

**SOUTH RUSSIAN INSTITUTE OF MANAGEMENT BRANCH OF
THE RUSSIAN PRESIDENTIAL ACADEMY OF NATIONAL ECONOMY
AND PUBLIC ADMINISTRATION OF THE RUSSIAN FEDERATION**

On the rights of the manuscript



Didenko Marina Sergeevna

**THE FORMATION OF THE SYSTEM OF SOURCES OF
SOCIALIST LAW IN THE SOVIET STATE (1917-1936)**

Specialty 5.1.1. - Theoretical and historical legal sciences

ANNOTATION

dissertations for the degree
of Candidate of Law

Scientific supervisor:

Doctor of Law, Professor

Shatkovskaya Tatyana Vladimirovna

Rostov-on-Don

2024

Relevance of the research topic. The legal force of modern sources of Russian law is determined by their relationship to state-organized law, which is the focus of jurisprudence. Various religious, traditional, corporate and other sources of "non-positive" law are considered as subsidiary, historical and auxiliary. It is believed that they have fulfilled their role in legal development, preparing the ground for positive law, built into a vertical system of formally defined sources, among which normative legal acts occupy a special place.

This approach does not always correspond to historical experience. The effect and significance of the sources of law depend on the specific historical situation, the specifics of the cultural environment and the socio-political system. The Soviet period is particularly significant in this regard. After the October Revolution of 1917, the imperial system of sources of law was broken in Russia and a new hierarchy of sources of socialist law was created instead. The specificity of Soviet socialist law is recognized not only by Russian but also by foreign lawyers. In particular, R. David proved the existence of an independent legal family of socialist law, which persists in a number of modern states of the world.

For the Russian Federation (hereinafter referred to as the Russian Federation), the USSR is not only a historical form of its state development, but also a direct legal successor.¹ The system of sources of socialist law created in the Soviet period largely predetermined both positive and negative aspects of the modern Russian legal system. Thus, the expansion of the scope of Soviet normative legal acts (hereinafter referred to as the NPA) from 1917 to 1936. This has led to the restriction and subsidiary application of other sources of law, primarily legal customs, and as a result, the separation of law from its national roots and real human needs.

To this day, discussions are underway in Russian legal science about the hierarchy of normative legal acts, the classification of laws, and the relationship

¹ The Constitution of the Russian Federation of 12.12.1993 (adopted by popular vote on 12.12.1993 with amendments approved during the all-Russian vote on 07/01/2020) art. 67.1// Official Internet portal of legal information <http://pravo.gov.ru> , 06.10.2022.

between the code and the law, which began in the 20s and 30s of the twentieth century. The resolution of these disputes is impossible without identifying and overcoming the contradictions inherent in the system of sources of law during its formation.

The discrepancy between the social role and the legal position of alternative legal sources of law is also observed in legislation. Thus, legal customs are fixed as subsidiary sources of law. However, civil servants have an obligation to respect the customs and traditions of the peoples of Russia and promote their development to ensure interethnic and interfaith harmony.¹

The dichotomy between the real and formal meaning of various sources of Russian law is also due to the lack of unity of scientific approaches to the concept of "source of law" and its differentiation from the form of law. In the Soviet legal science of the 30s, the discussion about the sources of socialist law received a special sharpness and political sound, becoming part of the "legal front" of the struggle for the construction of socialism.

We believe that historical and legal research makes it possible to identify stable development trends, features of the construction and systemic interaction of sources of national law. It is important to assess the social impact of certain regulators in certain periods of state development, the expediency and consequences of their use, the impact of specific historical events on the content of sources of law and ways of their formal legal expression.

The study of the historical process of the formation of the system of sources of state law in a transitional state relieves society from the fear of legal changes in the course of socio-economic and political transformations. During this period, it is possible to identify the most viable sources and forms of law that are closely related to the worldview of the people and constitute their peculiar normative ideology.

¹ Decree of the President of the Russian Federation dated 08/12/2002 No. 885 (ed. dated 08/25/2021) "On approval of the general principles of official conduct of civil servants" // Collection of Legislation of the Russian Federation. 08/19/2002, No. 33, article 3196.

The object of the dissertation research was the processes, events, phenomena, social relations, ideas, theoretical views related to the formation and development of Soviet law during the construction of socialism in the Soviet state.

The subject of the dissertation research was the structure of the consistently formed system of sources of Soviet socialist law in 1917 and 1936 in the interaction of its elements, various properties and connections, as well as stable trends in its development.

The purpose of the dissertation research is to establish consistent changes in the formation of sources of socialist law during the period of building socialism in the Soviet state in order to identify patterns in the systematic construction of sources of Russian law, as well as to determine the specific features inherent in the sources of socialist law.

The realization of this goal is achieved by solving the following **tasks**:

- to characterize the main scientific approaches to the concept of "source of law" and its relation to the "form of law" in Russian jurisprudence;
- to identify the signs and features of the sources of law in the transitional state of the state;
- to determine the influence of Marxist, sociological and psychological legal understanding on the formation of a system of sources of law during the construction of socialism in the Soviet state;
- to show the role of the first codification of Soviet law in the formation of the system of sources of socialist law;
- to characterize the features of the development of systemic links between the sources of Soviet socialist law in 1928 and 1936.;
- to reveal the specifics of the Soviet law as the main source of socialist law in the USSR and correlate it with other sources of law in the 30s of the twentieth century.

The scientific novelty of the dissertation is confirmed by the achievement of the following scientific results:

- the author's definition of the source of law is given as a volitional normative act that organizes repeatedly reproduced real social ties and objectifies them in a legal norm by force capable of enforcing external authority; having value and normative significance. The paper proves that this definition makes it possible to distinguish the main sources of Russian law according to the conditions of their occurrence;

- the signs and features of the sources of law in the transitional state of the state are highlighted. The special role of normative legal acts in the transitional state of the state is substantiated, such specific features of NPAs as casuistry, efficiency, subjectivism, low level of legal technology, syncretism, temporary nature, multifunctionality, novelty, variable and transformative character are highlighted. The definition of the specifics of the NPA gave reason to assert that such alternative sources of law as legal custom and judicial practice in the transitional state of the state preserve the legal content, ensure continuity and sustainability of social development. Previously unused materials extracted from archival funds have been put into scientific circulation;

- the influence of Marxist, sociological and psychological legal understanding on the formation of sources of law during the period of building socialism in the Soviet state is determined. It is established that the formation of the theory of sources of socialist law took place, among other things, during the discussion of representatives of Marxist and psychological legal understanding. The positive and negative consequences of the victory of Marxist theory in this discussion are revealed;-

- a gap has been filled in the study of the first codification of Soviet law in terms of its influence on the formation of a system of sources of socialist law, including the periodization of the first codification of Soviet law. Using the example of the first codification of Soviet law, it is established that the systematic construction of sources of law is impossible without the theoretical resolution of questions about the forms and sources of law and the relationship between them, the definition of the law and its role in Soviet society, the consolidation of clear

procedures of the legislative process, the differentiation of law-making competencies between Soviet bodies;

- the features of the sources of Soviet socialist law of the late 20s and 30s are revealed, confirming that Soviet lawyers failed to completely get away from legal traditionalism in its various manifestations. At the same time, it has been established that there are significant innovations contained in the concept of socialist law that do not correspond to classical ("bourgeois") theories of law. The position on the impossibility of recognizing party acts as formal legal sources of socialist law is substantiated;

- the features of Soviet laws, the change in their role in the political system of the USSR of the 30s, their relationship with such sources of socialist law as revolutionary and socialist legal awareness, judicial practice, legal customs, as well as with other social regulators such as the rules of socialist hostel are revealed.

The scientific and theoretical significance of the dissertation research is determined by the fact that the scientific results of the work make a significant contribution to the development of the history of the Soviet state and law. The study made it possible to fill in a number of gaps in historical and legal science related to the study of dynamic changes in the ratio of various sources of law during the transitional period of the development of the Soviet state, the influence of the first codification of Soviet law on the formation of a system of sources of socialist law, traditional and peculiar features in its structure and functioning. In addition, the conclusions and theoretical provisions of the study contribute to the theory of sources of law, expand scientific data and the source base of the research approach, proving the need to distinguish between the concepts of "source" and "form" of law.

The practical significance of the dissertation lies in the fact that the specificity of the sources of socialist law revealed in the study gives an understanding of the real possibilities and limits of practical use of Soviet legislation in modern conditions. The positive and negative trends in the formation of sources of socialist law, disclosed in the dissertation, should be taken into

account in modern law-making to improve the quality of legislation and update the array of Russian normative legal acts. The materials of the dissertation research have been introduced into the educational process at the South Russian Institute of Management, a branch of the RANEPa under the President of the Russian Federation, and are used in the study of such disciplines as "History of State and Law of Russia", "Theory of State and Law", "Actual problems of legal Cognition".

Methodology of the dissertation research. The fulfillment of the set goals and objectives is achieved using an integrated methodological approach involving general scientific and special legal methods. The dialectical-materialistic approach to law is used to identify the nature, principles, characteristics, internal and external structural relationships in the system of sources of socialist law. The systematic method made it possible to establish the interrelationships and interdependencies of individual elements that make up the system of sources of socialist law in the USSR. The method of scientific criticism is used to identify the main contradictions in theoretical approaches to the concepts of "source of law" and "form of law". With the help of the historical method, the scientific task of overcoming the shortcomings of abstract concepts, partly arbitrary, compiled without knowledge of the totality of conditions and specific facts of their action in relation to the formation of a system of sources of socialist law, is solved. The method of abstraction and generalization is used to study the similarities and differences of individual elements of the system of sources of socialist law and the peculiarities of their interaction. The method of assessing the regulatory impact made it possible to identify some negative consequences of the multiplicity and uncertainty of sources of law in the Soviet state during the period of war communism. The reconstruction method was used to recreate the historical reality of the Soviet state-building in 1917 and 1936 in its objective invariance in order to identify the necessary connections and relationships that have a norm-setting character. The study also uses synergetic, formal legal, comparative legal, statistical, system-structural, structural-functional and other methods.

The provisions of the dissertation research submitted for defense:

1. In Russian jurisprudence, discussions about the concept of "source of law" are conducted mainly in terms of its relationship with the form of law. According to this criterion, the positions of researchers are divided into three groups. Proponents of a narrowly normative approach do not separate the source and form of law, but the concept of "source of law" is interpreted in different ways: the material or ideological basis of law, a specific form of expression of the will of the ruling class to give it the meaning of the rule of law (M.I. Baytin et al.), a kind of shell of the content of a legal norm (S.L. Zivs et al.), type of government activity (N.G. Alexandrov et al.) and others. The second approach is presented in the works of legal positivists (G.F. Shershenevich, F.V. Taranovsky, I.B. Novitsky, M.N. Marchenko, etc.), distinguishing the concept of "source of law" in the material sense and the form of law. This approach does not solve the problem of confusing the concepts of "source" and "form" of law, but highlights the shortcomings of a narrowly normative understanding. The third approach includes the positions of researchers who distinguish between the concepts of "source" and "form" of law. They represent different concepts of legal understanding (N.N. Alekseev, N.N. Voplenko, A.V. Polyakov, etc.). Therefore, they proposed various justifications for the difference between the source and the form of law. The issue under consideration has not been definitively resolved in the domestic theory of law, which is explained, among other things, by gaps in the historical and legal study of the sources of Russian law.

2. The sources of law in a State in transition do not represent a stable system and can be considered as a dynamic structure. Some of its elements are ending their existence, others are being transformed, and others are just being formed. Such diversity leads to an imbalance and even to the destruction of the previously established hierarchy in the system of sources of law. The main features of the sources of law in the transitional state of the state should be recognized as their antinomy (contradictory nature), expressed in the simultaneous action of old and new sources of law; dynamism as a reflection of the constant transformation of

social relations; disorder associated with the absence of established social and political hierarchies in society; multiplicity caused by a decrease in the social significance of existing sources of law and the need to search for new ones; casuistry, that is, determinism by specific circumstances of social reality; the temporary nature of their action, determined by the tasks of the current moment.

3. The implementation of the Marxist approach to law has shown that the predictions about the death of law during the transition to socialism turned out to be incorrect. The denial of bourgeois law did not lead to the rejection of legislative regulation. During the ten years of Soviet rule, the use of sources of law alternative to the law was significantly limited. The proletarian state was proclaimed the only source of the formation of law. The sociological school of law did not have a significant impact on the system of sources of Soviet law. We believe this is also due to the fact that representatives of this scientific field did not hold senior positions in the party, government bodies and the administration of the Soviet state. Therefore, until the end of the 20s of the twentieth century, the process of formation of the Soviet legal doctrine was mainly accompanied by discussions between Marxist and psychological theories of legal understanding. The victory of the Marxist legal understanding in this discussion, on the one hand, contributed to the conclusion of disputes and the building of the system of Soviet legislation as a whole. On the other hand, it has incorporated a number of contradictions into the theory of sources of law and its practical systemic construction. The legislation has lost its independent legal content, which has led to the need for constant changes in laws to meet the priorities of the party and the state.

4. The first codification of Soviet law should be recognized as a complex multi-stage legally significant process, during which in practice not only doctrinal approaches, principles of construction, content and form of Soviet legislation were developed, but also the composition, hierarchy of sources of Soviet law, the limits of operation of alternative sources of law. As a result, it was possible to form the main branches of Soviet legislation and implement their codification. In addition, the negative practice of unauthorized publication of laws on the ground, which

developed in the early years of Soviet power, was overcome, and the priority of legislation of the highest and central bodies of Soviet power and management, the obligation of their execution at the local level, was fixed. The streamlining of Soviet legislation made it possible to lay the foundations for the hierarchical construction of a system of sources of socialist law.

5. At the end of the 20s – 30s, the tendency of unity and limitation of forms of legal expression of the sources of socialist law prevailed in the USSR. They retained such features of the previous period as temporality, dynamism, class character, close relationship with real social relations, the socio-economic structure of socialist society and the policy of the Soviet state. At the same time, during the period under review, it is possible to identify such features as the limitation of the number of sources of law, their inseparability from the state and its political superstructure, centralism, ideological unity, certainty and hierarchy, the priority of the law over other sources of law. The inseparability of law and the state led to the fact that the only source of law in the Soviet state was the will of the state, determined by the political leadership represented by the Communist Party.

6. In the Constitution of the USSR of 1936, it was not possible to completely overcome such a disadvantage as the plurality of bodies that issued laws. There were no criteria for distinguishing between laws and acts of legislative purpose, which include decrees of the Presidium of the Supreme Soviet of the USSR containing general norms. In the presence of general norms of law in acts of a subordinate nature, such as resolutions of the Council of People's Commissars of the USSR, Councils of People's Commissars of the Union and autonomous republics, the legal content of the Soviet law was actually determined by the competence of the Supreme Soviet of the USSR, the Supreme Soviets of the Union and autonomous republics. In the absence of clear distinctions between the powers of government and administrative bodies, such an approach to the legal force of the NPA created a number of negative trends in the system of sources of socialist law: conflict, multiplicity, disunity, inconsistency, disorder, instability. The formal approach to defining the law created difficulties in distinguishing between laws

and decrees of the Presidium of the Supreme Soviet of the USSR, determining the legal force of decrees of the Presidium of the Supreme Soviet of the USSR, as well as establishing a distinction between normative and administrative acts, administrative acts and treaties.

The results of the dissertation research were tested by making presentations at international and All-Russian scientific and practical conferences held in the cities of Voronezh, Yelets, Rostov-on-Don, St. Petersburg, Taganrog, Kursk, Krasnodar.

The main scientific results have been published in 14 articles, including four articles in journals recommended by the Higher Attestation Commission of the Ministry of Science and Higher Education of the Russian Federation; 1 article in a collection of scientific articles indexed in SCOPUS. The results of the dissertation research have been introduced into the educational process of the Russian Presidential Academy of National Economy and Public Administration of the South Russian Institute of Management.

The topic of the dissertation research corresponds to the passport of the scientific specialty 5.1.1. – Theoretical and historical legal sciences.