Clarification and analysis of the concept of "legal reality"

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Abstract. The relevance of the study is determined by fundamentally different approaches to understanding the essence of legal reality, which creates practical issues of law enforcement. Legal reality is considered in the context of cultural interpretation of law, its role in the legal being of civil society is determined. The analysis of scientists' worldviews on the problem of the category of "legal reality" allowed the authors to generalize global approaches and define this category as a special kind of being - the kind of ideal being; its essence lies in the obligation, and this sphere constitutes the world of man as a person and the world of culture in general. This "being" has a semantic structure. The meanings of law are expressed in mental attitudes, ideas and theories, in the symbolic form of norms and institutions, in human actions and relationships, i.e. in various manifestations of legal reality. However, taking into account the rootedness of law in culture, one can say that the way of the existence of meanings is very multifaceted. According to the authors, clarification of the concept of "legal reality" is necessary to improve legal practice. The leading research approach includes such scientific methods as dialectics, analysis, synthesis, deduction and the formal legal method.

1 Introduction

At present, Russia is undergoing a process of transformation of legal reality connected with the dynamics of social relations. Social progress is a catalyst for legal development. The progressive legal culture of society sets for us new goals, namely, the creation of legal tools that correspond to the modern social life of society, allowing to recognize the value of law, to enhance the legal culture and legal awareness of society.

The study is relevant due to the need to determine the content and significance of legal reality, since law is a reality that arises from all options for human interaction with the world of people, the state, the values of society and history, determining the world of a person as a person and the world of culture in general.

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The theoretical basis of the work consists of the scientific research of such scientists as N.P. Aslanyan, V.A. Bachinin, B.A. Kistyakovsky, I.P. Malinova, A.V. Malko, Yu.E. Permyakov, L.I. Petrazhitsky, E.V. Spektorsky, V.V. Trofimov et al.

The issue of determining the reality of the legal world is one of the most debatable in the national philosophy of law of the 20th and early 21st centuries. It is closely connected with the main question of the methodology of science, what is reality in general and how the reality recognized or created by science relates to the empirical reality. The problem is accentuated by the diversity of methodological approaches in philosophy and theory of law.

Well-known philosopher and lawyer E. V. Spektorsky emphasized: "It seems to lawyers that they know what reality they are dealing with, only until they are asked about it. If they are asked, they have to ask themselves and wonder, or, if necessary, solve one of the most difficult questions of the theory of knowledge." [1] According to L.I. Petrazhitsky, who started from the existence of two types of reality, namely, physical, i.e. sensually perceived objects, and mental, i.e. inner experiences, the law was not an element of sensory being, but was reduced to subjective experiences of the rights and duties of individuals. Objectification of these experiences was considered by him as phantasms, a metaphysical projection in the external sensory world [2]. Of course, the scientist correctly noted the irreducibility of the being of law to sensual being and the production of its objective being from a different type of reality. But it is difficult to agree with the fact that it is considered to be a psychological reality (one of the types of empirical reality).

B.A. Kistyakovsky criticized L.I. Petrazhitsky for underestimating the institutional existence of law. He himself stood on the position of the multifaceted nature of law, singled out in it organizational, institutional, social, psychological and regulatory aspects [3]. Subsequently, he focused on the sociocultural reality of law as being of ideas and values rooted in the culture of the people.

E.V. Spektorsky tried to reveal the peculiarity of the reality of law when comparing different types of realities: a) the realities of logical truths that are authentic not only subjectively but also objectively; b) the realities of geometric (mathematical) truths, that, on the one hand, are also transcendental, like logical truths, i.e. they reveal themselves in the minds of people in the same way, on the other hand, they are obligatory and valid for the sensory world; c) the realities of historical truths appearing through the intermediation of all kinds of monuments and documents; d) the reality of the moral world (moral reality).

2 Discussions

Aslanyan N.P. notes the variety of terms used that reflect the concept of "legal universe", such as legal reality, legal system, legal life, legal picture of the world, legal matter, legal space, world of law, legal field and criticizes the established understanding of the existence of law through the category "Legal life" as a universal criterion of perception (Malko A.V., Trofimov V.V.) [4].

We should, in our opinion, turn to the category of legal reality as a methodological tool adequate to solve the problem in order to get out of the infinite variety of definitions of the nature of law and at the same time not to lose its manifestations inherent in its wealth. In recent years, the concept of legal reality has been increasingly used in the works of philosophers and lawyers. It plays a crucial role in the concepts of I.P. Malinova, V.A. Bachinina and others [5].

The meaning of the problem of legal reality is to find out what is right and how it exists. The main issue is here the problem of being of right, including the question of its ontological basis, i.e. its rootedness in human existence. One should also take into account the specificity of the ontology of law, since the existence of law is a special mode of being -

“being-obligation”. Thus, the reality of law is established not as a fact, but because of its significance for a person.

What is the ontological basis of law? What does it owe its origin to? It is completely obvious that nature and natural laws cannot act as the foundation of law, as well as the universe as a whole, although there are attempts to revive the ideas of cosmic foundations of right characteristic for antiquity [6]. The right is a non-natural phenomenon, and no foundations of law in nature can be detected. Nature is the realm of objects, and the right belongs to the sphere of interaction of subjects.

Is it possible in this case to consider society as the substantial basis of the right? Although law arises only in society, is connected with it, and even has a social essence, it is not the essence of law, but of its manifestations. All of that turns our research into the plane of phenomenological ontology.

If we try to describe legal reality, it will appear as a special being. It can neither be identified with empirical (social) reality, nor deduced from it, nor reduced to it.

The deontological world, i.e. the world of law and morality is possible only if the following two conditions are met: a) recognition of free will, i.e. the full ability of each person to act in one way or another and in accordance with this, to fulfill or not to fulfill his or her moral and legal obligation (this requirement turns out to be of particular significance for a right); b) recognition of the fundamental possibility of the norm of due both as the criterion of good and evil, justice or injustice, prescribing to do so, and not otherwise and in accordance with this evaluating human actions as good and evil, fair and unfair. In positive law, these are quite tangible and objective criteria, which are laws. However, the problem of natural law also raises the question of a superpositive criterion. From its standpoint not only people's actions, but also the laws themselves can be assessed.

3 Results

The main thing in the reality of law in general and of each of the legal phenomena is a special way of its manifestation. It acts on a person. This is a special kind of action - an action not for an external reason, but for an internal impulse. It belongs to the sphere of significance that differs from the sphere of empirically-social manifestations. We emphasize once again that the world of law is of a meta-social nature, it cannot be reduced to the social interests of the parties involved in the legal relationship. As a special dimension of the human world, it is built according to laws differing from the laws of the empirical world, and its structural elements are not facts, but meanings.

We are dealing here with a special, deontic logic, therefore, cognitive means must be special, differing from those used in the knowledge of the empirical world, since they combine cognitive and evaluative moments. At the same time, the deontological reality manifests itself in different ways in the sphere of positive and natural law. Thus, the world of positive law, or legal reality, differs from a different expression of deontological reality, the world of morality, it is cognized through perfectly tangible external signs, i.e. thanks to objectivity (positivity). This objectivity, i.e. a written document (text), on which basis a conclusion is made about the objectivity of a norm, a transaction, a criminal act, is basically similar to the objectivity that is used for judging the historical reality. Such a nature of legal objectivity (linguistic text) makes possible an analytical and hermeneutic interpretation of law.

Natural law, unlike the positive law, does not have an official objective form, and it is only close to morality, which makes it possible for some authors to identify the natural right with moral norms. In the formulation of the problem of natural law, an attempt is made to overcome any relativity connected with the space-time definiteness of law, those subjective moments brought about by the experience of individuals, clans and historical

eras. So the normative validity of a law appears as necessary as the validity of logical and mathematical truths..

The semantic content expressing the phenomenon of law lies in a certain obligation (the connection of rights and duties). Positive law with its norms and institutions, as well as the entire legal life arises as a manifestation of this phenomenon. At this stage of the study, the distinctive features of the phenomenon of law are revealed as existing by themselves by contrasting with things that are not from the sphere of right - the actual or social world.

The very dichotomy of due and being, or law and fact, is not only an expression of the problem of the relationship between right and social reality (social environment of law), but also reveals one of the fundamental internal contradictions of law, which manifestation is the problem of correlating it spiritually - worldview and socially active sides. In contradiction between the proper and the real, there are two aspects: a) external, when the actual behavior constituting social reality (what exists) correlates with law as an expression of the idea of obligation (what should exist); b) an internal aspect, when an existing, positive law, which, by virtue of its factuality, temporality, materiality, expresses the moment of existence, correlates with the idea of law as an ideal, model and criterion for evaluating existing law from the standpoint of what it should be.

Therefore, the very meaning of the problem of the proper and the real consists in fixing the critical-evaluative attitude of a person to the conditions of his or her being. The conditions for the possibility of such an attitude are: a) the presence of a critical thinking mind capable of wondering whether the existence is in all respects a proper, justified, best social state; b) a certain autonomy and free position of a person in these conditions; c) the presence of criteria for comparing and contrasting. The purpose of such a relationship is to justify or reject the existing order. Here we are confronted with the double function of the value-normative system: maintaining the existing order and focusing on a broader perspective, some other possibility, the unrealized potency of a truly human being.

The special nature of the legal reality as the supra-empirical reality of the values of duty causes the need for a special operation that asserts the validity, justification and recognition of these requirements. This operation is called legitimization. To legitimize the most common legal requirements, it is sufficient to recognize them, i.e. establish as a self-evident basis for activity without deep penetration into their meaning. If these requirements are not so obvious, their recognition is preceded by a justification at the abstract-philosophical level (in relation to natural law) or justification in relation to positive law. The full operation of legitimization implies the justification and recognition of the right as a value. Ways of justifying the need to exercise the right are appeals to the benefit. Categories of freedom, justice as the basic semantic expressions of law are self-evident, a priori forms of practical reason and they possess an immanent binding force in relation to human consciousness. Therefore, the main problem is the human readiness to see them.

4 Conclusions

Thus, revealing the specifics of legal reality showed that it represents a special kind of being - a kind of ideal being, which essence is in obligation, and this sphere constitutes the world of man as a man and the world of culture in general. This "being" has a semantic structure. The meanings of law are expressed in mental attitudes, ideas and theories, in the sign-symbolic form of norms and institutions, in human actions and relationships, i.e. in various manifestations of legal reality. However, taking into account the rootedness of law in culture, one can say that the mode of existence of meanings is very many-sided: "Meanings are rooted in being, its essential aspect is human activity, communication and action" [7].

Being of right is a multifaceted reality that emerges from all variants of human interaction with the world of people, the state, the values of society and history. Any part of the right is not only a set of definitions, rules and regulations. This is an organic inclusion in this complex process of interaction. Therefore, each part of law is formulated in the scientific world through its own concepts and tools of knowledge. And raising the level of legal consciousness is impossible without changing the whole world of culture.

The normative world plays a special role in modern society, forms the whole daily life of a person. Legal reality is a way of organizing of public and individual life with the help of the legal norms[8]. It can be said that the lag of the legal reality from the socio-economic conditions leads to social and legal conflicts. The lack of proper regulation creates practical problems of law enforcement and does not guarantee the stability of civil turnover. So, for example, in foreign legal systems there is such a thing as “pre-assessed losses”. According to A. Egorov, they are not mentioned in the norms of Russian law. At the same time, parties especially accustomed to working with English law include them in treaties subordinate to Russian law. Whether they will receive protection in the courts - this, the author notes, is the most important and interesting question [9].

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