

Legal Acts in Russian Legal System

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Abstract: The article is analyzing the distinguishing features of Russian legal system. The author marks the special formal legal features of Russian legal system that differs it from other countries that belong to continental family of law.

Key words: Legal system • Legal acts • Normative acts • Lawmaking • The system of legal acts • Mentality • Legal mind • Legal means

INTRODUCTION

In every country legal system depends on national traditions, culture, mentality and other social-economical and political features [1]. But despite differences countries also have some common features, which allow scientists to unite them into so-called "legal families". A legal family includes different national legal systems, accentuated because of the communion of different features and options [2]. Legal system is a substantive legal category, which is different from terms «legal up-building», «legal life», «mechanism legal regulating», «legal system». Legal system is a complex of legal facts and processes (positive law, law-creation, law-realization, legal relationships, legal mind) which is built as a result of their connection and that is characterizing judicial cooperation on the social life [3].

Today modern Russian law is on the crossroads what to do.

- To connect to one of the existing legal families,
- To go its own way and create new euro-Asian legal family,
- To go back to «socialistic roots» [4].
- There are four main families marked in the modern theory of law: French, German, American and modern Russian.

RESULTS AND DISCUSSION

Russian legal system and also Soviet one are usually supposed to be included into Roman-Germanic legal system. But there are still other points of view.

If we analyze all the explorations of the special features of the Russian legal system, we can divide all of them into two main variants:

- Specification of the content;
- Formal judicial specification.

Most scientists are analyzing the factors of the first group. Modern scientists are analyzing interaction between law and morality in Russian society, deformations of the legal mind in Russian society, special features of Russian mentality and historical traditions of social life.

These factors really create specification of Russian legal system. But in our work we would like to pay more attention on formal judicial aspects. This group is still not well studied, but in our opinion a lot of different from classic Roman-Germanic countries features of the Russian legal system are hidden there.

First, Let's Talk about Descriptive Features of Russian Legal System: V. Sinyukov in his PhD dissertation work pointed that Russian legal system differs from Roman-Germanic legal family [5]. M. Marchenko also pointed on the singularity of the Russian legal system. He didn't neglect that Russian legal system is much similar to Roman-Germanic legal family, but he still thinks that Russian law has always been unique because of its own historical, social-economical, national and multinational fundament [6]. E. Lukyanov marks some special features of the Russian government-building: unity, paternalism, autocracy, national idea, Caesarism, spirituality, traditionalism. Appearing of these features

was predetermined because of the objective economical, historical and other factors. All of them appeared gradually according to development of the Russian government and at last acquired stable character, defining essence of governmental relationship and specification of its progressing [7].

According to Sinyukov's opinion, Russia refers to the substantive type of spiritual-material organization, which has its own mentality, own social institutes, individual character of economical structure and labor ethics. This is an important indicator that Russia has adequate national legal sphere that needs to identify the necessary spiritual means, both state and non-political cultural, religious, scientific, theoretical, literary and artistic reflection [8].

The other special feature is expressed in the fact that legal system reflects the role of the government in the process of regulation of all the social relationships. It should be mentioned that the power paradigm of public authority is likely to prevail in Russian political culture. This suits epypotestary character of the Russian political reality [9].

V.N. Sinukov says that the fundamental feature of Russian legal system is represented not by the exterior specification but in the content of the law institutes and acts that externally copy the shape of the continental law structures. Despite the resemblance and cognominality of these structures in Russia, they are sometimes even diametrically opposite in their meanings, social aims and causes than in other countries of Roman-German legal family [10].

Thus, when we are talking about substantial features of Russian legal system we should speak first of all about the scope of legal mind, specificity of the Slavic mentality, historical traditions of interaction between public authorities and society.

Formal-Legal Aspects of the Russian Legal System: Formal-legal aspects relating to the system of sources of law, their hierarchy, interaction principles of law-making and judicial practice in the legal system.

M. Marchenko in his work, like many others, says about the coincidence of the Russian legal system with the Roman-Germanic. One of the main principles of Russian law is the principle of supremacy of the constitution, the law, which corresponds fully to the principles of the Roman-Germanic legal system [11].

An idea of supremacy of the Constitution is closely related to the concept of the rule of law, but it refers to the laws that are issued pursuant to the Constitution and that are concretizing Constitution as the fundamental law of the country. So, laws should be the main regulator of

social relations but not the by-laws. But also, we shouldn't allow an extension of legislative regulation to such an extent that the law turns into just an instruction [12].

However, the realization of these principles and the actual essence of the system of normative legal acts look much different from theory.

Indeed, the normative-legal acts are the main source of Russian law. Other forms of law in our legal system are limited to those established by the legislation [13].

So, the features of Russian legal system are determined by the Soviet legal system. In Soviet law by-laws dominated and laws had a framework character with virtually no other. By-laws are a heterogeneous complex today [14]. By-laws have to regulate everyday life in all the details and because of this fact the number of by-laws is in dozens of times higher than the number of laws.

V. Zor'kin in his works turns attention to the legislative activity of courts as a special feature of Russian legal system. According to his point of view, law-making activity of the courts in the Russian legal system is formally (officially) not accepted; in the doctrine it is interpreted contradictory, but it really exists and through higher courts affects the development of the law, just as it is in many other European countries. Decisions and other acts of Russian Supreme Court and Russian Supreme Arbitration Court in fact affect other judicial decisions, so they actually acquire precedential value [15].

Another point. Modern legal literature correctly draws attention to the connection between legal system of the state and its political system [16]. The type of state and law is the basis of the legal system. In legal literature, we can't find an answer to the question, what type of state we have. Unlike the Roman-Germanic legal system, in our country politics dominates the law. Politics is "number one" in Russia, so all relations in Russia are still being built under the scheme «who is the chief, he is right» [17]. This is indicated by the famous Russian constitutionalist S. Avakyan. From his point of view, authorities do not act according to the Constitution and constitutional law, but to own political concepts [18].

Scientific studies have identified the following features of Russian legal system, that may influence legislation: in contrast to the Roman-Germanic legal family we have a principle of multiplicity of sources of law, with the leading role of the statute; the dominating role of politics, legal nihilism is inherent in all spheres of society. [19].

Summarizing and analyzing all of the above, we can draw the following conclusions. Distinctive features of the Russian legal system are not only in the sphere of legal mind, but also in the formal legal criteria typology of legal systems.

Today, the most significant feature of Russian legal system is that there is no system of legal acts. As it is rightly noted by the author's famous textbook on the theory of state and law, by the results of lawmaking - laws and other regulations –we are judging the state in general, its degree of democracy, the level of civilization and culture [20]. In Russian legislation there is no clear distinction between the different types of legal acts, no legislative recognition of the full hierarchy of acts, no officially established principles of their creation.

Russian Constitution has only two articles (17, 76), which establish the basic principles of the law-creation activity. Today it's not enough. There is no federal law about law-creation activities. A lot of scientists say that the special order for law-making and creating the system of laws ought to be fixed in our legislation. Nowadays there is neither term what is legal document, nor criteria of an official legal document. Also, there is no definition of terminology of official sources in the sphere of usage such terms as "legal act", "normative-legal act", etc.

Official regulation of the problem of legal acts is pretty fragmentary. The only act on the federal level, which is regulating these problems is Federal law from 06.10.99 ¹ 184-FL "About common principles of organization of legislative and executive bodies of power in the subjects of Russia". This is not enough from any point of view point.

CONCLUSION

Legal act is an outward manifestation of legal life, a reflection of legal reality. People get acquainted with legal reality through legal acts. Legal acts are the outward expression of legislation and legal practice as the main components of legal system of the country. In our opinion, all this factors allow us to mark legal acts as an important component of legal system and as its quality characteristic. Effectiveness of legal system, its democratic character depends, first of all, on used legal measures, legal acts are one of them. The system of legal acts is a qualitative indicator of the legal system; it shows the degree of civilization and progressiveness of the country in general. Therefore, as part of our work we explored the legal acts as a component of legal system, that determines its efficiency. Clear structuring of the sources of law and legal means like it is usually made in Roman-Germanic legal tradition can become a model for Russian legal system. We're not talking about blind copying. Further development of Russian legal system is possible in two ways: a rapprochement with the Roman-Germanic legal system or separation by creating our own path of legal development.

Different researchers have different views on prospects of development of Russian legal system. However, regardless of the chosen path of development, modernization of Russia's legal system will be linked to the need to establish a system of legal acts, their hierarchy and principles of creation. Today, absence of such system is a destabilizing factor for the legal system in general that does not allow Russia to reach a new level of quality legal life.

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