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A Legal Phenomenon of Law

Vladimir Valentinovich Kozhevnikov
Department of Theory and History of State and Law, Omsk State University, Dostoevsky, Omsk, Russia
Email: kta6973@rambler.ru

Abstract: *The scientific article critically examines some features of such a legal phenomenon as a legal norm. Attention is drawn to the fact that some of the features of the rules of law require clarification. In particular, and in particular, such a feature of it as "repeated use".*

Keywords: *rules of law; doctrinal concepts; repetition of implementation; application of rules of law*

I. Introduction

It seems that the relevance of this scientific article is due to the importance of the rule of law in the regulation of social relations. Here the rule of law acts as a legal means of legal regulation. The rule of law is an element, a "cell" of the system of law; along with legal facts, the legal personality of individuals or the legal capacity of legal entities, is a legal prerequisite for the emergence, change and termination of legal relations; the norms of law are, along with moral norms, other non-legal social norms, the normative basis for law enforcement. Speaking about the rules of law, we can identify other aspects that determine their significance in the field of legal regulation.

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 Signs of the Rule of Law

An analysis of modern legal literature shows quite clearly that legal scholars often name false signs of certain legal concepts that can be called doctrinal or theoretical. There are quite a few examples of this nature, but we will limit ourselves to only one of them, the most typical. This concerns the signs of such a legal phenomenon as the rule of law, the social relations that are regulated by it, act as the object of this study.

At one time, Yana Vladimirovna Gayvorovskaya believed that “the rule of law is traditionally defined in science through formal and state-imperious features. In its most essential moments, the rule of law is understood as a universally binding, formally defined rule of conduct (command), established (sanctioned) by the state and provided by it”[1]. Indeed, modern scientists - theorists in the system of signs of the rule of law quite often, one way or another, focus on its "state-powerful". component. So, according to Vladimir Ivanovich Chervonyuk, among the signs of the rules of law stands out "enforcement of their action - behind the rules of law there is always" the state, its specialized bodies, which demand to subordinate their behavior to the indication of the legal norm "[2]. The team of authors argues that the legal norm, being the official expression of the state will, is guaranteed by the mechanism of state coercion [3]. According to Valery Vasilyevich Lazarev, “the rule of law is a universally binding rule recognized and ensured by the state, from which the rights and obligations of participants in public relations arise, whose actions are intended to regulate this rule as a model, standard, scale of behavior” [4]. There are other features of the rule of law.

a. The Multiple Implementation of the Rules of Law

In particular, quite often scientists call such a rule according to which “the rule of law is applied repeatedly in the presence of relevant legal facts”[5]. In her works, Lyudmila Aleksandrovna Morozova emphasizes that the rule of law "has multiple application, i.e., ceases to be valid after its execution"[6], "... can act repeatedly, each time conditions or circumstances arise for its application"[7].

Vladimir Ivanovich Chervonyuk believes that the rules of law “are designed not for a single case, but for all cases that fall under the descriptive features of the rule, that is, they are not limited to a single action, they are applied until they are canceled in the manner prescribed by law”[2]

Boris Ivanovich Puginsky, discussing the signs of a legal norm, wrote that “the key feature for highlighting a rule of law ... is the possibility of independent application of the legal establishment expressed in the proposal, its separate part or group of proposals of a normative act (or rather, a normative-legal one - Vladimir Valentinovich Kozhevnikov) for regulation of actions of subjects”[8]. From the standpoint of a scientist, the rule of law is intended to express a universally binding establishment in the form of a statement, in relation to which it can be argued that “... the specified rule is presented in it as a sentence, a separate part of a complex sentence or several interconnected sentences that allow the application of this rule” [8].

Vadim Donatovich Filimonov, in solidarity with the opinion of Mikhail Nikolayevich Marchenko that the norms of law are characterized by multiple applications and duration of action [9], believes that “the prevailing idea of the norm of law is the result of a long and fruitful study of legal norms in the general theory of law, as well as in the theory of various legal branches” [10].

According to Oleg Vladimirovich Berg, “a hypothesis is a condition (circumstances) under which a given rule of law is applied”[11]. Timofey Nikolaevich Radko interprets the rule of law as “a universally binding rule of conduct designed for many cases of application”[12]. Ivan Andreevich Ivannikov, speaking about the rule of law, writes that “it defines the main, typical features of the situation in which this rule should be applied”[13]. The team of authors, showing a certain inconsistency, on the one hand, believes that “the rule of law is implemented and protected from violations by the coercive power of the state”, and on the

other hand, "the legal norm is a general prescription designed for long-term application and of a non-personalized nature"[14] . It is interesting to note that the order of the Ministry of Justice of the Russian Federation "On approval of clarifications on the application of the rules for the preparation of regulatory legal rules for acts of federal executive bodies and their state registration" dated May 4, 2007 gives the following legal definition of a rule of law: "a legal norm is usually understood as a generally binding state prescription of a permanent or temporary nature, designed for repeated use"[15]. Of course, doctrinal (theoretical) concepts should necessarily be guided by legal (official) ones, they should not contradict, but, unfortunately, the latter are not always perfect.

It seems that if scientists unreasonably focus only on the application of the rule of law, then they thereby ignore direct (immediate) forms of implementation:

1) the use of the right - the realization of the opportunities provided by legal norms;
2) performance of duties - the mandatory performance of active actions prescribed by the rule of law;
3) observance of prohibitions - refraining from committing acts prohibited by the rule of law.

The peculiarity of the use of the law is that the participants in public relations, implementing the empowering rules of law, can take actions that are permitted by the rules of law, and acting at their own discretion (for example, according to Article 60 of the Constitution of the Russian Federation, a citizen of the Russian Federation can independently carry out in full their rights and obligations from the age of 18).

The use of the right is the voluntary commission by the subjects of the right of actions related to the exercise of their subjective rights. In this case, the subject himself, at his own discretion, decides whether to use the subjective right presented to him (for example, the right to participate in elections) or not. The use of the right is carried out in an active way.

When performing duties, binding norms are implemented that provide for the need to take positive actions (for example, defending the Fatherland is the duty and obligation of a citizen of the Russian Federation (part 1 of article 59 of the Constitution of the Russian Federation). In other words, execution is the actions of subjects of law aimed at fulfilling the requirements established by the rules of law, that is, the strict adherence by the subjects of those legal prescriptions that are contained in the rules of law.

Fulfillment of duties is an active form of exercising the right of a binding nature, and refusal to perform duties or their improper performance entails coercive measures emanating from the state. For example, the failure of a witness to appear on a subpoena or his evasion from testifying entails for him a forced appearance in court (arrival) or legal liability provided for by law.

With regard to such a form of implementation as compliance with prohibitions, we note that both prohibitive (regulatory) and protective norms are implemented here. For example, prohibitive norms prescribe to refrain from socially dangerous actions for which sanctions are provided for by the norms of criminal law. When these norms do not "work" in relation to certain subjects, the second level of implementation comes into effect - the implementation of sanctions of protective norms (for example, according to part 2 of article 37 of the Constitution of the Russian Federation, forced labor is prohibited). Compliance with prohibitions is characterized by the voluntary submission of the subject of law to the requirements of legal norms.

This is a passive form of realization of the right. For example, when crossing the street on a green traffic light, we follow the rules of the road. It should be noted that individuals comply with the prescriptions of the relevant norms of law, often on a subconscious level, as if out of habit, as they were taught in childhood at home, at school; university, etc. Compliance as a form of exercising the right is usually characterized as refraining from actions prohibited by law. A legal prohibition is carried out in the daily life of people when they do not commit acts for which there is a corresponding prohibition on their commission in law, that is, when subjects of law refrain from unlawful behavior, conforming their behavior to the requirements of legal norms.

These forms of implementation of legal norms are considered direct, since legal prescriptions are implemented by the participants in public relations themselves. If these forms do not allow to fully realize the rights and obligations provided for by the rules of law, then there is a need for such a special form of implementation as the application of law, which has a state-imperious nature.

The foregoing allows us to assert that one of the signs of a rule of law is the repetition of its implementation. In one edition or another, this statement is supported by other scientists. Thus, Mikhail Iosifovich Baitin believed that “the rule of law is the only one among social norms that is supported in its implementation, protected from violations by the coercive power of the state”[16].

Anatoly Borisovich Vengerov, as one of the signs of a rule of law, defined "the repetition (or repetition) of its action." The scientist emphasized: “this means that the legal norm is created for permanent application, use, unless otherwise provided in the norm itself”[17].

Roman Anatolyevich Romashov, as general signs of social norms (including the norms of law - Vladimir Valentinovich Kozhevnikov), singled out “guaranteed and sanctioned nature: the normative consolidation of a particular standard involves ensuring its implementation with the help of special conditions (mechanisms) - guarantees and protection through application of measures of negative influence - sanctions to the violator" [18].

b. The Provisional-binding Nature of the Law

In the legal literature there is a statement that the rule of law has a “representative-binding content” [5] Aleksandr Yuyevich Larin and other authors also believe that “the rule of law has a representative-binding character”[19; 20]. According to scientists, "a representative-binding nature (norm of law - Vladimir Valentinovich Kozhevnikov) is an authoritative instruction of the state regarding the possible and proper behavior of people."

However, the authors further emphasize that “the named sign means that the rule of law not only provides some subjects of the right, but also imposes duties on other subjects, because it is impossible to realize the right without the duty without the right and the duty without the right”[21].

Apparently, as many scholars note, we are talking about the granting-binding nature of the rule of law, suggesting that “the regulatory effect of the rule of law is manifested in the fact that, while giving one side of the regulated relationship the right to act at its discretion, the rules of law at the same time impose on the other on the side of a legal obligation to a

certain action, i.e. they demand to act in the interests of the holder of the right, the authorized person"[22].

In fairness, we note that not all scientists recognize as a sign of the rules of law their provisional-binding nature. So, speaking about this sign of the norms of law, Nikolai Andreevich Pyanov believed that "the principle of the unity of legal rights and duties operates here (there are no rights without duties, there are no duties without rights)". At the same time, however, the author did not believe that each legal norm establishes both rights and obligations. "Some rules of law….," continued the scientist, "do not contain any indications of legal rights and obligations, while other rules of law can fix either only rights or only obligations"[23].

It seems that this position is not indisputable, because if the legislator fixes the rights in a legal norm, then the corresponding obligations are implied; and vice versa, if duties are fixed, then the corresponding rights are implied.

IV. Conclusion

In conclusion, it is necessary to conclude that taking into account the made and substantiated remarks by theoreticians will contribute to better literature on jurisprudence, which, in our opinion, is the most important prerequisite for obtaining a quality legal education.

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