

The Security of the Russian Federation and the National Legal System

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Abstract:

In the article, considering one of the most controversial concepts in the theory of law, as a national legal system, it is substantiated that such negative legal phenomena as contradictions in law, its gaps, legal nihilism, etc., should not be included as structural elements of legal system, because the latter is the result of the activity of the state, created to solve its goals and objectives, acting as one of the most important aspects of the sovereignty of the state, which, in turn, is the main subjects that ensure national security.

Keywords:

Russian federation; national legal system

I. Introduction

The relevance of this scientific article is due to the fact that the legal system is one of the most debatable concepts of the general theory of law, which, in our opinion, is directly related to both the sovereignty of the state and national security.

II. Research Methods

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

General Philosophical

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

III. Results and Discussion

3.1 On the Concept of the National Legal System

Law as a socio-political institution is distinguished by a complex, multifaceted nature, it is a multifaceted phenomenon of social life, manifesting itself in different ways in various spheres of public life. At one time, Sergei Sergeevich Alekseev noted that it "... is a phenomenon that is prohibitively complex, hardly amenable to scientific definition, perhaps even mysterious, somewhat incomprehensible. It is not for nothing that one word "right" has so many meanings, different meanings and at the same time hiding something single, solid"[1].

In particular, law underlies the legal system, which in legal science is understood as an integral complex of legal phenomena, due to the objective laws of the development of society, conscious and constantly reproduced by people and their organizations (states) and used by them to achieve their goals”[2].

It seems that the category of “legal system” is perhaps one of the most controversial. Theorists offer a variety of interpretations of it, focusing on certain structural elements of the right system. For example, Vladimir Nikolaevich Kartashov defines the legal system as “a single complex of organically interconnected and interacting legal phenomena (law, legal awareness, legal practice, etc.), with the help of which a purposeful impact is made on the behavior of people, their teams and organizations and legal providing (servicing) various spheres of public life”[3].

There is a position of those scientists who consider the legal system as “a specific historical set of law (legislation), legal practice and the dominant legal ideology of a particular country”[4; 5].

3.2 On the Role and Significance of Negative Legal Phenomena as Structural Elements of the National Legal System

In the context of this study on the problem under consideration, attention is drawn to the position of Yuri Aleksandrovich Tikhomirov, who includes four groups of elements in the legal system: a) legal understanding - legal views, legal awareness, legal culture, legal theories and concepts, as well as legal nihilism; b) lawmaking as a cognitive and procedurally formalized way of preparing and adopting laws and other legal acts (apparently, normative legal acts - VK); c) legal array - a structurally formalized set of officially adopted and interrelated legal acts; d) law enforcement - ways to implement legal acts and ensure the rule of law[6]. It should be borne in mind the ongoing dispute between jurists about the role and significance of negative legal phenomena (legal nihilism, gaps in law and its inconsistency) in building a legal system as such.

In our opinion, these and other similar phenomena can hardly be attributed to the content of the legal system, because, as Sergey Sergeevich Alekseev quite rightly pointed out, “the systemic world is the sphere of official legitimized (maybe legalized - Vladimir Valentinovich Kozhevnikov) and conscious legal forms mediating from the outside the order initially given to people, setting a reasonable framework for “possible” and “due” [7]. By the way, earlier the scientist argued as follows: the broadest concept, covering all legal phenomena without exception, is “legal reality”. “But in it, in this extremely broad concept, active elements are singled out, one way or another related to positive law and closely related to each other. This is the legal system”, which was interpreted by the scientist as “...all positive law, considered in unity with other active elements of legal reality – legal ideology and judicial (legal practice)”[8].

In our opinion, for evaluating the characteristics of the legal system, one should use the concept of “legal life” which was one of the first in domestic jurisprudence developed by Alexander Vasilyevich Malko[9]. Defining the theoretical foundations of “legal life” Nikolai Ignatievich Matuzov pointed out that it is “a reality that people and their teams inevitably and continuously face, regardless of their desire” 10].

An analysis of the legal literature shows that there are also authors who, when considering the evaluative aspect of the national legal system, show inconsistency. So, on the one hand, Maria Vladimirovna Zakharova believes that negative legal phenomena (legal nihilism, gaps in law and its inconsistency) can hardly be attributed to the content of the legal system, and on the other hand, identifying the legal system and legal life, the author argues that the latter, “manifesting itself outside not only from the standpoint of the proper and possible as a legal system, but also in the fullness of negative manifestations”[11]. It is difficult to agree with the author, who believes that “for the evaluation of the legal system ... it would be more logical to use the category of “legal life”[11].

In the legal literature it is noted that legal reality is all manifestations of the legal life of a society of collective and individual subjects of law; legal activity and its results (law-making, law enforcement and other acts), offenses and legal responsibility, legal thinking, legal education, deformation of legal consciousness (legal nihilism, legal demagoguery) and others, i.e. all legal elements, both ordered and those in the stage of ordering (chaotic) [12].

3.3 Legal System As A Result of the Activity of the State

Despite the debatability of the issue of the concept of a legal system, in our opinion, in the context of this issue, special attention should be paid to the position of Robert Vachaganovich Yengibaryan and Yuri Konstantinovich Krasnov, who, speaking about the legal system, write that it is “the result of the state’s activities, due to objective laws development of society and is necessary for the state to achieve certain goals”[13]. In principle, this provision does not contradict the concept of a legal system, which is interpreted as “a whole complex of legal phenomena, determined by the objective laws of the development of society, conscious and constantly reproduced by people and their organizations (the state) and used by them to achieve their goals”[14]. Lyudmila Alexandrovna Morozova reasonably believes that “the legal system reveals the legal development of a country, a particular people, features that are unique to this state”[15]. In this regard, one should agree with scientists who, considering that the formation of Russian statehood should be based primarily on law, emphasize the following: “Legality, in relation to state power, in political science is also understood as a recognized legal basis to manage the affairs of society”[16].

It seems that Vitaly Viktorovich Sorokin also shows some inconsistency in the issue under consideration, who first argues that negative legal phenomena (offenses, etc.) are clearly not suitable for the role of necessary, functional units of the legal system, because “out of the entire abundance of legal phenomena and elements of the legal system, it is more expedient to attribute what is necessary for an effective process of legal influence on public life, for a purposeful beneficial effect on the consciousness and behavior of subjects of law, "but then he asserts the diametrically opposite”... the exclusion from the concept of the legal system of negative legal phenomena cannot be absolute”, “an analysis of the legal system indicates that during the transitional period, the elements of the legal system are experiencing a crisis in terms of their organizational, functional and other aspects.” The author is convinced that the exclusion from the concept of the legal system of all negative legal phenomena (blankness of law, legal nihilism, inconsistency of sources of law, etc.) does not contribute to the reflection of the objective inconsistency of social development in it, deprives the studied phenomenon of an internal source of development. Moreover, the scientist believes that the analysis from the considered radical position of the transitional legal system will lead to the denial of the very fact of the existence of the legal system in the transitional period due to its many shortcomings[17; eighteen]. In another, earlier work, Vitaly

Viktorovich Sorokin writes that “... negative legal phenomena can also be included in the scope of the concept of a legal system, but only those that inherently characterize an element of the system as its necessary, functional unit and constitute its immediate content ... Disorganization and disharmony of the legal system in the transitional period is inevitable, therefore, it is not possible to distance negative legal phenomena from it”[19].

3.4 National Legal System as an Element of State Sovereignty

It seems that one should also take into account the fact that the national legal system “is the most important element of state sovereignty”, with the help of which “the state makes its decrees binding, performs its internal and external functions”[3]. In principle, this provision corresponds to the point of view of Yuri Aleksandrovich Tikhomirov, who believes that national legal systems are created and operate “as a manifestation of the sovereignty of the state, using and protecting their law for their own purposes”[6].

In turn, the sovereignty of the state, understood as the competence of the state in relation to its territory, which “characterizes the legal nature of exercising state power, is the necessary criterion that makes it possible to distinguish the state from other public law unions, to delimit the sphere of power of each state as a subject of sovereign power within its territory from the sphere of power of other states “20] is most directly related to ensuring state security.

3.5 Ensuring National Security as a Function of the State

Elena Igorevna Umrikhina believes that “since ensuring security is one of the primary state functions, the legal basis for security measures is beyond doubt”[21]. Sergey Vadimovich Stepashin, considering the sovereignty of the country and its security in the same row, understands the latter as “... the security of the qualitative state of social relations that ensure the progressive development of man and society in specific historical and natural conditions from dangers, the source of which is internal and external contradictions” [22]. Nikolai Dmitrievich Kazakov defines security as “a dynamically stable state in relation to adverse influences and activities to protect against internal and external threats, to ensure such internal and external conditions for the existence of the state that guarantee the possibility of stable comprehensive progress and its citizens”[23].

It is easy to see that the author considers the security of man and society solely through the security of state institutions. And this is quite understandable and understandable, because “... only a strong state and strong power can be guarantors of natural human rights, freedom and dignity of the individual”[22].

Marat Viktorovich Baglai and Boris Nikolaevich Gabrichidze quite rightly noted that “... the people act as a kind of guarantor of state sovereignty, because any infringement of the independence of the state, belittling the rule of power means a violation of the fundamental interests of the people, creates sources of internal or international conflicts”[24] .

Sovereignty as an integral and most important characteristic of the state, which is one of the most important subjects that ensure national security, in addition to public and other organizations and associations, as well as citizens participating in ensuring security in accordance with the law.

An analysis of the national security strategies (doctrines, concepts) of the newly independent states and leading countries of the world allows scientists to conclude that the

doctrinal vision of national security includes a number of structural elements: firstly, the main (established) national interests, which are usually understood as those that directly affect the sovereignty and territorial integrity of the state, ensure non-interference in the internal affairs of other states and, therefore, the condition for the existence of the state as an independent and self-sufficient subject of international law; secondly, the mission of the country at a certain historical stage (the actual doctrine that reflects national interests in their specific understanding of the highest bodies of state power). This element is not determined by each state, but only by those that position themselves as a global or regional leader (at this stage, these are the USA, Russia, Germany, France, Great Britain, China). The implementation of such a mission is not only rational - one of the goals of its implementation is glory, which is the recognition of your superiority by other peoples; thirdly, the definition of potential threats, the list and degree of danger for each state is individual, which does not mean that it is impossible to determine universal threats for all countries (for example, a military threat, terrorism, cybercrime, drug trafficking, etc.) ; fourthly, a list of potential antagonists (enemies) of the state. Today, individual states or their unions, as well as individual military- political, religious, separatist, extremist and other groups (drug cartels, etc.), or even individual hostile individuals can be considered such enemies; fifthly, a specific target set, developed and implemented not only by the highest state bodies authorized to develop national security policy, but also by all other actors (both governmental and non-governmental) [25].

Based on the foregoing, the following definition is proposed: national security is the state of protecting the vital interests of a person and a citizen, society and the state, ensuring the sustainable development of society, the achievement of national goals, the preservation of fundamental values and traditions, the timely identification, prevention and overcoming of real and potential threats national interests. This definition, according to the authors, differs from other definitions in that it focuses on the conditionality of security by national goals, values and traditions, which ensures the preservation of national identity, which is closely related to the sovereignty of their state. It should be emphasized that today national security is not only about protecting the vital interests of the individual, society and the state from internal and external threats, but also provides for measures aimed at ensuring sustainable development, without which the state loses its competitiveness compared to other countries, giving rise to the problem of inability to adequately respond to new threats and challenges. That is, the modern understanding of national security should be understood not only as a state of security, which is achieved as a result of the possession and use of weapons, but also as a condition that is achieved as a result of the general development of society and the state. The development of a national security doctrine and the adoption of an appropriate strategy on its basis is of fundamental importance for the sovereignty of the state, since it objectively prevents the search for ineffective strategies: the development of a national security strategy takes into account the diplomatic, economic, demographic, scientific, technical and military capabilities of the state [25].

IV. Conclusion

The foregoing allows us to conclude that the national legal system the content of which includes only positive law and a number of other related elements, is due to the fact that the former is formed by a sovereign state to solve its goals and objectives, which is the main subject that ensures national security (spatial, political and legal, socio-economic, environmental, food). Without detracting from other types of national security, both before and now, due to unjustified anti-Russian sanctions by the United States, Great Britain and their satellites, food security is especially actualized in Russia [26].

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