

## Soviet Law: The Problem of Its Succession

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### ***Abstract:***

*This article is devoted to the problems of continuity of Soviet law on the first ethanes of its development. Despite the denial of the continuity of Soviet law by some scholars, the opposite is proved by referring to specific legal acts.*

### ***Keywords:***

*soviet law; succession; decrees; old legislation; socialist law; laws of the old system*

## **I. Introduction**

The relevance of the continuity of Soviet law is due to the fact that this problem is directly related to the progress of law, its progressive development, and, consequently, to the very essence of the subject of theoretical and legal science. Legal culture, legal values, legal heritage are becoming increasingly important and relevant categories, because understanding the legal phenomena of the past, which have retained their ideological significance today, helps to penetrate deeply into the essence of the past and present era. There is another, practical side of this problem, related to the fact that the study of continuity allows us to trace the successive stages of the development of law and prove its internal regularity among accidents, and makes it possible to draw the lessons necessary to solve modern problems [1].

## **II. Research Methods**

When preparing a scientific article, the following methods were used:

1. General philosophical (dialectical-materialistic), which is used in all social sciences;
2. General scientific (analysis and synthesis, logical and historical, comparisons, abstractions, etc.), which are used not only by the theory of state and law, but also by other social sciences;
3. Special methods (philological, cybernetic, psychological, etc.), developed by special sciences and widely used for the knowledge of state and legal phenomena;
4. Private scientific (formal legal, interpretation of law, etc.), which are developed by the theory of state and law.

## **III. Discussion**

### **3.1 On the Concept of Succession**

In philosophical science, which is a methodological science in relation to jurisprudence, it is argued that “continuity is an objective necessary connection between the new and the old in the process of development, one of the most essential features of the law of negation of negation.... A correct understanding of the processes of continuity is of particular importance for the analysis of the laws of social development, progress of science,

art, to combat both the uncritical attitude to the achievements of the past, and the nihilistic denial of the cultural heritage” [2].

Speaking about the etymology of the word succession, one should keep in mind its interpretation by Sergei Ivanovich Ozhegov, who claims that succession - going in the order of succession, sequence from one to another, and succession - transfer, transition from one to another [3]. In the Soviet Encyclopedic Dictionary, the interpretation of continuity is broader:

“Continuity is a connection between phenomena in the process of development in nature, society and cognition, when the new, replacing the old, retains some of its elements. In society, it means the transmission and assimilation of social and cultural values from generation to generation, from formation to formation” [4].

### **3.2 Views of Soviet and Russian Legal Scholars on the Possibility of Soviet Law**

Russian legal scholar Georgy Konstantinovich Gins, speaking about political revolutions, emphasizes that “revolutions break the old law and create a new one. Violation of the right is unacceptable, it undermines respect and trust in the established order” [5]. And in the same work, emphasizing that “at present, only the blind will not notice that the revolution serves not only the destruction, but also the creation of law [5]”, the scientist quotes Schoenfeld, who formulates his conclusions regarding the relationship of the revolution to law in the following way: “The revolution violates the correct historical process, and therefore it represents “a breakthrough in law ... Nevertheless, the law created by the revolution, although it arose viciously, inconsistently with the order in which it should arise, still remains law. The path of the revolution, although a forbidden path, is nevertheless a path that, although one does not follow, one can actually go to the right.

Soviet lawyers expressed opposite approaches to the question of the continuity of Soviet law. For example, Vera Valeryanovna Malkevich categorically stated the following: “The demolition of the bourgeois state also requires the elimination of the bourgeois legal system, built, like the state, on private-property capitalist relations and adapted to protect and strengthen these relations through the exploitation and suppression of the broad masses of the working people” [7]. Aleksey Ivanovich Korolev, believing that the most important regularity in the emergence of socialist law is the decisive breakdown of the bourgeois legal system, at the same time draws attention to the fact that the bourgeois legal system to be liquidated also includes such legal norms and institutions, which, although they are used by the bourgeoisie to ensure their domination, however, by their nature, they should still be classified among those whose existence is directly related to the performance by the bourgeois state of common affairs arising from the nature of society itself. The scientist believed that these legal norms and institutions are not subject to liquidation, but are used by the proletariat and those led by it workers to achieve their goals [8]. A similar position was taken by Lev Samoylovich Yavich, who defined rights and rights as “the destruction of the exploitative state machine and legal system,” however, he later argued that “the task of breaking down the bourgeois state machine and legal system cannot be understood in a simplified way as the elimination of all and any state institutions and legal institutions of the bourgeoisie,” because “in the state the bourgeois machine and the legal system have such institutions and institutions that, if they are restructured in a certain way, can be used by the working people in their own interests” [9]. Socialist law, wrote Alexander Alexandrovich Ushakov, does not exclude the possibility of using and adapting individual old laws in in the interests of the struggle for socialist legality [10].

In modern legal science, there is a contradictory statement by Pavel Vladimirovich Krashenninikov that “the old legislation (we are talking about bourgeois-V.K.) was completely repealed ...”, and then “there was no new legislation, and the old one was largely canceled [eleven]. Indeed, earlier the need to destroy the bourgeois state and law was often emphasized [12]. It seems that one should recognize the rather contradictory point of view on this problem of Vladimir Alekseevich Rybakov. The point is that at first he asserts that Soviet law was characterized by the denial of continuity with the pre-revolutionary law of Russia. Clarifying this feature of Soviet law, the author believes that “Soviet law denied continuity with previous types of law and, above all, with pre-revolutionary Russian law. The first decrees of the Soviet government showed that the party and the proletariat intend to create their own fundamentally different law” [13] The scientist sets out a similar position in another work [14], although below he gives numerous examples of the continuity of Soviet law. Moreover, in his monograph, one chapter is devoted to continuity in Soviet law [1]

The Soviet legal theorist Nikolai Grigorievich Alexandrov once argued that “the fundamental difference between socialist law and bourgeois law ... does not mean that the socialist state does not use in a transformed form those progressive legal provisions that were legally recognized by the bourgeoisie under the pressure of the struggle of the working class and other democratic forces” [fifteen ]. It is interesting to note that at one time Joseph Vissarionovich Stalin pointed out the following: “If some laws of the old system can be used in the interests of the struggle for a new order, then the old legality should also be used”[16]. The position of denying the continuity of Soviet law is also supported by some modern Russian scholars. Thus, Yuri Aleksandrovich Tikhomirov believes that “in our country, with the victory of Soviet power, socialist law completely rejected the old norms”[17]. Vitaly Viktorovich Sorokin [18] and Yuri Efimovich Avrutin [19] categorically deny continuity during revolutions. Vladik Sumbatovich Nersesyants, referring to the characteristics of the socialist system of legislation, at one time drew attention to the fact that “a certain influence on the content and nature of the national legal systems of legislation in different socialist countries was also exerted by their legal past, the level of their legal development, established legal traditions and etc. [20] In principle, Nina Lvovna Granat discussed the past of socialist law, saying that “the legal systems of the countries included in the “socialist camp” previously belonged to the Romano-Germanic legal family, focused on the fact that “they still retain a number of her devil[21]. According to Mikhail Nikolaevich Marchenko, the socialist, and at the same time the Soviet legal system, even has “common origins” and legal traditions in relation to continental law [22]. Again, in the context of the analysis of the socialist legal family, Arkady Vladimirovich Kornev notes that law, even if it is seriously reformed, still retains its continuity - in approaches, terminology, traditions [23]. Vladimir Nikolayevich Sinyukov, in his dissertation, spoke about “the closest connection of Soviet law with all the previous development of Russian law” [24].

Oleg Ivanovich Chistyakov, referring to the issue of creating the foundations of Soviet law, noted that ... the Soviet state, just as it partially uses the old state apparatus, used the old legislation to a certain extent, referring to the Decree on Court No. 1. In the same work, it was noted that since the Judicial Charters of 1864 were quite progressive, some of them were preserved in the Soviet procedural legislation. This applies primarily to the general characteristics of the process, based on the principle of competition, combined with the investigative principles” [25].

### **3.3 The Concept and Essence of Continuity in Law**

How is the continuity of law understood in legal science? An analysis of the available literature shows that when formulating a definition, the authors pay attention to various aspects

of this phenomenon. Thus, Anastasia Nikolaevna Golovistikova and Yuri Albertovich Dmitriev understand continuity as the use of previous forms of law in the legal system while updating its content [26]. Nina Petrovna Koldaeva understands the continuity of law as the possibility of using legal experience, legal institutions of some countries or one historical type in the lawmaking of other countries [27]. Abram Osipovich Sternin - as the inclusion in the new of those elements of the old, which serves a new movement forward [28]; for Vladimir Konstantinovich Babaev, this is the borrowing by the law of one state or another of the provisions of past or contemporary legal systems [29].

Some scientists argue about the essence of the continuity of law. So, according to Franz Frantsevich Litvinovich, the essence of continuity is the ability of the legal system to preserve, stability and stability [30]. Tatyana Viktorovna Nakonechnaya argues that the essence of continuity in law lies in the retention, preservation and use of individual elements of the previous level of development in the next [31]. It seems that the most common understanding of continuity in law is the preservation of certain elements of the whole or individual aspects of its organization during the transition to a new state [32]. There is a position in the literature according to which continuity in law is an objectively existing natural connection between different stages or stages of development of law. Understanding continuity as a connection is the main theoretical tool for studying this phenomenon [1].

Practical examples of the continuity of Soviet law. Pavel Vladimirovich Krashenninikov, speaking about Decree on Court No. 1, emphasized that “they (the courts - Vladimir Valentinovich Kozhevnikov) were guided in their decisions and sentences by the laws of the overthrown governments only in so far. Since they have not been abolished by the revolution and do not contradict revolutionary conscience and revolutionary legal consciousness. This equally applies to Decree on Court No. 2, in accordance with Art. 8 of which legal proceedings in both civil and criminal cases took place according to the rules of the judicial charters of 1864 insofar as they were not canceled by decrees of the Central Executive Committee and the Council of People Commissars and did not contradict the legal consciousness of the working classes. Moreover, Pavel Vladimirovich Krashenninikov claims that “Decree “On the Court” No. 3 was issued by the Council of People Commissars on July 20, 1918 in continuation of previous decrees, did not cancel them, but was aimed at a gradual transition to a system of unified people courts in terms of both criminal and civil cases. The scientist believes that the text of the draft Civil Code of the Russian Empire was used in the preparation of the first domestic civil code - the Civil Code of the RSFSR of 1922. Considering the tax legislation during the NEP period, the author states that “... taxes established before the revolution of 1917 continued to be levied, including: a temporary tax on the growth of profits from commercial and industrial enterprises and remuneration for personal fishing activities, provided for by the Regulations of the Council of Ministers of May 13, 1916, the state tax on salaries and a one-time fee established by the Provisional Government on June 12, 1917” [11]. According to Sergei Sergeevich Alekseev, “the Bolsheviks ... took advantage of the developments of pre-revolutionary jurists, the materials of the draft Russian Civil Code. Moreover, despite all the efforts of Vladimir Ilyich Lenin, his strict orders that in this case the legislator assistant should not be the theory of Russian pre-revolutionary civil law, but revolutionary legal consciousness, when preparing the Civil Code of 1922, it was not possible to introduce something purely communist [33]. This refers to the famous letter of Vladimir Ilyich Lenin to Dmitry Ivanovich Kursky - the first Soviet Prosecutor General, People Commissar of Justice of the RSFSR, Prosecutor of the RSFSR with comments on the draft civil code [34].

As Pyotr Ivanovich Stuchka wrote in his own regard with regard to the Civil Code, “the real bourgeois Civil Code, 9/10 borrowed from the best bourgeois civil codes ... is the guiding principle for the entire civil practice of our court” [35]. The Civil Code of the RSFSR of 1922 had 435 articles at the time of its publication. A comparison of their text with the draft of the pre-revolutionary Civil Code shows that about 400 of them, according to Alexander Lvovich Makovsky, were borrowed from the project [36]. Only about 30 articles were the creation of the Soviet state and contained new norms of law (they secured in the hands of the state commanding heights in the economy and put the turnover of private capital under its control). With each subsequent revision of the Russian civil legislation, the new Civil Code of the RSFSR included up to 3/5 of the total number of norms of the previous codes [37].

Almost unchanged (or somewhat modified) by Soviet labor legislation, the norms of the Law of July 3, 1886 on the need to issue internal labor regulations were adopted; on a two-week notice of dismissal of one own free will (valid until 1979); on the limitation of deductions from the salary of a third of the average earnings (valid in relation to material liability until 1986); on the need to issue a paybook to the worker; about warning workers two weeks in advance about changes in wages; on labor contracts according to their terms (still in force), etc.

Such positive provisions of the legislation of the Russian Empire as the contractual nature of labor relations, the immutability of the terms of the labor contract, and the termination of labor relations on the grounds specified in the law were accepted [38]. Sergei Arkadievich Ivanov believes that the Law and Labor Codes of 1918 and 1922 in pre-October times, they had the forerunner of the Charter on Industrial Labor (1913) - a legislative act that regulated various areas of labor relations. The author believes that the Charter contained a number of concepts and norms that not only entered the above codes, but also survived to this day. The Charter contained a list of grounds (“legitimate reasons”) for terminating an employment contract by an employer or employee, a two-week period for mutual notice of dismissal, etc. The scientist notes that the use of the Charter on Industrial Labor by the Soviet government in certain cases is evidenced by references to it (48, 60, 96, 98, and 103) in the Decree on the 8-hour working day of October 29, 1917 [39]. This position is consistent with the point of view of Igor Yakovlevich Kiselev, who believes that with the issuance of the Charter on Industrial Labor, it became the main source of factory labor legislation, and from that moment on, legal science and practice began to refer not so much to the Complete Collection of Laws and to the texts of the relevant acts, how much for Articles of the Charter. According to the scientist, this allows us to consider it as a prototype of future Russian labor codes. Moreover, this scientist, considering the legislation that regulated the relationship between manufacturers and free (or relatively free) workers in the pre-reform era, which was limited to two acts: employment and the Regulations of August 7, 1845 on the prohibition of manufacturers from assigning minors under 12 years of age to night work, believes that despite the limited content of both of these acts and their almost complete non-application in practice, many historians consider these acts as the beginnings of the future Russian labor legislation [40].

There is an interesting opinion that many norms were borrowed by Soviet law from pre-revolutionary criminal legislation, in particular from the Criminal Code of 1903 (hereinafter referred to as the Code). [41]. Ninel Fedorovna Kuznetsova argued that indeed, within a few months after the revolution, decrees on the court No. 1 of November 24, 1917 and No. 2 of March 7, 1918 allowed the use of pre-revolutionary criminal legislation by the courts, if it was not canceled by the revolution and did not contradict the revolutionary conscience. However, as the scientist noted, in fact, local people courts did not apply pre-revolutionary legislation, because they had a sharp negative attitude towards the tsarist legislation and acts of the

Provisional Government, traditionally alien to them. In exceptional cases, it was referred to by higher district courts, where professional lawyers worked [42].

A number of other examples can be cited to prove the continuity of Soviet law. Thus, in accordance with the decree of the Petrograd Labor Commune on the Establishment of the Petrograd District People Court dated April 25, 1918 [43], in dealings with persons participating in the case, the court had to be guided by the Rules on the procedure for court communications with litigants through the mail (Appendix to Article 257 of the Charter of Civil Procedure). The Decree of the Council of Commissars of the Union of Communes of the Northern Region of August 15, 1918 "On the Establishment of the Judicial Section of the Petrograd Social Insurance Fund and on the Procedure for Considering Disputes Based on Laws and Decrees on the Socialization of Insurance and Compensation for Injuries"[43] stated that the judicial section jurisdiction over claims based on the Regulations of June 23, 1912 on the insurance of workers against accidents, as well as on articles 683, 684 vol. X of the Code of Laws of the Russian Empire.

#### IV. Conclusion

In conclusion, it should be emphasized that the above examples quite reasonably confirm the process of succession of Soviet law at the initial stages of its development, despite the views of Soviet and Russian scientists that deny it.

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