



**Uncertainty of the legal
reality and sense of
justice: theoretical and
methodological aspects (on
the experience of research
status of public law)**



UNCERTAINTY OF THE LEGAL REALITY AND SENSE OF JUSTICE: THEORETICAL AND METHODOLOGICAL ASPECTS (ON THE EXPERIENCE OF RESEARCH STATUS OF PUBLIC LAW)

INCERTIDUMBRE DE LA REALIDAD JURÍDICA Y EL SENTIDO DE LA JUSTICIA: ASPECTOS TEÓRICOS Y METODOLÓGICOS (SOBRE LA EXPERIENCIA DEL ESTADO DE INVESTIGACIÓN DEL DERECHO PÚBLICO)

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abstract

This article presents the results of a theoretical-legal analysis of uncertainty of the legal reality and legal consciousness as special subjects of (new) status, and ordinary citizens. Meaning of "uncertainty of the legal reality" is refined on the basis of a number of attitudes of social philosophy, including: one form of Government, social uncertainty, dependence on the manifestations of activity subject of social communication-person (citizen); social givens, which does not allow to focus on the sustainable social rules and practices, therefore, the decision always involves risk and accompanies stress for actors. Some of the justified theoretical generalizations include: uncertainty of the legal reality, in principle, not to be overcome, since the State of awareness is a deterministic public entity status (creator of law regarded); the legal reality is possible only to minimize the uncertainty. This task assumes that you have a solid scientific basis, which as the organic segment, comprises deeply and comprehensively developed doctrine of Pravosoznaniy based on the integral understanding of the right type.

Keywords: right; uncertainty in the law; uncertainty of the legal reality; legal certainty; sense of Justice: legal thinking, the subject of public status.

Este artículo presenta los resultados de un análisis teórico-legal de la incertidumbre de la realidad jurídica y la conciencia jurídica como sujetos especiales de (nuevo) estatus y ciudadanos comunes. El significado de "incertidumbre de la realidad jurídica" se refina sobre la base de una serie de actitudes de la filosofía social, que incluyen: una forma de gobierno, incertidumbre social, dependencia de las manifestaciones de la actividad sujeto de la comunicación social persona (ciudadano); social Givens, que no permite centrarse en las normas y prácticas sociales sostenibles, por lo tanto, la decisión siempre implica riesgos y acompaña el estrés para los actores. Algunas de las generalizaciones teóricas justificadas incluyen: la incertidumbre de la realidad legal, en principio, que no debe superarse, dado que el estado de conciencia es un estado de entidad pública determinista (considerado el creador de la ley); la realidad legal solo es posible para minimizar la incertidumbre. Esta tarea supone que usted tiene una base científica sólida, que como segmento orgánico, comprende profundamente y La doctrina desarrollada integralmente de Pravosoznaniy se basa en la comprensión integral del tipo correcto.

Palabras clave: derecho; incertidumbre en la ley; incertidumbre de la realidad jurídica; Certeza legal; sentido de la justicia: pensamiento legal, sujeto del estado público.



Introduction

Relevance of the stated topic is hardly possible to overestimate, since there is a large number of examples that eloquently indicate the following statements in the daily activities of law enforcement and judicial authorities within the framework of national legal systems. The social fact, regulated by the norms of law, in its legal assessment in the process of applying legal norm, gives rise to the solutions that are not just different, but sometimes drastically different! This, firstly, generates a diverse vector legal practice; and, secondly, it gives the grounds for this statement: there is uncertainty in legal reality.

Theoretical and legal analysis of the problem of uncertainty of legal reality makes it necessary to establish what this socio-legal phenomenon is not, and thus clarify the content of the construct. Scientifically, it is possible to accomplish this by mentally separating the content of the concept of "uncertainty of legal reality" from related scientific concepts and the phenomena and processes that they symbolize (indicate) as a result of the nomination.

Research Method

In the process of research, classical methodology of qualitative analysis of systems and processes was used, in particular, a system-analytical approach to the study of the object of study.

In addition, the research methodology is represented by modern tools, it used the basic principles of theory of systems, structural and functional analysis, legal hermeneutics, and phenomenology. The present study was conducted on the basis of dialectical, as well as the widespread use of general scientific (analysis, synthesis, induction, deduction, analogy) and particular scientific methods of cognition of reality.

Results and Discussion

The notion of "uncertainty in law" is directly related to the content-semantic "boundary" of the scientific abstraction of "uncertainty of legal reality". The phenomenon of uncertainty in law is estimated by most researchers unequivocally negative; for a reason that is obvious: law itself is a normative regulator of social relations, and the legal norm as a measure, the standard, and the model of human behavior (citizen) in society must be defined in its requirements for the act of behavior (Pokrovsky, 1998). This property combines such qualitative characteristics of the legal norm as concreteness, accuracy, clarity, etc.

Taking into account the abovementioned statements, we can state the following: notion of "uncertainty in law", due to its connection with the legal norm, was constructed and used in scientific discourse and special studies by those representatives of the scientific department of legal theorists, who have a worldview in a philosophical and legal sense generated by the positivist (normativism) type of understanding the essence of law.

In modern scientific discourse, attempts are being made to clarify the content of the concept of "uncertainty in law". At the same time, intellectual efforts are being made to "go" beyond the limits of the philosophy of positive law into the area of "pure" philosophy, and use the heuristic resource of its paired categories. As a result, the concept of "legal certainty" is introduced into the scientific discourse as a dual pair, the dialectical opposite of concept of "uncertainty in law" (Sinenko, 2013).

In order to clarify our own vision of logic of reflection in relation to the uncertainty of legal reality, we note two points: (a) legal uncertainty is one of the forms of governance of social uncertainty; (b) legal uncertainty is socially determined, i.e. put in dependence on manifestations of activity of the subject of social communication - a person (citizen); (c) legal uncertainty is a given, which does not allow to focus on the sustainable social rules and practices, therefore, making a decision is always fraught with risk and the accompanying stress for subjects. The risk from the standpoint of social philosophy, the system of knowledge and a set of relations, which allows one to make the best decisions, is burdened by the various types of uncertainty and vividly manifests itself during the crisis (Chestnov, 2018); (d) Direct determinations between legal uncertainty and social risks require the clarification of research facilities.

Since legal uncertainty is socially determined, i.e. dependent on the manifestations of activity of the subject of social communication, a person (citizen), and the activity itself is always secondary to subjective reality, leaving the process of scientific development of legal uncertainty unnoticed, and, moreover, ignoring the cognitive potential of the legal construct of the subject becomes more difficult (Cowan, 2004; Hoffmann, 2003; Nielsen, 2000). In the process of knowledge of various aspects of legal reality, he creates the necessary theoretical prerequisites for other scientific constructions. Although it is an example of such phenomena, which are usually presented in the structure of object of the general theory of state and law as a part of a non-legal social reality. Nevertheless, the legal consciousness of the subject (subjects) determines "the formation and development of legal



phenomena and processes” (Syrh, 2000).

Deep foundations of legal reality, which arise and support by the acts of public law activities of citizens, are located in the area of their subjective reality. It determines the specifically human way of public law being. The unique and unrepeatable inner world of a Person (citizen) as an autonomous subject of law, its various structures have their own, albeit hidden from external observation, effective influence on the acts of human activity (citizen) in the sphere regulated by the norms of public law. And if this is so, then there is an opportunity to expand research perspective, taking the advantage of the scientific potential of scientific field, which as locomotive of the social behavior of a person (citizen), asserts its complex mental reality and self-regulation, i.e. psychologism (Leontiev, 2000, Maltsev, 2007).

As confirming examples that conceptually updated the resource of psychologism in the process of theoretical and legal study of uncertainty of legal reality and its connection with legal consciousness of the subject, you can use the positions of a number of authoritative researchers of earlier and the present periods of the development of science (Petrazhitzky, 2000; Tomsinov, 2012; Kabyshev, 2011; Malakhov, 2015; Kozhanova et al., 2017).

Taking into account the research position, as well as other resources of modern scientific knowledge (Chernigovskaya, 2017), we emphasize the following: in order to fully and comprehensively consider all subtleties and nuances describing the observed legal reality, determined by the unity of acts of public law activity of subjects of public status, it is necessary to “plunge” into the sphere of his (subject) legal awareness. It is legal conscience that becomes cornerstone in the complex mechanism of operation of law and the state associated with it.

In theoretical jurisprudence, a rather extensive material has been accumulated, which makes it possible to describe how the subject's legal consciousness “works”. The processes that are hidden from external observation and actively flow in the sphere of legal consciousness and the whole subjective reality of a citizen, are diverse (Chestnov, 2012). They manifest themselves in the process of interiorization, i.e. the activity of consciousness, aimed at the perception of information about legal reality and its basis - the right as a segment of culture - assimilation of political and legal experience and its “application” to itself (experiences, affects, emotions, sensations, perceptions, thoughts, concepts, theories, etc.) as a kind of organizing center and a “point of reference”. We note in passing the so-called “main issue of the problem of consciousness” in cognitive studies (Chernigovskaya, 2017).

The activity of a citizen’s consciousness does not necessarily give rise to the socially significant actions; this is an important point to emphasize. Moreover, initiative, intensity, and tension in the functioning of a citizen's psychic activity, which show his maturity and consistency as an individual, may require and completely abandon any behavioral acts of public resonance and importance to legal reality. To a large extent, this situation shows itself in the society with values of a political and legal culture, in the landscape of which legal systems of European type have been formed of a democratic, legal, social state.

The consequence of recognizing the importance of studying the inner side of behavior of a subject of law in the sphere of public relations, which is governed by the norms of public law, becomes a rational description of its political and legal consciousness in a system with other mental phenomena (will, needs, interests, habits, attitudes, etc., affecting the formation of legal motivation for acts of implementation, and their content with legal content).

The situation is significantly made complicated by the fact that in modern domestic general legal theory, the universal concept of “legal conscience” has not yet been worked out, and one can hardly expect that the situation will change dramatically in the near future. The analysis of various and numerous scientific and theoretical sources on the issue of legal awareness, available to specialists in the field of theoretical and legal analysis of the modern period, convincingly shows that there are various judgments on the issue of concept of “legal conscience”. Many of them are rationalized and discussed many times (Kalandarishvili, 2009).

The situation in academic environment on the issue of understanding justice, however, is quite understandable. In this situation, the obvious fact should be evaluated as positive: the scientific community continues to make intensive attempts to “clarify” the meaning of the category of “legal conscience” (Lukashev, 1973), exploring the relationship of this scientific construct both with the law itself and with different paradigms of law and the state - legal thinking (Ershov, 2017). Therefore, I believe that those representatives of theoretical and legal departments of jurisprudence are right, who argue that “understanding of legal consciousness should be carried out in the context and at the intersection of basic schools of law, on the one hand, centering various aspects of reality, and on the other allowing master the “multi-unity” of concept of justice ” (Omarova & Chupanova, 2007).

I.L. Chestnov notes the changes that the postclassical methodology makes to the rational understanding of the phenomenon of sense of justice. She “spoke out” in a principled opposition to the objectless classical legal theory,



“proposing” a new characteristic of the legal theory, i.e. human dimensionality. The fundamental principle of non-classical science, human dimensionality, has led to and made it possible to propose such a methodological project as an integral theory of law (Timoshina, 2014). The post-classic, of course, “proposed” a radical update of the methodological foundations of development of a legal theory: it was postulated that it is impossible to think about law and the associated legal understanding in the categories of the nineteenth century.

In view of the abovementioned statements, it is worth acknowledging that the legal conscience is not just a category of general theory of law, but the most important aspect of legal reality. It is the legal conscience that provides construction of the norms of law, their fixation in appropriate forms and implementation in the practices of people who are the carriers of legal awareness (statuses of the subjects of the law).

Next, we allow ourselves to briefly share some judgments about various aspects of general problem of sense of justice in the context of developing the law of public statuses.

For theoretical development of the problem of legal consciousness of a subject of public status, interdisciplinary experience focused on person-centrism is in demand. The knowledge of such social and humanitarian spheres as philosophy, psychology, social psychology, cultural studies and others that are available to modern science force us to abandon physicalistic theories of consciousness in the study of legal consciousness as a category of theoretical jurisprudence.

Achievements of these and other spheres of modern scientific rationality make it possible to investigate the legal awareness of the subject of public status in the context of the following ideological attitudes.

Firstly, the presence of a psychological component is a certain degree of awareness of one’s actions in connection with realization of one’s status (legal obligations). In order to generate a new legal quality of public law relations and the entire political and legal reality, this degree must be sufficiently large. The high degree of consciousness of subject forms the deepest basis for the qualitative “leap” in the picture of his behavior, and determines the direction of the further evolutionary dynamics of the entire state-legal life of society.

Secondly, the legal consciousness of the subject of public status does not “cover” the entire subjective reality of the individual. It is only its segment, which is in complex interaction with other components of its psyche (interests, needs, will, motivation, etc.).

Inclusion in the world subject to the public status determines the exclusive connection,

“binding” legal consciousness to a person (in this connection, collective legal consciousness does not exist), its originality, fundamental unpredictability and fundamental unreadableness.

Thirdly, legal consciousness of the subject of public status is not a passive substance. It actively “creates” the subjective mode of behavior, interacts with supra-conscious and subconscious elements of the human subjective reality, used to model and create itself (the person is always not only what he is, but what he can be).

Thus, certain scientific perspectives in the analysis of the legal consciousness of a subject who is simultaneously the owner of a special public status, receive a methodology, the principles of which are persono-centrism and broad inter-disciplinary – mega-science (Krupenya, 2015).

Conclusions

In conclusion, we note that the uncertainty of the legal reality, in principle, is not surmountable, since it is determined by the state of legal consciousness of the subject of public status (creator of law, law enforcer). Therefore, we can only talk about minimizing uncertainty in the legal reality.

Minimizing the uncertainty of legal reality is a complex task, the solution of which presupposes the existence of a solid scientific basis, which, as an organic segment, includes a deeply and comprehensively developed theory of legal consciousness.

Since in modern conditions of development of domestic theoretical jurisprudence, it is hardly possible to speak about existence of such a doctrine for various reasons, the problem of determinations between uncertainty of legal reality and legal consciousness has a scientific perspective, primarily in conceptual terms. At the same time, the heuristically perspective of philosophical and methodological basis for development of the problem of determination between uncertainty of legal reality and legal consciousness is an integrative (synthetic) understanding of law and its associated state.

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