislator does not always have the opportunity due to the intensive development of public relations to adopt a convenient legal act that meets the requirements of the time, judges often have to maneuver, using an expansive form of interpretation of the law.

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THE EUROPEAN COURT OF HUMAN RIGHTS PRACTICE IN THE ORGAN AND TISSUE TRANSPLANTATION SPHERE

Key words: *transplantation sphere, Convention on Human Rights and Fundamental Freedoms, practice of the ECHR, organs and tissues.*

The work of the European Court of Human Rights is called «a living instrument». Due to the practice of the European Court of Human Rights the list of human rights, which is guaranteed by the 1950 Convention on Human Rights and Fundamental Freedoms and its protocols, is expanding. Medical cases did not become an exception to the evolutionary activity of the European Court of Human Rights. To this cases we can include cases related to transplantology.