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Legal Reality as a Juridical Category

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Abstract: The study is devoted to the research of juridical meaning of the category "legal reality". The researchers definition of the category is given. The main elements of the category are studied. The conclusion is made that legal reality as a fundamental juridical category is a complex multi-layer system, comprising the whole range of both the real juridical phenomena and the legal ideal and determining the sphere of law existence for an individual and social medium.

Key words: Legal reality, category of juridical science, existence of law, juridical phenomenon, post-modernist concepts of law interpretation, post-classical scientific rationality, methodological pluralism, legal behavior, anthropology-juridical research

INTRODUCTION

An important and topical purpose of the general theory of law is revealing and studying of the fundamental juridical notions and categories which characterize the essence and content of the legal existence of society. One of such categories is legal reality, not long ago introduced into scientific circulation and so far not sufficiently studied both in the general theory of law and the philosophy of law.

Review of literature: The term "legal reality" was used since the middle of the 20th c in the works of foreign existentially-phenomenologically oriented philosophers of law (Cohn, 1967; Kaufmann, 1990; Salter, 1992; Hamrick 1987; Moore, 2003). The term was mainly used to denote the reality of particular legal phenomena (Calavita, 2010; Gordon, 1987). No conceptual research of this notion as a category has ever been done.

In post-Soviet countries the issue became topical since the middle of the 1990's. Almost simultaneously it was scrutinized by philosophers (V.A. Bachinin, G.I. Ikonnikova, V.P. Lyashenko, S.I. Maksimov, I.P. Malinova, S.L. Slobodnyuk) and theoreticians of law (A.V. Polyakov, I.L. Chestnov, Yu.S. Shemshuchenko). The term "legal reality" is most used in the aspect of integrative law interpretation and is supposed to overcome the unilateral positivist, sociological and natural-legal theories by composing a complex category which would have comprised and structured al legal phenomena.

The study objective is to form definite scientific knowledge on the juridical category of "legal reality", to reveal and analyze the ontological and gnoseological meaning of this notion which determines the bases of the legal phenomena functioning in a particular society.

MATERIALS AND METHODS

The broad and varied study of the issue determined the research based on a vast arsenal of methodological tools, elaborated not only within the juridical science but also within other humanities. The fundamental methodological approach of this work is dialectic approach to the study of general rules of forming the essence and content of legal reality. A special role among the used methods is played by systemic-functional method which helps to study the functional characteristics of legal reality.

Historical method allows to view the genesis of forming the legal reality retrospectively with the aim to reveal the aspects which are significant for the modern legal ontology and which determine the trends of further legal development. Another, method used in the study is formal-logical method with the combination of such means as analysis and synthesis, induction and deduction, analogy and summarizing, allowing to reveal the essence and content of legal reality.

RESULTS AND DISCUSSION

The methodological approaches and methods allow to view legal reality as one of the fundamental

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philosophic-legal categories of the modern humanities and to analyze it in the institutional, functional and subject-object contexts. One might think that by now several similar categories have been formed: the legal system, the legal life, the legal culture, the legal conscience, the legal practice, etc. To ground the legal reality as a particular category means to extinguish its essential features which do not coincide with the essential features of the above categories.

Among many philosophical and juridical definitions of the legal reality, the following definition (given by a Ukrainian philosopher of law S.I. Maksimov) is the closest to the content of this category and the best reflecting its essence: it is a multi-level system of legal phenomena, an autonomous meta-social reality, the meaningful expression of which is the mutual obligation in the interaction of subjects. It is notable that this interpretation pays attention to the mutual obligation in the interaction of subjects which juxtaposes the essential vision of legal reality with the communicative concept of law, initially developed in westerns science but elaborated now a days in the Russian jurisprudence as well. The special role of speech, rhetoric, interpenetration of the linguistic and culturological factors is stressed in the works by foreign researchers. In particular, the role of juridical narration in detective stories is researched, as it helps to understand the essence of juridical reality.

Following S.I. Maksimov, we interpret legal reality as a category denoting a special, relatively autonomous world of law, a multi-level system of legal phenomena, which determine the process of social interaction.

Thus, legal reality can be defined as a special existence of law in a particular space-temporal continuum. Comprising the whole range of legal phenomena of social sphere, this category dialectically allows, that the legal phenomena of objective and subjective reality can exist both in close interaction and independently. On the one hand, the juridical array will determine the legal behavior of an individual and social medium and on the other hand, the social efficiency of legislation is determined by the need for it in the society and the actions of a particular individual for implementation of certain juridical norms. Although, legal reality is not a substantial part of reality but just a way of organization and interpretation of certain aspects of the legal existence of an individual and social medium, it has no strict material boundaries and exists simultaneously at both material and mental levels.

Legal reality includes three aspects: objective (existence of legal reality regardless of the attitude to it on the part of an individual and social medium), subjective (an individual action in the legal sphere are connected with legal conscience), irrational (legal behavior of a person is largely determined by accidental motivation). Hence, we cannot agree with S.L. Slobodnyuk's opinion about the solely objective nature of legal reality ("legal reality is objective and necessarily implies the existence of an individual joining into the legal relations"). We think that this category is characterized by a more complex subjective-objective character. In each segment of legal reality-law, law implementation or anything else-one cannot find phenomena, completely independent of the influence of subjective factors as well as of interpretation by the subjects (Cossio, 1954). Besides, this issue is connected with the problem of the law objectivity and material character: does it always possess these features or does it have certain subjective and ideal features as well? Unlike the classical theories of law interpretation, aimed at revealing the key legal notions and their position in the legal system (Kennedy, 1980) many post-modernist concepts, popular in the 20th century, view law as a complex phenomenon. In particular, integativism postulates the impossibility to explain law by a single scientific theory. Moreover, the post-classical scientific rationality insists that a subject cannot be separated from an object, an object has subjectified character and a subject objectified. A law scientist is placed in the researched legal reality and their conclusions cannot be absolutely objective (Schlag, 2001).

The essence of legal reality is in organizing the human behavior in the society in order to achieve a stable organization of the society on the normative basis. This approach to the essence of legal reality implies that it is a sophisticatedly organized social system which can be viewed in dialectic interconnection of structural elements at various levels. The elements will be discussed further.

The features of this category are normative distinctness, formality and imperative character. Indeed, unlike other normative systems (religious, moral, corporate), law has a special authoritative-regulating nature, based, first of all, on the possibility of state compulsion. The institutional provision of the normal functioning of law with jurisdictional levers, takes place due to the proper recording of juridical norms in the proper formal sources of law. The imperative character of law is determined, first of all, by the inextricable link between law as the basic element of social reality and the authoritative-organizational subject (state, society, local community, etc.). However, we consider it to be improper to transfer the characteristics of a part (legal norm, legislative system) on to the whole as a broader and more complex system (legal reality). The described features are characteristic for the legal system and cannot be transferred to the subjective components of legal reality,

like legal behavior which is based on certain mental guidelines and ideas potentially not coinciding with the official normative legal establishments.

O.V. Kret extinguishes in the structure of legal reality three fundamental ontological components-law making (activity aimed at creating, improving, alteration and revocation of legal norms), law implementation (a process, a system of means and measures aimed at realization of the existing legal system and achieving the goals stipulated by it) and law protection (activity aimed at preventing the existence of law breaches in the society as well as at implementing the measures of state compulsion in case of such law breaches). These components perform their functional roles in interconnection with each other and the system in general. As stated, the dysfunctions of the mentioned components (lacunas in law, legal collisions, lack or inefficiency of law regulation mechanism, etc.) if exceeding the threshold level, may lead to both the development of the existing legal reality and its elimination. To our mind, law protection traditionally should be viewed as one of the directions of law making and law implementation: protecting of law is carried out both by recording the due provisions in the legal norms and by their implementation. Hence, the extinguishing of law protection in line with law making and law implementation logically contradicts to the notion-category lines existing in the modern juridical science.

When studying the legal reality, dialectic and systemic-structural methods are most commonly used. Undoubtedly, the philosophic dialectic method is one of the most reliable and well-developed, allowing to study legal reality via cause-effect relations, determination principle, in correlation with other phenomena and in dynamics, taking into account the changes in historic prospective. However, we think that at the present stage of science and juridical science development, one should not reject other methodologies when interpreting the legal phenomena. In particular, one should not reject synergetics, phenomenology and other methodological approaches. We should adopt the idea of methodological pluralism which is becoming popular in the Russian humanities. We think that the pluralism results in not only a mere summarizing the means and techniques in describing the research results but in the idea that any research object moreover, in socio-humanitarian sphere, can be interpreted in different way, its various revelations can be researched. The claims of any methodology for absolute truth look naïve now a days (Bix, 1999).

Systemic methodology extinguishes three elements in the structure of legal reality: law (the system of social relations regulation, determined by the nature of a human being and a society, possessing normativity, formally recorded in official sources and provided with the possibility of state compulsion); legal relations (social relations regulated by legal norms, participants of which are carriers of subjective rights and juridical liabilities protected and guaranteed by the state); legal conscience (integrity of views and ideas expressing the attitude of people, social groups and classes to law, lawfulness, justice, their idea of was is legally acceptable and inacceptable).

In its turn, phenomenological methodology allows to view legal reality as a multi-level phenomenon. In terms of the most important spheres of legal activity, two main levels can be extinguished: law making (integrity of actions of a legislator, aimed at forming the law order and lawfulness as well as the package of normative documents) and law enforcement (integrity of actions of individuals and authorities for implementation of normative guidelines and a complex of documents produced during and as a result of these actions). Law in its normating, legislative form functions as an integrative basis of legal reality, bounding all components of its levels and elements. The law based on an ideal determines not only the interconnection of the written law and justice (unwritten law) but also their mutually complementing roles in social regulation. However, under crisis conditions with the lack of efficient enough juridical and social mechanism of law implementation, the third level of legal reality is being formed the legal behavior, i.e., the behavior corresponding to the social ideas of justice. In this case an individual does not care if these "righteous actions" comply with or contradict to the "wrong" legislation. Law ceases to be an integrative basis of legal reality which due to the incoherency of law and justice acquires transgressive, mosaic character. The legal relations are to a large extent formed on the basis of "non law" rules and practices, the content of which is determined by the individual (formed on the basis of synthesis of legal conscience and individuals' interaction in legal sphere and expressed in knowledge, skills and habits) and supra-individual (social) legal experience (formed on the basis of synthesis of the legal ideal, legal mentality and under the influence of the agents of legal socialization and expressed in definite legal situations and their formal record).

Obviously, each level of legal reality has mixed, objective-subjective character. Both law making and law implementation are processes not independent of mental ideas of law, justice, obligatory and optional. The measure of order for legal reality is the juridical notion of law order, interpreted as organization of social life, based on law and reflecting the qualitative state of social relations at a certain period of society development. The legal norm can

influence legal relations and legal conscience (and law interpretation) as long as the actual justice (recorded in normative legal acts) remains equal to the notion of justice (the image of social justice). If it stops being equal law interpretation acquires horizontal and vertical conflicts and law conscience begins to counteract the legal norm and to form completely new legal relations, being under certain conditions able to change legal reality.

The issue of legal reality content is connected with the issue of criteria for attributing certain phenomena to the legal ones. This issue cannot be solved unambiguously: in the law interpretation concepts the criteria of the "legal" can be completely different (Hoerster, 1987). For example, the juridical positivism traditionally bounds law with state and its compulsory power. At the same time, in spite of the long taken attempts of the natural-legal doctrine to bind legal norms with basic moral values, other criteria are proposed for use, like the force and effectiveness of law (Hoenke, 2002). Representatives of the American pragmatic school, in turn, propose a new pragmatic methodology, capable of solving the contradictions between the natural law concept and juridical positivism. This methodology should be based on three main principles: the principle of cause (respect for a human being as a rational creature with good will), the principle of consensus (the norm is based on the consensus of the managers and the managed) and the principle of autonomy (independence of law on the authority of the existing political power).

To our mind, the prospect of studying the content of legal reality can be connected with anthropological-legal research. Human being themselves create law, use it, being directly involved into the legal reality. Despite the significant objective component of legal phenomena, legal reality cannot be viewed outside the context of the internal, psychic attitude of a subject (subjects) to legal phenomena. As a social being, a person simultaneously joins plenty of links.

This cause a problem of distinguishing the legal phenomena from other social phenomena: where is the boundary between the legal and social reality? As we know, law cannot be viewed metaphysically, in abstraction from other social norms and social phenomena, which influence it and/or interact with law and its constituents (Alexy, 1989). At the same time, the boundaries of the "legal" and "non-legal" have not been defined so far (Maus, 1989). Even Prof. V.M. Syrykh, an apologist of material concept of law, states as the object of juridical science not only the state and law but also the legal and state practice and other kinds of social practice inextricably bound with state and law the research of "close to law" phenomena which in some scientific interpretations can be viewed as legal ones is the research direction which can give fruitful results when describing and analyzing the legal reality.

CONCLUSION

Thus, legal reality can be viewed as a fundamental juridical category, denoting a special kind of social reality. Legal reality is a complex multi-layer system, comprising the whole range of both the real juridical phenomena and the legal ideal and determining the sphere of law existence for an individual and social medium.

REFERENCES

Alexy, R., 1989. On necessary relations between law and morality. Ratio Juris, 2: 167-183.

Bix, B., 1999. Patrolling the boundaries: Inclusive legal positivism and the nature of jurisprudential debate. Can. J. L. Jurisprudence, 12: 17-33.

Calavita, K., 2010. Invitation to Law and Society: An Introduction to the Study of Real Law. University of Chicago Press, Chicago, Illinois, ISBN-13: 978-0-226-08996-6, Pages: 177.

Cohn, G., 1967. [Existentialism and Legal Science]. Occana Publications, Dobbs Ferry, New York, Pages: 148 (In Danish).

Cossio, C., 1954. Intuition thought and knowledge in the domain of law. Philosophy Phenomenological Res., 14: 470-493.

Gordon, R.W., 1987. Unfreezing legal reality: Critical approaches to law. Florida State Univ. L. Rev., 15: 137-195.

Hamrick, W.S., 1987. An Existential Phenomenology of Law: Maurice Merleau-Ponty. Martinus Nijhoff Publishers, Leiden, Netherlands, Pages: 246.

Hoerster, N., 1987. Die rechtsphilosophische Lehre vom Rechtsbegriff. Juristische Schulung, 27: 181-188.

Kaufmann, A., 1990. Preliminary Remarks on a Legal Logic and Ontology of Relations. In: Law Interpretation and Reality, N. Patrick (Ed.), Springer, Netherlands, ISBN:978-90-481-4061-9, pp: 104-123.

Kennedy, D., 1980. Toward an historical understanding of legal consciousness: The case of classical legal thought in America, 1850-1940. Res. L. Sociol., 3: 3-24.

Maus, I., 1989. [The separation of law and morality as a limitation of law]. L. Theory, 20: 191-210.

Moore, M.S., 2003. Excerpts from Legal reality. Associations J. Legal Soc. Theory, 7: 145-157.

Salter, M., 1992. Towards a phenomenology of legal thinking. J. Br. Soc. Phenomenol., 23: 167-182.

Schlag, P., 2001. [Black case]. Columbia L. Rev., 101: 1733-1741.