https://doi.org/10.59295/ierm2025.28 CZU 340.12(478):327

SUSTAINABLE DEVELOPMENT OF MOLDOVA'S LEGAL SYSTEM AND ITS INTEGRATION INTO THE EUROPEAN POLITICAL AND LEGAL SPACE: „CROSSING ROUTES"[1]

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Summary. *The article raises the problem of „gaps in development" of the legal system of Moldova and other countries of the post-Soviet political and legal space and analyzes the features of sustainable development of the legal system of society as a conceptual model for overcoming such „gaps". The author examines this model using a specific historical example of the European „route" of sustainable development of the legal system of society, which was „paved" by the countries of Europe after the Second World War to overcome the „gaps in development" that formed during the war and pre-war period not only in legal systems, but also in all other spheres of life of European society, and compares this model with the general patterns of the process of European integration, which began at the same time. Based on the use of methods of theoretical legal modeling of the analyzed states of the legal system of society, structural and comparative analysis of their basic components, the author comes to the conclusion that the model of sustainable development of the legal system of society has become the „legal form" of integration processes in Europe, which makes it possible to use the European experience of implementing this model for the confident and long-term exit of the legal system of modern Moldova on the route of its integration into the European political and legal space.*

Key words: *sustainable development, legal system, political and legal space, European integration.*

Introduction

A realistic view of the legal system of modern Moldova allows us to discern in the legal life of the country not only the ideas and principles of continental legal dogma reflected in official legal documents, but also the features of Soviet legal and political culture preserved in the legal thinking and legal communication of Moldovan society. This circumstance, along with the deep contradictions existing between the continental legal system and the Soviet legal system, testifies to the fact that in the dynamics of the legal

[1] Articolul este elaborat în cadrul subprogramului 01.05.01 Securitatea națională a Republicii Moldova în contextul aderării la Uniunea Europeană: abordări juridice, politologice și sociologice, realizat de Institutul de Cercetări Juridice, Politice și Sociologice al Universității de Stat din Moldova.

system of Moldova we can notice not only a „forward movement" oriented towards European legal values and standards, but also a „backward movement" or, in any case, a certain „downtime" that forces this system to constantly „look back" at what hindered its development in the Soviet past. Such multidirectional trends in the dynamics of the legal system of Moldova create new „gaps in the development" and worsen the „gaps in the development" of the country's legal system that formed back in the Soviet period. Such „gaps" not only slow down the pace of progressive legal reforms, but also, due to the aforementioned internal contradictions in the dynamics of the legal system, can devalue any positive changes in the legal sphere. At the same time, the course chosen by citizens for Moldova's accession to the European Union [1] requires consistent progressive movement forward from the country's legal system, which, while raising the „upper bar" of standards that orient the legal system of Moldova towards further development, at the same time creates conditions for the aggravation of the „gaps" that already exist in the dynamics of this system. A constructive way to overcome such problems in the legal system of Moldova could be for this system to take the route of „sustainable development" that is consistently removing destructive internal contradictions in its dynamics and synchronizing it with the normal structural cycles of development of the legal system of a democratic society. However, to what extent is such a route of sustainable development of the legal system compatible with the route of integration of the country into the European Union chosen by the citizens of Moldova? Is there anything in common between them? To answer this key question for the current moment in the legal history of the country, it is necessary to analyze the nature of the existing „gaps in development" of the legal system of Moldova, their main causes, and also to compare the changes that the legal system of Moldovan society must undergo, having entered each of the specified „routes". The research results presented below were obtained using a comprehensive methodology, the basis of which was the methods of theoretical legal modeling, structural and comparative analysis of the studied dynamic states of the legal system of society, including their specific historical models.

„Gaps in development" as a systemic problem of the post-Soviet political and legal space.

In order to understand the essence of the problems in the legal system of modern Moldova, it is necessary to form a fairly clear idea of the main problems of the Soviet legal system, the rejection of which in the European part of the post-Soviet political and legal space in favor of a return to the traditions of continental law, however, did not entail a sustainable movement of legal institutions in this region in line with the progressive trends of European law, giving way to „catch-up development", which encountered serious internal problems.

Thus, after a decade of Moldova's sovereign statehood, its official documents acknowledged the facts of „deep-rooted disregard for rights and freedoms", „legal nihilism" [2], and later noted such facts as: „excessive protractedness of judicial procedures, unsatisfactory justification of judicial decisions, lack of uniform judicial practice, improper summons to court, violation of the security of legal relations and unreasonable

delays in cases", „multiple forms of de facto discrimination", „inhuman or degrading treatment or punishment", „violation by the Republic of Moldova of the European Convention for the Protection of Human Rights and Fundamental Freedoms", „insufficient regulation of the decision-making process, unsatisfactory knowledge and low level of trust of citizens in relation to the role and importance of regulatory acts, passivity in their practical application and implementation" [3], etc. In the context of these problems, the period of the „captured state" that Moldova experienced and the problems that persist in modern Moldova in the field of human rights, insufficient public administration and corruption, which have been assessed by international and European institutions [4,5,6,7] and reflected in domestic documents reflecting priority areas in the field of human rights protection [8] and national security of the Republic of Moldova [9], are also logical. However, the reasons for the listed negative facts should be sought not only in the 90s of the last century, but much earlier – in the Soviet legal system.

Our study of the specific features of the Soviet legal system [10] allowed us to come to the conclusion that its basic typological characteristic was the „truncated" or, in other words, „limited" nature of all the main parameters of the legal system of society: legal statuses, legal principles, legal institutions and legal self-organization of society. This view of the specifics of the Soviet legal system allowed us to push into the background the ideological principles of communism and socialism, discarded by the course of history itself and playing only an auxiliary role, and to draw attention to a more important feature of the Soviet legal system, which, in contrast to the aforementioned ideological moments, has not been completely overcome by the post-Soviet political and legal space – the actual limitation of the effect of a number of legal principles, legal institutions and other components of the humanistic legal culture inherent in continental law.

In the course of our research, we also came to the conclusion that the external form of the continental model of legal regulation with its inherent dominance of the normative legal act in the system of sources of law was preserved and used by the Soviet legal system, which allows some modern researchers to define the Soviet legal system as „quasi-Western law" [11, p. 57]. However, the supremacy of law in the Soviet legal system was actually replaced by the unconditional authority of corporate acts of the leading political party, which lead to the adoption by the mass consciousness of society of a nihilistic model of attitude to the law. However, while not being an open form of nihilism, restrained by the repressive Soviet system of coercion, this model was overcome in the mass consciousness, mainly by replacing legal concepts with categories of moral consciousness and the state system of Soviet education, which, while developing the moral qualities of the individual, translated all complex and inconvenient questions of legal content into claims to the moral character, and along with it to the ideological affiliation of the individual, which deprived a person of the opportunity to participate in any kind of „legal" dialogue with society and the authorities.

From the point of view of finding ways to overcome the existing problems of the legal system of Moldova and similar problems of other legal systems of the post-Soviet political and legal space, it is important to understand the internal „mechanics" of the Soviet legal system, which led to the formation of such a model of legal consciousness

of society, insurmountable corruption in the system of political and legal institutions of society and other problems that the post-Soviet political and legal space failed to fully cope with. Our study of the Soviet legal system as a „truncated model" of the continental legal system allowed us to see such „mechanics" in the formation of „gaps in development" of all basic elements of the legal system of society during the Soviet period: institutional, organizational, normative and spiritual-cultural.

„Gaps in the development" of the institutional elements of the Soviet legal system were formed both as a result of the revolutionary upheaval in the system of political power institutions and as a result of mass repressions and wars experienced by society after the Bolsheviks came to power, which led to profound changes in the social structure of society, which was the basis for the processes of institutionalization of the legal and all other spheres of public life. Institutional „gaps in development" were expressed in the actual abolition of political pluralism as the basis of the democratic procedure for the formation of legal and political institutions of society and the principle of separation of powers as the basis of the democratic procedure for their functioning. The resulting model of a one-party command-administrative system of totalitarian governance and a repressive system of coercion threw the legal institutions of Soviet society away from the path of their free democratic development and influenced the subsequent formation of authoritarian models of political governance in the post-Soviet political and legal space, the very fact of the emergence and existence of which is natural and serves as a clear confirmation of the deep gap in the democratic development of the institutional structures of the post-Soviet political and legal space that formed back in the Soviet period.

„Gaps in the development" in the organizational elements of the Soviet legal system were reflected in truncated procedures of justice and preliminary investigation [12,13], as well as in the actual abolition of decentralized legal regulation in the sphere of private relations, which slowed down the development of types of legal activities not related to the participation of the state, characteristic of the normal organization of the legal life of society. All this significantly threw the development of the organizational elements of the legal system of Soviet society back from the democratic achievements of their pre-revolutionary development [14]. As a result of all of the above and despite the changes in legal procedures that occurred during the years of Soviet power, affecting various types of legal activity, tendentious practices limiting the implementation of human rights and ineffective human rights mechanisms also became a problem in the post-Soviet space, which also strengthened the role of the corruption component of the legal life of society, which became a serious problem for a significant part of the post-Soviet space, including the Republic of Moldova [15].

„Gaps in the development" of normative elements of the Soviet legal system affected both the content of normative regulation and its formal sources. Substantive gaps in the development of normative elements were expressed in the actual removal of a whole complex of human rights from the sphere of normative regulation, as well as in a significant limitation or leveling of the leading principles of European law: inviolability of the person, respect for human rights, inadmissibility of humiliation of human

dignity, fair justice, presumption of innocence, inadmissibility of objective imputation, freedom of enterprise, inviolability of private life, inviolability of private property and others. Formal gaps in the development of normative elements of the legal system were expressed in the actual limitation of the rule of law and the effect of those sources of law that lost their significance in the conditions of the command-administrative system. At the same time, on the one hand, it seemed much easier to overcome substantive „gaps in the development" of normative elements in the post-Soviet space than gaps in the development of other elements of the legal system. But, on the other hand, filling gaps in the law and bringing the current law into line with certain legal principles does not in itself entail the automatic implementation of the relevant norms, recognized as declarative guidelines, but limited in examples of the practical implementation of their direct effect.

„Gaps in the development" of the spiritual-cultural elements of the Soviet legal system, in our opinion, were the result not so much of the substitution of the cultural foundations of law with the ideological principles of socialism and communism, but rather of the complex influence of the already examined „gaps" in other elements of the Soviet legal system, which led to the adoption by the mass consciousness of a nihilistic model of disdainful attitude toward law. Much more important than legal acts turned out to be first „revolutionary legal consciousness," and then the „guiding line" of the political party reflected in party documents. The consequences of these distortions in mass legal consciousness are still felt today in most of the post-Soviet political and legal space, where the problem of various kinds of „deformations" of legal consciousness has not been fully overcome either at the level of mass legal consciousness or at the level of public authority, as evidenced by problems related to corruption, mechanisms for implementing human rights, discrimination, the justice sector, the low level of compliance by Moldova with decisions of the European Court of Human Rights, the lack of effective legal remedies, etc. [16].

As can be seen, *the considered „gaps in development" have indeed affected all the basic elements of the legal system of the society of the Soviet legal system and are manifested in most of the post-Soviet political and legal space, which allows us to characterize them as a „systemic problem", the search for solutions to which should also be of a systemic nature. In our opinion, this search should be conducted in the direction of establishing those conceptual models of the legal system of society in which there are internal mechanisms for overcoming the noted „gaps in development" of all the basic elements of the legal system of society.*

Peculiarities of the dynamics of the European political and legal space in the second half of the 20th and first quarter of the 21st century.

The Second World War became a generally recognized turning point in the modern history of the European political and legal space. It was after the Second World War that a whole complex of events followed that gave rise to the process of European integration [17], which affected not only economic ties and the coordination of foreign policy of modern European countries, but also the sphere of justice, as well as other legal issues. In this regard, the coincidence of the celebration of Europe Day in Moldova with Vic-

tory Day and the Day of Remembrance of the Heroes Who Died for the Independence of the Motherland [18], seems to us not only symbolic, but also reflects the objective connection between the modern destinies of European nations and the consequences of the most terrible war in Europe.

However, it should be noted that some unity of the legal space of European countries is not an exceptional fact of their modern history, which is already evident from the analysis of the approaches of comparatists to the classification of legal systems that existed before the Second World War, among which one could find the opinion about the existence of a fairly unified legal system or „family" that united the national legal systems of all European states. Thus, in 1913, J. Souther-Hall proposed the identification of a single „Indo-European" legal system [19, p. 74]. It should also be noted that among modern researchers of the problem of classification of legal systems one can also find opinions that point to „fundamental compatibility" rather than „irreconcilable contradictions" between the legal systems of the countries of the European region [20]. These circumstances, as well as the argument given in the scientific literature about the fundamentally permissible combination of elements of the legal systems of different European countries in the so-called „mixed" legal systems [21], allow us to speak about the fact of the existence of a kind of „genetic" connection between the legal systems of the countries of the European region, which makes possible organic borrowing between them, as well as a certain degree of their integration into the common political and legal space.

This „genetic" connection of the legal systems of the European region finds clear confirmation of its existence in the fact that, despite the certain „hostility" of the common law towards the continental law noted in the scientific literature, and despite all the fundamental differences between the Anglo-Saxon legal system and the attempt by Great Britain to integrate into this European organization, which ended with its exit from the European Union, we must nevertheless state that the legal system of Great Britain did not find itself „overboard" of the integrative legal processes in Europe in the second half of the twentieth century and the first quarter of the twenty-first century. Thus, Professor Thomas Lundmark notes that the jurisdiction of the United Kingdom, which is open to the concepts of European law, not only implemented the European Convention for the Protection of Human Rights and Fundamental Freedoms into its national law during the period under analysis, but also carried out many other measures developed in the European Union [19, p. 174].

The theoretical analysis conducted within the framework of our study allowed us to establish that during the period of the second half of the 20th century – the first quarter of the 21st century, the most important „milestones" in the modern legal history of the European region were: the final liquidation of the colonial system and the transition to modern humanistic standards in interstate relations built on the principles proclaimed by the United Nations; gradual democratization of legal regulation in the post-war period; the rejection of military aggression in favor of peaceful and, first of all, „legal" tools and methods of governance in the European region; the processes of European integration took the form of a gradual expansion and deepening of cooperation between

European countries in a variety of areas based on legal agreements, which led to the creation of a whole complex of European organizations, one way or another connected with the process of pan-European integration.

A brief overview of the above-mentioned features of the dynamics of the European political and legal space in the second half of the 20th – first quarter of the 21st century leads us to the conclusion that *the integration processes observed during this period of time, which affected the legal systems of European states, went in parallel with the strengthening of the role of law and legal communication not only at the interstate and supranational levels, but also at the intrastate level, which contributed to the relative stability and progressive development of the legal institutions of European countries and their integration structures at the level of European communities. In our opinion, this allows us to characterize the period under consideration as a „period of sustainable development" of the political and legal space of Europe, which can be considered a phenomenon of the post-war peaceful development of the European region*.

The implementation of such a model of „sustainable development" of the European political and legal space, in our opinion, became possible due to two key factors: firstly, due to the internal factor of the reflection by Europe of Christian humanistic values as a result of the events of the Second World War, which brought a serious humanistic component to international law and the national law of European countries, and, secondly, due to the no less important external factor of favorable geopolitical conditions that formed a safe environment for the comprehensive development of European countries, which, in turn, stimulated the development of legal, rather than violent, methods of resolving various types of conflicts that always inevitably arise in the conditions of any socio-political organization of society. All this brought the law to the forefront in the 21st century as a basic instrument for establishing constructive ties and cooperation between the peoples of Europe, creating a precedent for the sustainable progressive development of the legal systems of this region.

The European model for overcoming the „gaps in development" of the legal system of society in the post-war period.

In order to clearly demonstrate a possible mechanism for overcoming the „gaps in development" of the legal system of Moldova that formed during the Soviet period in the model of its sustainable development, we believe it is appropriate to draw attention to similar processes that have already taken place in the legal systems of European countries in connection with their overcoming the „gaps" that formed by the end of World War II. The theoretical legal analysis of the specific historical models of progressive overcoming of the „gaps" formed by these legal systems as a result of totalitarian and authoritarian approaches to issues of legal regulation, justice and legal coercion that became widespread in the pre-war and war periods can contribute to a more systematic and profound understanding of the patterns of the legal systems of the post-Soviet political and legal space entering the „route" of sustainable development.

Our analysis of the peculiarities of the post-war development of legal systems in the European region has allowed us to establish the general patterns of their progres-

sive overcoming of the „gaps in development" of the basic elements of the legal system of society, presented below. It should be noted that these general patterns have most consistently manifested themselves in the development of legal systems in the Western part of the European region, while the legal systems of Central and Eastern Europe had to take a similar development route, having made a preliminary „stop" on the socialist model of development of legal and political institutions of society under Soviet foreign policy influence. However, taking into account the rather soft and „velvet" forms of the revolutions of 1989 in Central and Eastern Europe [22], it seems possible to us to conclude that the said „stoppage" did not become fatal and not only did not prevent the legal systems of the part of the European region in question from joining the general mainstream of the integration processes of the European political and legal space, but also does not deprive the grounds for considering (with certain reservations) their dynamics in the context of the general European model of sustainable development of the legal system of society.

Overcoming the „gaps in the development" of the institutional elements of the legal system of society in the European political and legal space in the post-war period was carried out through consistent democratization of the authoritarian political and legal institutions of the war and pre-war period, modernization of legislative institutions based on the ideas of parliamentarism, political pluralism and universal suffrage, introduction of elements of constitutional control and institutions that gradually formed a system of institutional guarantees for the observance of human rights and freedoms. The said changes in the political and legal institutions of society were accompanied by the restructuring of the socio-economic foundations of public life in European countries in the spirit of the principles of a market economy, combined with the desire for a socially oriented model of the state, which stimulated the formation of legal institutions of civil society and legal institutions based on public-private partnership, which became a clear confirmation of not a formal, but a real democratization of legal institutions in the European region.

Overcoming the „gaps in development" of the organizational elements of the legal system of society in the European political and legal space in the post-war period was a direct consequence of the above-described changes in the institutional elements of the legal system of society and the post-war restoration of the socio-economic system, which contributed to the sustainable development of those types of legal activities that organize private legal relations, as well as the introduction of significant elements of control and supervision over the legal activities of public structures of the state and the strengthening of the role of justice in maintaining law and order. A clear confirmation of the latter was the development observed in the post-war period not only of national justice systems, but also the formation of pan-European judicial bodies, including the creation of the European Court of Human Rights in 1959.

Overcoming the „gaps in the development" of the normative elements of the legal system of society in the European political and legal space in the post-war period was carried out on the basis of the democratization of constitutional law, which found its initial expression in the adoption of the European constitutions of the „second wave" in the

1940s and 1950s and was reflected in their subsequent transformations. These changes occurred not only under the influence of domestic trends, but also as a result of the progressive development of international regulation in the field of human rights, accompanied by the adoption of the Universal Declaration of Human Rights, the International Covenants in the Field of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and other international acts. All this testified to the formation of a system of international standards, which, along with constitutional and legal guarantees, can be considered as a „framework" that restrains the dynamics of the legal systems of the European region from the radicalization of legal and political conflicts and at the same time „directs" the dynamics of these systems along the path of sustainable development.

Overcoming the „gaps in development" of the spiritual-cultural elements of the legal system of society in the European political and legal space in the post-war period was accompanied by a reflection of humanistic Christian values and the influence of the ideology of socialism, which, under external Soviet influence, took radicalized forms in Eastern and Central Europe, but also in this part of the European region by the 1990s through fairly soft and peaceful revolutions that gave way to moderate ideas of social statehood with the recognition of the absolute value of the democratic path, in the context of which the sustainable post-war development of legal institutions of the European political and legal space became possible. In analyzing the overcoming of spiritual-cultural „gaps" in the European model of sustainable post-war development of the political and legal space, it seems necessary to pay attention to the closeness of the problems of spiritual-cultural elements of the legal system of society in the post-Soviet political and legal space with the problems of authoritarian traditions of political and legal culture in Eastern and Central Europe, „inherited" not only from post-war Soviet influence, but much earlier – from the legal and political culture of the Austro-Hungarian, German and Russian empires. As the analysis of specific historical models of legal regulation in these territories shows, deviation from humanistic Christian values in the direction of any ideological influences (pro-fascist in the pre-war period and socialist in the post-war period) has always resulted in the formation of new or the aggravation of existing „gaps in the development" of spiritual and cultural elements of the legal systems of this region, therefore overcoming these „gaps" (including in the European part of the post-Soviet political and legal space) is impossible without the growth of critical self-awareness of society, prompting it to a real experience of public legal consciousness of the reflection of universal humanistic common Christian values.

The considered patterns of overcoming the „gaps in development" of the basic elements of European legal systems in the post-war period are of particular interest not only as specific historical examples of the progressive dynamics of the legal system of society along the route of sustainable development, but also as models of legal development, accompanied by the expansion and deepening of integration processes in the European political and legal space, which is especially relevant for understanding the features of the current stage of legal history experienced by the legal system of Moldova.

General patterns linking the integration processes of the European political and legal space with the process of sustainable development of European legal systems.

The above-considered patterns of overcoming the „gaps in development" by European legal systems in the post-war period demonstrate the „route" of sustainable development laid by these systems. However, this specific historical example was naturally connected with another process that engulfed European countries in the post-war period – European integration. In order to understand the existing connection between the sustainable development of European legal systems and their integration into a single political and legal space, it is necessary to recognize the causes that gave rise to the process of pan-European integration, the search for a legal form for the peaceful implementation of which led to the development of the above-considered European model of overcoming the „gaps in development" of the legal system of society, which reflects the course chosen by European legal systems for the sustainable development of legal institutions of society, legal communications, sources of law and universal cultural foundations of law.

As is well known, in his speech in Zurich in 1946, Winston Churchill spoke in favor of creating a „United States of Europe", which reflected the „lesson" learned by Europe as a result of the Second World War. In order to prevent another war on the European continent, it was understood that only the stable peaceful development of Germany, which had unleashed the Second World War, as well as France and all other European countries along with them, could keep the German nation from trying to „revenge" and would help ensure peace and prosperity in Europe [23]. This approach was fundamentally different from the „lessons" of the First World War and it was this approach that helped to bring to life the idea of pan-European integration, one of the first historical projects of which was proposed back in 1306 by P. Desbois in his „Christian Republic". Thus, sustainable peaceful development, in which law became the main means of achieving pan-European consensus on a wide range of issues and aspects of European integration, became both the driving force and the proposed model for the integration of European countries.

The model of sustainable development of the legal system of society became, in turn, the „legal form" of the process of pan-European integration after the Second World War. Our research allowed us to establish four groups of regularities in the structure of this model, which demonstrate the connection between the sustainable development of the basic elements of the legal system of society and the process of integration of the European political and legal space: 1) regularities of sustainable development of institutional elements, 2) regularities of sustainable development of organizational elements, 3) regularities of sustainable development of normative elements and 4) regularities of sustainable development of spiritual-cultural elements.

A comparative analysis of the above-described European model of overcoming the „gaps in development" of the legal system with the integration processes within the European political and legal space [24] allows us to combine the discovered similarities of the regularities of sustainable development of the legal system and the integra-

tion processes affecting it in such common features as: 1) *democratization of legal and political institutions of society*, uniting the regularities of sustainable development of the institutional elements of the legal system; 2) *dialogization of the political and legal space of social communications*, uniting the regularities of sustainable development of the organizational elements of the legal system; 3) *humanization of the content and legitimization of the form of normative regulation*, uniting the regularities of sustainable development of the normative elements of the legal system; 4) *reflexivity of legal consciousness*, uniting the regularities of spiritual-cultural elements of the legal system.

It should be noted that the humanization of the content of normative regulation in the considered European model of sustainable development of the legal system was accompanied by the formation of a system of international standards in the field of human rights, and the spiritual basis for the reflexivity of legal consciousness in many European countries became common Christian values and moral imperatives consistent with them, which formed the basis of European ideas of social statehood.

Key findings:

Firstly, the conducted research allows us to conclude that overcoming the „gaps in the development" of the legal system of Moldova, which formed both in the Soviet period and in the post-Soviet era, similar to overcoming the „gaps" in the development of European legal systems in the post-war period we have examined, is a necessary condition not only for the full-fledged progressive dynamics of all other spheres of public life involved in the process of pan-European integration, but also the only real guarantee of ensuring the country's national security in the long term.

Secondly, the sustainable development of the legal system of Moldova and its integration into the European political and legal space are not parallel routes that, like parallel lines, never come across. This is an inevitable „crossing of routes", since *the sustainable development of the legal system of Moldova presupposes its deep integration into the space of legal culture and legal values of the European community, regardless of the final political forms that the process of European integration of Moldova will acquire in the near and distant future*.

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