Restrictive-regulatory potential of procedural standard

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ABSTRACT
The article deals with issues relating to the resource of procedural standards in the restrictive regulation of social relations. Based on the analysis of a wide range of doctrinal sources, the authors presented their own position regarding the procedural standard essence and content, its correlation with material standards and its praxiological value.

Having singled out the relations of the first, second and third orders in the social environment, the authors see an element connecting material and procedural standards i.e. management, make the conclusions about the relationship between the "process" and the "procedure", the place and the role of procedural legal acts in the system of legislation.

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1. INTRODUCTION

The nature of procedural law rules can be represented especially clearly by disclosing the nature of the relationship concerning the subject of this category of standards - procedural relations with substantive relations. Two sets of relations should be distinguished in the subject of legal regulation: "organized" and organizational. The former ones constitute the subject of regulation for substantive law standards, and one of the varieties of the second ones - organizational and procedural - is the subject of procedural law. Organizational and procedural relations have a derivative, auxiliary character and are intended to serve the process of "organized" (material) relation implementation [1,2]. The difference between the standards of material and procedural law is that the first ones answer the question "what?", and the second ones - "how?" [3]. Considering that many material standards require not one but a whole group of procedural standards for their correct implementation, some scholars reasonably assume that the procedural standards constitute more than half of all normative material in the system of law.

2. METHODOLOGY

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

Besides, the research methodology is presented by modern tools. It used the fundamental provisions of system theory, structural and functional analysis, legal hermeneutics and phenomenology. The study was carried out on the basis of dialectical as well as a wide application of general scientific (analysis, synthesis, induction, deduction, analogy) and private scientific methods of reality cognition. The application of general scientific methods allowed the author to comprehend the development of scientific images concerning the procedural standard, to formulate the provisions concerning the subject and meeting the requirements of modern conditions.

The use of such special methods as the comparative-legal method of legal prediction made it possible to comprehend and reveal the subject of work comprehensively.

3. RESULTS AND DISCUSSION

The behavior of regulated relation subjects acts as a direct object of law standard impact, and in relation to organizational and procedural relations it is represented by different activities of state authorized bodies and officials.

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Thus, the procedural law, with its purpose of servicing the need for substantive law standard implementation, is a derivative of the latter and always has a subordinate, auxiliary character in relation to it. However, this derivative nature is traced not directly, but through such an intermediate link as the law enforcement activities of authorized entities, which conditions and determines directly the necessity of procedural law rules designed to regulate the specific organizational and procedural relations that develop in the course of carrying out this activity. Consequently, the application of substantive law directly determines procedural norms, and the subject of their regulation is the organizational and procedural relations that are developed in the sphere of this activity [1].

Further, let's note that the positions "what?" and "how?" during the determination of substantive and procedural law standard essence are based on the etymology of the word "process". Indeed, this term denotes a successive change of states, a close connection of successive stages of development, which represent an inseparable unified movement. Taking into account this interpretation, one can see the procedural elements in any activity and present it as a process. The use of the concept "procedural" in this context is not adequate to its meaning, apparently, in relation to such special-legal categories as "procedural form", "procedural activity" and "procedural norm". Otherwise, a very dubious idea is created. It seems that one and the same social relations are ordered simultaneously with the help of material and procedural norms.

Of course, there are many normative prescriptions devoted specifically to the procedure of one or another procedural action implementation. But the procedural legislation uses the term "order" not always to indicate the form of procedural actions. It fixes a strict sequence of legal process participant actions as a unity of form and content, and the form acquires the quality of procedural one due to the fact that it expresses precisely the essence and the content of the legal process. If the content of an activity requires ordering on the part of material and legal norms, then the means for carrying out such activities are also fixed by the substantive law.

Modern social life is characterized by the determination of its following main spheres: material production, social, political and spiritual one. An everyday life activity of people takes place in these spheres, the subject of which are the diverse phenomena of the external world that society needs for normal existence. Accordingly, first of all, there is

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an urgent need to regulate the recurring processes of life activity by common rules and to take care that a single individual obeys the general conditions of such life activity. The substantive law regulates these first-order social relations.

Public relations of the second order are related with administrative activity, considered as a special kind of public activity. Economy, the socio-political and spiritual life of society, and, correspondingly, similar activities are also subject to management [4, 5]. Thus, management activity has the social relations of the first order by its subject, which acquire a certain degree of an ordered form as the result of such an influence.

Finally, third-order social relations arise as the result of the state own activity ordering to create and implement material, legal, managerial and legal norms, to ensure and organize their implementation, to control their creation and implementation. The service role of these types of state activity in relation to the activity of the first and second order is obvious.

In some extent third-order public relations need legal mediation themselves, they generate a whole complex of special legal norms, different in quality from the first two categories, because they have different, unequal subjects of regulation. They form an extensive group of procedural norms, since they are called upon to regulate all the activities of state bodies in the commission of certain legal acts: law-making, constituent and law enforcement, including control, supervisory, managerial and other activities.

Let's note that the position of scholars in relation to the separation of procedural norms is not unambiguous one. And some authors talk about procedural norms [2].

The arguments in the authors' approaches to the substantiation the procedural norms non-identity are reduced mainly to the fact that a legislator uses the term "procedural" only in relation to the rules that determine the procedure for the activities of certain law enforcement agencies (for example, courts). Accordingly, some jurists believed that not every legal procedure for the commission of legal actions could be recognized as a process in that special legal sense that has historically been developed and adopted by law, in practice and in science. V.N. Skobelkin noted that the order of employee's demand satisfaction by the director of a state enterprise concerning the return of an illegally withheld amount from wages is a procedure, and it is the process if it satisfied by judicial authorities [6].

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In this regard, let us disagree with the abovementioned views, as well as with the position expressed by R.V. Shagieva, if in the general theory of law the problem has not developed the issue of legal norms regulating control and supervisory, organizational and executive activities, the activity of normative, legal and individual legal act interpretation, then it is not necessarily to classify them as procedural ones automatically. In the author's opinion, these norms, as well as the norms establishing the order of lawmaking activity, refer to procedural ones most likely [7]. We believe that this scientific solution fully complied with the requirements of its time. At the present time, the phenomena of the process and the procedure in the doctrine are correlated as a general and a particular.

Those authors, who write that any substantive law should be connected to such regulation by an appropriate procedural instruction in order to be a regulator of social relations, are right. Otherwise, it limits the range of its impact only by the level of legal information on the due a legal regulation, a legal call or a general, abstract legal declaration that does not have a direct way to a direct, "working" regulation. And in this sense, we support the position that advocates the inclusion of norms indicating specific procedures for their implementation (i.e. the procedural part of substantive law implementation) in aggregate with the norms of substantive law.

Of course, the operation of the law without a mechanism for its implementation is hindered in advance or even reduced to zero. In modern conditions [8; 9; 10], when the failure to enforce the law became a direct manifestation and one of the main causes of legal disorder, the absence of inviolable limits of public authority subject activity [11] and increased risks in the humanitarian sphere [12], this issue becomes a particularly acute. In this regard, when drafting a bill, it is required to provision that either it contains material legal norms and procedural mechanisms for their implementation, or it is necessary to issue another law defining the relevant legal process for these purposes, together with the draft law reflecting the basic rules.

4. CONCLUSION

The duty of basic norms provisioning with procedural ones should be assigned both to the subjects of legislative initiative, who submitted a bill to a representative body, and to a legislator. Practice is very diverse in this regard, but ideally the norms of procedural law should be placed in a primary act, i.e. they must have the same legal force as the

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rules of substantive law. For example, if the relevant material norms are recorded by federal law, then the process of their provision must be established by federal law.

REFERENCES

Gorshenev, V.M,. 1972, The methods and the organizational forms of legal regulation in a socialist society. (in Russian)

Bajtin, M I,. 2005, The essence of law (Modern normative legal understanding on the verge of two centuries). (in Russian)

Sorokin, V.D,. 1968, Administration issues. (in Russian)

Wood, R., Bandura, A,. 1989, Social cognitive theory of organizational management. Academy of management Review, 14 (3). pp. 361-384.

Certo, S.C., Certo, S.T,. 2006, Modern management. Pearson/Prentice Hall.

Skobelkin, V.N,. 1982, The provision of worker and employee labor rights. (in Russian)

Shagieva, R.V,. 1986, Process-legal norms and their implementation in a socialist society. (in Russian)

Held, D,. 1995, Democracy and the global order.

Held, D,. 2013, Political theory and the modern state. John Wiley & Sons.

Hill, M.J,. 1997, The policy process in the modern state. Prentice Hall PTR.

Belyaeva, G.S., Makogon, B.V., Bezugly, S.N., Prokhorova, M.L,. Szpoper, D,. 2017, Basic Ideas of State Power Limitation in Political and Legal Doctrine. J. Pol. & L. 10. p. 197.

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S. M. Seyedhosseini, M. J. Esfahani, M. Ghaffari: A novel hybrid algorithm based on a harmony search and artificial bee colony for solving a portfolio optimization problem using a mean-semi variance approach. J Central South University 23 (2016), No. 1,181–188.

G Soleimani, M Amiri, SM Khatami, MJ Isfahani :Using S Technology, in the Automotive Industry, with the Approach of Its Implementation in Commercial Vehicles .Industrial Engineering & Management Systems.2016; 15(4): pp.290-297

Kornyushkina, A.Y., Markhgeym, M.V., Novikova, A.E., Doronina, O.N,. Zajcev, S.Y,. 2017, Minimization of human rights risks: the constitutional legal experience of post-soviet states. Turkish online journal of design art and communication, 7. pp. 352-356.

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