THE ROLE OF NORMATIVISM IN THE RESEARCH OF LEGAL SYSTEM

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Abstract. The relevance of studying this problem is due to the fact that there is still pluralism in the understanding of law in legal science. Such uncertainty complicates the students' learning of the foundations of the theory of law, which negatively affects legal practice. Among many concepts that offer their own vision of law, a special place is occupied by the normative understanding of law. The bright representatives of this direction are G. Kelsen, G. Khart and Kh. Bobbio.

The study purpose is to reveal the role of normative understanding of law in the study of the legal system of society. We set the following tasks to achieve this purpose: analysis of the features of normative approach to understanding the law; definition of the legal system of society; identification of the normative approach significance in analyzing the legal system composition; study of the normative approach significance in studying the functions of the legal system.

The methodology of study is based on the systemic dialectics. At the same time, we involved a variety of general scientific and privately-based methods. The materials specified in this article can be used in the educational activities. They can also be taken into account in legal practice, since they make it possible to better understand and delineate positive law and other legal phenomena.

Key words: normative understanding, legal system, composition, positive law, law.

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1. INTRODUCTION

The legal system of society is one of the key categories of the modern theory of state and law. It allows considering the legal reality as a single holistic phenomenon. The components of the legal system are positive law, legal consciousness, legal science, processes of lawmaking and the exercise of law.

At the same time, there is the problem of understanding the core of this system - a positive law. On the one hand, there is a large number of interpretations of this phenomenon within the framework of legal positivism. On the other hand, a positive understanding of law is also not unique. There are some psychological concepts of legal understanding, the historical school of law, the concept of natural law. Normativism, being one of the manifestations of legal positivism, enables us to outline the boundaries of law. Therefore, we can say that this concept of legal understanding has a methodological significance.

The individual fragments of this problem are studied in detail in the legal science: understanding, composition, functions of the legal system, normativism. However, we need some comprehensive studies showing the role of normative understanding of law in studying the legal system. They will enable us to avoid confusion in understanding the composition and content of the functions of this system.

This article is of a survey nature. It is designed to lay benchmarks for future similar studies. The key structures are the legal system and the normative understanding of law. The methodological basis is represented by the systemic dialectics.

As a result of the study made, we revealed the possibilities of a normative understanding of law in studying the composition and functions of the legal system. The obtained results can be used in educational activities and legal practice. In the process of the study, there were some questions as to the role of normativism in studying the international legal system. This problem requires conducting separate studies within the framework of the theory of state and law and the science of international law.

2. METHODS

The doctrinal basis of this article is represented by the scientific works connected with the general theory of the state and law. We used the works of Russian and foreign researchers, describing the understanding of normativism and the legal system of society.

The systemic dialectics used within the framework of the classical type of scientific rationality acts as a methodological basis of studying. It allows using such methods as analysis, synthesis, deduction, induction, analogy.

We implemented the general scientific methods of scientific knowledge in the article. The structural-functional method enables us to see the relationship between changes in the composition of the legal system and in the content of its functions. The historical method makes it possible to use historical and legal material illustrating the development of the legal system and political and legal thought.

The formal legal method that allows using Russian and foreign regulations should be noted among the private-science methods. It is also necessary to distinguish a comparative legal method, through which different concepts of legal understanding are compared.

3. RESULTS AND DISCUSSION

A normative approach to understanding the law is traditionally popular in Russia - a state that is part of the Romano-Germanic legal family. As you know, the law takes here a leading position in comparison with judicial practice. Some theorists of normativism generally question the power of the courts to recognize the laws as void on the basis of their inconsistency (Himma, 2005). A positive right is convenient from the point of view of obtaining a legal education, because this right is exercised by professional lawyers and citizens. It turns out that this approach has a practical-oriented meaning.

Normativism is a kind of legal positivism, according to which law is considered a certain set of norms created or sanctioned by the state (Martyshin, 2003). In other words, according to the representation of supporters of legal positivism, law is a state's will product objectified in a strictly defined form. Moreover, the moral, class,
psychological and other factors that determine the direct content of the legislator's will remain beyond the research interests of the positivists. The law may be voluminous or concise; in particular, the US Constitution consists of only seven articles and establishes basic management parameters (Wenzel, 2013).

Although the Austrian lawyer and scientist Hans Kelsen is the founder and the main representative of legal normativism, the origins of such interpretation of law lie much deeper. The basis of world outlook of normativism of the beginning of the XX century was the provisions of the formal dogmatic jurisprudence of the XIX century, which made the law effective in the state the main object of study. This methodological emphasis was predetermined by the widespread introduction of legality into the life of society, the strengthening of the legislative power position in the state apparatus. At the same time, it should be noted that the appeal of legal science to the specifically legal content and the formal side of law is objectively conditioned by the embodiment of the ideas of earlier concepts in the political and legal practice. Thus, the legal ideals proclaimed by the natural-legal concepts of the XVII-XVIII centuries called for replacing the rule of people with the rule of laws.

Moreover, the initial principles of legal positivism can be found already in the ancient Chinese legism, as well as in the views of the sophists and nominalists, who demand obedience to the imperative orders of the state (Napalkova, 2016).

Of course, the positivist approach to understanding the law, as well as normativism, is heavily criticized in modern science from a variety of positions. This is largely due to the fact that there are many concepts of normative understanding of law. The variations of normativism proposed in the literature differ in the final analysis by the degree of categoricity with which the authors deny the forms of law other than the formal legal ones. In particular, the "pure doctrine of law" of Hans Kelsen, understood as the theory of positive law in general, rather than a separate law and order, is very vulnerable. Perhaps he did not think that positive law was not ideal, it could contain gaps (Dyzenhaus, 2011). The very idea of pure law with some abstract basic norm seems to be overly dogmatic and far from reality.

In addition, Kelsen's normativism focuses on the formal side of law. The domination of form leads to a legal imbalance, often it means an absolute disregard for the content of law (Arzamasov, 2016). In other words, any decisions of public authorities may be considered legal in the considered interpretation.

How can we interpret the law in terms of modern normativism? Obviously, in this case, it is reasonable to regard the law as a set of norms regulating social relations that have general binding and formal certainty, expressing the universal and class nature of the state's will, issued or sanctioned by the state, which also protects these norms from the violations (Baytin, 2005).

With all the shortcomings of normativism, this approach enables us to consider law as one of the key elements of the legal system of society, without confusing it with other legal phenomena. Turning to the formal side of the law makes it possible to clearly see and explore its instrumental role as an effective regulator of social relations. In this capacity, law acts as a system-forming element of the legal system, which gives it unity and organic integrity. At the same time, the question immediately arises as to what the legal system is and what its composition looks like.

The legal system is one of the established theoretical constructions. It can be regarded as a certain set of jointly existing legal phenomena affecting the behavior and activities of legal entities and ensuring the existence of various spheres of society's activity (Kartashov, 2005). The term "complex" emphasizes the system interaction between the system components. They include positive law, legal consciousness, legal science, law-making and implementation of the rule of law.

Of course, it is possible to separate other legal phenomena within the legal system, but this depends on the methodology of particular study. For example, sometimes they write about legal practice, embracing the law-making and the exercise of law. It is also worth noting that the modern legal systems are included in various legal families.

A normative understanding of law implies that a positive law consists of certain norms. This makes it possible to clarify the composition of the legal system. For example, a sociological understanding of law will inevitably lead to a mixture of law and legalization. The psychological concepts include legal awareness in the understanding of law. A broad approach to understanding the law calls into
question the need for the legal system itself, as it integrates various legal phenomena in the content of law.

Normativism provides an opportunity to preserve the independence of these phenomena. The researcher, based on this methodological approach, clearly delineates the positive law, legal awareness, the exercise of law. At the same time, there are no insurmountable boundaries between these components. On the contrary, there is a close interaction between them; it is conditioned by the nature of the legal system itself.

Normativism enables not to confuse the legal system of society and the system of law. They are related as a whole and part.

Ignoring the provisions of natural law, as well as reducing the methodological significance of this concept in the family of common law and in religious legal families is sometimes called as weaknesses of the normative understanding of law. Such statements cannot be accepted.

Natural law is an important achievement of political and legal thought; its significance is not questioned. In addition, the obligation to take into account the provisions of natural law is contained in the doctrine of the rule of law, to which many modern countries adhere (Gubaydullin & Shigabutdinova, 2016).

But the natural law is present in the legal system of society due to all legal phenomena, primarily due to the positive law. In its pure form, natural law is a set of certain ideals. Only when it is secured in the official legal norms, the natural law receives its execution within the composition of the legal system of society.

As for the low effectiveness of normativism in the legal systems that are part of various legal families, this can also be argued.

In the family of common law, the leading source of law is the judicial precedent; therefore the sociological approaches to understanding the law are popular here. However, such a situation does not detract the value of normativism. In addition to the positive law, there are some processes of the exercise of law in the legal system. Within the framework of legal regulation, these components are closely related to each other and do not work separately. The normative approach makes it possible to see how new legal norms are born in the framework of the exercise of law (the activity of higher courts), which are subsequently included in the positive law. Of course, one can talk about the judge discretion, which is still bound by the law (Taggart, 2013), but it should be taken into account that this freedom has also certain limits.

In religious legal systems, the mechanism of regulating public relations has a complex character. From the point of view of positivism, it is difficult to see law in the norms of religious legal order (Eekelaar, 2012). But there is a dualism in the composition of many religious legal systems. It means that there is also a positive law, which can be studied through normativism, in addition to religious law.

A special place is occupied by the international legal system. Its composition is different from the composition of national legal systems. Therefore, this problem requires carrying out some individual scientific researches.

The legal system of society is constantly functioning, influencing various spheres of public life. Here we can talk about the integrative, regulatory, protective, information, educational and other functions of the legal system. The normative understanding of law allows clarifying the content of these functions, determine the scope of their actions. At the same time, it should be borne in mind that all the components of the legal system manifest themselves in the content of these functions.

So, the positive law, allocated on the basis of normative approach, is present in the content of each of these functions. However, the degrees of his presence and role are different.

For example, the integrative function of the legal system ensures its integrity and connection with other social systems. Such a function could not exist without a system of legal norms, since all legal phenomena are connected with each other due to a positive law. The interaction of legal norms, moral and religious norms underlies the relationship of the legal system with the spiritual sphere of society.

The regulatory and protective functions act as general functions of the legal system. They include the nature of this system, which has arisen because of the need to regulate social relations. The legal norms are one of the products of legal policy implementation. They, in turn, determine the scope
of these functions. For example, archaic laws mainly contained the protective norms, which determined the prevalence of the protective function. Later, the regulatory norms began to develop, and therefore the regulatory function of the legal system came to the fore. It should be borne in mind that the change of priorities was due to changes in the positive law, although other components of the legal system were involved in these processes.

If we talk about the information and educational functions of the legal system, then there is a noticeable effect of positive law. Of course, this does not detract the role of legal consciousness, legal science and the processes of exercising the law. But the initial information is contained in the legal norms.

4. SUMMARY

The emergence of normativism as a special concept of legal understanding was a peculiar reaction to wide dissemination of sociological, psychological and ethical-philosophical ideas in the legal science. The "norm" is a key concept of the theory under consideration. The law appears to be in the form of an orderly, coherent system of norms united in a single legal order. The source of unity of the whole set of norms is the state's will. The very norms are in the hierarchically organized vertical relations, providing subordination of norms of different legal force.

The law is regarded as an independent object and is not mixed with other legal phenomena - the exercise of law, legal awareness, legal science. Therefore, normativism allows considering in detail the composition of the legal system, consisting of many independent components.

Normative understanding of law can be used in the study of various legal systems of our time. But research is needed to show the potential of this concept in the study of the international legal system.

Normativism allows us specifying the content of the legal system functions, because they are based on a positive law. Changes in the legal system affect changes in these functions.

5. CONCLUSIONS

Having become an independent direction of political and legal thought, normativism had a noticeable influence on the further development of legal science. It emphasizes not only the state-power nature of law, but also its complex systemic nature. The allocation of positive law among other legal phenomena provides an opportunity for investigating their interaction within the legal system of society. Having enriched the categorical apparatus of jurisprudence with such concepts as "legality" "legal force", "legal order", "legislative system", the normative approach has become an effective methodological basis for researching the legal system of society. It enabled us to comprehend the nature and functional activity of various legal phenomena, not allowing their mixing.

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REFERENCES


