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Problems of strengthening the legality and legal order

This article deals with the role and its features of localization, regulation of regularity and law order in the public relations. Regularity and law order are necessary element of the constitutional state therefore based on regularity and the law; the state can provide unshakable steady level of discipline and turn its legal. And also the problems of improvement of the legislation are considered, its role and place in formation and development of the constitutional state. The problems of regularity and law order always pay attention of scientists and civil servants because the condition of the rights and freedoms of the person is directly connected with questions of definition of a political regime of society.

Key words: legality, legal order, democracy, legal state (constitutional state), state power, reform, subject.

Many works are written about legality. There is also a set of definitions about this phenomenon. But almost each of them is the most important thing that contributes the essence, the basis of legality — strict, steady observance, execution of the rule of law by the participants of public relations. It is inherent validity of any historical period, regardless of the conditions of place and time. In the concrete historical conditions of this entity is filled with specific content and acquires appropriate forms. Legality is proclaimed, and often is enshrined in law as a principle, the requirements to comply with legal regulations, addressed to the subjects of public relations. However, for various reasons, including measures of state coercion, legality (observance of the rule of law) is shown in concrete behavior, activity of the specified subjects, i.e. becomes the method of their activity. The result is a mode of social life, expressed in fact that the majority of participants of public relations observe and comply with public relations.

Thus, the validity can be defined as a principle, method and strict mode, strict observance, fulfilment of the rules of law by participants of public relations (state, its bodies, public and other organizations, labor unions, officials, citizens, -all of them, without exception). This principle acts as a ideal form of legality — all people have to respect the rule of law. Actually, not all legal rules and not all subject of law are respected and enforced, many violations of legality take place. Legality is closely related with other phenomenon — a legal order (law and order). The legal order is the condition of orderliness of public relations based on the law and legality. This is the end of the result of implementation of legal requirements and regulations, result of observance, compliance and enforcement of the legal norms, i.e. legality. The legal order represents the purpose of legal regulation, only for its achievement laws and other normative legal acts are published, improvement of legislation is carried out, measures of legality strengthening are taken place. It is important to be aware of the following circumstances:

- firstly, it is impossible to achieve law and order in other ways, in addition to the improvement of legal regulation and enforcement of law;
- secondly, legality strengthening naturally and inevitably leads to strengthening of a law and order;
- the concrete maintenance of a legal order depends on the maintenance of legality which, in turn, is defined by a number of the circumstances considered below [1].

Legality in the conditions of concrete historical period of concrete state, its political mode and etc. is filled with a specific content. The content of legality and legal order in the conditions of Eastern despotism, the Athenian slave-owning democracy, feudal absolutism democratic or totalitarian regimes of modernity has huge differences, although the legality is always compliance, enforcement of legal order- its result.

Differences in the maintenance of legality and legal order depend on its sides (elements): subject (legality carriers — that has to conform to legal requirements); subject (structure of subjects covered by the obligation to comply with legal regulations and the right to require such performance from other people); regulatory (a circle of legal instructions is obligatory for execution). Changing these aspects of legality and defines the different amount of content in the specific historical conditions, increase or decrease of its role in the society.

So, the main carrier of legality is its activity (behavior) of people. But through it property of legality, i.e. compliance with the law, get also other objects — normative and law-enforcement acts (such as the law

contradicting the Constitution, laws, establishing non-judicial or emergency order of consideration of certain categories of criminal cases) has been one of the major causes of mass unjustified repressions in the USSR in the 30's and early 50's. The maintenance of legality substantially depends on structure of its subjects. The majority of scientists connect concept of legality with activity of all participants of the public relations, i.e. the states, its bodies, public and other organizations, officials and citizens. However, there is an opinion which considerably narrows this structure, excluding from it citizens, and in certain cases and public organizations. But the exception of anyone from among the subjects of the law creates the illusion of not fulfillment of legal requirements. There is a narrowing of the sphere of legality, and it from all-social, political and legal turns into the phenomenon much narrower, connected with activity of a limited circle of subjects.

This narrowing of the range of subjects of legality in terms of the administrative-command system contributed to the emergence of «dead zones», is not subject to the law. And although it proclaimed the idea of «universality of legality», in fact, outside of its scope remained consistently the top party and state apparatus, and often the number of state bodies. In the period of Stalin's personality cult is led, in particular, to mass arbitrariness and lawlessness, and during stagnation to the development of corruption, the formation of the clan system for decades with impunity carrying out criminal activities. Similar phenomena take place in the present [2; 215].

Thus, narrowing of a circle of subjects of legality destroys idea of its generality, all-obligation of legal instructions, equalities of all before the law that in practice leads to the erosion of the mode of legality. The normative side of legality is determined by the nature and content of legal norms, observance and execution which form this concept. Most of authors connect legality with need of observance of all legal norms. However, there is an opinion that the meaning of legality is performed only norms formulated in the laws. Acceptance of this position would mean an exception of the sphere of legality of obligation of observance of subordinate regulations that eventually will inevitably lead to weakening of the mode of legality in the country.

Expressed the opinion that the concept of legality are themselves rules of law, the law itself. Legality really is closely connected with the right, with the legislation, can't exist without them: people observe, execute not abstract slogans, but concrete legal instructions. The contents of the legislation, thus, define the maintenance of legality, its standard party. However, legal norms itself are the prerequisite, but not an element of legality. Otherwise there is an illusion that strengthening of legality can be reached only due to improvement of the legislation. Also existence of the independent scientific concept other than the legislation which at the same time would reflect the transition mechanism from legal opportunity to legal reality is necessary.

The selection of the parties of the content of the legality allows for a fresh look at its historical development. Differences in the content of legality and legal order in the different historical conditions are determined primarily normative and subjective aspects of this content: firstly, the degree of regulation of certain aspects of social life, the concrete content of the legislation reflected the interests of different classes and social groups, etc., and secondly, the entities are obligated to comply with legal regulations and has the right to require such performance from the other, i.e., the range of authorized and obligated subjects of legality.

In any society the number of the persons obliged to observe strictly the law includes all representatives of enslaved classes and, as a rule, considerable part of a ruling class, and the relevant requirement is consistently supported by the compulsory force of the state. Thereby the vast majority of the population in the conditions of all social and economic structures and all political regimes is compelled to work according to the existing legislation. At the same time in specific historical conditions, at various political regimes some part of a ruling class and a top of government, having rights to demand from others observance of rules of law (that a people at large is often deprived), cannot adhere to requirements of legality, violate legal instructions. Here various options which depend on a political regime, the form of government, the level of culture of the population, especially political and legal, conditions of legal regulation and etc. But this does not affect the final conclusion that law and order exist under any political regime, and that their specific content socially determined and is shown in normative, objective and subjective sides of the legality. All this objectively causes that circumstance that formal legality and a legal order in certain conditions can turn into the contrast, having become «the lawlessness built in the law» [3; 4].

So, many negative things in our society were not only the result of violations of the laws.

There were a lot of regulations that are not consistent with the public interest. Their «strict observance» actually meant «strict violation», i.e., have resulted in negative consequences for the people, for the interests of social development. Therefore, improvement of legislation involves the creation of robust mechanisms to identify and reflect on the laws of the people's will and interests of the progressive development of society. Important for the theory and practice of strengthening the legality is the question of delimitation of the prin-

ciples and requirements of legality. The principles of legality are the main ideas, start expressing the content of the law, and the requirements of what «requires» legality, i.e. formulated in the general form of legal regulations, compliance, performance of which makes the phenomenon (behavior, act, etc.) legitimate.

With this approach it is possible to identify four of the principle of legality: the rule of law, unity, feasibility and reality of law. The rule of law is usually interpreted as the rule of law in the system of normative acts. However, this principle must be understood much more broadly — as obedience to the law and all regulations and all acts of the implementation of the law (application, compliance, and performance), and all other objects. Only under these conditions, the principle of the rule of law becomes universal, throughout the entire fabric of society [4; 9].

Under unity (universality) of the law refers to a single direction of legislating and previously in the territorial and subject terms, i.e. on the whole territory covered by the respective normative act, in relation to the activity of all subjects of public relations. The feasibility of legality means choosing strictly within the law of the optimum, consistent with the goals and objectives of the company options for the implementation of legislative and prorealtime activity (behavior), the inadmissibility of the opposition to the legality and expediency. And, finally, the reality of law is an achievement actual performance of the legal requirements in all activities and will be held accountable for any breach of them.

The unity (generality) of legality is understood as a uniform orientation of law-making and realization of law in the territorial and subject plan, i.e. in all territory of action of the relevant statutory act, in relation to activity of all subjects of the public relations. Expediency of legality means need of a choice strictly within the law of the optimum, answering to the purposes and tasks of society options of implementation of the law-making and right realizing activity (behavior), inadmissibility of opposition of legality and expediency. And, at last, the reality of legality is an achievement of the actual execution of legal instructions in all kinds of activity and inevitability of responsibility for any their violation.

Requirements of legality (that demands legality) reflect its orientation which is caused by the content of rules of law. Unlike principles, expressing the content of the legality of the act in all its spheres, apply to all activities of any entity of public relations requirements associated with certain activities of certain subjects. For example, the requirements of the protection of rights and legitimate interests of citizens, publication of legal acts in the prescribed manner apply to the authorities of the state, etc. Along with the principles and requirements of the law we can distinguish two groups of features of the law that often, but without sufficient grounds are considered as its principles or requirements. This is, firstly, the characteristics of external relations of legality (the relationship with democracy, culture and so on), and, secondly, the ways and means of ensuring the legality (state control, citizen participation in strengthening the rule of law and so on). When considering communication principles and requirements of legality, you can come to the conclusion that each of the principles can be deployed in the totality of its requirements.

So, the principle of the rule of law is developed in the following requirements:

- all laws (and activities for their creation) have to correspond to the constitution and other higher laws;
- subordinate regulations (and activities for their creation) have to correspond to laws;
- acts of right application and law-enforcement activity have to correspond to laws and subordinate regulations based on them;
- acts of individual behavior have to correspond to the laws based on them to subordinate regulations and acts of right application [5; 32].

It is important that each of these requirements, in turn, can be developed in set of provisions which or are directly recorded in the law, or follow from its text: laws have to correspond to the Constitution.

Thus, we from the principle of the rule of law through the relevant requirements of the law came to specific legal regulations. In the same way based on the activities and outcomes can be deployed and other principles of law in the requirements, and then in certain legal norms. This allows you to define a clear list of requirements and to carry out their regulatory consolidation and specification that will create additional opportunities for strengthening the legality and legal order. The role of legality and legal order can be considered from different positions, and above all from the point of view of the state and individual. To state this role primarily is determined by the place that take legality and legal order in the legal regulation of social relations. Leading the society, the state uses a variety of methods and tools: economic, political, ideological, organizational, and others. Among them, the most important place takes the legal regulation of social relations. This method lies in the fact that the state publishes (or authorizes) the rule of law and provides universal compliance and enforcement, i.e., legality, and thereby achieves the legal order.

The special place of this method is connected, first, by that legal norms regulate all most important aspects of life of society: economy, political activity, property relations, questions of a family and marriage, etc. Therefore, compliance with the relevant rules determines the order and stability of the most important spheres of human activity, the existence of society itself. Secondly, other methods of state management of the society is often implemented through legal regulation. So, planning (organizational method) is often conducted through the approval of the plan regulation (for example, the budget law); wages (economic method) sets the regulatory basis of its size, the procedure of calculation and payment, etc. From the standpoint of personal legality and legal order act primarily as a means of protecting her rights, freedoms and legitimate interests. They protect people from the tyranny of the state and its bodies, and unlawful actions of other persons. Personal freedom degree, reality of its rights and freedoms, level and reality of democracy depend on a condition of legality and a legal order. And as in modern conditions interests of the personality become priority for the state, this party of legality and a legal order is also the most important purpose of the state activity [6; 5].

All this defines a special role of legality and a legal order for society in general: they act as a basis, an order kernel in society, as conditions and necessary elements of democracy, as the main universal values and, therefore, essential parts of legal and general culture. Strengthening of legality and legal order is an indispensable condition and means of formation of the constitutional state, and they — its necessary elements. The state will become legal only in the presence of a strong rule of law and stable, based on the law and the legality of the order.

In light of the above, it is possible to make some predictions about the development of legality in the formation of a constitutional state.

First, there will be a consecutive expansion of the subject party of legality, i.e. a circle of those objects which will gain property of legality. It will belong to different types of activity (behavior) of people, to legal acts (standard, law-enforcement and other acts of realization of the right), managerial and other documents, the relations of people and their organizations. Thus those objects which were traditionally considered as unlawful that is connected with implementation of the principle will fall within the scope of legality more and more: «Everything is authorized (i.e. it is lawful) that it isn't forbidden by the law».

Secondly, there will be changes in the subject party of legality. Formation of the constitutional state assumes that all subjects of the public relations, without exception (the state, its bodies, public associations, officials, and also labor collectives), really will become carriers as duties strictly to observe legal instructions, and the rights to demand respecting the rule of law from other subjects. Thus the reality of these rights and duties will constantly increase, won't become almost absolute yet. Thirdly, to improve the regulatory side of the law. This improvement will occur in at least three directions. On the one hand, the content of the legislation is increasingly will correspond to the actual conditions and the progressive trend of social development (change management economy, the democratization of social life etc). On the other hand, the legislative process will be improved itself, which is primarily due to its democratization, participation by the wider public, with the expansion of its scientific base. And at last, the structure of the legislation radically has to change. The law has to become the main source of the right in practice. Thus, unlike many existing, new laws have to be, as a rule, laws of direct action that will make unnecessary the edition of the supplementing and concretizing instructions and will allow to realize the principle of rule of law in practice. Law enforcement doesn't happen spontaneously. It demands purposeful impact on behavior (activity) of subjects of the public relations, i.e. is administrative process [7; 64].

Successful influence on this process requires knowledge of mechanisms of the implementation of legal norms in activity of people; factors which influence on behavior, defining its legitimacy or illegality, and also means by which it is possible to operate this behavior, providing its compliance to legal instructions and requirements.

In legal literature reality, provision of law is traditionally considered as a result of influence of guarantees of legality: general (economic, political, ideological) and special (normative and organizational-legal). Thus, however, the following circumstances aren't considered.

Firstly, in the theory of guarantees negative impacts, without knowledge of that an effective activity on strengthening the legality is impossible.

Secondly, really guarantees work as set of any phenomena, the processes including both positive, and negative impacts (so, public prosecutor's supervision is realized in activity of numerous prosecutors in which shortcomings and violations also take place).

The problem of law enforcement demands knowledge and the accounting of all variety of the factors influencing behavior of people — both positive, and negative, both legal, and material, political, organizational, psychological, etc. The problem of strengthening of legality is, thus, not only legal, it has complex character. For implementation of effective measures for strengthening the legality it is important to know the mechanism of action of all factors in relation to different social levels, to different types and directions of activity of all subjects of public relations.

Unity of the specified factors possesses all signs of social system: forms unity of elements inseparably connected among themselves, has the ordered hierarchical structure, develops under certain laws of social development. This system is multi-level, in which intensive management processes flow, complex information streams exist.

Influence of the factors entering into this system can be as the positive, i.e. promoting lawful behavior and strengthening of legality, and negative, pushing people on the illegal acts breaking the legality mode.

It is possible to allocate four main levels of system of these factors: all-social, regional (region, district, etc.), group (collective, family, etc.) and individual. While the same factor in different conditions, in combination with other factors, including the qualities and characteristics of an individual, may have a different impact (positive or negative) or it can be applied to the case of neutral.

The factors influencing realization of all rules of law by all participants of the public relations in all territory of the country belong to all-social level. The considerable part of social processes and the phenomena renders on behavior of people (and, therefore, on a condition of legality) generally positive influence and acts as that as legality guarantees — economic, political, legal and others (positive sides and elements of economy, policy, culture, «good» laws, etc.). But there are many all-social factors having opposite impact on a condition of legality (shortcomings of economy, mistakes in the political management of the country, omissions in activity of various government bodies and so forth) which define the general reasons of offenses.

At the regional level, as well as on social action of many factors becomes a «variable»: their impact on the legal human behavior can vary according to the nature and intensity (the state of the production and distribution of wealth; the degree of compliance of legal norms of social relations and so on).

It is important to bear in mind that various factors (economic, political, legal and so on) interact with each other and the end result (the behavior of subjects) in each case is determined by the combined influence of many factors related to different social levels and interconnected complex causal, functional and other dependencies.

The factors operating at the group levels represent specific conditions of activity of the relevant group. So, in relation to public bodies of region, city, district, etc., as such act, the level of their material and technical equipment, activities guide, local and departmental regulations, the level of general and professional culture of the employees, etc. Impact of all factors on the concrete act of legal behavior is carried out on two channels [8; 13].

Firstly, under the influence of conditions (all-social, regional, group) acquired traits, properties, qualities of a person that determined the character of his behavior in the legal situation i.e. the personality possessing a certain level of legal, political and moral consciousness is formed.

Secondly, system of these factors determines the specific life situation, perceiving and evaluating which the person chooses a certain option of behavior (lawful or unlawful). So, at intention to make, for example, residential theft entity assesses the possibility and probability of circumstances, such as availability and response of the alarm, the responsiveness of the police, the state of detection of such crimes in the region, secure sales kidnapped, etc.

Influence of different factors on legal behavior can be direct, when under their direct impact is generated by the person or when they are directly taken into account by the person when making a decision about a particular variant of behavior.

Thus, the problem of strengthening the legality is complex, is associated with many phenomena and processes of social life and can be successfully solved only in the context of overall stability in the country.

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Заңдылық және құқықтық тәртіпті нығайту мәселелері

Мақалада заңдылық пен құқықтық тәртіптің атқаратын қызметі, олардың қоғамдық қатынастарды құқықтық реттеудегі орны мен өзгешеліктері қарастырылды. Заңдылық пен құқықтық тәртіп құқықтық мемлекеттің қажетті элементтері болып табылғандықтан, мемлекет мызғымас заңдылық пен құқыққа негізделген қалыпты деңгейдегі тәртіп жағдайында ғана құқықтыққа айналатынын анықтай отырып, оның орны мен ролі, заңнаманы жетілдіру мәселесінің көкейтестілігіне байланысты заңдық себептері анықталды. Заңдылық және құқықтық тәртіп мәселелері әр уақытта ғалымдардың және іс жүзіндегі қызметкерлердің көңілін өзіне аударады, себебі жеке адамның құқығы мен еркі — қоғамның саяси тәртібін анықтаудың тікелей нысаны.

М.Ш.Какимова, А.И.Бирманова

Проблемы укрепления законности и правопорядка

В статье рассматриваются роль и особенности локализации, регулирования законности и правопорядка в общественных отношениях. Законность и правопорядок — необходимые элементы правового государства. Авторы отмечают, что, основываясь на законности и праве, можно обеспечить непоколебимый устойчивый уровень дисциплины и превратить государство в правовое. Также рассмотрены проблемы совершенствования законодательства, его роль и место в становлении и развитии правового государства. В статье освещены проблемы закономерности и правопорядка, всегда привлекающие к себе внимание ученых и госслужащих, поскольку состояние права и свободы человека напрямую связано с вопросами определения политического режима общества.

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