

Integrative Law Understanding as Basis for the Lawyer

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Abstract

The integrative theory of law, like any social theory, needs constant updating and development in accordance with the dynamics of the development of society and the state. This requirement is more related to the practically applied component of the theory, but the conceptual basis of integrative legal thinking (the fundamental component of the theory) should also be in the research focus. This article attempts to identify and form some elements of the practical basis of integrative theory. It is given the definition of law, it is shown the elements it consists of and how they are situationally manifested in practice. The article also separately examines typical situations of the law existence as an element of practice. The article emphasizes that the law is an integral element and regulator of any socially significant practice. The law, as an element of practice, is always situationally specific. The authors emphasize that the integrative legal thinking is a necessary and core element for a lawyer. It is noted that by combining all the best that is in other concepts, the integrative theory of law contributes to the thinking development of a high-class practicing lawyer. Practical aspects of the integrative theory of law seem to be quite important and significant for the effective work of the legislator and the practicing lawyer, since they allow forming the basis of the methodology of an effective lawyer.

Keywords: Integrative legal thinking; situational complex of norms of objective law; Situational complex of individually defined norms of cognitive law; Legal measure of behavior; "Living" law; Methodology of an effective lawyer.



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1. Introduction

The definition of law, which is scientifically theoretical and instrumentally suitable for effective activity (legal thinking), is possible only on the basis of the study of this object as an element of practice. The problem of defining the difference between the "law in statics" (indicating the way the law should be) and the "law in dynamics" (indicating the way the law actually is) is one of the key in modern researches (Calavita, 2016). Practice and practice only, and not the ideas of the luminaries of jurisprudence (even if very convincing in the first approximation), contains all the necessary and sufficient data from the integrative theory of law, since practice, above all positive practice, is the truth criterion of any social theory. The identification of law as an integral element of practice, the formation of an empirical image of the phenomenon of law, the understanding of its practical specifics is the first and necessary action in the process of an integrative definition of law. When people begin to actively pay attention to the new practice, the state immediately tries to give it a legal basis (Viscusi and Aldy, 2013).

Law is always situationally specific in practice (Pogodin, 2015). It becomes not just a formal, but also a real regulator, if it is claimed in a specific situation by the personally named subjects who, in accordance with the conditions of the situation, their interests and capabilities, use the regulatory potential of the complex of abstract general norms of objective law addressed to the situation participants.

2. Methods

In this analytic study, we used content analysis method to investigate Integrative Law Understanding. We believed that we can consider the typical situations of the law as an element of practice. The criteria for identifying a typical situation are associated with the features of a) the subject composition of the situation, b) the regulatory action and manifestation of law, c) the legal form (situationally necessary legal documents). To determine these situations, we compiled a list of them, and then, removing the extra items and those that were aligned, a final list of the situations was prepared:

- a situation outside a specific relationship;
- a situation of the emergence and functioning of a simple particular relationship;
- a situation of the emergence and functioning of a complex particular legal relationship;
- a situation of a gap in objective law;
- a situation of the offense in a particular legal relationship;
- a situation of the offense outside a particular legal relationship.

3. Results and Discussion

1. A situation outside a specific relationship. Here, the subject of law acts (inacts) unilaterally, does not interact with another subject or subjects, for example, a person is in the entrance of a residential house, no one and nothing controls it. In this situation, law is a synthesis of 1) a complex of situationally significant, abstractly general norms of objective law (norms of housing law, civil and administrative law) and 2) a complex of individually defined norms arising in the subject's legal consciousness (subjective rights, duties, prohibitions and etc.) (Pogodin *et al.*, 2018).

The objective law establishes the statutory (non-personally identifiable) rights and obligations, prohibitions and restrictions, procedures for their implementation, punishment, rewards and other requirements relevant to the given situation and rights addressed to the subject. The situational complex of the norms of objective law is a potential (formal) regulator, the situational obligation of law exists only on paper (legal requirements are obligatory for all and there is no one for whom); this complex goes into the state of a real regulator, the binding nature of law is actually manifested, if a person specifies abstract standards in the mind and psyche, i.e. in fact, he/she creates the individually defined norms in the form of subjective rights, duties, etc., therefore, he/she is ready to fulfill and actually fulfills the situationally significant legal requirements, in particular, he/she does not leave litter at the entrance, does not damage common property. In the analyzed situation, the individually defined norms are not formalized in a legal document, they exist in the system of cognitive law in the mind and psyche of a person.

Thus, in this situation, the law consists of two elements: firstly, a set of situationally significant norms of objective law (law is a potential regulator), and secondly, a situational complex of the individually determined norms of cognitive law (law is a real regulator). In this aspect, the integrative theory uses everything rational available in the regulatory and psychological theory of law. We can add that one of the brightest representatives of the regulatory direction R. Strammiller said that "the law of social life is the law of its legal form, comprehension and adherence to the basic idea of law as the ultimate goal of human society" (Gareis *et al.*, 1921), as if emphasizing the connection between theory and practice. The rationality of the regulatory theory of law was well disclosed by P.I. Novgorodtsev. In his opinion, the legal regulation is a means of satisfying social needs and progressive social transformations (Heuman and Beirne, 1990). If we turn to the psychological theory of law, then its essence was rather well conveyed by the founder of this concept L.I. Petrazhitzky, according to which the law "is an imperative attribute (the obligatory pretentious experience of people)" (Petrazhitzky, 1907).

2. A situation of the emergence and functioning of a simple particular relationship. In such a situation, the law, as an element of practice, has a structure of three elements. Firstly, the situational complex of abstract general norms of objective law for the participants in a particular situation (for a passenger and a carrier, an examiner and an examinee, etc.). It includes the norms of various legal institutions of the core industry and the norms of other industries, for example, criminal law. Secondly, the situational complex of individually determined norms as a result of concretization of abstract general norms in a given situation, i.e. situational cognitive law of the subject. Third, along with these components, it is necessary to single out the "living law". It arises (or does not arise; then the legal relationship is deformed and it appears an offense in it) in the process of interaction of subjects, but this is not the very behavior of the subjects of a specific legal relationship and not the legal relationship as a whole, but the measure of its (behavior) compliance with the abstractly general and individually defined norms. The third element can be designated with the help of the terminological construction "legal measure of behavior" or "legal normativity of behavior". This terminology shows the real manifestation of law in practice, reflects the real action and the power of law.

The inclusion of a legal measure of behavior in the structure of law, which exists in the analyzed situation, is justified not only by the desire to use the conceptual basis of the sociological theory of law - in this case it's about distracting from the formal signs of law, this theory fills it with a social content (Khropanyuk, 2008), but, above all, the practice circumstance. In case of a conflict between the parties or between them and third parties, including representatives of the state and local authorities, a specially authorized subject, for example, a judge determines the situationally significant norms of objective law involved, they way they are interpreted by the parties to the conflict and the way the behavior complies with the norms. In essence and in fact, the judge identifies all three elements, especially the legal measure of behavior ("living law") and makes a decision in the form of a law enforcement act on this basis. At the same time, the very decision also becomes an integral part (optional element) of law in this situation. It is also worth noting that a large number of foreign authors considered the problems of a sociological approach to law (Baier *et al.*, 1986).

3. A situation of the emergence and functioning of a complex particular relationship. Here, the law is a specific system (micro system) as a situational law at the micro level. Indeed, the law structure consists of: 1) a situational complex of norms of objective law (ideal level of law), 2) a situational complex of individually defined norms of cognitive law (psychological level of law), 3) a situational complex of individually defined norms enshrined in the legal form, for example, contract, will, etc. (formal legal level of law), 4) "living" law (practically applied level of law), 5) an optional element in case of a conflict, for example, a judicial act (conflict level of law).

The specific nature of the law system in a particular situation is in the fact that at first glance it is formed by heterogeneous elements, which, nevertheless, cannot fully exist without each other, they complement each other, the new systemic properties appear when they interact, the contradictions inevitably arising between them are resolved to known limits within the system, ensuring its stable operation.

In fact, the situational norms of cognitive law may be authentic to the situational norms of objective law, less or more in volume: include additional situational norms. In turn, the formalized situational norms do not necessarily repeat the norms of cognitive law, and a "living" law may not fully coincide with the formalized norms.

Thus, the multilevel and generally systematic manifestation of law in the analyzed situation allows it to be a flexible and effective regulator - an element of practice. In turn, the dynamics of development of the regulated practice, its diversity and complexity predetermine the form and content of the situational law.

4. A situation of a gap in objective law. In the society and the state - this is an indicator of the development dynamics - new practices are constantly arising (and the existing ones are filled with new content or stopped) (Gazizullovich *et al.*, 2018). Constant updating of the system of practices of the modern society and the state, emergence of each new practice, for example, the practice of organ transplantation, largely determines the presence of such a variety of legal defects, such as a gap in the situational complex of the norms of objective law (partial gap) and the absence of this complex (full gap). As is well known, the destructiveness of the existence of gaps in the law leads to the fact that a certain field of relations cannot function normally without binding legal norms (Malyushin, 2003). There is a dilemma before the subjects of law in the first, but especially in the second case: 1) to enter into a non-legal, but social relation, therefore, to expose oneself to the risk of the impossibility to secure and protect one's own interests by legal means; 2) to wait until the state (or another specially authorized subject) develops a legal basis for a new situation in the form of a situational complex of abstract general norms or in accordance with the principles "everything that is not prohibited by law and morality is allowed" and other legal principles to implement the individual legal regulation and create a situational complex of the individually defined norms, formalized in the contract.

If the participants in the private legal situation decide to overcome the complete gap in the objective law and in the process of individual legal regulation based on the principles of law, taking into account the conditions of the situation, their interests and capabilities, create a situational complex of individually determined norms, the law includes the following elements: 1) a situational complex of the individually defined norms of cognitive law, 2) a situational complex of the individually defined norms in the form of a contract, 3) a "living" law, 4) an additional element in the event of a conflict, for example, a court decision; while the judge, as a source from which he/she takes the rule of law, uses the provisions of the contract.

In such situations, the role of the practicing lawyer is extremely important. It is he/she who, in his/her mind and psyche, forms the situationally determined norms, then explains them to the principal and coordinates them with the legal representative or directly with another participant (participants) in the private legal situation. The integrative legal thinking of a lawyer is the methodological basis of his/her effective activity in the analyzed situation (Pogodin, 2015).

5. A situation of the offense in a particular legal relationship. The situational complex of the norms of objective law may contain the norms that determine the way of behavior unacceptable in a particular situation and a particular legal relationship. What is law in this situation? As in the above situations, there is a situational complex of norms of objective law (which includes the composition of offenses and corresponding punishments), as well as a situational complex of norms of cognitive law. There may be a situational title document, for example, a real estate sale and purchase contract and, in general, a package of documents, i.e. the formalized individually defined norms, for a complex particular relationship. However, there is no legal measure of behavior. Its absence destroys the situational law system, therefore it (the law) does not fulfill the function of a real regulator, the injured party or other authorized legal entities may use the procedure for bringing the perpetrator to legal responsibility. Then an additional element appears in the forms of the law enforcement act, for example, a judicial sentence.

6. A situation of the offense in a particular destructive legal relationship. In various practices, the offenses are committed outside a specific legal relationship, i.e. the offense exists in its "pure" form, it becomes an independent so-called destructive legal relationship. What is the law in this situation?

Firstly, a situational complex of norms of objective law, defining the corpus delicti and punishment for its commission. In contrast to the views of the XIX century, which argued that the law was justice, therefore, since justice was an unchanging quantitative indicator, it could not allow any changes in the direction of increase or decrease (Long, 2006). Secondly, a situational complex of norms that is formed (or absent, for whatever reason, for example, ignorance, state of affect) in the mind and psyche of a criminal. Thirdly, a situational complex of individually determined norms of the cognitive right of a judge (composition of judges). Fourthly, if the criminal is established, his/her guilt is proved in the judicial process, then the formalized individually defined norms are created in the form of a sentence, which are the result of concretization of the criminal law norms taking into account the conditions of the situation, personality features of the criminal and the victim, and public danger of the crime.

4. Summary

1. The law is an integral element and regulator of any socially significant practice. The law, as an element of practice, is always situationally specific. There are a number of typical situations in which the situational nature of law is clearly manifested.

2. In a specific situation, the law is a multi-level and systemically organized regulator. A comprehensive understanding of law, taking into account all aspects of its manifestation in practice, is contained in an integrative theory.

3. The integrative legal thinking, its conceptual component, integrating everything valuable and rational that is in the regulatory, sociological, and psychological theories of law, is the methodological basis for the work of an effective lawyer.

5. Conclusions

To make a conclusion, it should be noted that the integrative legal thinking is a necessary and core element for a lawyer. By combining all the best that is in other concepts, it contributes to the thinking development of a high-class practicing lawyer. Moreover, it should be emphasized that this concept is the methodological basis of an effective lawyer.

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