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SYSTEMACY OF LAW AND LEGAL SYSTEM: TO PROBLEM OF TERMINOLOGICAL UNCERTAINTY

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Abstract

The article reveals specific features of systematization of law to overcome gaps positivist concept of theory of law and meet the practical need of streamlining and improving the regulatory material, the formation of a system. Based on the analysis of works of well-known Russian academics, the authors identified features of the structure of the legal system and functions of its main elements. The authors defined the main approaches to the concept and features of systematicity of law. The study found that the positivist approach to law is his justification as a structurally organized system, designed to meet the practical needs of developing, applying and streamlining the aggregate of legal norms (the main elements of the legal system), expressed in the legal acts of the state. The researchers argue that the concept of "legal system" was introduced in the categorical apparatus of the theory of law representatives of positivism. The article defines and describes the main methodological problems of creating coherent theory of the legal system. The authors come to the conclusion that regulatory law creates the possibility of determining the content and conduct of his defense. Normative legal approach allows you to zoom right to the practical needs, the objective to distinguish the right from other legal phenomena, reflecting the higher level of awareness of legal reality.

Keywords: Right, law system, legal, regulation, approach.

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1. Introduction

Legal support of law and order as a precondition for stable and dynamic development of social life determines the creation and functioning of the system, defined in the modern theory of law as "legal system", "system of legislation", "law". The definition of the above concepts is a long scholarly discussion, has no clear understanding and leads to confusion of categories "right" and "law" not only in theory but also legislative definitions, the identification of justice with a system of statutes and other normative expressions.

At first glance terminological uncertainty affects only the theoretical legal discourses, but in practice, negligent in the use of legal categories in the text of the laws or legal practices may hinder the implementation of basic legal principles and the implementation of the law due to the extension of subjective-voluntarism approach to the interpretation of basic concepts and provisions.

Debatable and uncertainty of theoretical views about the nature of system of law prevents meeting the practical need of streamlining and improvement of the existing material, forming system, in which power and generally binding decrees are expressed and embodied in particular formal legal sources.

2. Problem Statement

Due to the fact that the consistency inherent in not only the legal but also the other regulatory structures belonging to the class of social systems, it is necessary to highlight the characteristic features of the legal system. In the Soviet legal science the concept of consistency in the law formed on the basis of positivistic epistemology. In the framework of General theory of socialist law as a systemic manifestation of the social nature of the right determines its place as a legal superstructure over the economic basis of class society (Yavich, 1985).

The lack of recognition of independent value as a phenomenon of law and its theoretical justification in the framework of dogmatic materialism has led to the identification of social unity and system of law. So, even in the later work of Alekseev (1995), highlighting agency normativity and structure as the main characteristics of the law argued that the law of a particular country can be regarded as a single national legal system, the original elements of which are interrelated normative legal provisions, which is developed in the codified acts.

Consistency of law in the Soviet and post-Soviet theoretical research associated with the discipline of law and is disclosed on the basis of structurally functional analysis of the legal superstructure of social relations. For example, in the fundamental work by Kerimov (2000) system of law formulated as a link, grouped according to meaningful characteristics, "certain legal parts in structurally ordered integral unity" (p. 131). The Association, he characterizes the qualities of self-reliance, sustainability, and Autonomous operation.

Attempts to overcome the gaps positivist concepts and to form a systematic theory of law take a modern theorists. They rightly criticize normativity approach to consistency, which is widely used, the systematic character of the exact Sciences, as well as General systems theory by means of their transfer to the social sphere (Antonov, 2014). However, modern scientific criticism of system of law in line with dialectical materialism, warning of the "threat of a false "system" associations" that are based on positivist

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epistemology, restrict the meaning law the concepts of "regulatory complex" or "part of social reality" and abandon the division of law in the absence of clear criteria for such demarcation in the philosophy of law.

Realizing a holistic understanding of systematic law based on normative law researchers either come to the conclusion that there is no need of using this concept (and the system approach in General) in legal science, in particular to avoid contradictions in the "objectivist understanding of systemic" domestic law, or give rise to the eclecticism of understanding of the systemic characteristics of law. So, according to M. Voronin (2013), consistency of law is not special, and the "secondary nature in relation to the General social system". Consistency of the right predefined system of social relations and "state power volition" (Voronin, 2013).

We believe that the lack of a holistic concept of law in positivism leads to the fact that the development of the theory of systematic law based on it is an attempt to find the place of law in the system of social relations.

3. Research Questions

The subject of this study is with an internal unity and integrity of the system of hierarchically organized and structured legal regulations, norms and their complexes as an objective form of expression of systematic law.

4. Purpose of the Study

The aim of the study is to establish the specific properties of systemacity of law and the exercise of its relationship with the concept of a legal system. Modern lawyers are so fond of nurturing their own legal Glossary that I forgot about that legal text is written primarily in the language of its author and is designed to understand native speakers. Developed and many terms have a specific lexical meaning, and must first contact and get closer, because the main task of the General theory of law is not designing the perfect multivalue and most of them are fictitious models divorced from the socio-economic reality, but rather the development of tools to clear those whom it is intended – the citizens.

5. Research Methods

The study was performed on the basis of General scientific dialectical methodological doctrine of the relationship and interdependence of social phenomena and based on this systematic approach to law. System view on the right used to analyze the mechanism of action of law as a coherent object of study. This analysis is carried out by means of scientific methods of induction, deduction, modeling, comparative and statistical method.

Features of the structure of the legal system and functions of its main elements identified using the structural functional method. Examination of the internal and external strategic factors that influenced the formation and development of the Russian legal system is carried out by applying methods of historical reconstruction, historical analysis, comparative legal method.

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To map the views of various researchers on the concept of "legal system", "system of law", as well as scientific notions of systematic rights were used such methods as dogmatic, formal legal method, method of chronological historical and legal analysis.

6. Findings

The analysis of the concepts of "systemic law" in Soviet and Russian legal science allows us to identify the following approaches to its definition: positivist (systematic – is the ordering of law as a system for the purpose of its knowledge, processing and use for the implementation of specific goals, as well as its improvement (Karabasnikov, 1914); system (consistency is considered as a property (quality) of legal phenomena, which means that legal integrity is not formed by the elementary addition of the properties of its constituent elements, but represents the unity of its constituent elements interacting for the realization of a common goal).

Critics of the above-mentioned approach to the concept of "systemic law" consider this approach banal and reflects the truth about the interconnectedness of the elements of plurality. In this regard, we note that it is the specificity of the nature, origin, transformation and development of these relations between the elements within the system (the Central element is the activity subject) and other interdependent systems that distinguishes the legal system from other social systems. In this case, the mechanism of "consistency" will be similar in various regulatory systems of society.

Consistency ("recursiveness" and "self-referencing", Luman (2004) is inherent in all social systems. However, the system of law is a complex concept characterized by the following features:

– integrity, expressed in the fact that the properties of the system are manifested in a variety of relationships of all elements of the system, but the properties of a single element of the system to some extent identical to the system of the whole, as well as in the conditionality of the behavior of the system is not so much the properties of its individual elements, ;

– centricity, which means the presence of one center, acting as a system-forming factor and focusing all elements of the system to implement its targeted functional purpose;

– purposefulness, which is that the links between the elements are mediated by the objectives to be achieved by the system;

– stability and stability due to the existence of long-term relationships between the elements of the legal system, which in turn leads to the emergence of legal principles and legal structures;

– multilevel and hierarchical, reflecting the complex structure of relations, relationships and interdependencies, connecting elements of the legal system into a single whole and predetermining the heterogeneity and inequality of internal and external systemic relations;

– openness due to the interdependence of internal relations of the system with the external environment in the process of achieving the goal;

– the dynamism associated with the fact that the law arises, functions and develops in time.

The need to analyze the system of law and its systematic study to unite the "single logical circle" of the totality of all legal phenomena observed by lawyers, pointed out by Russian legal theorists in the XIX century. In the early twentieth century, the concept of "legal system" ("system of law") is introduced into

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scientific circulation, first of all, with the aim of a holistic study of a disparate set of legal facts from the standpoint of determining their place in the General subordinate to the Supreme unity of the "cycle" of law.

The main element of the legal system (system of law) called the rules of judgment (rules of law). The legal system – is "the expression of a single, internally consistent and subject to the laws of logical thinking of the will of the legislator" (Nolde, 1908, p. 2388). This approach to the concept of the legal system follows from the classical definition of "system" as unity in the set and during the rule of the encyclopedia of law reflected the need for a comprehensive knowledge of the law and the order of the legal material.

Thus, it can be concluded that the concept of "legal system" as an integral, self-sufficient, logically structured, closed system was introduced into the categorical apparatus of the theory of law by representatives of scientific positivism not to describe the law and reveal its essence, but with the pragmatic purpose of separating legal phenomena from other manifestations of social reality, structurally functional analysis and ordering of the legal phenomenon, the use of the system of law as a means of legitimizing certain ways of creating and implementing the norms of positive law, research of legal impact as an integral system.

In place of scientific knowledge of law as an ideal image of self-organizing social reality in order to detect its essential characteristics comes positivist approach to law as a structurally organized system designed to meet the practical needs of the creation, application and ordering of a set of legal norms (basic elements of the legal system), expressed in the legal acts of the state. That is why the development of the concept of "legal system" in the General theory of Russian law stopped during the formation of Soviet law and then received a "second birth" in the systematization of Soviet legislation in the second half of the 50's – the first half of the 80's of the twentieth century.

The approach of Soviet jurists to the legal system was based on the concepts of dialectical materialism about the basis (production relations) and superstructure, including legal superstructure. The legal system was understood as an ordered set of legal norms with their own qualitative certainty arising from their abstract connections, interdependencies and contradictions.

The lack of scientific justification of this concept led to a plurality of interpretations in relation to the structural elements of the legal system. For example, Tikhomirov (1979) was a supporter of a narrow approach, including in the legal system a set of legal acts and their associations, goals and principles of legal regulation, as well as system-forming relations. At the same time, Alekseev (1980) considered the concept of "legal system" wider than "law". Law, in his opinion, being a "special institutional socio-class normative formation", was included as an element in the legal system, along with other elements of legal reality (Alekseev, 1980). The position of the Soviet jurists was United by the normative meaning of the legal system.

In the post-Soviet and modern period in the Russian theory of law is mainly observed the rejection of exclusively normative meaning and the transition to a broader (comparative) interpretation of the legal system as part of social reality, limited, as a rule, within the framework of a separate state. Researchers are trying to overcome the one-dimensional approach to the legal system and demonstrate the unity of law in all its manifestations. Thus, representatives of communicative legal understanding describe the legal system as an intellectually identified phenomenon from legal reality, including legal phenomena (legal texts and

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means of legal legitimation) directly interacting with society to ensure social objectification and internalization of legal texts of a particular society. According to Polyakov (2003), the mechanism of the law (its system functioning) can be disclosed only within the framework of the legal system.

Proponents of the activity approach to law define the "legal system" as a "relatively independent public education" with "independent laws of origin, development and functioning." The boundaries of such a broad definition are the components of the legal system: objective law in the unity of its form and content, legal practice within the framework of legal relations and legal consciousness (legal psychology and legal ideology). System-forming ("cementing") factors of the legal system, according to Kartashov (1991), it should be considered the legal activities of specially authorized organizations, individuals and their groups, legal principles, norms, legal relations, etc.

An even broader definition of the legal system was proposed by Matuzov (1997). The scientist believes that any legal phenomenon characterizes the legal system, which he defines as "a single multifaceted normative-legislative form of social relations" (Matuzov, 1997, p. 25). At the same time, such a wide (almost limitless) set of legal phenomena in this concept performs rather narrow functions, namely, the means of public power intended for regulative organizing and stabilizing influence on people's behavior.

It should be noted that such features of the legal system as self-organization, self-regulation (the ability to maintain the integrity and properties of the system), adaptability, hierarchy, the ability to self-development and the creation of the necessary elements and connections between them are distinguished by representatives of various concepts of law.

We believe that the lack of a coherent theory of the legal system in Russia is due to the following methodological problems:

– substantiation of the concept of "legal system" on the basis of the objectivist scientific platform of dialectical materialism, which leads to the consideration of law as a legal setting and its conditionality by the laws of the development of basic social foundations, for example, industrial relations. As a result, the legal system is defined either as a normative complex or as a separate part of social reality. The first approach limits the legal system to the sphere of objective law and denies the influence of subjective creative activity on the development of law. In addition, the system as a set of normative acts is considered in the conceptual framework of the formal-logical definition of consistency, which generates a mixture of the concepts of "system" and "system" (Tikhomirov, 1996). The second approach leads to an arbitrary adaptation of the provisions of the General theory of systems to the legal reality (Skorobogatov, 2013), the blurring of the composition and structure of the legal system, repeating the structure of social relations, as well as the content of system relations as a subject of legal knowledge;

– wide and not always justified use of comparative jurisprudence for the theoretical definition of the "legal system". For a long time in the Russian theory of law, David's (1988) ideas about the typology of legal systems were applied without proper scientific criticism. It should be noted that the researcher did not formulate the basic concepts of "law" and "legal system" in his works (David, 1988). Comparative studies have not developed a unified approach to the understanding of the "legal system", which is defined as the "receptacle" of all manifestations of national law, and as a set of related national legal systems, United by common legal cultures and other legal phenomena.

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In addition, comparative and theoretical studies have different aims and specific features. Comparative law deals with the description of the multidimensionality of the legal picture of the world and operates with socio-cultural concepts, using them in formal legal and comparative legal aspects (Saidov, 2000). Constructions of the General theory of law can not be based on abstract categories that do not have a clear interpretation, since these concepts determine the legislative definitions and uniform approaches to norm-setting and law-realization in General;

– the lack of methodological justification for the inclusion of certain elements in the legal system, which undermines the scientific value and potential of the concept under study, introduced into the theory of law to study law as an ordered structurally integral unity. The researchers describe all the new objects in the legal system, without explaining the criteria of legal phenomena by which they are United in the legal system. Therefore, the structure of the legal systems are dissimilar concepts in different spheres of social reality (Antonov, 2014).

For example, Sinyukov (1994) defines the legal system as a "social organization" that includes "the main components of the national legal culture" (p. 3), as well as legal ideology, legislation, legal practice, law enforcement agencies and organizations. By pushing the concept of "legal system" to the limits of legal reality (Chernenko, 2004), the researchers create an unprecedented situation of combining the unconnected into a single whole, devoid of theoretical and practical significance. As noted by Korkunov (1914), "with the recognition of law only a set of phenomena, the former absolute opposite of legal and non-legal is replaced by a purely relative distinction. In phenomena, it is impossible to find absolute contrasts" (p. 29);

– the use of the concept of "system" for a wide range of legal phenomena, for example, the legal system, the system of law, the system of legislation. To date, the legal science discusses the distinction between the concept of "legal system" and "system of law". Thus, according to Bartsits (2000), Federal, regional legal system and the acts of bodies of local self-government in unity constitute the system of law of Russia. On the Contrary, Kartashov (1991) considers the system of law to be a narrower concept and considers it as a subsystem of the legal system of society. A Central element of the legal system the system of law determined in the doctoral thesis of Ismagulova (2015). According to Vengerov (2000), "legal system" and "system of law" are different concepts. In the theory of law, the concept of "legal system" can only be used to characterize the national cultural and historical differences in the development of legal systems of different States and peoples. Doctrinal uncertainty leads to the creation of legal norms similar to the provisions of art. 1188 of the Civil code of the Russian Federation (hereinafter the civil code), which establishes that in the case of action in the country of "several legal systems", applies "the law of this country»;

– lack of distinction between the concepts of "legal system", "structure of the legal system", "system of law" and "structure of law". Thus, Yavich (1985) considers the legal system, including as "the entire existing structure of law in the unity of its concrete and abstract forms" (p. 52). As Surilov (1989) believes, "system of law" and "structure of law" are synonymous concepts. This view is shared by other researchers (Sinyukov, 1994).

The confusion of the meaning of these categories is caused by the dominance of the perception of law either as a system of norms determined by social relations and protected by state-power coercion or as volitional imperatives that are firmly established in the public consciousness and determine the behavior of

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people. This approach means that the right should be seen as a means of state influence on the conduct of people used by the state at its own discretion. In this case, the legal criterion for assessing the activities of the state, as well as the effectiveness of the legislation, is excluded.

Therefore, it is difficult to agree with the position that the autonomy of law from the will of the legislator and taking into account its intersubjective qualities will not allow to justify the inherent property of the law of consistency and integrity. No less controversial position that positive law is Autonomous and is "a product of the will of the state" (Antonov, 2014). The Constitution of the Russian Federation enshrines the rule of law over the law, as well as the conditionality of "the meaning, content and application of laws, the activities of the legislative and Executive authorities, local self-government" with human and civil rights and freedoms in accordance with universally recognized principles and norms of international law. The definition of law includes the principles of human rights and freedoms, justice, equality, inevitability of legal responsibility, in a concentrated form reflecting the essential features of the law. Taken in unity and interdependence, they constitute a meaningful characteristic of the system of law.

7. Conclusion

Based on the above, the right cannot be identified solely with the system of enforcement and other normative expressions of state activity. Adhering to the position that the right can exist without the state, we consider fair expressed Alekseev (1919) thought that "between law and the state ... there is some necessary connection ... with full clarity is revealed when historical development has reached completeness and when in history the perfect embodiment of the idea of law and order" (p. 153).

Therefore, the need for state forms of organization of power lies in every law and order. As Florensky (1986) wrote, "the right...is the most essential side and even the condition of the existence of statehood, – if only not to put between them an equal sign" (p. 181). The state and public authorities endowed with special powers for the adoption of laws, the publication of normative legal acts that establish a particular legal institution and forming a unified system of legal regulation by making all elements of society consistent look. "Building material" of these institutions are the norms developed by society and built into regulatory systems. The norm as an expression of due worth and should stand above all the factors and facts involved in regulatory processes.

As a result of the above, the methodological miscalculations noted earlier in the understanding of the legal system should be supplemented by an indication of the need for lawyers to construct the unity of law, taking into account its consistency and the need to streamline and improve the normative material in the field of state-organized law (positive law). Normative consolidation of law creates the possibility of determining the content and conduct of his defense. Normative legal approach allows to bring the law closer to practical needs, to distinguish objective law from other legal phenomena (for example, legal consciousness), reflecting a higher level of awareness of legal reality, as well as building regulatory systems based on the collection, description and scientific systematization of a variety of norms.

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