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NATIONAL INTERESTS AND THEIR RELATIONSHIP TO THE LAW

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Abstract

The article is devoted to substantiation of theoretical and semantic content of national interests concept, peculiarities and scientific and practical importance of legal provision of national interests. The author proves that the formation, strategic planning and legal provision of national interests have become one of the main functions of the modern state, as well as the presence of a real correlation of interests and law, their dialectical relationship and interdependence. The relevance of the topic of the research is conditioned by both theoretical and practical importance of the whole set of issues concerning the formation of a set of national interests, as well as those related to ensuring their implementation in the conditions of modern Russian statehood, i.e. the theory of national interests. The national interests of the Russian Federation are defined as objectively significant needs of an individual, society and the state to ensure their protection and sustainable development, which determines the complex multilevel systemic nature and indicates the target component of this scientific phenomenon. National interests should be seen as a reflection of the needs of society and the state in achieving the goals of their own existence. In terms of law, national interests are dictated by the objective and expedient needs of society and legally enshrined, officially declared directions of state policy in all areas of life of the country. National interest, as a theoretical and legal category, reflects the agreed recognition by society and the state of the objective needs of their mutual (national) development.

Keywords: Category, law, legal enforcement, national interest, realisation, theory

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1. Introduction

The relevance of the topic of research is due to the need to develop a general legal theory of national interests in order to achieve a multilevel balance and reliable protection of individual, group, public and state interests and their effective implementation. The totality of the named interests constitutes the system of national interests, and it is responsible for the sustainable, stable development of society and state, which allows to solve the national interests of future generations of Russians in the process of legal development of the state

The theory of national interests, including the mechanism for ensuring their realisation, is based on numerous philosophical-legal, general theoretical and sectoral studies.

The study of individual problems in relation to the theory of national interests has been conducted in the works of (Belyaeva, 2020; Proskurin, 2017; Shatkovskaya, 2020) and others.

2. Problem Statement

Despite the fact that certain aspects of ensuring national, mainly state interests, and a variety of scientific studies devoted to national security have been developed, the problem of understanding the nature, essence and content, role and significance, as well as the mechanism for ensuring the implementation of national interests of modern Russia in its general legal perspective remains virtually unstudied, which predetermined the goals, objectives and methodology of this study.

3. Research Questions

The object of the study is a set of social relations arising in the field of formation and legal safeguarding of national interests by means of an appropriate legal mechanism and a real correlation between national interests and the theory of law. The subject of the study is the legal framework of national interests, as well as the scientific approaches, legal categories and concepts of the theory of national interests and the theory of law.

4. Purpose of the Study

The aim of the study is to provide a systematic and comprehensive scientific exploration of the theory of national interests, including the nature, essence and content of national interests and the legal provision for their realisation, as well as the identification of the correlation between these categories and the main categories of legal theory.

5. Research Methods

The methodological basis of the study was, first of all, the dialectical method of cognition as a universal and universal basis for the formation of the most abstract conclusions in the study of concepts and trends of transformations in a particular sphere. General scientific methods also played a significant role in the research: the method of logical analysis and synthesis, induction and deduction, the method of

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abstraction and ascending from the abstract to the concrete. The work also used traditional for the legal science methods: formal-logical, system-structural, modeling, specific sociological research, formal-legal, textual, statistical, analytical.

6. Findings

The term "national interest" has firmly entered the modern lexicon of law and politics. Of course, the main thing in this term is not the interests of any nation in the sense of an ethnic group (indigenous, titular, majority), but the unity of interests of citizens and society within a particular sovereign state, i.e. the interests of a people (multinational people) integrated into the state community on the basis of law. When we speak about the unity of interests, we do not assume a hundred percent coincidence of personal interests of all citizens inhabiting a particular state. Such an arithmetical coincidence of personal interests cannot exist in nature - the essence of humanity is in its diversity and difference of personal interests. The unity of personal interests in this diversity is achieved by the harmonisation of fundamental interests, which is a necessary condition for the development of individuals, society and the state and their security. It is such agreed national interests of citizens, society and the state that are expressed in law and enshrined in the Constitution - the Basic Law of Russia as a state governed by the rule of law.

National interest is a category expressing the understanding (subjectivisation) of the objectivist needs of society. In our opinion, national interest is determined by the most meaningful criteria that characterise the phenomenon of the state as a whole, as well as the implementation of its functions, regardless of the ethno-national component.

Often the right is seen only as a means, an instrument. Yet law, as a measure and norm of human freedom, is of great value. The cruel alternative to it is lawlessness, lawlessness, social chaos. Therefore, the principle of the rule of law lies at the heart of the modern world order and the constitutional order of the modern state, including Russia.

An important issue for our analysis is the relationship between national interests and law, their dialectical relationship and their conditionality

Here is how Udartsev (2017) described this relationship: interests, especially those relevant and backed by the power of the state, have a significant impact on the content and structure of law, the implementation of international law into national law, on international relations and on the moral and political perception of history. Interests in today's world - especially national and state interests - significantly influence legal policy, the interpretation and application of law, the selective appeal to and interpretation of certain principles, norms and precedents of international law. As a result of the clash and interaction of different interests in the context of a system of external and internal factors affecting them, a dynamic equilibrium is established in the law, a situational reconciliation between competing multi-level actors and their interests. New challenges of time, needs affecting interests can change their content, orientation, intensity of manifestations, charge/discharge their energy potential, set in motion the system of law, take it out of equilibrium or stabilize (Udartsev, 2017).

On the whole, agreeing with such an assessment of the relationship between interests (of course, national interests, although the scientist does not name them specifically - author) and law, in this case it would be advisable, it seems, to speak not only about the interpretation and application of law, but also

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about law-making, which is also determined by interests, that is, to consider the relationship between law and national interests in an expansive format, so to speak. We also note that national and state interests are opposed to each other; we believe otherwise.

Consideration of the problem indicated in the title of the article we believe it advisable to continue with the following statement: there is no doubt that the law is the most important regulator of social relations in society and the state. However, the "legal measure" is far from being a constant value; it undergoes changes with the change of historical events, this or that circumstance, etc., which, of course, affects the problem of legal provision of national interests.

According to Kant (1994), law 'can be both a source of restraint to arbitrariness and an instrument of disregard for human freedoms' (p. 73).

For his part, the famous German jurist Iering (1991), in his work "The Struggle for Law" (1872), reinforced the argument for the paradigm of law as a legally protected interest. Every legal position is in contact with a contrarian position and, in seeking to preserve itself, leads to its destruction. The maintenance of this balance of power by the state is a constant counterbalance to lawlessness. The changes occurring in the law cause resistance, especially when the interests it protects take the form of a priority right.

Characteristically, there is no unified approach to the definition of the concept of law among scholars, there is a controversy of opinions, which has received this figurative assessment: a protracted and widespread disease of legal science, expressed in the lack of unity of views of legal scholars on its basic, fundamental categories (Serkh, 2014).

Therefore, let us consider only some of them, allowing us to extend them to the subject matter of our study, relevant to it.

And let's start with the opinion of the classic of modern general legal science - Alekseev, who, noting the multiple meanings of the term "right", writes: "At the same time with all its multiple meanings the word "right" expresses also something unified. In its most abstract form, it denotes socially justified freedom of behavior, justified, normal and in this sense normative - something that people "may", i.e. it is allowed, do and that, consequently, is accepted and supported by society. In turn, in his opinion, 'Law in the legal sense is written law; it is covered by the concept of positive law, i.e. the law that is available, really and officially existing, 'made' by people and related to their activities, to the activities of official state bodies' (Alekseev, 1995).

It is not difficult to see that the above can also apply in full measure to the legal provision of national interests, especially in the part where the scholar speaks of the relationship between law and the activities of people and official state bodies. The latter circumstance manifests itself in the process of both formation and coordination and implementation of national interests, in which the so-called "human factor" (human energy) - human activity in its various manifestations - is inevitably involved. "Law is inconceivable outside the conscious, volitional activity of people" (Averin & Groza, 2020, p. 77).

Alekseeva believes that the following attributes (properties) of the relationship between national interests and law illuminate to an even greater degree: generally binding normativity, "universality" - the law is capable of making certain general rules (norms, principles) obligatory for everyone in the country, on a given territory through its documentary form; certainty of content - written law enables the content

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of rights and obligations, the conditions for their arising, the possible consequences of non-compliance, etc., to be strictly recorded in written documents. Only norms and principles fixed in written documents are properly guaranteed by the state and can be equipped - also through written documents - with procedures and mechanisms for their real, guaranteed implementation" (Alekseeva, 2015, p. 91).

We believe that all the above-mentioned characteristics of law, without any "stretch", can be extended to the entire process of legal safeguarding of national interests. The correlation between law and national interests is particularly clear if we proceed from the principle of the external form of law - the sources of law, such as laws, regulations and other official documents.

At the same time, we note that although Mnatsakyan did not use the term "national interests", he actually spoke of them in the following way when describing the right: law as a normative institutional formation, one of the manifestations of social exclusion, 'returns' to people by subjective rights, very significant in terms of people's interests and the needs of social progress. This circumstance should be kept in mind: it seems very important for understanding the role of law in human progress (Mnatsakyan, 2004). Let us ask ourselves the question: are not the interests of people and the needs of social progress national interests? It seems that they (interests and needs) can be equated, albeit with a certain degree of conditionality, to national interests.

Another prominent legal theorist, Baitin, devoted a special monograph to law (or rather, its essence), in which he writes the following: on the basis of a generalization of the above attributes of law that form the core of its normative understanding, the following general definition of law may be proposed: law is a system of generally binding, formally defined norms that express the state will of society, its universal and class character; issued or sanctioned by the state and protected against violations by the possibility of state coercion; is an authoritative and official regulator of social relations. ... The law existing in real life should be considered taking into account the specification of its state-will, normative and power-regulatory attributes in relation to a particular stage of historical development and the specifics of this or that country (Baitin, 2005).

To a certain extent, Belyaeva's (2020) words about the historical development and peculiarities of this or that country correlate with national interests and their enforceability by law. For example, here is what he notes in this direction: It is known that many citizens do not know how to defend their legitimate interests in the new conditions, they are not always able to restore their violated right painlessly and in an acceptable time frame. In this connection, there is an urgent need for legislative measures against arbitrariness, bureaucracy, corruption, commercial activity, disrespect for individual rights and other violations of the law and state discipline by officials which are still quite common.

As stated earlier, let us consider some other approaches to clarifying (defining) the concept of law. But first let us turn to such a philosophically generalized and profoundly meaningful phrase: law is the sphere of the proper and the possible, the condemned and the encouraged, the incentives and restrictions (Matuzov, 2004). This judgement is directly related to the subject matter of this study, in particular, to the objective and expedient needs of an individual, society and the state - national interests, conditioned by law as a means of their regulation.

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In his monograph "Essays on the General Theory of Law" Voplenko (2019) writes: law is the state will resulting from the struggle and cooperation of political forces and containing in itself an official measure of freedom of members of society.

In the definition of law proposed by this scholar, the attributes of law are visible; and such of them as normativity, formal certainty and others, in his words, "call" for "respectful attitude to the official sources of law", which has already been mentioned, and in relation to the relationship between law and national interests.

It is characteristic that Abalkin stands firm on the position of a normative understanding of law: normativity manifests itself in the fact that law, by establishing norms, limits, typical scales of human behaviour, thereby normalises public life, brings the developing human activity to the norm. The norm itself, being the unity of the proper and the essence, is aimed at suppressing and pushing out of the practice of social life undesirable from the perspective of the root interests of the state variants of behavior, as well as to consolidate and stimulate socially useful activity (Abalkin, 2014). Thus, this scientist testifies to the indigenous interests of the state in relation to law, its normativity (we believe that it is not a mistake to consider the indigenous interests of the state as national - author).

He continues by noting: the need and interest, having launched the process of the individual enforcement mechanism, retain their effect at its subsequent stages in a removed form, as their basis (Trukhanov, 2016). Sokolov (2013) believes that knowledge of the degree of compliance of an interest with the current legislation is useful in the sense that it provides additional arguments in favour of an interest consistent with the current legislation, or, on the contrary, indicates the negative attitude of positive law to the formulated interests and puts the individual in advance in a dilemma, which way he should choose: lawful or unlawful. Consequently, the above fragmentary judgments clearly show the correlation of needs and interests with the law in force.

As always, Molchanov (2017) figuratively and concretely describes the relationship between legal norms and the interests of the whole society: legal norms, being the unified scale (standards) of human activity, define the limits of people's actions, the measure, framework, volume of their possible and proper behaviour. It is with the help of law, laws the subjects of social relations - individual and collective - become under the jurisdiction of the state, which in the interests of society prohibits or permits certain actions, limits or expands the scope of personal desires and aspirations, grants rights, assigns duties, responsibility, encourages useful and suppresses harmful activities. The scholar defines legal norms as benchmarks of human activity, which is placed under the jurisdiction of the state in the interests of the whole society and the state.

When considering the problem of the relationship between national interests and law (in fact, their legal enforcement), two important aspects should be emphasised.

The first of these is expressed in the so-called shadow law. In modern legal science, the most detailed and precise definition of shadow law is given by Baranov: "it is a set of asocial mandatory regulations, prescriptions, symbols, rituals, gestures and jargon established by the participants in social relations themselves, through which all stages of illegal activity are regulated and a shadow law and order is formed, protected by special moral, psychological, material and physical sanctions". At the same time,

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attention is drawn to the fact that shadow law is a kind of unofficial law which is in a state of struggle with official law (Baranov, 2009).

For our part, let us say that the subject of shadow law is the same totality of social relations as positive law, but it is regulated with directly opposite goals - to secure and protect those social relations which are prohibited by positive law under penalty of criminal or other legal liability, or which are not directly prohibited but contrary to moral and other social norms.

Consequently, shadow law is also capable of having an impact (rather a negative one) on the legal security of national interests, a circumstance that cannot be ignored in their formation, negotiation and implementation.

The second aspect is more theoretical in nature and lies in the need to distinguish between law and law, a concept which is most thoroughly outlined in this approach by Afinogenov (2020): the libertarian concept is a new independent direction in the new general theory of distinguishing between law and law, rather than a variant of natural law. The libertarian concept and the natural law concept are different directions of the distinction between law and law, having both common and specific characteristics. The specifics of the libertarian concept is, in particular, that it does not have the dualism of simultaneously functioning systems of 'right' (ideal, proper, natural, etc.) law and 'wrong' law inherent in natural law ideas... The libertarian concept is focused on clarifying those relations and conditions that are objectively necessary for the existence and operation of law.

Without going into the commentary on this opinion expressed by a prominent scholar, however, let us refer to the position shared by Kudryavtsev (2004) regarding the understanding of law norm: a professional lawyer ... must have a clear and definite position: no wish, belief or opinion can be considered as a legal norm as long as they are not expressed in a duly adopted legal act. And to conclude the analytical review of approaches to the definition of law in relation to national interests let us recall the well-known definition of law as a system of legally secured, protected by state coercion interests (Pastukhov, 2010). At the same time it should be remembered that one should not pin unrealistic hopes on the law, it is not omnipotent. It is naive to demand from it more, than it knowingly can give, it must be given the place and the role that arise from the objective capabilities of this institution. Unrealistic tasks can only compromise the law. Therefore, it cannot be raised to an absolute (Proskurin, 2017).

7. Conclusion

It is thus possible to conclude that there is a real correlation between interests and law, their dialectical relationship and their interdependence.

The existing techniques of legal regulation are based on its direct connection with the soil, more precisely with the earth's surface, which, in accordance with the law of nations, belongs to a community of people, which first mastered a common territory and created an independent state on it. Nothing less than the territorial sovereignty of the State, including for the time being both the surface of the Earth and the sea and the airspace, forms the basis of the territorial principle of law (Baburin, 2000). This principle for the most part formulates the thrust of the international legal relations, which are the interaction of the territorial legal foundations formed at the state level, secured by legislative acts, in essence, of international law.

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We believe that harmonization, which in fact means friendly grouping, implies the same uniformity, but of a more peaceful nature, and leads to the creation of a voluminous, spatial system of legal regulation, securing the preservation of original national components and their mutual links, the main qualities and functions of cultural and legal influence on the digital system of legal activity (Bidova, 2020). In our opinion, legal coexistence is the most expedient and rational alternative to the global officialization, caused by the digitization of objects of the present reality, transforming them into content. Legal coexistence is a form of co-existence of different subjects of law, which benefits them all (Shatkovskaya, 2020).

The development of national interests implies the implementation by the state structure of a multitude of internal and external state goals. Internal objectives include the following: the formation of a system of strategic management, research and forecasting as well as relevant state bodies; the dispersal of the state power structure and the provision of broad operational management functions to private organisations; the distribution of regulatory competencies and responsibilities for their implementation among state and non-state actors; and the formation of an effective legal surveillance mechanism to obtain realistic and realistic results. The main external objective is to organise, co-ordinate and steadily implement a unified government strategy for legal evolution on a global level, and to form and develop cross-national legal forms of regional significance.

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