

Implementation of regulatory impact and regulatory function of the law in modern Russia

Gyulnaz Eldarovna Adygezalova, Sergey Alekseevich Zhinkin, Tatyana Valerievna Faroi, Oksana Nikolaevna Zhbyr, Irina Stanislavovna Kich

Kuban State University, Krasnodar, Russia

Abstract

The article examines some theoretical issues related to the implementation of the regulatory impact of the law. In this context, it is impossible to underestimate the value impact on an individual, their worldview, system of ideals, and a number of other aspects. The aim of this work is to study the regulatory function of the law, including its value content. A complex of general scientific methods was used in the course of the study, including historical, comparative, and logical (including abstraction). The study showed that the regulation of relations in society is the main purpose of the law. Its implementation is possible only if the norms of the law (by determining the legal status of subjects of law, as well as giving life circumstances the status of legal facts) take into account the value orientation of a person and the moral and ethical principles that can serve as a motive for legitimate behavior.

The novelty of this study is related to the fact that an attempt is made to determine the stages of the regulatory impact of the law. The law is considered through the prism of its regulatory function, taking into account the values supported in society.

Keywords: law, impact of the regulatory function, functional understanding of the law, value, exercise of a right.

Implementación del impacto regulatorio y la función reguladora de la ley en la Rusia moderna

Resumen

El artículo examina algunas cuestiones teóricas relacionadas con la implementación del impacto regulatorio de la ley. En este contexto, es imposible subestimar

el impacto del valor en un individuo, su visión del mundo, su sistema de ideales y una serie de otros aspectos. El objetivo de este trabajo es estudiar la función reguladora de la ley, incluido su contenido de valor. Se utilizó un complejo de métodos científicos generales en el curso del estudio, incluidos los históricos, comparativos y lógicos (incluida la abstracción). El estudio mostró que la regulación de las relaciones en la sociedad es el objetivo principal de la ley. Su implementación es posible solo si las normas de la ley (determinando el estado legal de los sujetos de derecho, y dando a las circunstancias de la vida el estado de los hechos legales) tienen en cuenta la orientación de valor de una persona y los principios morales y éticos que puede servir como motivo para un comportamiento legítimo. La novedad de este estudio está relacionada con el hecho de que se intenta determinar las etapas del impacto regulatorio de la ley. La ley se considera a través del prisma de su función reguladora, teniendo en cuenta los valores respaldados en la sociedad.

Palabras clave: ley, impacto de la función reguladora, comprensión funcional de la ley, valor, ejercicio de un derecho.

1. Introduction

The dramatic increase in the number of social relationships and their dynamism, as well as in the level of social activity and mobility, make increasing demands on the proper regulation of social processes and relations. In this context, it is important to choose appropriate methods and ways of legal regulation, as well as to determine the exact measure of regularity of social life, the ratio of legal and other social regulators, regulation and self-regulation. All this determines the relevance of the study of the regulatory impact of the law in today's changing social reality.

A separate problem is the implementation of the regulatory function in modern Russia. In the conditions of the development of society and the state, new social relations and categories of subjects of legal relations have emerged. The functional meaning of the law is determined by its social roots and reflects its social essence.

Supporters of the sociological understanding of the law, representa-

tives of the American sociological jurisprudence are focused on the consideration of rights through their functions. For example, one can mention the ideas of R. Pound (1942), T. Parsons (1962), C. Brede-meier (1969), etc.

Currently, many Russian jurists, including T.N. Radko, A.S. Palazyan, V.P. Malakhov, deal with the issues of the regulatory function of the law and the problems of social efficiency. Functional understanding of the law and the problem of the implementation of the law are considered in the works by G.E. Adygezalova (2012; 2016: 2017: 2018).

The question of the operation of law and the implementation of the functions of the law becomes even more relevant in connection with the transformation of the law in Russia based on the judicial reform. Currently, the focus is not on law making, but on law enforcement, as well as other forms of the law implementation.

2. Methods

This study is of theoretical nature and was conducted mainly using methods that are traditionally attributed to general scientific. First of all, it is a number of logical methods: analysis, synthesis, induction, deduction, etc. Such a method of cognition was used as abstraction, that is, the mental allocation of the right distinguishing its regulatory property from its other properties.

Comparative and historical methods in combination with other general scientific methods allowed us to identify a number of stages of the implementation of the regulatory impact and show their value and motivational significance.

3. Results

The results of the study include the following:

- 1) It has shown that the regulatory function of the law is its main function, which manifests its social essence.
- 2) The implementation of regulatory impact on the part of the law allows us to consider the law as actually acting, implemented in legal relations.
- 3) It has been revealed that it is possible to distinguish a number of

stages, steps in the process of the regulatory impact of the law. The first stage is the endowment of citizens with legal personality, which establishes requirements for the psychophysical state of persons capable of acting as carriers of subjective rights and legal obligations.

4) The second stage is related to the determination of the set of legal facts that are associated with the occurrence of legal consequences. This information and facts play a guiding role.

5) The value orientations of the subjects of legal relations are important for the implementation of the regulatory function. This function must have value content. Standards should determine the motivation of lawful behavior in private relations.

4. Discussion

The attention is also naturally increasing to the value aspects of law and its regulatory impact, since legal regulation today cannot be reduced only to a mechanical definition of the rights and duties of subjects of regulated relations.

On the one hand, there is a clear need to formulate state-legal and public responses to the challenges of modernization and globalization. On the other hand, the role of self-regulation in the regulation of various aspects of public life and its various new nuances is steadily increasing. In particular, with the help of law, those civil society institutions are formed that serve as instruments for the development of acts of self-regulation. These are plebiscites and referendums, gatherings of citizens, meetings of citizens based on a territorial, ethnic, or religious principle, homeowners' associations, etc. At the same time, "these institutions are not used enough because of the passive political and legal culture in modern Russia" (Almazova, 2016).

The statist concept of legal thinking, which has prevailed for quite a long time, has shaped the image of strict, purely mechanical, and externally compulsory law. In this regard, a new vision of law and its regulation is necessary, for which the highest value is not the state and its interests, but an individual, the realization of their abilities, qualities, and social responsibility in relations with other subjects, including the state, as rightly pointed out in the literature (Shafirov,

2004).

This thesis, of course, is also applied to the implementation by modern law of its functions, including regulatory, which should be carried out on the basis of the priority of socially valuable actions and interests of an individual, based on clearly established social and value bases.

From the very beginning, the social significance of a right has been manifested in the need for it to perform the regulatory (rule-setting, rule-indicating) function aimed at coordinating people's behavior (Radko, 1970). Therefore, the regulatory impact is rightly considered the most important of all types of legal impact.

Defining a certain framework of political, economic, cultural, and personal freedom, formulating the public duty of citizens, the state thereby legally opens (or accordingly closes) the possibility of participation of persons in certain social relations, and, therefore, in legal terms, recognizes or denies the subjects of law the ability to possess the relevant rights and obligations, as well as their ability to acquire the rights and perform the duties assigned to them by their conscious actions. Such actions of subjects should be the result not of thoughtless subordination or fear of possible punishment, but of value solidarity with legal requirements.

The regulatory function of law is the most important multidimensional special-legal function of law, expressing its social purpose as a social, value and spiritual regulator and consisting in regulating social life and people's behavior by establishing subjective rights and legal duties, determining the range of subjects of certain legal relations and circumstances leading to their occurrence, change or termination. The allocation of an independent ideological (axiological) function of the law does not exclude the fact that the regulatory impact of the law must have a certain value content.

Regulatory function, on the one hand, is common to all forms of organization of public life – politics, morality, economy, religion. On the other hand, within the framework of the current law, it has a certain specificity, for example, in the nature and means of influence, authorization, etc. (Palazyan, Malakhov, 2009). All regulated spheres of public life have a certain value basis, and the subjects

acting in them are guided by a certain set of values, including those of legal nature.

The implementation of the regulatory impact and the actual regulatory function of law includes a number of stages, steps, which can be considered as aspects of this implementation. Empowering citizens with legal capacity, or, more precisely, legal personality, is a definite, initial stage in the implementation of the regulatory function, since, at this stage, the persons who will then become participants (subjects) of certain legal relations are determined. It is at this stage that the requirements for the psychophysical state of persons capable of acting as carriers of subjective rights and legal obligations are established. To this end, the law often determines the age, state of health and other necessary conditions for classifying a person as legally competent, or vice versa. Legal capacity (legal personality) is a necessary condition, without which a person cannot become the subject of certain legal relations. The influence of the law, its regulation of the actions of persons, in this case, is that, by recognizing their ability to exercise their rights and obligations by their actions, those options, behaviors are indicated, by which they can achieve the satisfaction of certain public and personal interests.

Russian authors have repeatedly stated that without a correct theoretical solution of problems related to the legal status of subjects of social relations and, in particular, the legal status of an individual in society, it is impossible to successfully resolve issues related to the forms and methods of the impact of the right on the ways aimed to further improve the regulatory function of law (Kuchinskii, 1965). It is obvious that the definition of the range of subjects of law and their legal status is particularly relevant in the modern world in connection with the processes of social differentiation, modernization, and complexity of social regulation. It is also connected with the concept of the value of an individual in modern society and the need for maximum protection of their rights.

Fixation or transformation of the legal status of citizens through legal norms is one of the important ways to implement the regulatory function of law. The effectiveness of such a path depends on the timely response of legislation to achievements in political, econom-

ic, cultural, and other spheres of public activity, to social and cultural needs in the relevant period.

The legislative definition of a complex of legal facts constitutes the following most important form of the implementation of the regulatory function of law and its other most important aspect in modern conditions. Although legal facts are primarily real-life circumstances, their “determination through legal norms is associated with one of the forms of the regulatory function implementation. After all, the facts of legal significance are only such life circumstances, which are provided by the law. They give rise to certain legal consequences, and not by themselves, but by virtue of the fact that they are provided for in the relevant legal norms” (Alekseev, 1964). However, we must not forget that these facts can also have a valuable, cultural value for an individual and society as a whole.

Based on the fact that the occurrence of certain legal consequences for participants in public relations is clearly associated with legal facts, they play an important informational and orienting role in coordinating the actions of citizens, state bodies, and other legal entities. In addition, in this case, there is a direct regulatory effect of the law and its norms on the specific behavior of legal entities, since some have specific rights with the onset of a legal fact, while others have specific legal obligations or legal responsibility.

At the same time, subjective rights and legal obligations resulting from the occurrence of a legal fact or the formation of a complex of facts must be implemented. Therefore, it is clearly established in the norms of law, what rights and obligations arise in relation to a particular legal fact or factual composition and with the occurrence of what circumstances they change or cease. At this stage, “the greatest certainty of the legal status of legal entities, more precisely, the highest degree of legal formalization of their mutual relations, is achieved. Here, we are talking about a specific legal relationship of specific individuals, which arose on the basis of a specific legal fact and the rights and obligations arising from it” (Radko, 1970).

Legal relations can be considered not only as a kind of specification of the legal norm but, above all, as a form of embodiment of the legal norms in real life, the process of transition of the legal possi-

bility (obligation) to actual relations. Accordingly, it is in the legal relations that the regulatory function of the law acquires its specification.

However, the regulatory impact and regulatory function are expressed not only in the fact that certain rules, models, the framework of behavior are established, but also in the fact that the norms of law cause motivation to lawful behavior in the minds of the participants in the relationship. This is another aspect of the implementation of this function and this type of impact, which is underestimated today. The regulatory impact and the regulatory function are carried out in a wide variety of forms, therefore, the functional characteristics of the law in this regard will be multidimensional, which is also reflected in the doctrinal developments on relevant issues. Thus, according to A.S. Palazyan and V.P. Malakhov, organizing and distributing functions are most significant in reflecting the peculiarities of legal regulation. At the same time, the legal organization is associated with the formation of social situations of people, organizations, and groups. The distributing function is connected with the structuring of society on various legal parameters (rights, duties, benefits, merits, privileges, justice, responsibility, etc.), with individualization (orientation to situations) of regulation (Palazyan, Malakhov, 2009). As one can see, it is possible to use various legal and technical tools, the allocation of certain subfunctions in the framework of the regulatory impact of the law.

In the context of the study of the implementation of regulatory impact and, in particular, the regulatory function of law, it should be said that a clear mutual legal relationship established in general form by legal norms between participants in public relations is achieved due to the fact that the rights and obligations of legal relations entities have an established regulatory content. However, we should not forget about the connection that arises in the minds of the participants, in the system of their value orientations, motivation. It is in the consciousness of a person that the regulatory impact of the law finds its obligatory refraction.

The regulatory impact of the right is very noticeable when it values its actions influencing the personality. Norms of law indicate

patterns of proper behavior, keep people from undesirable actions harmful for society, affect the choice of activity goals and the means to achieve them most rationally, including by securing and protecting a certain set of social values that are essential for an individual.

5. Conclusion

Law and its regulation do not act as a kind of elemental and irresistible force. Many different conditions determine the effectiveness of their regulatory impact. Among them, one of the most important is “the internalization of law, that is, the assimilation of legal principles and norms by an individual, the recognition of their justice and necessity, and the attitude to the values of law as to their own values” (Boikov, 1974). One can talk about the real effectiveness of the regulatory impact of such norms only in the case when a person learned the relevant prescriptions, solidarized with them and began to adjust their legally significant actions. Only such a massive solidarity of the subjects of public relations with the requirements of legal norms is a significant indicator of the effectiveness of the regulatory function of law. Legal norms should not be perceived as alien, imposed from the outside requirements, but as universal human and instrumental values that allow the subject to maximally meet their needs and perform legally significant actions.

In this regard, we believe that the value content of the regulatory impact of the law is the most important factor in its effectiveness and the most important aspect of its implementation in social life.

Therefore, the implementation of the regulatory impact and the regulatory function of law is multidimensional, and, therefore, needs further doctrinal reflection, including from axiological positions.

Acknowledgments

We would like to thank the management of the Kuban State University for assistance in conducting the research.

References

Adygezalova, G.E. (2012). Integrativnaya funktsiya prava v teorii G. Bredemeiera[Integrative function of law in the theory of G.

Bredemeyer]. Istoricheskie, filosofskie, politicheskie i yuridicheskie nauki, kulturologiya i iskusstvovedenie. Voprosy teorii i praktiki, 5-2(19), 14-17.

Adygezalova, G.E. (2016). Case law school as a way of law rationalization. *Man In India*, 96(12), 5463-5470.

Adygezalova, G.E. (2017). *Sotsiologicheskaya yurisprudentsiya SShA v KhKh v.: Formirovanie doktriny, razvitie i sovershenstvovanie pravoporyadka: PhD Juridical Sciences [Sociological jurisprudence of the United States in the twentieth century: the formation of the doctrine, the development, and improvement of the rule of law]*. Krasnodar.

Adygezalova, G.E., Kurdyuk, P.M. (2018). Trends in the «Living» Law Development in Russia: The Lawmaking of Other Authorities. *Journal of Advanced Research in Law and Economics: scientific journal*, 9(1(31)), 15-19.

Alekseev, S.S. (1964). *Obshchaya teoriya sotsialisticheskogo prava [The general theory of socialist law]*. Sverdlovsk, 2, 53.

Almazova, Z.L. (2016). *Sotsialnye i tsennostnye osnovy regulyativnoi funktsii prava v sovremennoi Rossii: PhD Juridical Sciences [Social and value bases of the regulatory function of law in modern Russia]*. Krasnodar, 5.

Boikov, A.D. (1974). *Nekotorye voprosy teorii pravovogo vospitaniya. Pravovaya kultura i voprosy pravovogo vospitaniya (sbornik nauchnykh trudov) [Some questions of the theory of legal education. Legal culture and issues of legal education (collection of scientific papers)]*. Moscow, 11.

Bredemeier, H.C. (1969). *Law as an Integrative Mechanism. Sociology of law*. Harmondsworth: Penguin, 52–67.

Kuchinskii, V.A. (1965). *Pravovoi status i subektivnye prava grazhdan [Legal status and subjective rights of citizens]*. *Jurisprudence*, 4, 43.

Palazyan, A.S., Malakhov, V.P. (2009). *Funktsionalnaya kharakteristika prava: voprosy metodologii [Functional characteristic of law: questions of methodology]*. Moscow, 153.

Parsons, T. (1962). *The Law and Social Control. Law and Sociology*. New York: The Free Press of Glencoe.

Pound, R. (1942). *Social control through law*. New Haven, 138.

Radko, T.N. (1970). *Osnovnye funktsii sotsialisticheskogo prava* [The main functions of socialist law]. Volgograd, 43.

Shafirov, V.M. (2004). *Pravo v chelovecheskom izmerenii* [Law in the human dimension]. *Jurisprudence*, 3, 198.