

BASIC APPROACHES TO THE DEFINITION OF LEGAL SECURITY: HISTORY AND MODERNITY

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Abstract: This paper contains a comprehensive study of the evolution of views on the legal security of the individual, society and the state in the general social and legal aspects. As a result of the study, the main approaches to understanding security are systematized and define it in space; concerning the national interests of the population of a particular state; concerning military threats; concerning the sovereignty of the state; the legal content of this concept, the principles of ensuring personal, public and national (state) security at the international level are revealed.

Keywords: safety, legal security, concept, approaches to the definition, international security.

1. Introduction.

Modern doctrinal general theoretical approaches to the definition of legal security are characterized by some uncertainty and underestimation of the main methodological aspects of the concept of national and international security, which, in turn, excludes a single algorithm for developing, formulating, adopting and implementing strategic directions for ensuring state, public and personal security within individual states, as well as international security on a global scale.

As a result, regardless of what is meant by security - the strategic goal, the scientific program, the state of an individual, society or a state, etc., the issues of personal security, national security, international security and global security are largely dissociated, since they relate to completely different spheres.

There are even points of view about the absence of an independent concept of the legal security of the individual and the "absorption" of this phenomenon by other social spheres. So, for example, George Nef, considering human security, distinguishes its following constituent elements: physical, economic, social, political, legal and cultural; at the same time, legal security, according to the scientist, is part of political security and embodies only the possibility of individual and collective access to justice and protection against abuse. [1] Such a narrow approach to security problems is difficult to recognize as completely fair and justified. The reason is as follows.

Already in the ancient times, when the understanding of human security did not go beyond the ordinary view and was interpreted as the absence of danger or evil for the individual, nevertheless, this term has already begun to be used by ancient Greek philosophers in legal terms: Plato used it in his philosophical and legal discourse on the structure and goals of an ideal state ("State" dialogue); Aristotle saw the main threat to social stability in the wrong state system [2]. A concept of "security" became quite widespread in the XVII-XVIII centuries thanks to the philosophical concepts by T. Hobbes, J. Locke, J. Zh. Rousseau, B. Spinoza, G.W.F. Hegel and other thinkers. For example, according to T. Hobbes, "power ... is good, because it is a means of ensuring a safe life, and our peace of mind rests on security." J. Locke, on the other hand, admits the opposition of "the security of the people and security of the state" [4]. Political and legal developments by Immanuel Kant clearly show the need to highlight the internal and external security of the state and civil society, the interdependence of the national security of each state with the security of the international community, the doctrine of universal peace as the only reliable basis of security [5]. Hegel considers the state as a "self-conscious moral substance". The destruction of public morality, in his opinion, through the undermining of the foundations of the family, the moral degradation of the individual, the loss of religious feelings leads to the disintegration of the spiritual foundations that ensure the stability of the state, both against external threats and against internal contradictions [6]. Thus, the concept of "security" in Western European political consciousness, along with democracy and human rights, has historically been an integral part of liberal consciousness. An example of this is the English Bill of Rights 1689, which links security to the unity of peace and tranquility of the people and the welfare of the state [7]. A similar provision is contained in the American Declaration of Independence 1776, which proclaims the creation of the security guarantees to be the right and duty of the people, and the provision of security and happiness to people to be the task of the government [8]. Summarizing the above, this paper seems reasonable to identify some conceptual approaches to the definition of legal security and its provision, including at the international level.

2. Methodology

The methodological basis of the study is the general principles and methods of scientific knowledge related to the research apparatus of the humanities, which include the basic principles of dialectics - development and historicism; general scientific approaches - systemic, sociological; methods of analysis and synthesis, induction and deduction,

abstraction and theoretical modeling, ascent from abstract to concrete, typological analysis, etc. An important role in the study is played by the method of comparative analysis, classification, comparative-legal, comparative-historical, as well as formal-legal methods.

3. Results

We shall consider the basic, from our point of view, conceptual approaches to the definition of legal security.

The first approach is official, which defines security as the protection of interests (including national ones) from threats. In the original sense, this is the protection of the territory from external threats, carried out by military means in anarchic state system, which, according to the postulates of structural realism [9], is characterized by a constant rivalry for security. In the future, the transformation of the understanding of security caused the attention of scientists to the so-called "internal" threats (the state of the environment, terrorism, refugees, crime, etc.), and threats not only to states, but also to individuals and their groups [10]. The second approach to the definition of security (system-philosophical) emphasizes the need to preserve integrity, sustainability, stability, normal functioning, sustainable development of the system (country, state, society as a social system). This concept is reflected in many international documents, which will be further considered, as well as in the National Security Strategy of the Russian Federation 2015.

Moreover, this understanding of security is reflected in other sciences. Thus, the American scientist J. Kirchner from Cornell University, in respect to socioeconomic relations, regards the "national vitality" as an important aspect of the state, which is interpreted as the ability of society to purposefully address existing problems [11].

The third approach to the concept of security - let's call it axiological - regards security as the protection of the values belonging to the subject (the country, society, group, personality) against the significant damage to it. This perception of security is typical of Western European political consciousness, where the considered social phenomenon, along with democracy and human rights, has long become an integral part of the liberal worldview. In particular, Hegel considered the state as a "self-conscious moral substance". The destruction of public morality, in his opinion, through the undermining of the foundations of the family, the moral degradation of the individual, the loss of religious feelings leads to the disintegration of the spiritual foundations that ensure the stability of the state, both against external threats and against internal contradictions [6].

Recognizing the validity of the main provisions of all the above-mentioned approaches, nevertheless, we shall focus on the need to strengthen the legal component of the phenomenon of "legal security".

The opinion by R. Jackson, according to which legal security is a "civil state created and supported by the state through the rule of law", is considered fair in the light of the comment [12]. In general, the terms "legal security" and "legal certainty" in the English legal literature are used as synonyms and designate "predictability of legal decisions" [13]. The work by G. Kelsen "Collective Security in International Law" contains a systematic approach to the definition of legal security and notes that in science there are two main values of the concept under consideration. The first is related to the international security of the state, which is divided into political and legal security, and is defined as "the state in which a state observes an objective law without fear that its rights as a subject of international law will not be violated without compensation" [14]. The second meaning of the concept of legal security used in the English-language literature derives from the German legal science (from *Rechtssicherheit*) and denotes the principle, according to which the legal and administrative laws of the state must be conditioned by an established legal rule [15].

Thus, in most general sense, the concept of "legal security" is a multifaceted phenomenon, which, in our opinion, is necessary to consider:

- in space: as part of international security with regard to security within the borders of a certain state (its state borders);
- regarding the national interests of the population of a particular state: as a state of protection of the vital interests of the individual/society from internal and external threats;
- regarding military threats: as a state of the country, which does not threaten with war or other impingements on sovereign development;
- regarding the sovereignty of the state: as a state of the state, which ensures its integrity and the opportunity to be an independent subject of international relations.

The main international document in international security should be the Charter of the United Nations, which makes an attempt to create a mechanism for "maintaining international peace and security" [16]. In particular, the UN Charter defines the basic principles of the law of international security, namely, the principles of peaceful settlement of disputes and the non-use of force or threat of force, for the implementation of which the states pledge to provide the United Nations with all possible assistance in its actions and refrain from rendering assistance to any state against which it undertakes preventive or compulsory actions. These provisions also apply to the states that are not members of the United Nations, calling for the latter to act in accordance with these principles to the extent necessary to maintain international peace and security (Clause 6, Article 2 of the Charter).

The foundation for international security also forms other principles of international law. So, according to Art. 3 and 28 of the Universal Declaration of Human Rights, "respect for human rights and democracy are paramount in order to avert a threat to peace". Everyone has the right to life, and the state and the international community as a whole must ensure an international order under which this right can be exercised" [17].

This provision serves as the source for the human right to peace, which is connected with the right of the people and the state to peace. The General Assembly in the Declaration on the Right of Peoples to Peace 1984 formulated the "sacred right of peoples to peace", provision of which is the fundamental obligation of the states [18].

A particularly important is the principle of conscientious fulfillment of international obligations. Thus, par.1, Art. 1 of the UN Charter states the task "to maintain international peace and security and, to this end, to take effective collective measures to prevent and eliminate threats to peace and suppress acts of aggression or other violations of peace and in peaceful manner, in accordance with the principles of justice and international law, settle or resolve international disputes or situations that could lead to a breach of the peace" [16].

It should also be noted that a number of documents adopted by authoritative international organizations in the 1980s-1990s, - from the Brandt Commission [19] to the South Commission and the participants of the Stockholm Initiative [20] - recognize the need for a broad rethinking of the ways to ensure security, in shifting the emphasis from disarmament to the elimination of socio-economic and other non-military sources of instability.

The international conference on the relationship between disarmament and development, held under the auspices of the United Nations in 1987, and the meeting of experts on non-military aspects of security held in Tashkent in 1990 adopted an expanded definition of security, including the absence of external political pressure and economic coercion, an opportunity for states to "freely pursue national development and progress, as well as meet basic needs and human rights" [21].

An indisputable fact is that the United Nations, which has proved lack of its alternatives and is endowed with a unique legitimacy, should remain the center for regulating international relations and coordinating world politics in the twenty-first century. All world powers should support efforts to strengthen its central and coordinating role, which implies: the steady observance of the purposes and principles enshrined in the UN Charter; rational reform of the United Nations in order to adapt it systematically to the changing political and economic realities in the world; further enhancement of the effectiveness of the activities of the UN Security Council, which has the primary responsibility for the maintenance of international peace and security, making this body more representative in the process of reforming, with due diligence in its work. Any decisions on creating additional seats in the UN Security Council should be made on the basis of the broadest consensus of the UN member states. The status of the five permanent members of the UN Security Council should be preserved.

To achieve these goals, the following actions must be taken.

First, it is necessary to organize work on the systemic strengthening of the legal bases of international security, since only generally recognized rules and principles of international law can determine the "rules of the game" in relations between states. In turn, development of the habits of international law in the subjects to correlate their actions with international norms will help to reduce the factor of "tough" force and establish a collective way of action in order to prevent world chaos that threatens international public order [22].

Secondly, it is necessary to form a polycentric international system based on reform of the leading international institutions, strengthening of multilateral diplomacy, and prevention of single dominance in any sphere [23].

Thirdly, it is proposed to approve universal diplomatic methods for resolving crisis situations, which are based not on isolation of the so-called "problem" states (wherever they are in the world), but on their participation in international dialogue.

4. Conclusion. Legal security in the most general sense should be understood as the state of protection of the individual, society and the state from a wide range of internal and external threats, which ensure the implementation of constitutional rights and freedoms of citizens, worthy quality and standard of living, sovereignty, independence, state and territorial integrity, and sustainable socio-economic development of the state. Thus, security in the legal sense has not only (and not so much) protective meaning (protection against threats), but also ensures the optimal state and effective operation of social institutions, sufficient for the development of the individual, society and the state. Provision of national and international security as the main goal and content of the state's activities determines the main directions of its functioning at the international level and in the domestic political sphere.

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