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The Communicative Function of Law in a Digital State

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Abstract: The paper is dedicated to the analysis of the communicative law function, which is the basis of the modern interaction between social state and civil society in the era of the digital law formation. In the context of modern digital society and state, we need to take into account the specificity of understanding and classification of the law functions. Communication is one of the most important characteristics of modern digital state and law. In this regard, the paper considers the communicative law function both socially and legally. Socially, the communicative function is considered as an informational one. In this regard, it is essential for the legal culture, legal education and legal consciousness. Communicative function as a social one involves understanding of the interaction between society and law from a position of the linguistic paradigm. With this concept, the legal system is seen as a system of communication between subjects based on the autonomy of the individual. In the modern digital state communication as a social function of law is a basis of legitimization of legal acts. The legal consciousness is an important condition for law recognition.

Along with the social function, communication plays an important role as a legal one. In this aspect, communicative action is connected to the regulatory and the protective functions of law. Communication plays a key role in the modern legal regulation due to the extension of its subject. The functioning of law in modernity has its own specifics with regard to the process of society juridification under conditions of law modernization and fulfilment of the state social function. The

juridification consists in the fact that legal norms replace other social rules. Regulation of the majority of social relations through legal functions leads to the need to take into account communicative connections in society. Legal functions of law in the modern society should use the principle of deliberation in law to achieve their goals. Communication in its functional aspect is deemed a necessary foundation of an effective legal regulation and legal policy.

Keywords: functions of law, legal communication, legal regulation, digital state, legitimization of society, legitimacy of law, communicative function of law, subject of law, principle of deliberation in law

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Contents

I. Introduction

Functions of law is a "description of the main areas of legal influence on social relations, as well as the role (purpose) of law in society" (Radko, 2014, p. 207). The theory of functions of the law reveals questions of an impact of legal rules on society, specificity of such an impact in a state, as well as its main directions. Functional approach to law is important because it reveals the features of legal regulation in various states. In the modern period, the digital state is being formed, which affects the type and content of the functions of the law. The most important areas of legal influence in connection with the digitalization of legal relations are, first of all, the informational and communicative functions of law. In the second half of the 20th century, there was a transition to an information society in which the structure of the economy radically changed, which was reflected in the legal

policy of a state power. Information becomes the main object in public relations, including legal ones. As J.-F. Lyotard pointed out in 1979, "It is widely accepted that knowledge has become the principle force of production over the last few decades; this has already had a noticeable effect on the composition of the work force of the most highly developed countries" (Lyotard, 1998, pp. 18–20). Both in public and private law, the phenomenon of information reality is being developed, which forms a system of objects that may be absent outside the virtual space. The formation of a significant number of new legal relations inevitably results in the expansion of the subject of legal regulation. At the same time, their specificity leads to the formation of new functions associated with legal procedures that have no analogues in the past. Thus, modern society is characterized as a postmodern or late modern society, in which relations are determined by the so-called "hyperreality" and "simulacra" (Baudrillard, 1981, p. 45). The effectiveness of the functions of law in a modern state directly depends on the legal policy in the field of information relations. Therefore, it is important to understand the role of the communicative function and its relationship with other functions, such as regulatory and protective ones. The concept of the communicative function of law is thus conditioned by the development of social relations and presupposes a doctrinal analysis of the entire system of legal functions in a modern digital state.

II. Legal Communication in a Digital State

In the 1970s, the "communication" category becomes one of the key ideas in political and legal science. From that time to the present, various concepts of legal communication have been formed. Analyzing this question, we should note that there are several aspects of understanding the "communication" category. Mark van Hoecke wrote, "The concept of communication has the advantage and disadvantage of being polysemic" (Van Hoecke, 2012, pp. 20–21). In legal science, communication is considered from the following aspects: firstly, in constitutional law, the basic condition for obtaining a certain legal status, for example, citizenship or a work permit for a foreign citizen, is a certain level of proficiency in the state language, that is a "communicative competence"

(Parfenov, 2019). Secondly, in relation to the questions of the functions of law, the scientific approach to communication was revealed within the framework of the theory of N. Luhmann and J. Habermas (Luhmann, 1969, pp. 120–145). These concepts reveal the specifics of legal regulation in the modern information society. It is these theories that are of interest to us, since with the help of a communicative method, the understanding of the essence of law is being revised. An important communicative approach is the theory of "autopoesis in law" by the German sociologist N. Luhmann (1985, p. 436).

In the modern state law, according to N. Luhmann, should be understood not as a system of legal documents but as a system of communications. This approach to law is associated with the consequences of social development, which consists of the complication and differentiation of social systems. These two processes lead to the existence of autonomous social systems. Modern social systems differ from each other in two characteristics, firstly, it is a program, and secondly, it is a binary code. The legal system, in particular, is characterized by its binary code — legally/not legally, and its programs, by which various sources of law are understood. In the information state, the phenomenon of a decline in the effectiveness of legal regulation arises, since the legal system does not correctly recognize the communications of other systems. Unlike more ancient periods, in the modern era, law is an autonomous system within which information is exchanged, that is, the process of communication takes place.

Thus, the functioning of the legal system within the framework of the theory of N. Luhmann is considered through the idea of communication. The communicative approach to understanding legal regulation is most consistent with the legal policy of the digital state. The theory of autopoiesis in law considers the social grounds of legal acts. As a practical recommendation, N. Luhmann suggests indirect legal regulation that will achieve the goals of legal acts. As an example of such regulation, one can point to labor law, in which legal acts only establish the foundations of the legal status of citizens, and the subjects of legal relations themselves form specific rights and obligations. Thus, the communicative understanding reveals the phenomenon of the functions of law from methodological grounds other than the

normative type of legal thinking. Speaking about legal communication, A.V. Polyakov writes, "Law in such a communicative perspective is not an isolated entity — an abstract metaphysical idea (for example, the common good), an a priori value (for example, equality, freedom or justice), a textual prescription, behind which stands someone's "will" (for example, the law), but appears as a "living" (coherent, synthetic, integral, procedural, developing) social phenomenon that includes reason, values, normativity, and textuality" (Polyakov, 2011, p. 32).

The discursive-communicative concept of J. Habermas plays the greatest role for the theory of legal functions. In the work "The Theory of Communicative Action" J. Habermas notes that the nature and structure of conflicts is changing in modern society. Earlier they were formed in the sphere of economic production and were connected with the distribution of public goods. Now "new conflicts break out not in the field of distribution problems, but in connection with the grammar of life forms" (Habermas, 1997, p. 15). Therefore, social changes of the second half of the 20th century require a new understanding of the system of functions of law and a new scientific methodology. J. Habermas considers communication as a type of social action from the position of the linguistic paradigm. The word is not understood here "as a mean of expressing the results of thinking; thinking and the use of language are interpreted as coinciding processes (and the second process becomes more important for the researcher of society). Therefore, the philosophy of the "pure" (only) subject is being replaced by the philosophy of intersubjectivity" (Denisenko, 2020, p. 314).

In the second half of the 20th century, the so-called linguistic turn in philosophy took place, which influenced the development of various directions in jurisprudence. The expansion of positive law into the sphere of morality, the expansion of the subject of legal regulation in a modern social state inevitably posed the problem of language learning and interaction through language. Language act is a key term for understanding, research related to linguistics. Gadamer notes, "language has its true being only in dialogue, in coming to an understand." To understand the speaker's position is "to come to an understanding about the subject matter, not to get inside another person and relive his experiences" (Gadamer, 1988, p. 452). For example, a doctor listening to a pa-

tient's complaints acts as an observer studying the signs of the patient's internal state. A distinctive sign that the interlocutor understands the statement of the interlocutor is to come to a "substantive understanding" (Gadamer, 1988, p. 446). In this case, the text appears not just as a manifestation of the one who speaks or writes, but is considered as a claim to truth.

The understanding of interaction through language came through Karl Buhler's theory of language. Buhler identified three functions of language signs: 1. representative function — to represent the state of affairs; 2. appellative — to appeal to someone; 3. expressive function — to express the speaker's experiences. This classification of functions made it possible to move away from the understanding of a language, description or representation and served as the basis for the formation of a new philosophical paradigm of a language as an action. This paradigm was developed by J.L. Austin in the work "Word as action" and was named the theory of speech acts (Austin, 1986, pp. 26–27). J.L. Austin, unlike all previous researchers, reveals a different aspect of speech. Through words, we do not just convey information, but perform actions that change social facts. J. Austin for the first time points out that earlier in philosophy statements were considered as a description or claim of something. At the same time, the statements were evaluated as true or false. Meanwhile, there are statements that do not describe the situation, but carry out an action. For example, the saying "All rise, the court is in session" does not describe the situation, but commits an action performed by the subjects.

A declaration on entering into marriage is not a description of the commission of marriage, but it is the commission of an action with legal consequences. It was J.L. Austin who introduced the category "performative" to introduce the word-action into scientific circulation. A performative is a statement that is an action at the same time. As a result of the language analysis, Austin came to the conclusion that any statement that people use in life has a performative change. So, the phrase "there is a dog outside!" is not only a description, but also a warning.

According to Austin, the speech act consists of a number of elements: locution, illocution and perlocution. Locution is a kind of

message when information is transmitted. For instance, a message about what time it is now. An illocutionary act already means an act of action in the process of speaking, so by saying what time it is, a person reminds that it is time to get off. Perlocution is the effect on the feelings and thoughts of the listener. Austin focuses on the illocutionary element of speech, since it is the illocutionary act that has the power of influence. This power indicates exactly what action we are performing when we utter a particular statement. The power of a speech act is expressed in performative verbs that command or allow something. The special feature of the speech act lies in its conventionality. That is why Austin especially focuses on the conditions of their success.

The concept of speech acts by J.L. Austin was supplemented and developed by J.R. Searle, who distinguished the regulatory and constitutive rules. "Regulative rules regulate a pre-existing activity, an activity whose existence is logically independent of the rules. Constitutive rules constitute an activity the existence of which is logically dependent of the rules" (Searle, 1969, p. 34). The rules of etiquette are regulatory rules. Sports rules that create the possibility of the activity itself are constitutive ones. J.R. Searle investigated the constitutive rules of successful speech acts and their illocutionary force. He researched the constitutive rules of successful speech acts and their illocutionary power. Ideas of the concept of speech acts by J. Austin — J.R. Searle formed in the English analytical philosophy had a significant impact on the development of the theory of discourse in political and legal science. Primarily, we are talking about the discursive and communicative theory of philosophy of K.O. Apel and J. Habermas. "As a mean of achieving understanding, speech acts serve to: 1. establish and resume interpersonal relationships; the speaker establishes an attitude to something in the world of legitimate (social) orders; 2. imagine (or assume) the state of things and events; at the same time, the speaker establishes a relation to something in the world of the existing state of affairs; 3. express experiences — that is, to present oneself, while the speaker establishes an attitude to something in the subjective world to which they have privileged access" (Habermas, 1997, pp. 308).

According to J. Habermas there are three types of claims to significance in a speech act. Truth claim means that the speaker

assumes that the existing state of affairs corresponds to what they are talking about. Correctness claim in the normative sense characterizes the fact that the speech act does not contradict the existing institutional structures. Finally, honesty claim means that the speaker is really guided by the intentions that are expressed. J. Habermas explains his understanding of speech act by giving an example. A professor asks a student: "Could you bring me a glass of water, please?" Such a statement contains a correctness claim. The student may not recognize this claim by answering: "You can't treat me as your employee." Honesty claim means that the professor does not pursue any other goals except the one expressed in words. The student can challenge this claim by saying: "In fact, you want to put me in a bad light in front of other participants of the seminar." Truth claim means that the state of things voiced in the professor's statement really exists. The student may question this claim by saying: "The nearest water source or faucet is so far away that I will not have time to return by the end of the seminar." The speech act will have power if the student recognizes all three claims. Thus, the success of a speech act means the implementation of a linguistically mediated so-called "communicative action." J. Habermas introduces this term for the designation of speech acts-actions that would distinguish actions aimed at mutual understanding (communicative) from actions aimed at manipulating the interlocutor to achieve their own success (strategic). "In my opinion, communicative action are those linguistically mediated interactions where all participants pursue illocutionary and only illocutionary goals with their mediating acts. On the other hand, I consider as a linguistically mediated action those interactions where at least one of the participants wants to produce perlocutive effects on the partner with their speech acts" (Habermas, 1997, p. 295).

Thus, speech acts should be distinguished from communicative actions. From the standpoint of the discursive theory of J. Habermas speech acts are a broader phenomenon, since they can also include acts as means of strategic interactions. The fundamental position here is the understanding of the communicative act as the basic action for other speech acts. The use of language with an understanding orientation is a fundamental form of its use in relation to strategic interaction. Habermas points out, "Speech acts can serve the non-illocutionary purpose

of influencing listeners only if they are adapted to achieve illocutionary goals. If the listener did not understand what was the speaker said, the strategically acting speaker would not be able to provoke the listener through communicative acts to behave the way the listener wants him to" (Habermas, 1997, p. 291). The concept of speech acts formulated in this way explains the mechanism of coordination of citizens' interaction using language.

Within the framework of the linguistic understanding of law, there are two directions in the understanding of speech acts: narrative and discursive-communicative. The fundamental difference between them is that representatives of the narrative approach consider a speech act as a narrative or a story, which can be an instrument of deception or manipulation, for example, in the speech of a lawyer. Representatives of postmodernism considered the category of "narrative" in the same way. The expression "metanarrative" by the French philosopher Lyotard, contains criticism of the ideas of the Enlightenment, calling them "big stories." In contrast to this view, proponents of the critical theory of the philosophy of law, such as R. Alexy, B. Melkevik, A. Honnet, J. Habermas justify the need for legal policy in modern society precisely through such a type of speech act as a communicative one.

The key categories for understanding this type of speech act as a communicative action are the terms "communicative rationality," as well as an "ideal speech situation." J. Habermas understands rationality within the framework of the discursive philosophy of law in the cognitive sense, that is, rationality is related to knowledge: "When we use the term "rationality," we believe that there is a close relation between rationality and knowledge. Our knowledge has a structure of judgment; opinions can be presented in the form of statements" (Habermas, 1997, p. 292).

Rationality of knowledge is related to criticism, since actions or expressions are rational insofar as they are based on knowledge that can be criticized. In philosophy, rationality has two understandings. Initially, the idea of rationality was developed in a non-communicative, transcendental sense. Enlightenment thinkers formulated this approach to rationality. Communicative rationality is a new understanding of it in the 20th century, associated with the ability to change social facts (for example, in the legal system) in the process of discourse. Habermas

formulates the following definition of communicative rationality: "This concept of communicative rationality brings with it connotations based on the central experience of the unlimited, unifying, consensus-producing power of argumentative speech, through which various participants overcome their purely subjective opinions and, thanks to the generality of rationally motivated opinions, gain confidence both in the unity of the objective world and in the intersubjective connectedness of their lifeworld" (Habermas, 1997, p. 292). The peculiarity of communicative rationality implies the possibility of criticism and justification of statements.

As a rule, the claim to significance is not relevant in everyday communication. This is due to the fact that the consent associated with the coordination of actions is usually based on beliefs shared intersubjectively by the entire community. In the cases when a statement raises doubts about the normative correctness, it requires the use of another form of linguistic communication — discourse. "Discourse is a reflexive form of communicative action where communicative rationality becomes explicit. A discussion of the claim to the significance of statements takes place in a discourse" (Habermas, 1997, p. 294). Therefore, discourse can be considered as a non-everyday form of communication in which there is a discussion and critical verification of statements.

The condition for the recognition of the truth claim of a statement is the consent of all stakeholders of the discourse. Consent can be based on coercion or deception, therefore, only such consent that is exempt from other types of coercion or privileges can serve as a criterion of normative correctness. German jurist R. Alexy formulates the so-called rules of discourse to achieve consensus: "1. Every language-speaking and capable subject can take part in the discourse; 2. Anyone can question any statement. Anyone can introduce any statement into the discourse. Everyone can express their attitudes, desires and needs; 3. No compulsion dominating outside or inside the discourse should prevent any of the speakers from exercising their rights defined in the paragraphs" (Alexy, 2011, pp. 110–137). Such rules are an ideal model, but they are important for understanding the conditions of argumentation. Based on the intersubjective understanding of interaction in society,

the theory of speech acts is used for the discursive justification of legal norms.

At the same time, the significance of moral rules differs from the justification of the norms of law. The justification of legal norms is connected with the concept of justice, and the norms of law — with legitimacy. Habermas emphasizes that "meaningful legal norms are indeed consistent with moral norms, but they are "legitimate" in the sense that they additionally express an authentic self-understanding of the legal community, a fair consideration of values and interests, and a purposeful choice of strategies and means in the implementation of policy" (Habermas, 1996, p. 147). It should be noted that a discursively justified norm can be changed in the future if there are grounds to reject a rule that is recognized at the moment.

III. The Communicative Function of Law: the Concept and Features

The mechanism of discourse and the communicative justification of law is associated with the threat of delegitimization of law in the conditions of a modern information society, when law loses touch with reality and is considered as a "simulacrum." According to J. Baudrillard, a simulacrum is not just a deception or a fiction, but a situation when, as a result of simulation or imitation of reality, an object of the so-called "hyperreality," that is a simulacrum, is formed. Jean Baudrillard defines the following order of simulacra: "the first order is imitations, effigies, copies, forgeries; this order is a characteristic of the Renaissance; the second order is functional analogs, series that characterize the era of the Industrial Revolution; the third order is hyperreality (money, fashion, DNA, model, public opinion), a characteristic of the postmodernism era" (Baudrillard, 2015, p. 45).

The characteristic of modern society is also relevant to the legal system: "The new legal picture of the world of the postmodern era, with its apology for a blurred, segmental, pluralistic rule of law, essentially legitimizes the rejection of universal and general law in favor of situational and particular, and ultimately — the legal war of all against all. Postclassical jurisprudence is the jurisprudence of returning to

the legal social state existing outside the framework of the normative principles of formal equality and equivalence. Law of social relations is being replaced by law of social transactions, the legal content of which is continuously redefined depending on their location in an impersonal and anonymous network structure of communication" (Vedeneev, 2014, p. 648). In the conditions of the information society and digital law, legal science begins to be considered as a set of meta-narratives, that is stories that impose a picture of the world in the interests of the ruling elite. V.V. Lazarev indicates: "The general theory of state and law has promoted and promotes myth-making, fulfilling a political order. On this basis, it is possible to refuse it as a science.

However, we will leave aside both economics and politics. It is more important to expose the epistemological roots. Theorists recalled them when, for example, they pointed out the reasons for the multiplicity of theories, linking them, in particular, with the nature of cognition (exalting one side of the subject to the detriment of others)" (Lazarev, 2015, pp. 13–14). New branches of law are beginning to form in the information society, which leads to the expansion of the subject of legal regulation. The process of replacing other social rules with legal norms is a general trend of most modern states. J.-L. Bergel notes: "Technological progress has endlessly led to the renewal of human views and living conditions. The law had to adapt to them every time and manage new spheres and new forms of human activity in order sometimes to develop them and sometimes to limit their development" (Bergel, 2000, p. 286). The expansion of the sphere of legal regulation is a natural historical process associated with the formation of new functions of law (Belyaev, 2016). The formation of new branches of legal regulation itself performs a social function, since it ensures the protection of citizens' rights and freedoms by state coercion. At the same time, there are also negative consequences, since an increase in the number of regulations leads to collisions in the legal system. A more significant problem of increasing the scope of regulation of legal norms is the crisis of legitimacy of law. This is due to the complexity of understanding legal norms, as the system of legal rules becomes too complex due to a significant increase in the number of regulatory legal acts. The issue

of increasing the number of regulations is relevant for the legal system of the Russian Federation. A.S. Pigolkin wrote, "The fight against the 'overproduction' of laws, their consolidation and unification is becoming increasingly relevant" (Pigolkin, 2000, p. 251).

In the context of the expansion of the sphere of legal regulation and the transition of a significant number of legal relations into the virtual space, the phenomenon of a state, fully controlling all social relations of a subject in society, is being formed. To characterize a digital state exercising universal control over citizens, the term "biopolitics" is used, which means full control over a citizen's body. Detailed regulation of public relations by laws leads to the power of the state, which is embodied in M. Foucault's formula — "to make live or to let die" (Foucault, 1988, p. 68). Currently, biopolitics issues have become relevant due to legal regulation in a state of emergency (Malinovsky, Osina, and Trikoz, 2021, pp. 283–287). In the context of the Covid-19 pandemic, legal regulation began to be conducted in accordance with exceptional norms, which replaced the general rules.

In this situation, the most acceptable way to ensure the effectiveness of the functions of law is the implementation of a discursive understanding of speech acts. This approach allows us to maintain the necessary level of legitimacy of the functions of law in the conditions of the information state. The classical theory of the functions of law combined all directions of legal influence on the regulatory and protective functions. This approach considers legal regulation from an instrumental position. Understanding the impact on society as a kind of tool was common for the Russian jurisprudence of the mid-twentieth century. This approach gained wide popularity thanks to the works of S.S. Alekseev, who developed such categories as "mechanism of legal regulation" and "legal means."

Currently, it has become obvious that such an approach, which understands the functioning of law as a system of tools and mechanisms, is one-sided. The instrumental approach to the action of law does not take into account the problems of the legitimacy of legal norms, as it focuses on state coercion. As G.V. Maltsev pointed out, "Nowadays, the words "legal mechanism," "mechanism of legal regulation, law-making,

law enforcement" take pride of place in the lexicon of a lawyer who is not at all confused by the mechanical nature of legal and institutional devices. On the contrary, in these terms they see what is severely lacking in a complex, chaotic, fluid reality — clear relationships according to a given scheme, the movement of elements according to a calculated vector, geometrically correct arrangement of lines in the process of movement, etc. In practical terms, the image of a clockwork mechanism as an ideal for legal regulation is very attractive. However, there is one circumstance that, in a theoretical and methodological sense, makes this image inconvenient for law: it leaves aside the existence of the latter as a super-complex dynamic system, literally growing into its social environment, capable under certain conditions of self-adjustment and self-development" (Maltsev, 2007, p. 64).

In Russian jurisprudence, the mechanistic understanding of the functions of law is associated with the long dominance of Karl Marx's philosophy, which is associated with the scientific and technical paradigm of the 19th century. Marxism used the terms "apparatus," "machine" and "mechanism" as key categories. The mechanistic approach to the state and society was popular in the political and legal science of Europe at the beginning of the 19th century. The reason for this was the discoveries, made thanks to the successes of science, which changed the life of society, so these times were called the "era of Industrial Revolution." Science, in this historical period, actively influenced public opinion and culture, so the ideas of legal positivism, as well as criticism of natural law, were popular in jurisprudence.

Meanwhile, in the 20th century the European science overcame the understanding of society and the legal system as a mechanism. At the same time, in Russian jurisprudence, a mechanistic understanding of law and an instrumental understanding of legal regulation is still widespread. We should agree with N.V. Varlamova's opinion that the instrumental approach to the essence of law contradicts the values of the current Constitution of the Russian Federation: "The fundamental teleological value provided by legal regulation is recognized as personal freedom, the manifestation and concretization of which are human rights and freedoms. However, these constitutional arrangements,

which radically change the ideas about the social purpose of law, have not yet received proper theoretical understanding and legal-dogmatic interpretation in Russian science. In particular, they had no effect on the development of the problems of the effectiveness of legal regulation. Today the socio-instrumentalist approach to understanding the effectiveness of law prevails both in theoretical and empirical research" (Varlamova, 2009, p. 215).

Communicative approaches to the functions of law have an advantage over instrumental ones, since they consider law as a certain system. The ideas of substantiating legal norms through discourse are relevant precisely for the modern state and law. In a modern state, positive law is not established by traditions, but is created by a legislator. Compliance with formal procedures for the adoption of laws is a condition of legality, and not reliance on religion or customs, as it was in a traditional state. In the constitutional state of the Modern period, the law is legitimized "on the principle of national sovereignty and human rights." The law is legitimate only if it does not violate human rights and acts as an expression of the will of the people. The discursive philosophy of law through communicative action justifies the legitimacy of the law in modern society. This approach was implemented in the concept of discursive (deliberative) democracy.

The first scientist to introduce the category of "deliberative democracy" into wide scientific circulation was J. Dewey, who pointed out: "Majority rule, just as majority rule, is as foolish as its critics charge it with being. But it never is merely majority rule... The means by which a majority comes to be a majority is the more important thing: antecedent debates, modification of views to meet the opinions of minorities... The essential need, in other words, is the improvement of the methods and conditions of debate, discussion, and persuasion" (Dewey, 1954, p. 207). The modern philosopher W. Kymlicka points to a "deliberative turn" in 1990, which found consolidation in the European constitutional legislation, because the attention of democratic theorists "shifted from what happens in the voting booth to what happens during public discussion in civil society" (Kymlicka, 2010, p. 371).

The relevance of the principle of deliberation in relation to law "is currently due to the expansion of the subject of legal regulation, which is a general trend in the legal systems of developed countries" (Denisenko, 2008, p. 56). The principle of deliberation is implemented both in law-making and in law enforcement. In law-making, the principle of deliberation means the insufficiency of representative democracy and discussion procedures within the institutions of representative power. In law enforcement, the principle of deliberation is the ability of citizens to participate in the realization of law as a full-fledged subject of legal relations, for example, through mediation. Varieties of discursive procedures in law are aleatory decision-making mechanisms in public law. Thus, the functions of law are legitimized. In particular, the use of aleatory procedures in making publicly significant decisions is a condition for the effectiveness of the regulatory function of law.

Consensual procedures, such as mediation, serve as a tool for resolving conflicts not only in private, but also in public law. Thus, mediation procedures in criminal proceedings form a special institution, restorative justice, in which the communicative function of law is realized. Communication makes it possible to form a consensus in the relations between the subjects of legal relations and thus ensure the implementation of the functions of law in a digital state. This allows us to substantiate the understanding of the communicative function, namely as a legal one, and not only as a social one. For a long time, the approach has prevailed in Russian jurisprudence, according to which the informational function of law is a legal impact that should be distinguished from legal regulation. Therefore, the informational function of law was distinguished from the regulatory and protective (Chervyakovsky, 2007, p. 127).

The formation of information law and the digital state has significantly changed legal relations in the Russian legal system. Currently, the communicative function is inextricably linked to the legal regulation or the functions of law, since the role of information and communication in the legal system has become crucial. Communication is a highly important element of legal regulation. The implementation of the main directions of legal regulation should be considered in the context of the legitimacy of legal norms.

IV. Conclusion

In the modern state, the communicative function of law is a condition for the effectiveness of legal regulation of society. The communicative understanding of the legal impact of power on society considers the functioning of law based on two grounds, coercion and the legitimacy of legal norms. The communicative function is an important basis for both the regulatory and protective functions of law. The functioning of law should be considered as not only an authoritative process of ordering public relations, but at the same time as a process of legitimation of legal rules, where citizens can participate in law-making and law enforcement. The peculiarity of the development of the modern state is the expansion of the subject of legal regulation and the formation of an information society, therefore legal regulation cannot be based only on ideology and coercion. In the conditions of a digital state, in order to fulfill its aims, "it should include two aspects — facticity and significance. The factuality of law is its enforcement of the norms of law, while the significance is the legitimacy of the functions of law, their recognition in society as an authority" (Habermas, 1997, p. 18).

The communicative function of law includes legal procedures that allow legal acts to successfully perform the role of mediator between the state and society. The legal regulation of the absolute majority of public relations, "fulfilling its task of protecting the individual rights, at the same time inevitably leads to a number of negative consequences, both formal and substantive" (Denisenko, 2020, p. 302). Formal consequences consist in an increase of legal norms collisions, while substantive ones are associated with a crisis of legitimacy of law, which occurs due to an increase in the number and size of normative acts. In the context of the expansion of the subject of legal regulation, the legal means that can ensure the achievement of the necessary goals of legal regulation are deliberative procedures. It can be concluded that the legal policy of the digital state should be associated with the implementation of the communicative function of law, since this is a necessary condition for law to fulfill its main aim — the regulation of public relations.

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