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THE LEGAL PATTERN IN THE RATIONAL PICTURE OF LAW

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Abstract: The modern rational picture of law needs to expand the conceptual, categorical and cognitive tools. To this end, the article introduces such categories as "regulatory cycle", "regulatory crisis", "legal pattern", "rational picture of law" into legal circulation and legal discourse. With their help, it is proposed to monitor changes in public attitudes to emerging threats and risks, the prevention of which requires legal regulation.

As the conducted research has shown, this toolkit should be based on the category of "legal pattern", which allows to explore intuitive legal understanding, the structure of a legal norm, an unformalized sample of lawful behavior, as well as phase transitions from intuitive legal understanding to a legal norm representing the form-content of positive law, from a legal norm to an unformalized sample of lawful behavior, from such a sample to the legal code.

The presented tools make it possible to avoid the current instability, social and legal crisis phenomena arising in connection with the overlapping of rational and real components of the picture of law, as well as many "regulatory cycles" leading to "regulatory crises".

Keywords: rational picture of law, regulatory cycle, regulatory crisis, legal pattern, behavior model, legal behavior.

Introduction

Currently, there is an articulation of a new legal discourse that reinterprets key concepts and methodological approaches in the theory and philosophy of law. This became especially noticeable during the period of significant changes that modern legal science has undergone. First of all, it should be said about the change of the methodological paradigm and the picture of law determined by it. If earlier there was a system of well-established approaches and an unambiguous understanding of the fundamental terms defined by the Marxist-Leninist methodological paradigm, then in the modern period of methodological diversity it is no longer necessary to talk about uniformity. At the same time, there is a question of continuity in the development of philosophical-legal and legal thought, the preservation of all that was advanced before, ensuring a balance between early rational achievements and new legal reality, the results of scientific and

technological progress.

It is important to focus on the connection that exists between the formation of a rational picture of law and the crisis of modern legal science, more precisely, the regulatory crisis underlying the latter. By itself, the crisis of the legal science does not arise. It only serves as a reflection of the crises associated with social regulation, in general, and law as its universal form, in particular. At the same time, regulatory crises should not be considered by themselves, but as an element of the regulatory cycle. In turn, the analysis of regulatory cycles needs to establish the phenomenon of a legal pattern.

Results and Discussion

In verse 39 of chapter 6 of the Gospel of Luke, there is a parable about the blind: "...He also told them a parable: can a blind man lead a blind man? won't both of them fall into the pit?". The piece of the Dutch Renaissance artist P. Brueghel the Elder was also devoted to this biblical plot. It is from this plot, taken as a metaphor, that we would like to begin considering the rational picture of law. Indeed, it is not given to a blind person to see what is around him. However, with the help of a stick, he can very effectively form an appropriate image that allows him to move around. In this regard, how can we not recall Bulgakov's Voland, who, during a conversation at the Patriarch's Ponds, referring to Berlioz, points out that a person "...cannot say at all what he will do tonight..." (Bulgakov, 1984, p. 5), thereby emphasizing the fundamental impossibility of a person to manage anything, including management by himself. It is difficult not to agree with this argument, knowing that soon Berlioz will have his head cut off, since Annushka has already spilled oil on which he will slip. However, the inability to know one's future is compensated for by various social regulators, one of which is law. It is the law that we compare with the blind man's stick. Just as a blind person, using it and forming an image of the surrounding reality with its assistance, acquires the opportunity to move, so human society through the law is given the opportunity to develop systematically, overcoming various challenges and threats, assessing the risks caused by them and forming behavioral models that can prevent these risks.

A person is forced to adapt to his environment. However, as Kudryavtsev (1982, p. 7) rightly noted, it is unlikely that this definition of human behavior can be considered sufficient, especially if we take into account the fact that biologists determine animal behavior in approximately the same way. In his opinion, it is necessary to take as a basis those definitions of behavior that take into account the role of consciousness and other qualities of the human personality. Reasoning in this way, he further recognizes legal behavior as a kind of social behavior of an individual, expressed in public relations regulated by the norms of law, referring to the following signs of such behavior: control over the consciousness and will of a person; normative certainty; being under the control of the state; the ability to generate legal consequences (Kudryavtsev, 1982, pp. 37-39).

This approach is shared by most scientists. For example, developing it, some pointed out that it is possible to influence people's behavior by legal means only through the establishment of obligations, permits and prohibitions, calling them the "omnipresent trinity" and emphasizing that it is from them that the primary layer of legal matter is woven (Alekseev, 1999). In turn, others wrote that "each immediate goal, being fixed in specific rules of conduct, expresses the tasks of legal regulation in a given period of the historical development of our society and is a necessary step, link in the chain connecting it with a long-term goal, which, in turn, is a means, period, stage on paths to the ultimate goal (Kerimov, 2001, p. 375).

Thus, defining the nature of the relationship between human behavior and law, it is necessary to point out that the very essence of the development of human society as a system in which it is considered not as a simple collection of individual representatives of the biological species Homo sapiens sapiens, but as something integral, involves collective awareness of various threats, assessment of the risks caused by them, acceptance of measures to prevent the latter.

Taking into account the above, it is necessary to point out the intensification and acceleration of crisis phenomena in modern society. This circumstance, as a rule, causes an appeal to the problems of legal regulation in order to assess its effectiveness and productivity (Khabrieva &

Tikhomirov, 2015; Zaloilo, 2019b; Tikhomirov, 2022). At the same time, at present, the causes of certain problems in this area, such as the complexity of regulatory tools and the inconsistency of the national nature of the law with globalization and regionalization of markets, may seem exceptional for the current moment. However, in the historical retrospective, the law has repeatedly and previously faced similar problems. The most important reason of the current instability and similar crises in the past is related to the "regulatory cycle". This concept allows us to track the change in attitude to a particular threat, the prevention of which requires legal regulation: from ignoring it through its awareness and zero tolerance to its acceptance. Ignoring the threat entails negative social consequences. Zero tolerance to the threat hinders social development in a certain direction. Acceptance of the threat presupposes the election of such regulatory tools, which on the one hand minimizes the negative social consequences associated with the corresponding threat, and on the other hand provides the society with an opportunity for further development.

The transition from one stage of the regulatory cycle to another is always caused by some kind of crisis, within which public awareness occurs: during the transition from the stage of ignoring to the stage of awareness and zero tolerance – of the threat itself and the risks partly caused by it; during the transition from the stage of awareness and zero tolerance to the stage of acceptance – of the overwhelming totality of risks associated with this threat as well as the impossibility of further social development in a certain direction without abandoning zero tolerance to the corresponding threat. It should be noted that each of these processes can be quite long, as a result of which the corresponding crisis can acquire a permanent character.

The most striking example of recent times is the regulatory cycle associated with the simultaneous complication and internationalization of financial instruments, which cause the redundancy of lending. This threat has always accompanied the development of the financial system (Chernogor et al., 2021), primarily being associated with the risk of the emergence of various financial pyramids. In this regard, it is enough to recall the scheme implemented in 1920 by Charles Ponzi. Its essence was that investors were paid "income" from the proceeds from new investors. At the same time, payments for invested funds up to 50% per annum were promised. It should be noted that the average market rate at that time was about 5%. Such high payments were explained by the presence of a secret plan of currency speculation, which should provide the necessary profit. As a result, the scammers managed to collect about $ 8 million in a short time, which were simply appropriated by Ponzi himself and his accomplices.

Despite all the evidence of the threat under consideration, it was actually ignored until the first half of the last century. Only the Great Depression pushed the leading (in economic development) countries, primarily the United States, to search for legal tools to prevent it. So, in the United States, in order to improve the banking system at a speed unprecedented up to that time, the Glass-Steagall Act was prepared, signed by the President on June 21, 1933. Its main provisions, assuming the separation of banks into commercial and investment, the establishment of significant restrictions for the former, were aimed at strengthening the stability of the banking system and preventing financial crises. For a long time, he determined the nature of banking in the United States and was a model for building other national banking systems. Only on November 12, 1999, US President Clinton signed the Gramm-Leach-Bliley Act (hereinafter – GLBA), which annulled the operation of the Glas-Steagall Act, thereby ending the 66-year history of strict regulation of commercial banks and actually legally caused the mortgage crisis that occurred almost ten years after that.

However, initially the GLBA gave an unprecedented boost to the growth of the banking sector. Thus, in 2002-2004, the availability of loans in the United States increased due to significant foreign investment, mainly from Asian countries with rapidly developing economies and oil exporting countries, as well as the low level of interest rates in the United States at that time. At the same time, in retrospect, it can be stated that banks understand that their excessive lending during this upswing was carried out at such rates that proved unable to cover possible risks, which subsequently led to a crisis compared with the Great Depression and, according to some researchers, has not ended to date. Such a reaction of participants in economic relations is very typi-

cal and is a consequence of their unwillingness to take on the very threat of the corresponding risk (Tobias, 2010, pp. 24-28).

It should be pointed out that the redundancy of lending, due to the complexity and internationalization (currently – globalization) of financial instruments, is primarily based on the motives that guide individual financial institutions in their activities. The longer the period of growth in the banking sector lasts, the younger and less experienced its representatives occupy senior positions in credit institutions, and, consequently, begin to be responsible for the formation of the loan portfolio. There have simply been no failures in their careers yet, and as a result they tend to underestimate possible threats and risks. In turn, the law is the tool that allows us to compensate the lack of personal experience by consolidating the collective (public) experience.

Summing up the interim results, first of all, we would like to draw attention to the fact that the threat discussed above – the complication and internationalization of financial instruments, which cause excess lending, is at the stage of its realization. Numerous problems causing the incompleteness of this process have led to the acquisition of a permanent nature by the corresponding regulatory crisis, which is evidenced, for example, by the rejection of the ideas underlying the Glass-Steagall Act. This act has not been reformed taking into account its positive impact on the American and global economy. It was simply canceled, which resulted in a new financial crisis that began with the 2007 mortgage crisis in the United States, and its actual manifestations were the bankruptcies of Silicon Valley Bank and Signature Bank.

Secondly, human society has been constantly confronted with numerous regulatory cycles since its inception, the manifestations of which are, on the one hand, regulatory crises, one of which was discussed above as an example, and, on the other hand, various regulatory tools that appear as a result of overcoming of regulatory crises. The most elementary regulatory tool can be recognized as the institution of "taboo", which even in primitive society served as a means of awareness of a certain threat and its prevention through the establishment of zero tolerance to it. The undoubted merit of modern jurisprudence is the allocation of the category of "legal norm" and the construction of a system of law on its basis.

It should be noted that this category, to one degree or another, underlies any modern legal system. Without awareness of the legal norm, it is impossible to recognize law as a universal social regulator. Only the underlying idea made it possible to overcome the casualness of social regulation of past periods of social development. However, each legal family has its own construction that determines the interaction of individual legal norms and ensures the unity of the law, preventing its fragmentation (David & Joffre-Spinosi, 1998).

In relation to Russian law, this construction was formed as a result of a long scientific discussion that began in 1938 and ended in 1982. It assumes, depending on the subject and method of regulation, the unification of legal norms into institutions and branches of law (hereinafter referred to as the industry model). However, due to the adoption and entry into force of the current Constitution of the Russian Federation, the industry model has lost its completeness and logical consistency, which is due to the following circumstances. This model, characteristic to Soviet law, was based on the denial of everything private in law (Lenin, 1964, p. 389) and the denial of the concept of separation of powers (Lenin, 2020). However, it is these prerequisites as basic principles (equality of all forms of ownership and separation of powers into legislative, executive and judicial) that have formed the basis of modern Russian constitutional regulation. In addition, recently there has been a general complication of public relations, as a result of which the very understanding of law has deepened, including in terms of building its system.

Taken together, these circumstances necessitate the revision of the industry model, the active phase of which has begun in recent years. Its examples are the emergence of the concept of cyclic normative arrays in law (Khabrieva, 2019, pp. 5-18; Zaloilo, 2019a, pp. 16-24), as well as the rejection of the industry model in the formation of the nomenclature of scientific specialties for which the degrees of doctors and candidates of law are awarded.

However, in the context of the formation of a rational picture of the law, its consideration exclusively through a set of legal norms seems insufficient. The formation of this picture is facilitated by the consideration of "regulatory cycles"

realized in a certain period of time, taken in their systemic unity. At the same time, in order to establish systemic links between these cycles, the modern legal science needs additional cognitive tools. This toolkit is based on the phenomenon of the legal pattern.

Recently, among domestic and foreign scientists, the category of "legal pattern" has become popular in the study of various regularities of legal regulation. Thus, a legal pattern is understood as: a means of determining the legal form (Tretyakov, 2022, pp. 182-209); a means of convergence of the theory of law and the doctrine of communication, or Luhmann's system theory (Ladeur, 1999); content of regulatory legal arrays (Nesterov, 2020, pp. 11-16); the external form of legal information that is formed in a person's mind as a result of a purposeful expression of will (Ivanskiy, 2013, 2014, 2016a, 2016b); a certain element of the legal system (Lebedev, 2022a, 2022b); etc. At the same time, the content of this category as a whole remains uncertain, and its application is situational.

According to the author's opinion, the legal pattern should be considered, on the one hand, as a phenomenon, and, on the other hand, as a process. As a phenomenon, a legal pattern is an integrative concept that allows, within the framework of a single scientific category, to present: an intuitive legal understanding; a legal norm or institution, presented both as a text of the law and a certain logical structure; an unformalized sample of lawful behavior, acting as an expression of legal consciousness. As a process, the legal pattern allows us to explore the transition from an intuitive legal understanding to a legal norm representing the form–content of positive law, from a legal norm to an informal sample of lawful behavior, from such a sample to a legal code, that is, a means of overcoming of a regulatory crisis that compensates the insufficiency of personal experience of individual subjects of law due to a behavior model presented in a formalized (legal norm, institute of law) and in an informal view.

Conclusion

Based on the above, we can draw the following several main conclusions.

One of the ways to present a rational picture of law is to establish systemic links that exist between different regulatory cycles.

The introduction of the category "regulatory cycle" by the authors into scientific circulation allows us to track the change in attitude to a particular threat, the prevention of which causes the need for legal regulation. The "regulatory cycle" also allows us to track the attitude of society to a particular threat from ignoring it through zero tolerance to its acceptance.

The regulatory crisis is a turning point in the regulatory cycle, when there is awareness of the threat and its acceptance. This is a very long, sometimes permanent, process within the framework of social development.

Social development involves the implementation of an indefinite set of regulatory cycles. Their specific number is directly related to the number of threats faced by a person and society. At the same time, the acceptance of one threat may give rise to new ones, which will also need their awareness.

The currently accepted ideas about the legal system through a set of legal norms combined into institutions are not sufficient to build a system of links between regulatory cycles. The modern legal science needs additional cognitive tools to establish them. According to the author's opinion, the basis of this toolkit should be the category of "legal pattern", considered as a phenomenon and process.

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