

Specificity of Legal Regulation Discreteness in Federal States

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Abstract — The article is devoted to the issues of discreteness of legal regulation of public relations in the field of the state structure in federal states. The article aimed to study the features of the legal regulation discreteness of public relations in the field of the state structure in federal states. Particular attention is paid to the organization of legal means to prevent the occurrence and settlement of conflicts between the federation and its subjects based on a topological approach to the mechanism of legal regulation. The study paid attention to a topological context of the law. The dynamics of the legal system development leads to the indispensable existence of such a phenomenon as discreteness. Discreteness is due to the properties of the legal system as a set. This idea does not mean that individual manifestations of discreteness cannot be eliminated. On the contrary, if we consider law as a system directed against the entropy of society, then there must be specific mechanisms in it to overcome individual manifestations of discreteness.

Keywords — law, regulation, federation, topology, legal regulation.

I. INTRODUCTION

Legal regulation in the ideal case is a continuous process of streamlining social relations. A stable law and order arise as a result of the legal regulation of public relations [1; 2]. Based on the rule of law, contradictions between subjects of law are resolved quite quickly and without negative consequences for society as a whole.

However, the fact of inclusion in the mechanism of legal regulation of law enforcement does not deny the phenomenon of discreteness of legal regulation [3; 4; 5]. It is assumed that in many social processes, a situation may arise in which the subjects of legal relations for some time do not use the legal means of organizing their activities. Legal means are not used, despite their existence. The subjects of legal relations in these conditions require particular actions of other legal entities in order for legal regulation to be resumed [6; 7; 8]. To comprehend this phenomenon, it can use a reasonably common analogy with the natural sciences. The indicated phenomenon can be called discreteness of legal regulation.

The article aimed to study the features of discreteness of the legal regulation of public relations in the field of the state structure in federal states.

In terms of identifying and analyzing the discreteness of legal regulation, the most obvious one is the use of the temporal approach. From this point of view, the discreteness of legal regulation acts as a period during which the

mechanism of legal regulation seems to “stand idle.” In contrast, the regulation of social behavior is carried out by extra-legal, if not anti-legal, means.

II. METHODOLOGY

In the framework of this approach, the period between the commission of the offense and the bringing of the offender to legal liability is the most uncomplicated period of legal regulation discreteness. The simplicity and visibility of the temporal approach to the discreteness of legal regulation served as the basis for many very successful studies on this issue.

D.V. Sherbik defines discreteness in law as a negative phenomenon, expressed in violation of one or another of the necessary continuity [9]. D.V. Scherbik considers discrepancies in law at various levels of the development of law and the functioning of the legal system.

The historical discontinuity of law is one of the critical features of the law discreteness that can occur under the influence of the culture and law of other cultures [10]. Ivanov and Ivanov note that a situation is possible when someone else's law is imposed. Ivanov and Ivanov also determine the discreteness of law in the internal structure of the right to institutions and industries [10].

P.D. Ivanenko considers discreteness in historical and legal senses [11]. P.D. Ivanchenko summarized research in the field of legal regulation. Based on the study, the scientist proposes to determine the discreteness of law in the historical sense.

Discreteness of law is a discontinuity in the process of law smoothly ongoing succession. It can be historical discontinuity in the process of a particular state law development. The historical discontinuity in the development of law is reflected in the non-functioning of the legal system that nominally exists in a given period. Perhaps this is a situation of the inapplicability of the legal system to the regulation of existing legal relations in society. However, this situation may consist of the termination of the existence of a previously functioning system of law as a result of foreign policy, domestic policy, or foreign and domestic political factors at the same time.

P.D. Ivanchenko suggests considering discreteness not only in the historical but also in the legal sense. Discreteness in the legal sense is the discreteness of the legislation. It is a situation where the current legislation is inherently discontinuous. This discontinuity is expressed in the

heterogeneity of the law-regulator. If we expand the interpretation of the definition of discreteness, it is also expressed in the heterogeneity of legal regulation. P.D. Ivanchenko reduces this type of discreteness to a combination of gaps in the legislation and defects in the text of the law [11].

III. RESULTS AND DISCUSSION

Today, the legal regulation discreteness is considered in a temporal context and as a synonym for a gap in the legislation. However, discreteness as a universal property of matter extends to any relationship of any conceivable object. Accordingly, we can assume the existence of temporal and topological discreteness of legal regulation.

If this assumption is reliable, then the existence of a nonempty set, each of whose elements is included in this set with a particular "neighborhood," is also reliable. Moreover, the term "neighborhood" here is understood exclusively in the mathematical sense of the word. The neighborhood is a set of phenomena that elements have any qualities similar to the element of the given set under study.

The legal system can be considered as such a set, since all its elements:

- are relatively isolated in content,
- have some "neighborhood,"
- possess properties similar to those of other elements of the set "legal system."

In turn, if we consider the legal system as a discrete topological space, then it, as in any setting, should contain its own and improper subsets.

At the same time, the elements of the legal system will act as own subsets of this space, and the legal system itself and some empty subset will act as odd ones. The simplest example of such an empty subset is a gap in the law.

The presence of an empty subset does not exclude that the neighborhood of any element of such a set as the legal system can intersect each other. They can intersect either in the form of suppression of the subsets ($A \cap B$) or in the form of symmetric difference ($A \Delta B$).

Moreover, in the case of the intersection of subsets, legal regulation will be complicated (for example, using norms from different branches of law). In the case of symmetric difference, legal regulation will be practically impracticable or substantially tricky. So, one of the apparent examples of symmetric difference is legal conflict.

Based on this, the following definition of topological discreteness of legal regulation is possible. Topological discreteness of legal regulation is the interaction of the legal system elements among themselves that interrupt the existing legal regulation.

The legal system can be considered as a set forming a discrete topological space. This vision does not mean the exclusive fixation of the study of the legal system at an arbitrarily chosen point in time.

The fact is that such sets as discrete topological spaces in mathematics cannot fundamentally be closed. In turn, any open sets have several features. Open sets assume that over time, any of their elements can be changed, lost, and new elements can appear in the set.

The temporal and topological views on legal regulation discreteness do not exclude each other. These views rather complement each other.

For example, a gap in the law in a temporal context means a period of lack of legal regulation necessary for subjects. In a topological context, a gap in the law is such a lack of interaction between the legal system elements that entails the emergence of an empty subset called a gap in the law. Moreover, for each of these cases, the description of membership in the set will fix the error ($x \in \emptyset$).

Similarly, a legal conflict in the topological sense of the word forms a symmetric difference, excluding the implementation of any of such elements of the legal system as the rule of law. In a temporal context, a legal conflict is a situation of the impossibility of legal regulation during the simultaneous operation of two legal norms with equal legal force. Moreover, any description of such symmetric difference ultimately also comes down to fixing the error ($A = \bar{A}$).

Thus, the following definition of the discreteness of legal regulation is possible. The discreteness of legal regulation means that in the process of legal regulation, some aspects of the legal system at specific periods can interact with each other in such a way that the process of legal regulation is not carried out for a given period.

Such interaction of the legal system elements includes the interaction of such elements of the set as subjects of legal relations. In particular, it is the subjects of legal relations who invent such social relations that need legal regulation but do not receive it. They exclude legal regulation by committing offenses and resume legal regulation through the application of the law.

The simplest case of discreteness of law is the discreteness of legal regulation caused by the actions of individuals as subjects of law. However, the discreteness of legal regulation can be a somewhat complicated and multidimensional phenomenon. Multidimensional discreteness of legal regulation can arise as a result of the law subjects' interaction. These elements are complexly organized sets.

The discreteness of legal regulation that arises in the interaction of subjects of law, which are sets, is especially pronounced in states with a federal-state system. In this case, a subset of the legal system (X), as a system of law, splits into at least two subsets, namely, the system of federation law (A) and the system of law of constituent entities of the Federation

(B). Note that if we take for "n" a finite number of subjects of the Federation, each of which has its system of law, then the following entry is possible: B1, B2, B3 Bn.

Moreover, in the topological plan, the relations between A and B in the normal state of the set can be described by the following system of expressions: $A \subset X$; $B \subset X$; $A \cap B$.

These expressions take into account:

- the intersection area of the subsets forms the sphere of joint reference, the region of the subset A, not included in the intersection;

- the sphere of exclusive jurisdiction of the Federation, the area of subset B, not included in the intersection;

- the scope of the exclusive jurisdiction of the Federation.

Based on this system of expressions, discreteness areas of legal regulation concerning individual elements of the system of law of the federation (a) and its entities (Bn or, to simplify the notation – B) can be described as follows:

1. $a \notin X$
2. $B \notin X$
3. $a \neq A$
4. $B \neq B$
5. $a \Delta B$
6. $a = \emptyset$
7. $B = \emptyset$

Let us consider each of these cases of discreteness of legal regulation in relations between the Federation and its subjects and the individual features of the mechanism of legal regulation in such situations in more detail.

1. $a \notin X$

This expression means one of the rarest and perhaps the most serious cases of legal regulation discreteness in the field under study from the federal state integrity. This formula reflects the possibility of the federal center taking such actions concerning the subject of the Federation that is clearly and unlawful.

In this case, the resumption of legal regulation is significantly stressful. The reason for the difficulty lies in this fact. Namely, the offender is the state, which is entrusted with the obligation to ensure the operation of the legal regulation mechanism. As the historical examples show, the federal center often "covers up" such offenses with the help of criminal law. Such cover, in particular, was paragraph 2 of Decree of the Supreme Soviet of the USSR No. 1410-I of April 3, 1990 "On the Enactment of the Law of the USSR "On the Procedure for Solving Issues Related to the Exit of a Union Republic from the USSR," Article 253 [12]. This resolution contains a direct violation of the principle of the inadmissibility of retroactive force, which extended the effect of this law to the period preceding it and effectively outlawed the actions previously committed by the Union republics.

2. $c \notin X$

This expression means such a kind of legal regulation discreteness as the performance by a federation subject of such actions about a federation or its other subject that is clearly and unlawful.

Such actions are not as dangerous as described in the first expression. However, such actions may lead to the discreteness of legal regulation for an extended period. As a rule, such actions are also "covered up" with the help of unconstitutional law. For example, the long-term civil war in Chechnya, which entailed two anti-terrorist operations, began with the introduction of provisions on the state in Articles 14 and 15 of the Declaration on State Sovereignty of the Chechen-Ingush Republic [13].

3. $a \neq A$

This expression means that the Federation has committed such actions that lead to an excessive restriction of the Federation subject's rights, compared with those established by law.

In particular, Articles 71 and 73 of the Constitution of the Russian Federation, it would seem, suggest the possibility of the existence of both federal conflicts of law and conflict of law subjects of the Federation. However, an attempt to form a law conflict at the level of the Federation subject was made only once. This event is a decision of the Supreme Court of the Republic of Tatarstan of October 24, 2001. On recognition of the Decree of the Supreme Court of the Republic of Tatarstan on October 2, 1992 No. 1615-XII "On declaring the Republic of Tatarstan as a zone free of weapons of mass destruction" contrary to federal law, invalid and not giving rise to legal consequences since October 9, 1992 [14].

4. $c \neq B$

This expression means the performance by the Federation subject of such actions that lead to the exercise of rights belonging to the Federation law.

It is precisely such acts committed by the supreme legislative body of the Republic of Tatarstan that was correctly recognized as illegal in the court mentioned above decision.

5. $a \Delta B$

This expression describes a situation in which the legal regulation implementation in the joint jurisdiction field is impossible due to the contradiction between the law's rules of the Federation and its subjects.

Such situations are resolved in competency disputes. Despite the fact that to this situation there is a sufficiently developed procedural mechanism, we note that over the entire period of its operation the Constitutional Court of the Russian Federation resolved a dispute on competence in essence in five cases (from 1995 to 2002) and in twenty-two Cases refused to accept relevant appeals [15].

6. $a = \emptyset$

This expression describes a situation in which the implementation of legal regulation in the field of joint jurisdiction is impossible due to gaps in federal law.

Currently, such gaps are being filled (filled) without any special difficulties in the process of the current lawmaking.

$7.c = \emptyset$

This expression describes a situation in which the legal regulation implementation in the joint jurisdiction field is impossible due to gaps in the law of the subject of the Federation.

These gaps are also eliminated during the current lawmaking of the subjects of the Federation. However, defects of a legal-technical nature are more common here.

IV. CONCLUSION

In a topological view, these examples show that the legal system development dynamics leads to the indispensable existence of such a phenomenon as discreteness in it due to the real properties of the legal system as a set. However, this does not mean that individual manifestations of discreteness cannot be eliminated. On the contrary, if we consider law as a system directed against the entropy of society, then there must be specific mechanisms in it to overcome individual manifestations of discreteness. Moreover, these mechanisms are doomed to continuous improvement. Since the discreteness elimination in one of the subsets means only that sooner or later, discreteness will manifest itself in some other subset. Discreteness is being an integral property of the studied set.

Accordingly, concerning the development of federalism in our country, attention should be paid to the insufficient development of the legal regulation of the inadmissibility of the appropriation of powers by both the state bodies of the Federation and the state bodies of its subjects. This conclusion holds even though in the nineties, extraordinary means were found to solve this problem.

There is a need to develop laws of the Federation and its constituent entities. It is also necessary to establish rules for filling in the gaps by the subjects of the Federation as applied to the sphere of their joint jurisdiction.

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