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LEGAL FORM OF ACTION: THE ISSUES OF CONTENT AND METHODOLOGY

FORMA LEGAL DE ACCIÓN: CUESTIONES DE CONTENIDO Y METODOLOGÍA

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Abstract

Based on the examination of a wide range of sources, this paper presents the author's opinion on certain essential characteristics of the legal form of action in the context of the general theory of law and the state. This work outlines and systematically studies procedural proceedings, procedural stages, and procedural regime as the fundamental components, which are essential for the knowledge of the content of the legal form of action.

Keywords

Legal process – Legal form of action – Legal restrictions – Public authority

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Introduction

We should note that the appeal to the form of action in legal reality has always been an important theoretical and practical challenge. However, the relevant issues have been resolved mainly through criminal, civil and partly administrative processes. In recent years, the situation has begun to change, since this problem has undoubtedly gained wider scientific significance, becoming the subject of intensive research in the field of forms of action, including non-traditional ones, and also, which is most valuable, moving into the field of basic research in legal theory.

This is largely due to the desire to implement a real democracy[1] and the rule of law as a principle[2], based on legal liability in its broad sense[3].

The essence and content of the form of action seems to be known only when its constituent components are considered. We believe that it should be divided into such elements as procedural proceedings, procedural stages, and procedural regime. Any form of the legal process as an integral system implies an internal connection of its constituent elements. However, this does not take the the issue of the unification of individual components and, in particular, procedural proceedings, stages and regime off the table.

Methodology

In this research, an analytical hermeneutic method has been used. Hermeneutic method helps to analyze, interpret and interpret legal texts. Since a large part of the legal content is composed of rational-philosophical texts, the hermeneutic method can be the best way to analyze the content and reasoning of these texts. The research was carried out in four phases: predetermining the knowledge, determining the horizons, approving or modifying the knowledge, and ultimately interpreting and finalizing the analysis.

Results and Discussion

We believe that procedural proceedings are the most meaningful and capacious elements of the form of action, as they are intended to isolate the objective characteristics of the process, its spatial dimension, and reflect the objective need for professional specialization of the activities of participants in the legal process.

Procedural proceeding as a complex entity includes components of different levels and purposes. Structurally, it can be divided into procedural legal relations, ways and methods of proving all the facts relevant to the case, and into procedural documents formalizing the results obtained in the course of the legal process.

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[1] R. Harrison, Democracy (New York: Routledge, 1993) y D. Held, Democracy and the global order, 1995.

[2] L. Bingham, L. “The rule of law”, The Cambridge Law Journal, Vol: 66 num 1 (2007): 67-85 y A. Scalia, “The rule of law as a law of rules”, The University of Chicago Law Review, Vol: 56 num 4 (1989): 1175-1188.

[3] B. V. Makogon; I. V. Savel’eva; A. I. Lyahkova; A. A. Parshina & A. S. Emel’anov, “Interpretation of legal responsibility as a universal instrument of procedural legal restrictions”. Turkish Online Journal of Design Art and Communication, num 7 (2017): 328-332.

The initial part of the procedural proceedings is the legal procedural relationship. The features of legal social relations, the specificity of their specific content primarily determine the individuality and types of procedural proceedings. In this regard, the study of the nature of legal procedural relations, their composition and functions seems to be particularly significant, since it allows both solving many theoretical issues and facilitating the filing of recommendations for legislation and the practice of its application. In methodological terms, the starting point of the most correct solution of the issue of the nature, content and purpose of legal procedural relations can contribute to the development of the theory of law on the so-called organizational (organizing) relations as a specific level in the subject of legal regulation[4].

The group-specific nature of procedural proof is that it is a technical-legal component within the structure of procedural proceeding, in contrast to legal procedural relationship, which is a social legal entity, since in terms of procedural proof this is not about a procedural law, but about the relevant rules of legal technology, directly involved in forensic science. Each type of procedural proceedings has an appropriate procedural evidence structure[5].

The most important element of any procedural proceedings is the official documentation of the results obtained. It is carried out exclusively with the help of the established system of official legal documents that have such a basic characteristic as their reflection in specific legislative acts. This component in the procedural proceedings discloses its formal legal aspect.

We shall turn to the stages of the process. The starting point and the initial basis for determining the stage as an independent element in the procedural form should be the decomposition of the process itself in terms of continuity of movement, i.e. its constant renewal and discontinuity or disintegration into the next successive stages.

To better understand the content of the stages they are considered in two aspects. We should single out the stages that constitute the logical sequence of actions taken when a legal act is issued. This stage is one-time and is a solution to a simple logical syllogism (establishing factual grounds, determining and analyzing the relevant norm, making a decision in the form of a specific act). In this respect, stages are traditionally reviewed and confirmed by scientific research in the general theory of law.

The second aspect is typical of branch procedural sciences. Within its framework, a strict distinction is made between functional stages. These are, for example, the stage of initiating a criminal case, preliminary investigation, court proceedings and the stage of execution of a sentence in a criminal process, the stage of pre-trial preparation, the consideration of a dispute, the execution of a decision in a civil process or the stage of initiating an administrative prosecution, an administrative violation case and decisions on the imposition of an administrative penalty, and the execution of this decision - in the administrative process.

[4] V. M. Gorshenev, Sposoby i organizacionnye formy pravovogo regulirovaniya v socialisticheskom obshchestve. YUrid. lit-ra. 1972.

[5] I. V. Benedik and I. M. K. Pogrebnoj, Voprosu o strukture processual'noj formy. Problemy socialisticheskoj zakonnosti: Resp. mezhved. nauch. sb. 1982.

Each individual functional stage consists of several private (logical) stages, which play the role of their quantitative filler and are carried out each time with strict observance of the general law enforcement procedure.

Thus, a stage in its most generalized form as an independent element of a procedural form, if considered not in isolation, but in combination, interrelationships and interdependencies with other stages, is a part of the temporal structure consisting of an objective logical sequence of performing a certain number of actions to resolve legal case and acts as a definite stage filled with a certain functional content.

Further, it is necessary to find out a set of distinctive features, the presence of which allows limiting one stage from another, determining its autonomy. Starting from the general theoretical positions, these criteria can be defined as follows: each separate stage is characterized by its own specific tasks, the non-fulfillment of which would impede further normal progress of the process; procedural activity, as a rule, is characterized by a different circle of subjects, whose functions at each stage are different and consist in solving unequal procedural tasks; it must be an aggregate, a system of legal proceedings and relations carried out within certain time limits and sequence established by law, and necessarily ends with the adoption of a decision by the state body or an official recorded in the relevant legal act; any subsequent stage is for verification and complementary with respect to the previous one and logically continues the activity that was completed in the previous stages of the process.

It is important to note that due to the separation of the legal process into the stages, procedural activity focuses on achieving, first of all, the closest specific goals, the successful implementation of which is the key to the effective implementation of the objectives and goals of the process as a whole.

The next element of the procedural form is the procedural regime. In this terms, legal science is represented by two opposing positions. First of all, there is an opinion that the regime is an additional characteristic of each procedural form. Otherwise, the procedural regime is considered as an independent element. This point of view is considered more acceptable and reasoned because only recognition of the regime as an independent element allows us to consider the procedural form as a completed legal structure.

The procedural regime is a complex phenomenon with its own structure, which includes principles as social guidelines defining the nature of procedural activity, and legal guarantees interpreted as organizational and legal means and methods which help carry out this activity and achieve strict and sustained compliance and execution of laws, and ensure the protection of the rights and legitimate interests of all participants of the process. Differences between procedural principles and safeguards should be based on the existence of close, mutually pre-emptive relations between them.

Further, given the disclosure of the substantive aspects of key concepts in the process, we consider it necessary to pay attention to the issues of methodology in the framework of the legal process.

In terms of dialectical logic, the definition of the concept “legal process” given in legal literature is achieved by disclosing a general and individual relationship, in which the general expresses the essential aspects of the individual by finding out the order of their

interrelation. One cannot imagine a theory that would not play a methodological role in research. This provision applies to the developed theory of the legal process, i.e. a set of generalized knowledge about one of the parties to real legal reality.

It is noteworthy that even in the Soviet legal literature the authors repeatedly pointed out to the phenomenon of "procedural nihilism" in legal science and practice and substantiated the need to overcome it[6]. In solving this problem, an important role rightly belongs to the legal process, as a specific complex that contains an organic combination of the general properties of the general and the features of each structural unit. Improving the effectiveness of legal regulation, the scientific search for ways to strengthen the rule of law require a comprehensive study of the specifics of the legal regulation of social relations that underlie the subject matter of procedural law, regardless of which branch of law is considered. This in turn requires a high methodological level of development of scientific research on the issues of the methodology of the legal process. The methodological approach to this phenomenon poses the need to determine, first of all, the ways, methods, and research techniques applied in their dialectical unity[7].

According to the most general classification of research methods, the materialist dialectic method is universal. The presence of private scientific methods of research involves a general scientific methodology, which is also specified depending on the subject of a particular science. The categories of materialistic dialectics, their correct application to the phenomenon under study allow revealing the content of the complex concept of "legal process". Based on the analysis of the essence and structure of traditional (civil and criminal) processes, it is possible, by generalization, to conclude that there are basic structural links, elements of procedural form in the content of the legal process, namely procedural proceedings, stages, and regimes. These elements also serve (when considering the dialectic relationship of the general and the individual) a general, which, being the result of the generalization of traditional processes, at the same time expresses the essential aspects of these processes, within the framework of which the corresponding legal forms of activity of state bodies and officials are carried out, and therefore allow us to consider various legal forms of activity as separate versions of a general (legal process) taken on a particular classification basis. It also shows the importance of the classification method as a type of scientific systematization of phenomena according to a common feature - the presence of elements of the procedural form in specific versions.

An in-depth study of the content of this category is obviously impossible without specific scientific research methods, which are used not in isolation from the general scientific method, but in their organic unity. Comparative analysis plays an important role in the theory of state and law, which allows determining the unknown by comparing with the known, comparing the content of the legal process with another legal form of activity of a state body in order to identify the main elements of the procedural form and recognize this legal form as a type of legal process. The creation of a concept, classification and systematization are inevitably associated with the comparison.

The effectiveness of any method definitely rises along with its conscious and purposeful application. Thus, a comparative method in combination with other scientific

[6] V. M. Gorshenev, Nekotorye metodologicheskie problemy teorii yuridicheskogo processa. YUridicheskie garantii primeneniya prava i rezhim socialisticheskoj zakonnosti, 1977.

[7] S. S. Alekseev; D. A. Kerimov and P. E. Nedbajlo, Metodologicheskie voprosy pravovedeniya. Pravovedenie, 1964.

methods is necessary to improve procedural and restrictive legislation[8], disclosing ways to rationalize the structure and forms of activity of state bodies for the application of substantive law, enshrining the relevant powers of the authorities. Here we should note the importance of the functional approach to comparative research, when it begins "... not with the recognition of certain norms or institutions as units of comparison, but with the promotion of a social problem and then the search for a norm or institution which can help solve the problem"[9].

Note that if the study of law of different periods of history is based on the use of historical methods, then the study of future law should rely on the methods of forecasting and modeling based on the data being obtained as a result of analyzing the phenomenon. Thus, the improvement of procedural and restrictive legislation, dictated by the need to optimize the activities of all state bodies performing various legal functions, should take into account the basic patterns identified by analyzing various processes, combined as a set of homogeneous requirements, elements of procedural form and necessarily available in the structure of the legal process.

The examination of the content of the legal procedural form (structural-functional analysis) allowed to identify elements of the legal process on a substantive basis, i.e. this method made it possible to single out various sets of actions by participants in the process, aimed at accomplishing a specific function in the process. For example, lawmaking (on streamlining, filling gaps, current legislation) or constitutive proceedings, identified as a result of the analysis of such a type of legal process as electoral (ordinary proceedings, on repeated elections, etc.).

Using the same method allows us to distinguish the stages in various types of processes and the corresponding procedural regimes too. Recognition of the procedural form of the elements in specific varieties of the legal process of certain functions performed by participants of the process should be motivated by the need to develop them with a view to further use in the process of improving the procedural law. In the legal literature, points of view have already been expressed on the issue characterizing the importance of developing procedural proceedings. It is also recognized that it is expedient to develop questions regarding procedural stages, since it is believed that the stages serve as the main basis for the differentiation of procedural institutions, which is enshrined in the structure of the relevant sectoral laws.

The nature and degree of importance of the public relations between the participants of the process regulated by the procedural norms should be reflected in the entire procedure for the authorized bodies to carry out their functions, expressed in the nature of the guidelines, norms, regulation of the activities of the participants in the exercise of these powers, creating appropriate "tension" of the procedural activities. This should reflect the procedural regimes, firstly, to take the whole set of factors influencing the behavior of participants in various processes, since it is believed that it is the behavior of citizens and officials that interests lawyers first and foremost.

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[8] G. S. Belyaeva; B. V. Makogon; S. N. Bezugly; M. L. Prokhorova & D. Szpoper, Basic Ideas of State Power Limitation in Political and Legal Doctrine. J. Pol. & L., num 10 (2017) y B. V. Makogon, Yuridicheskaya priroda i ogranichitel'naya sushchnost' processual'nogo prava. Probely v rossijskom zakonodatel'stve. YUridicheskij zhurnal, 2013.

[9] M. Borucka-Arctova, Metodologicheskie problemy sravnitel'nyh issledovanij v pravovyh i inyh obshchestvennyh paukah. V kn.: Sravnitel'noe pravovedenie / pod red. V.A. Tumanova. 1978.

We believe that gaps in some areas of the procedural and restrictive legislation require an active rule-making activity that considers the diversity of social factors that determine the needs of law enforcement. No law-making would be possible if it did not seek to simulate procedural legal norms in accordance with the properties and laws observed in the structure of the legal process, which the procedural law must reflect and arrange.

Conclusions

The increasing complexity of the tasks that arise before the state apparatus, the need to strengthen the legal limits of the activities of the subjects of public authority definitely place high demands on the content of managerial work. In legal literature, the issue of the tasks of switching the entire process of creating and functioning of the links of the state apparatus to a scientific basis arose naturally; this issue also involves the challenge of rhythmic and purposeful solving of tasks and performing the functions of bodies exercising state authority. Ensuring the strengthening of the regime of legitimacy in their activities requires the exact and uniform application of legal norms in compliance with established organizational and procedural forms.

We consider legal form of action as a universal scientific structure, capable of becoming a unified tool for interdisciplinary communication in the modern process.

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